

The Customer's attention is particularly drawn to the following: clauses 4.6, 5.3, 6.3, 7.3 and 8.3 (Contract Extended Term); clauses 9.2 and 9.6 (Unauthorised or Fraudulent Use of Services); clause 10.1 (Charges and Payment for Services); clause 13 (Cancellation Charge) and clause 15 (Limitation of Liability).

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Bribery Act: means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption.

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

Carrier: the relevant third party telecommunications operator or network service provider.

Charges: the applicable charges payable by the Customer for the supply of any Services and/or Equipment in accordance with clause 10.

Commencement Date: the date on which Online Systems shall start to provide the Service which shall mean in the case of:

- Maintenance Services the Installation Date or where Online Systems has not contracted with the client to install Equipment in connection with the Maintenance Services the date specified as the Commencement Date for the Maintenance Services;
- Fixed Network Services the Handover Date in respect of those Fixed Network Services;
- Data Services the relevant Handover Date in respect of those Data Services;
- IT Support Services the date specified as the Commencement Date in the Order Form or the date of the first invoice where this is not specified; and
- Mobile Services the Handover Date in respect of those Mobile Services.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.7.

Connection Date: in the case of the provision of Data Services the date when the Carrier starts providing the Data Services to the Customer on behalf of Online Systems.

Contract: the contract between Online Systems and the Customer for the supply of any Services and/or goods (including where appropriate Equipment) in accordance with these Conditions, the Order and any Service Specific Conditions.

Contract Date: the date on which a Contract between the Customer and Online Systems is formed and comes into existence as determined pursuant to the provisions of clause 2.2.

Customer: the person or firm specified as such in the Order Form who contracts to purchase Services from Online Systems.

Customer Default: has the meaning given to it in clause 9.3.

Data Protection Laws: all applicable data protection and privacy legislation and regulations in force from time to time (for so long as and to the extent that they apply to Online Systems) including, where applicable, the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 (GDPR) and any amendment or replacement to it (including any corresponding or equivalent national law or regulation that implements the GDPR), the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and any laws of the European Union relating to data protection and privacy

Data Services: the data services to be provided by Online Systems to the Customer as described in the Order, together with such other data services that Online Systems agrees to supply to the Customer from time to time.

Data Services Contract: where applicable, the Contract for the supply of Data Services.

Delivery: has the meaning given to it in clause 4.2.

Equipment: the equipment as set out in the Order Form.

Estimated Installation Date: the date on which Online Systems estimates that the Equipment will be installed, as advised by Online Systems to the Customer.

Ethernet SLA: the service level agreement for ethernet services (available on request) as amended from time to time.

Extended Term: in relation to:

- a Contract for the supply of Fixed Network Services has the meaning given to it in clause 5.3;
- a Contract for the supply of Data Services has the meaning given to it in clause 6.3;
- a Contract for the supply of Maintenance Services has the meaning given to it in clause 4.6; and
- a Contract for the supply of the IT Support Services has the meaning given to it in clause 7.3.

Fair Use Policy: Online Systems' Fair Use Policy (available at <https://thisisfocusgroup.co.uk/downloads/online-systems-fair-usage-policy.pdf>) as amended from time to time.

Fixed Network Services: the voice services to be provided by Online Systems to the Customer as specified in the Order Form.

Fixed Network Services Contract: where applicable, the Contract for the supply of Fixed Network Services.

Handover Date: means

- in the case of the provision of Fixed Network Services the date when the Fixed Network Services are available for use by the Customer with Online Systems as the supplier of the Fixed Network Services.
- in the case of Data Services the date when the Data Services are available for use by the Customer with Online Systems as the supplier of the Data Services.
- in the case of Mobile Services the date when the Mobile Services are available for use by the Customer with Online Systems as the supplier of the Mobile Services.

Hosted Sub Licence: a sub licence granted by Online Systems to the Customer for a hosted product for use in connection with Fixed Network Services.

Installation Date: the date on which the Equipment is installed.

Installation Services: the services relating to the installation by Online Systems (or its duly authorised agents) of the Equipment (where applicable).

IT Support Services: the IT support services to be provided by Online Systems to the Customer as specified in the Order.

IT Support Services Contract: where applicable, the Contract for the supply of IT Support Services.

Maintenance Services: the maintenance services to be provided by Online Systems to the Customer as described in the Order, together with such other maintenance services that Online Systems agrees to supply to the Customer from time to time.

Maintenance Services Contract: where applicable, the Contract for the supply of Maintenance Services.

Minimum Term: the minimum contract term that applies to the Maintenance Services, the Fixed Network Services, the Data Services, the IT Support Services and/or the Mobile Services as the case may be, unless a different minimum term is specified for any such Service in the Service Specific Conditions section of the Order Form, be the period of three years commencing on the Commencement Date. Where the Customer is a Small Business Customer the Minimum Term shall (save in respect of Data Services) be 24 months unless the Small Business Customer has expressly agreed to a longer Minimum Term on the Order Form.

Mobile Services: the mobile services to be provided by Online Systems to the Customer as specified in the Order.

Mobile Services Contract: where applicable, the Contract for the supply of Mobile Services.

Notes Section: the section of the order form marked "Notes Section".

OFCOM: the Office of Communications or any equivalent successor body.

Online Systems: Online Systems (Northern) Ltd Limited registered in Carlisle with company number 02709011 and with registered address Online Systems Head Office, Innovation House Brunhill Road, Kingstown Industrial Estate, Carlisle, Cumbria, England, CA3 0EH

Order: the Customer's order for Services as set out in the Order Form; such Order being subject to these Conditions.

Order Form: the document which sets out amongst other things the Services which the Customer would like Online Systems to provide to it and certain details in respect thereof including when read in conjunction with these Conditions the basis on which the charges for providing the Services will be calculated. The Order Form shall be prepared by Online Systems and sent to the Customer for signature by or on behalf of the Customer and returned to Online Systems. The Order Form may be prepared, sent, signed, or returned either electronically or physically.

Services: the services to be supplied by Online Systems to the Customer being any or all of the Installation Services, Maintenance Services, Fixed Network Services, Data Services, IT Support Services and/or Mobile Services, as the case may be, and Service shall be construed accordingly but shall exclude the provision of DNS servers and mail servers.

Service Policy: the Service Policy (available at <https://thisisfocusgroup.co.uk/downloads/online-system-service-policy.pdf>) as amended from time to time

Service Specific Conditions: any policies, terms or procedures that apply to and shall be incorporated into the Contract, as specified in the notes section of the Order Form.

Site: the Customer's place of business as specified in the Order Form where any Services are to be provided or carried out and/or (where applicable) Equipment is to be delivered and any Installation is to take place, as specified in the Order Form.

Small Business Customer: a Customer identified on the Order Form as not being a communications provider and who has 10 or fewer individuals working for that Customer (whether as employees, volunteers or otherwise).

Specification: the description or specification of the relevant Services and/or Equipment provided in writing by Online Systems to the Customer as set out in the Order Form.

Tariff: the standard tariff as available on request and as may be varied in the Notes Section of the Order Form for Fixed Network Services, Data Services and the IT Support Services as attached to the Order Form and as amended or notified to the Customer from time to time.

VOIP: Voice Over Internet Protocol being the use of the internet as the transmission medium for telephone calls by digital means (rather than the traditional telephone system based on copper wires carrying analogue data).

1.2 Construction. In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to writing or written includes e-mails but excludes faxes.

2. BASIS OF CONTRACT

2.1 The sending of the Order Form by Online Systems to the Customer constitutes an offer by Online Systems to the Customer to provide services and/or Equipment in accordance with these conditions, the Order and any service specific conditions ("the

- Offer"). The Offer may be withdrawn at any point by Online Systems prior to it being accepted by the Customer.
- 2.2** The offer shall be accepted and the Contract shall be formed and come into existence at the point when Online Systems receives the Order Form, either electronically or physically, duly signed (either electronically or physically) by or on behalf of the Customer at which point and on which date the Contract shall come into existence (subject where applicable to clauses 4.1, 5.6, 6.6 and 7.5). If Online Systems has not received the Order Form duly signed for or on behalf of the Customer within 12 months from the date on which it is sent to by Online Systems to the Customer the offer to contract with the Customer shall be deemed to have been withdrawn unless otherwise agreed between Online Systems and the Customer.
- 2.3** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Online Systems which is not set out in the Order Form, the Service Specific Conditions or the terms (or incorporated by reference in any of them).
- 2.4** Any samples, drawings, descriptive matter or advertising issued by Online Systems, and any descriptions or illustrations contained in Online Systems' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions shall prevail. In the event of any conflict between these Conditions, any Service Specific Conditions and the Order Form, the Order Form will prevail in relation to that Service.
- 2.6** Any quotation given by Online Systems shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7** The Customer warrants to Online Systems that it is entering into the Contract for the purpose of its business, trade or profession and not as a consumer.
- 2.8** Except for Installation Services that shall form part of a Contract for the supply of Equipment, each order for Maintenance Services, Data Services or Fixed Network Services shall be deemed to be a separate Contract (irrespective of whether more than one or all of them are included on the same Order Form).
- 2.9** To the extent that there is any failure or delay by Online Systems to supply one of the Services, that shall not entitle the Customer to terminate the Contract for the supply of any other Service or Services as the case may be (if any).
- 3. SUPPLY OF SERVICES**
- 3.1** Online Systems shall supply the Services to the Customer in accordance with the Contract in all material respects. In the event that the Order Form specifies:
- (a) the supply by Online Systems to the Customer of Equipment and Installation Services and/or Maintenance Services, clause 4 of these Conditions shall also apply to the Contract;
 - (b) the supply by Online Systems to the Customer of Fixed Network Services, clause 5 of these Conditions shall also apply to the Contract;
 - (c) the supply by Online Systems to the Customer of Data Services, clause 6 of these Conditions shall also apply to the Contract; and
 - (d) the supply by Online Systems to the Customer of IT Support Services, clause 7 of these Conditions shall also apply to the Contract.
- 3.2** Online Systems shall use all reasonable endeavours to deliver any Services on or by any date or dates specified in the Order Form, but any such dates shall be estimates or for guidance only and time shall not be of the essence for the performance of the Services.
- 3.3** Online Systems shall have the right to make any changes to any Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the relevant Services. Online Systems shall notify the Customer of any such change.
- 3.4** Online Systems warrants to the Customer that the relevant Services will be provided using reasonable care and skill, subject to clauses 4, 5, 6 and 7 of these Conditions.
- 4. TERMS APPLICABLE TO EQUIPMENT, INSTALLATION SERVICES AND MAINTENANCE SERVICES**
- 4.1** Any Order for Equipment is conditional on the availability of such Equipment prior to the Estimated Installation Date. Online Systems shall use reasonable endeavours to deliver the Equipment and supply the Installation Services with reasonable care and skill in accordance with the estimated period for delivery and installation. Installation within such period is not guaranteed and time shall not be of the essence.
- 4.2** Delivery of Equipment shall be deemed to take place when the relevant Equipment arrives at the Customer's Site (prior to unloading or unpacking) as specified in the Order (Delivery) (and Delivered shall be construed accordingly). In relation to Delivery of any Equipment:
- (a) the Customer shall be responsible for checking that all details specified in the Order are correct;
 - (b) if the Customer fails to take Delivery of any Equipment within 10 Business Days of Online Systems notifying the Customer that the Equipment is capable of being delivered, the Equipment shall be deemed to have been Delivered in accordance with the Contract and the Equipment shall be at the risk of the Customer and thereafter clause 4.3 shall apply to the Equipment;
 - (c) if any Equipment is to be Delivered in instalments, any delay in the Delivery of one instalment shall not entitle the Customer to reject the other instalments or to terminate the Contract; and
 - (d) the risk in any Equipment shall pass to the Customer on Delivery (or deemed Delivery in accordance with clause 4.2(b)) and the Customer shall be responsible for insuring the Equipment from that time.
- 4.3** Notwithstanding clause 4.2(d), ownership of any Equipment contracted to be purchased by the Customer shall not pass to the Customer until such time as the Customer has paid to Online Systems all sums due for the Equipment and the Installation Services. Unless and until ownership of the Equipment passes to the Customer (if at all), the Customer shall:
- (a) not remove, deface or obscure any identifying mark on or relating to the Equipment;
 - (b) maintain (except where Online Systems is also at the time supplying Maintenance Services) the Equipment in satisfactory condition and insured it against all risks for its full price from the date of Delivery or deemed Delivery;
 - (c) not lease, charge or otherwise encumber the Equipment;
 - (d) not remove the Equipment from the Site without Online Systems' prior written consent;
- 4.4** If the Equipment is leased or rented to the Customer the Customer shall:
- (a) return the Equipment at the Customer's cost to Online Systems immediately on request at the end of the lease or agreement; and
 - (b) permit Online Systems or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.
- 4.5** If the Customer is in breach of the Contract the Customer shall return the Equipment at the Customer's cost to Online Systems immediately on request and permit Online Systems or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.
- 4.6** Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 4.7** Not used.
- 4.8** The Maintenance Services shall only be supplied by Online Systems in relation to the Equipment and to any other equipment agreed by Online Systems in writing from time to time. Unless agreed otherwise in writing by Online Systems, Online Systems shall supply the Maintenance Services in accordance with the Service Policy as amended from time to time.
- 4.9** The Maintenance Services shall not include or be deemed to include repair or maintenance to:
- (a) equipment that is faulty or has failed due (in whole or in part) to or caused by:
 - (i) fair wear and tear;
 - (ii) the Customer's (including its agents or workers) acts, operating errors, omissions or default;
 - (iii) failure in air-conditioning or fluctuations in electrical power;
 - (iv) any failure of equipment or software attached to or integrated to the Equipment where such equipment or software was not supplied by Online Systems;
 - (v) vandalism, fire, theft, water or lightning;
 - (vi) any defect or error in software loaded on to the Equipment;
 - (vii) any defect or fault in connection with services supplied to Online Systems by any Carrier;
 - (viii) failure by the Customer (including its agents or workers) to adequately maintain any Equipment or operate it in accordance with the manufacturer's specifications, guidelines or recommendations; or
 - (ix) any attempt by the Customer or any third party other than Online Systems or its duly authorised agents to repair, reconfigure, re-program or otherwise alter the Equipment or any equipment or cabling attached to it.
 - (b) ancillary items, including but not limited to, answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
 - (c) the maintenance or repair of any extension wiring, any Equipment not at the Site, or of anything other than the Equipment; or
 - (d) the reprogramming of the Equipment to provide improved or modified services or facilities.
- 4.10** In the event that Online Systems carries out Maintenance Services to any Equipment which has, in its reasonable opinion failed or become faulty due (wholly or partially) to any of the circumstances described in clause 4.9, Online Systems shall be entitled to charge additional fees for such services calculated in accordance with clause 10.5.
- 4.11** In carrying out the Maintenance Services Online Systems shall not (subject to clause 15) be liable for the loss of any data or information stored on the Equipment or any other equipment that may be affected by the carrying out of the Maintenance Services and the Customer shall ensure that appropriate backups of all data and information are maintained.
- 4.12** In rectifying any fault to Equipment it may be necessary for Online Systems to reset the Equipment's software. In such cases, Online Systems shall not be responsible for resetting or reloading equipment programming and user profiles.
- 4.13** The Maintenance Services are limited to the provision and repair of the Equipment by Online Systems on a like for like basis, which may include Online Systems supplying reconditioned parts for Equipment and reconditioned Equipment. Any Equipment that is removed or replaced and any parts that are removed or installed in Equipment in the carrying out of the Maintenance Services shall become or shall remain (as the case may be) the property of Online Systems.
- 4.14** Subject to clause 15, Online Systems shall not be liable for any delay in the performance of the Maintenance Services where such delay is attributable to no or poor or delayed availability of spare parts for any item of Equipment.
- 4.15** If the Customer terminates a Contract (in whole or in part) for Maintenance Services before the end of any applicable Minimum Term or Extended Term, the Customer shall pay to Online Systems all charges that would have accrued during the period from the expiry of the Customer's notice to terminate (or where no notice is given the date of indication by the Customer of an intention to no longer be bound by the Contract (in whole or in part)) to the end of the Minimum Term or Extended Term (as the case may be).

THIRD PARTY MAINTENANCE

4.16 Where the Customer and Online Systems have agreed for maintenance support to be provided by a third party ("Third Party Maintenance"), in the event the Customer requires the support of such Third Party Maintenance, the Customer may first contact Online Systems who shall provide first line support in respect of that Third Party Maintenance, and thereafter the Customer shall receive the Third Party Maintenance directly.

5. TERMS APPLICABLE TO FIXED NETWORK SERVICES

5.1 Subject to clause 2.2 and clause 5.5, the supply of the Fixed Network Services shall commence on the Commencement Date and shall continue for the Minimum Term.

5.2 If the Commencement Date for the provision of Fixed Network Services has not occurred prior to the first anniversary of the Contract Date for the Fixed Network Services then the Contract in respect thereof shall be deemed to have terminated unless otherwise agreed between Online Systems and the Customer. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.

5.3 Subject to clause 5.5, the Fixed Network Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

5.4 Not used.

5.5 Where the Customer is a Small Business Customer, the Customer may terminate the Fixed Network Services Contract by giving not less than 30 days' notice in writing to Online Systems, such notice to expire no earlier than the end of the Minimum Term.

5.6 The provision of any Fixed Network Services by Online Systems under a Fixed Network Services Contract is conditional on:

- (a) Online Systems carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the Fixed Network Services;
- (b) the installation of the lines over which the Fixed Network Services are to be provided and such lines being fully operational; and
- (c) the Customer providing to Online Systems to its satisfaction accurate information and data to enable Online Systems to calculate the Charges and to carry out a site survey.

5.7 Online Systems warrants to the Customer that Fixed Network Services will be provided using reasonable care and skill. The Customer agrees that Online Systems cannot guarantee that the Fixed Network Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Fixed Network Services must be notified to Online Systems in accordance with clause 5.8.

5.8 The Customer shall notify Online Systems of any interruption, fault or error with the Fixed Network Services in accordance with the Service Policy as amended from time to time. Online Systems shall use reasonable endeavours to correct or cure any interruption, fault or error with the Fixed Network Services in accordance with the Service Policy, save that time shall not be of the essence.

5.9 Notwithstanding any other provision of these Conditions, Online Systems shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of Carriers that may (wholly or partially) cause, impact or result in any interruption, fault error with or withdrawal of (temporarily or permanently) the Fixed Network Services.

5.10 All and any telephone numbers allocated to the Customer in connection with the Fixed Network Services may be withdrawn by OFCOM and accordingly Online Systems does not warrant or represent that such telephone numbers can be provided to the Customer. The Customer acknowledges and agrees that any telephone numbers allocated to it are allocated on the basis of a licence and the Customer agrees not to sell or transfer any telephone number provided to it (except where the Customer has a right to port that telephone number).

5.11 In relation to the use of the Fixed Network Services the Customer agrees:

- (a) to ensure that the Fixed Network Services are not used to make offensive, indecent, menacing, nuisance or hoax calls;
- (b) not to use the Fixed Network Services in any way that may, in Online Systems' reasonable opinion, damage its reputation;
- (c) not to contravene any laws, regulations or codes of conduct that may, from time to time, be applicable to the use or supply of the Fixed Network Services;
- (d) to implement and maintain appropriate security and control over its networks, equipment and business to prevent fraud and to prevent calls being generated by third parties;
- (e) to adequately maintain all equipment utilised in connection with the Fixed Network Services and ensure its compatibility in terms of technical specification;
- (f) not to use nor permit the Fixed Network Services to be used in any way that would constitute or contribute to the commission of any crime, tort, fraud or other unlawful activity;
- (g) not to allow any unauthorised use of the Fixed Network Services and to take all reasonable security measures to prevent such use;
- (h) not to sell or resell the Fixed Network Services in whole or in part;
- (i) not to misuse the Fixed Network Services in any way, including without limitation causing the volume of calls made to the telephone numbers allocated to the Customer to significantly exceed that which can be answered by the Customer where this would cause congestion to a network;
- (j) that Online Systems may publish details of the Customer's name, address and telephone number(s) in the Directory Enquiries Service, unless the Customer expressly confirms to Online Systems in writing that it would like a special entry to be made, for which Online Systems may make an additional charge;
- (k) that to the extent the Fixed Network Services contain VOIP services, clause 6.13 shall also apply save that references in that clause to Data Services shall be deemed to be references to Fixed Network Services;

- (l) in order to protect the Customer against unauthorised transfer of Fixed Network Services, in the event that the Customer fails to contact Online Systems not less than 48 hours prior to any transfer date, Online Systems may cancel any order made with a third party supplier;

- (m) and undertakes not to cause any attachments to be connected (directly or indirectly) to the Fixed Network Services, other than those that meet the appropriate essential requirements of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and any other requirements or standards under applicable law or as prescribed in the description of the Fixed Network Services published from time to time;

- (n) to comply with Online Systems' Fair Use Policy,

and the Customer shall be liable for and will indemnify, keep indemnified and hold harmless Online Systems in full against all losses, liability, damages, costs, claims and expenses (including reasonable legal fees) in relation to any claim by Online Systems or any third party arising out of or in connection with any breach of this clause 5.11 or any misuse or illegal use of the Services by the Customer or any of its end users.

5.12 Not used.

5.13 Not used.

5.14 Online Systems shall be entitled to make additional charges in the event that the Customer supplies inaccurate or misleading information to Online Systems or if the results of any survey reveal additional construction work is required in order for Online Systems to supply the relevant Fixed Network Services.

5.15 Where the transfer of lines and services of another supplier occurs, then the provision of any and all relevant existing services supplied to the Customer by such supplier will automatically transfer to Online Systems and will be charged for by Online Systems in accordance with the Tariff.

5.16 The Customer acknowledges and accepts that it is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly stated on the Order Form that Online Systems will pay for such charges in which case Online Systems will pay for such charges but limited to those specifically as set out on the Order Form.

5.17 The Customer accepts and acknowledges that Online Systems will prior to the Handover Date have spent a significant amount of time and incurred expense in preparation for the provision of the Fixed Network Services to the Customer. In the event that the Customer terminates the Contract for Fixed Network Services prior to the Handover Date it shall pay to Online Systems £500 plus vat. This clause 5.17 shall not apply where the Customer is a Small Business Customer. Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services at any time prior to commencement of the supply of such Services.

5.18 The following provisions of this clause 5.18 shall apply in the event that after the Handover Date the Customer terminates the Contract for Fixed Network Services otherwise than in accordance with clause 5.3 (or clause 5.5 where the Customer is a Small Business Customer):

- (a) In this clause 5.18 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract.

- (b) Save where the Customer has contracted for the supply of line rental only, a Customer agrees that it shall not on lines contracted to be billed by Online Systems use those lines for calls charged for by another supplier. If in breach of this clause the Customer does use lines supplied by Online Systems for the carriage of calls charged for by another supplier the Customer shall be deemed to be in breach of the Contract for the supply of Fixed Network Services and at Online Systems' option the Customer shall be deemed to have terminated the Contract for Fixed Network Services in breach of contract and the provisions of this clause 5.18 shall apply.

- (c) If in breach of contract the Customer terminates a Contract for Fixed Network Services otherwise than in accordance with clause 5.3 (or clause 5.5 where the Customer is a Small Business Customer), the Customer shall be liable to pay to Online Systems an amount calculated in the following manner:

- (i) (by reference to line rental) the sum that it would have paid to Online Systems for the rental of the lines for the Remainder of the Term calculated at the rate then applying at the time of termination; plus

- (ii) (by reference to call charges) either the sum of £500 or if greater the average of the monthly charges for calls incurred by the Customer for the three whole months prior to the termination of the Contract multiplied by the period of the Remainder of the Term (expressed in months)

5.19 The Customer agrees not to use in connection with the Fixed Network Service provided by Online Systems any telephone number that the Customer does not have the legitimate right to use. In this regard the Customer shall not "present out" any telephone number that it does not have the right to use; such as a telephone number of a competitor.

5.20 Where Online Systems grants to the Customer a Hosted Sub Licence it shall terminate at the point when Online Systems ceases to provide to the Customer the Fixed Network Services in respect of which the Hosted Sub Licence was granted and the Hosted Sub Licence and all rights in the Hosted Sub Licence shall revert to and be owned in their entirety by Online Systems.

6. TERMS APPLICABLE TO DATA SERVICES

6.1 Subject to clause 6.6, the supply of the Data Services shall commence on the Commencement Date and shall continue for the Minimum Term.

6.2 Subject to the remaining provisions of this clause if the Commencement Date for the provision of Data Services has not occurred prior to the first anniversary of the Contract Date for the Data Services then the Contract in respect thereof shall be deemed to have terminated. Online Systems may by giving written notice to the Customer extend the period referred to in this clause by six months if the reason why the Commencement Date has not occurred is outside of the control of Online Systems. Further, the period may be extended in by such period as Online Systems

- and the Customer agree. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.
- 6.3** Subject to clause 6.5 the Data Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant Extended Term, to terminate the Data Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 6.4** Not used.
- 6.5** Where the Customer is a Small Business Customer, the Customer may terminate the Data Services Contract by giving not less than 90 days' notice in writing to Online Systems, such notice to expire no earlier than the end of the Minimum Term.
- 6.6** The provision of any Data Services by Online Systems under a Data Services Contract is conditional on:
- Online Systems carrying out such surveys as it considers necessary to satisfy itself that it is feasible for it to supply the Data Services and Online Systems being satisfied with the results of such surveys;
 - Online Systems not being prevented by circumstances and factors outside of its control from being able to supply the Data Services. Examples of such circumstance and factors include (without limit) the infrastructure not being able to support the Data Services, the Customer not obtaining the necessary permission from third parties such as a landlord to install the necessary infrastructure, or a public body such as a local authority or highways authority withholding consent to the installation of the infrastructure where such consent is required;
 - the installation of the lines over which the Data Services are to be provided and such lines being fully operational; and
 - the Customer providing to Online Systems' satisfaction accurate information and data to enable Online Systems to calculate the Charges and to carry out or commission a site survey.
- 6.7** If, following carrying out the surveys as are referred to at clause 6.6, it is apparent that to enable the Data Services to be provided, infrastructure is required in addition to that which is already in place, then Online Systems will provide the Customer with a quotation for undertaking such work, and the Customer may either accept that quotation or not accept that quotation. If the Customer accepts the quotation then Online Systems shall arrange for the work to be carried out to install the infrastructure required and the cost thereof shall be paid by the Customer in accordance with the quotation, which shall be in addition to other costs payable by the Customer. If the Customer does not accept the quotation then either the Customer or Online Systems may terminate the Contract to provide Data Services and Online Systems will not be obliged to provide Data Services to the Customer.
- 6.8** Online Systems warrants to the Customer that Data Services will be provided using reasonable care and skill. The Customer agrees that Online Systems cannot guarantee that the Data Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Data Services must be notified to Online Systems in accordance with clause 6.9.
- 6.9** The Customer shall notify Online Systems of any interruption, fault or error with the Data Services in accordance with the Service Policy (or Ethernet SLA where applicable). Online Systems shall use reasonable endeavours to correct or cure any interruption, fault or error with the Data Services in accordance with the Service Policy (or Ethernet SLA where applicable), save that time shall not be of the essence.
- 6.10** Notwithstanding any other provision of these Conditions, Online Systems shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of suppliers that may (wholly or partially) cause, impact or result in any interruption, fault or error with, or withdrawal of (temporarily or permanently), the Data Services.
- 6.11** In relation to the use of the Data Services the Customer agrees and where appropriate accepts:
- to comply with the obligations in clauses 5.11(a) to 5.11(i) (inclusive) as if references in those clauses to Fixed Network Services were references to Data Services, and the Customer shall be liable for and will indemnify, keep indemnified and hold harmless Online Systems in full against all losses, liability, damages, costs, claims and expenses (including reasonable legal fees) in relation to any claim by Online Systems or any third party arising out of or in connection with any breach of this clause or any misuse or illegal use of the Services by the Customer or any of its end users;
 - not to misuse the Data Services in any way, including sending or receiving data in such a manner or volume so as to exceed agreed usage limits or so as to adversely affect the network, Online Systems or its other customers;
 - that the speed of any Data Services or connection depends on a number of factors beyond Online Systems' control (including external factors and physical factors) (such as local availability, the distance from the exchange and peak traffic volume) and that Online Systems does not warrant or represent that the Customer's connection(s) will produce the maximum advertised speed;
 - that except where stated otherwise in the Order Form, the Data Services do not include the supply by Online Systems of lines, modems and other equipment that might be required by the Customer to utilise the Services nor advice on these unless Online Systems is specifically engaged to do so under a separate contract which shall be in addition to the provision of Data Services under the Data Services Contract;
 - to comply with Online Systems' Fair Use Policy;
 - to provide suitable space and environment at the Site for the equipment used in the provision of the Data Services (such as sufficient cooled space on a rack) and to do so in a timely manner. Compliance by the Customer with this clause shall be entirely at the Customers cost.
 - In respect of any router supplied by or on behalf of Online Systems for a managed internet Ethernet circuit unless otherwise specifically agreed with Online Systems:
 - the router will be provided in a routed IP configuration and its sole purpose is to create an interface for the Customer to plug equipment into and it is not to be used for any other purpose;
 - the router is the demarcation point at which the responsibility for the provision of Data Services by Online Systems ends;
 - access to the command interface of the router (which would be required to configure the router) will not be provided to the Customer, nor will other functions that the router may be capable be enabled such as wireless connectivity and firewall functionality;
 - Online Systems is not responsible for configuration of the router other than to an IP configuration; and
 - Online Systems shall not be responsible for installing firewalls or plugging in the router and if the Customer requires firewalls the Customer shall be responsible for processing their installation.
- 6.12** Online Systems is under a duty to all of its customers to preserve network integrity and capacity and avoid degradation. The Customer agrees that:
- if in Online Systems' reasonable opinion the Customer's use of Data Services is adversely affecting, or may adversely affect, integrity and capacity of networks, Online Systems may take such steps as it deems appropriate to manage the Customer's Data Services;
 - Online Systems and/or the Carrier may take such steps as it deems necessary to stop emails that appear to be bulk emails or which appear to be of an unsolicited nature from entering networks and this may include blocking access to or delivery of any such emails; and
 - Online Systems and/or the Carrier may operate virus screen technology which may result in the deletion or alteration of emails or their attachments.
- 6.13** Where the Data Services involve the supply of VOIP services, then it is agreed that the following shall apply and the Customer accepts that:
- the Customer's ability to make emergency calls and their priority treatment cannot be guaranteed and that any suspension or interruption of the VOIP service may result in the Customer being unable to make emergency calls;
 - if the Customer experiences a power cut, the customer will not be able to access emergency services using VOIP and should ensure they have alternative means for access to emergency services.
 - it must, prior to activation, register with Online Systems the principal fixed location(s) for use of VOIP outbound calls and update that information with Online Systems if there is any change to this principal location, or if any new locations are to be added
 - the VOIP services are generally not considered to be as reliable as calls made over conventional telephone lines and Customers are advised to maintain the ability to make telephone calls other than through a VOIP system;
 - the Customer acknowledges that the VOIP service may sometimes be limited, unavailable or interrupted due to events beyond Online Systems' control, such as those specified in clause 18.1 (force majeure); and
 - the VOIP services may not offer all of the features or resilience that the Customer may expect from a conventional telephone line.
- 6.14** Other than Equipment purchased by the Customer, any equipment installed or supplied by Online Systems to the Customer in connection with the Data Services (including but not limited to routers) shall at all times remain the property of Online Systems. The provisions of clauses 4.3(a) to (d) shall apply to all such equipment. The Customer shall return such equipment to Online Systems immediately on request or cessation of the provision of Data Services and the Customer shall be liable for all costs, losses, damages and expenses incurred by Online Systems for the repair, recovery and replacement of such equipment.
- 6.15** Upon termination of the Data Services Contract (for whatever reason), the Customer shall return any routers installed or supplied by Online Systems to the Customer in connection with the Data Services at the Customer's cost. If such routers are not returned within seven days following the termination of the Data Services Contract, Online Systems reserves the right to charge the Customer a fee in respect of each router, as specified in the Tariff.
- 6.16** Where the Customer wishes to transfer the provision of any lines or services from another supplier to Online Systems, the Customer shall:
- provide to Online Systems such accurate information as is required by Online Systems to enable the migration from the current supplier; and
 - be responsible for all costs, charges and penalties that may arise as a result of or in connection with such transfer.
- 6.17** The Customer acknowledges and accepts that it is liable for all cancellation or termination payments and charges (including without limitation any early termination charges) levied by a previous supplier for the transfer of the provision of services and lines to Online Systems unless it is stated on the Order Form that Online Systems will be responsible for the payment of such Charges.
- 6.18** The Customer accepts and acknowledges that Online Systems will prior to the Connection Date have spent a significant amount of time and incurred expense in preparation for the provision of the Data Services to the Customer. In the event that the Customer terminates the Contract prior to the Connection Date it shall pay to Online Systems: (a) £500 plus vat in respect of the time spent by Online Systems in preparation for the provision of the Data Services to the Customer; and (b) an amount equal to the direct expenses (plus vat) incurred by Online Systems to its supplier(s) in the preparation of Data Services to the Customer limited to £10,000 (per leased line). Where the Customer is a Small Business Customer, paragraph (a) of this clause 6.18 shall not apply.
- 6.19** The following provisions of this clause 6.19 shall apply in the event that after the Connection Date the Customer terminates the Contract for Data Services otherwise than in accordance with clause 6.3 (or clause 6.5 where the Customer is a Small Business Customer):
- In this clause 6.19 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract)

the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract. Where the Customer terminates the Contract for Data Services in breach of contract after the Connection Date but before the Handover Date then the Remainder of the Term shall be deemed to have commenced on the Connection Date.

- (b) The Customer acknowledges and accepts that to enable Online Systems to provide the Data Services to the Customer, Online Systems will enter into a contract for a fixed term with its supplier at the Connection Date. As is common with such contracts Online Systems may remain liable to its supplier whether or not the Contract for Data Services with the Customer terminates prior to the end of the Minimum Term or the Extended Term as the case may be.
- (c) In the event that the Customer is in breach of contract by terminating the Contract for Data Services otherwise than in accordance with clause 6.3 (or clause 6.5 where the Customer is a Small Business Customer) the Customer shall pay to Online Systems as liquidated damages an amount equal to the sum that the Customer would have been liable to pay to Online Systems for the Remainder of the Term for the Data Services (calculated at the rate which applied at the time of termination) less any reduction that may apply pursuant to the provisions of clause 6.19(d) below. Where such termination occurs after the Connection Date but before the Commencement Date then the rate shall be the rate that would have applied at the Commencement Date had the Contract not been terminated.
- (d) If the provisions of clause 6.19(c) apply and in the event that a supplier used by Online Systems to provide the Data Services to the Customer reduces the amount that it charges to Online Systems from that which it is contractually entitled to charge in respect of the Remainder of the Term Online Systems shall advise the Customer of the amount of the reduction and that reduction shall be deducted from the amount payable under 6.19(c).

7. TERMS APPLICABLE TO IT SUPPORT SERVICES

7.1 For the purpose of the IT Support Services, the following terms shall have the following meanings:

Service Level Agreement: the service levels for the provision of IT Support Services as available on request and as may be varied from time to time

System: the hardware, operating systems and software listed in the Order Form.

Support Hours: the hours listed on the Order Form.

Out of Hours: such hours and times that not within the Support Hours.

Support Request: includes the following: a request submitted by the Customer via telephone or email for support by Online Systems under the IT Support Services; and automated messages for support generated by the System and sent directly to Online Systems for attention.

7.2 Subject to clause 2.2, the supply of the IT Support Services shall commence on the Commencement Date and continue for the Minimum Term.

7.3 The IT Support Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the IT Support Services Contract at the end of the Initial Period or the relevant Extended Term, as the case may be.

7.4 Where the Customer is a Small Business Customer, the Customer may terminate the IT Support Services Contract by giving not less than 30 days' notice in writing to Online Systems, such notice to expire no earlier than the end of the Minimum Term.

7.5 The provision of any IT Support Services by Online Systems under an IT Support Services Contract is conditional on:

- (a) Online Systems carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the IT Support Services; and
- (b) the Customer providing to Online Systems to its satisfaction accurate information and data to enable Online Systems to provide IT Support Services.

7.6 Subject to the Customer's payment of the Charges, Online Systems will provide the IT Support Services to the Customer:

- (a) during Support Hours, unless support during Out of Hours is requested by the Customer and this is agreed to be provided by Online Systems;
- (b) meeting or exceeding the service levels referred to in the Service Level Agreement;
- (c) remotely, unless otherwise agreed between Online Systems and the Customer.

7.7 In relation to the use of the IT Support Services the Customer agrees:

- (a) that the IT Support Services shall be provided by Online Systems remotely, unless otherwise agreed;
- (b) to permit Online Systems remote access to its System and inform Online Systems of any changes to passwords or other security devices to enable Online Systems to access the System;
- (c) to keep back-up copies of its operating systems and software;
- (d) to keep back-up copies of its data in line with recommendations made by the relevant software providers or Online Systems from time to time;
- (e) to make available such personnel of the Customer with appropriate skills, knowledge and authority to assist Online Systems in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults;
- (f) to promptly check that files have been restored from back-up when restoration from back-up has been tested.

7.8 Online Systems shall prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported and use its reasonable endeavours to respond to all Support Requests with a break fix in accordance with the response times set out in the Service Level Agreement.

7.9 Online Systems will seek to acknowledge all Support Requests within one working office hour of being logged.

7.10 The Customer acknowledges and agrees that:

- (a) in the event that a fault in the System is caused by an error or defect in the operating system or software, the sole responsibility of Online Systems will be to

notify the Customer of the issue and to devise (where possible) a workaround for the Customer;

- (b) the sole responsibility of Online Systems in respect of any hardware issues shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty;
- (c) Online Systems will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt back-ups of data or back-up procedures.

7.11 In the event that the Customer requests and Online Systems provides IT Support Services in excess of the Customer's allocated allowance, Online Systems shall be entitled to charge additional fees for such services in accordance with clause 10.10.

7.12 Online Systems shall, at the request and cost of the Customer, provide the Customer with a report summarising the Support Requests received, the time of receipt, the time of response and the time the Support Request is cleared. Any such request must be made in writing to Online Systems and the Customer acknowledges and agrees that reports can only be provided by Online Systems in respect of the month or months following the receipt of the request.

7.13 Online Systems warrants to the Customer that the IT Support Services will be rendered by personnel with appropriate skills and experience to provide the IT Support Services. The Customer agrees that Online Systems cannot guarantee that the provision of the IT Support Services will cause the System to work without interruption or error. The warranties provided by Online Systems in clause 3.4 and this clause 7.13 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the IT Support Services.

7.14 The Customer warrants to Online Systems that it owns or has the benefit of a valid and subsisting licence to use every element of the System and it has full authority to permit Online Systems to perform the IT Support Services hereunder.

7.15 The Customer will fully indemnify and hold harmless Online Systems against all costs, expenses, liabilities, losses, damages and judgments that Online Systems may incur or be subject to as a result of a breach of clause 7.14.

7.16 In the event the Customer is in breach of contract by terminating the Contract for IT Support Services otherwise than in accordance with clause 7.3 (or clause 7.4 where the Customer is a Small Business Customer), the Customer shall pay Online Systems as liquidated damages an amount equal to the Charges the Customer would have been liable to pay to Online Systems for the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of the Contract.

7.17 Introduction Fees and Non Solicitation of Online Systems Employees

(a) In this clause 7.17 the following terms are defined as follows;

"Helpdesk Service" the service provided by Online Systems to Customers by which Online Systems provides assistance to the Customer in respect of IT matters by telephone and/or remote electronic access.

"Restricted Online Systems Employee" means an employee or former employee who has as an employee of Online Systems:

- attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer; or
- personally provided IT Support Services directly to the Customer via the Helpdesk Service; or
- both attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer and personally provided IT Support Services directly to the Customer via the Helpdesk Service

"Relevant Date" the last occurring of:

the date when the Restricted Online Systems Employee last attended the premises of the Customer in connection with the provision of the IT Support Services to the Customer; and

the date when the Restricted Online Systems Employee last provided the IT Support Services to the Customer via the Helpdesk Service.

(b) The Customer shall not without the express written consent of Online Systems within 12 months from the Relevant Date employ, recruit, hire or otherwise engage a Restricted Online Systems Employee.

(c) If contrary to the provisions of clause 7.17(b) the Customer (or any subsidiary; parent or associated company of the Customer) does employ, recruit, hire or otherwise engage a Restricted Online Systems Employee without the prior written consent of Online Systems then by way of an introduction fee the Customer shall pay to Online Systems an amount equal to the greater of;

- (i) 50% of the remuneration paid to the Restricted Online Systems Employee by Online Systems in the preceding 12 calendar months prior to the Relevant Date; or
 - (ii) the sum of £12,500
- Such sums exclusive of VAT which if applicable is payable in addition.

(d) If the Customer (or any subsidiary; parent or associated company of the Customer) does employ, recruit, hire or otherwise engage a Restricted Online Systems Employee without the prior written consent of Online Systems then the Customer will, by way of liquidated damages, pay to Online Systems an amount equal to the greater of those amounts calculated or set out in clauses and 7.17(c).

7A. TERMS APPLICABLE TO MICROSOFT OFFICE 365

"Microsoft" means Microsoft Ireland Operation Limited

"Microsoft Customer Agreement" the agreement between Microsoft and the Customer made available to the Customer via the Customer's Microsoft Tenancy

"Microsoft Licence" the licence granted to the Customer by Microsoft for the use of Microsoft 365 licenses, features and services

7A.1 Microsoft 365 is made available to the Customer by Online Systems as the reseller for Microsoft products. The Customer acknowledges that the Microsoft 365 product shall be supplied under and in accordance with the relevant Microsoft Licence and the licence fee shall be included in the Charges. The terms associated

with the use by the Customer of Microsoft 365 are governed by this Contract and the Microsoft Customer Agreement.

- 7A.2** Subject to a 48 hour cooling off period starting from the date of this Order Form, the Customer hereby acknowledges and accepts that they have subscribed to the Microsoft Licence for the term stated in this Order Form, and that this is a minimum term which is not cancellable for any reason (Subscription Term).
- 7A.3** The Customer further acknowledges and accepts that at the end of the Subscription Term, the Subscription Term shall automatically renew for the same period unless and until it is cancelled upon giving at least 7 days' notice prior to the expiry of the relevant Subscription Term. This provision shall apply irrespective of any Minimum Term applicable to other Services provided by Online Systems under this Contract or otherwise.
- 7A.4** The customer may increase, but may not decrease, the number of subscriptions to Microsoft 365 and any such additional subscriptions shall be subject to clauses 7A.2 and clause 7A.3. For the avoidance of doubt, the applicable Subscription Term for any additional subscriptions shall be determined by the relevant product identification code assigned by Microsoft.
- 7A.5** The customer hereby confirms they have reviewed and accepted the Microsoft Customer Agreement and will comply with the terms of the Microsoft Licence.
- 7A.6** The Customer will indemnify, keep indemnified and hold harmless Online Systems in full against all losses, liability, damages, costs, claims and expenses (including reasonable legal fees and expert fees) in relation to any claim by Microsoft or any third party arising out of or in connection with any breach of the terms of the Microsoft Licence or this Contract by the Customer and its officers, directors, employees, agents and contractors.
- 8. TERMS APPLICABLE TO MOBILE SERVICES**
- 8.1** For the purpose of the Mobile Services, the following terms shall have the following meanings:
- Airtime Provider:** the relevant mobile network operator or wireless communications service provider.
- Connection:** connection to any Airtime Provider's network.
- Hardware Fund:** the fund allocated to the Customer to allow it to purchase equipment in connection with the Mobile Services. Retail Mobile Services: the mobile services to be provided by Online Systems to the Customer, where the Customer is directly contracted with an Airtime Provider.
- Support Hours:** Monday-Friday (excluding bank holidays) 09:00 to 17:30 (GMT).
- Wholesale Mobile Services:** the mobile services to be provided by Online Systems to the Customer, where the Customer is directly contracted with Online Systems and not an Airtime Provider.
- 8.2** Subject to clause 2.2, the supply of the Mobile Services shall commence:
- (a) In the case of Wholesale Mobile Services on the Commencement Date and continue for the Minimum Term;
- (b) In the case of Retail Mobile Services on the date the contract between the Customer and the Airtime Provider is signed by the Customer and processed by the Airtime Provider and continue until it expires, is terminated by the Airtime Provider, or the Customer is otherwise released from the contract by the Airtime Provider.
- 8.3** In the case of Wholesale Mobile Services, the Mobile Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Mobile Services Contract at the end of the Initial Period or the relevant Extended Term, as the case may be.
- 8.4** Where the Customer is a Small Business Customer, the Customer may terminate the Mobile Services Contract by giving not less than 30 days' notice in writing to Online Systems, such notice to expire no earlier than the end of the Minimum Term.
- 8.5** The provision of any Mobile Services by Online Systems under a Mobile Services Contract is conditional on:
- (a) the Customer providing to Online Systems to its satisfaction accurate information and data to enable Online Systems to provide Mobile Services;
- (b) Network coverage;
- (c) Availability of equipment.
- 8.6** Subject to the Customer's payment of the Charges, Online Systems will provide support for the Mobile Services to the Customer as follows:
- (a) In the case of Wholesale Mobile Services, remote support during Support Hours, unless otherwise agreed between Online Systems and the Customer with on-site support being chargeable;
- (b) In the case of Retail Mobile Services, limited support during Support Hours in accordance with the Airtime Provider's terms with on-site support being chargeable.
- 8.7** Online Systems shall operate and maintain a telephone helpdesk to receive and process any requests for support in respect of the Mobile Services.
- 8.8** In relation to the use of the Mobile Services the Customer agrees:
- (a) that any support for the Mobile Services shall be provided by Online Systems remotely, unless otherwise agreed;
- (b) to keep their data backed-up and ensure that software updates are maintained;
- (c) to make available such personnel of the Customer with appropriate skills, knowledge and authority to assist Online Systems in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults.
- (d) that the use by the Customer of any online management and/or billing portals is the Customer's own responsibility and risk and the Customer shall be responsible for any charges that occur or services that may be disrupted as a result of such use.
- 8.9** The Customer acknowledges and agrees that:
- (a) Online Systems bears no responsibility for and will not be liable for any loss suffered by the Customer as a result of any fault that is caused by an error or defect in the network or software;
- (b) the sole responsibility of Online Systems in respect of any issues with hardware supplied under or in connection with the Mobile Services shall be to diagnose faults in the hardware. The correction of any faults in the hardware shall be undertaken in accordance with the manufacturer's warranty;
- (c) Online Systems will not be liable for any loss of data, loss of productivity or financial losses incurred due to incomplete or corrupt back-ups of data or back-up procedures, network outages, or errors, failures or defects in the operating system;
- (d) in recognition of the fact that Online Systems may be entitled to receive payments from the Airtime Provider as a result of the Customer taking up the Mobile Services, the Customer will remain liable to Online Systems and shall not avoid liability to Online Systems in clause 3.4 and this clause 8.10 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the Mobile Services.
- 8.10** Online Systems warrants to the Customer that the Mobile Services will be rendered by personnel with appropriate skills and experience to provide the Mobile Services. The Customer agrees that Online Systems cannot guarantee that the Mobile Services will work without interruption or error. Any interruption, fault or error must be notified to Online Systems using the telephone helpdesk referred to in clause 8.7. The warranties provided by Online Systems in clause 3.4 and this clause 8.10 shall be in lieu of and shall operate to exclude any other condition or warranty whether express or implied by law as to the provision of the Mobile Services.
- 8.11** The Customer warrants to Online Systems that, where Online Systems provides the Mobile Services and the Customer uses equipment it owns or has the benefit of using, the Customer either owns such equipment or has a valid right to use it, and the Customer further warrants that it is the Customer's responsibility to ensure any such equipment works and is suitable as is for the Customer to receive and/or use the Mobile Services. By way of example and without limitation, the Customer must check and ensure that any handset it proposes to use is unlocked and this shall not be the responsibility of Online Systems.
- 8.12** Notwithstanding any other provision of these Conditions, Online Systems shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of the Airtime Provider that may (wholly or partially) cause, impact or result in any interruption, fault error with or withdrawal of (temporarily or permanently) the Mobile Services.
- 8.13** The Customer will fully indemnify and hold harmless Online Systems against all costs, expenses, liabilities, losses, damages and judgments that Online Systems may incur or be subject to as a result of a breach of clause 8.11.
- 8.14** Any equipment supplied or installed by Online Systems to the Customer in connection with the Mobile Services (including but not limited to SIMs, handsets and any subsidised equipment) shall at all times remain the property of Online Systems, except where the equipment has been purchased by the Customer in accordance with clause 4. Clause 4.3 shall apply to such equipment as if it were deemed to be Equipment. The Customer shall return such equipment to Online Systems immediately on request and shall be liable for costs, losses, damages and expenses incurred by Online Systems for the repair, recovery and replacement of such equipment.
- 8.15** Upon termination of the Mobile Services Contract (for whatever reason), the Customer shall return any handsets and SIMs installed or supplied by Online Systems to the Customer in connection with the Mobile Services at the Customer's cost. If such handsets and SIMs are not returned within seven (7) days following the termination of the Mobile Services Contract, Online Systems reserves the right to charge the Customer a fee in respect of each handset, such fee being the full market value of the handset(s) at the time of being supplied to the Customer.
- 8.16** In relation to any equipment that is supplied or installed by Online Systems to the Customer in connection with the Mobile Services hereunder, except for equipment purchased by the Customer under clause 4, the following shall apply:
- (a) The Customer shall notify Online Systems in writing within three (3) Business Days of receipt if any of the equipment is damaged, or if the order has been incorrectly fulfilled;
- (b) Online Systems is not obliged to offer the Customer a refund, exchange or credit to the Hardware Fund in the event that equipment is ordered by the Customer in error;
- (c) Online Systems is not obliged to agree to any upgrades to the equipment it supplies to the Customer at any time, including during or after the Minimum Term (if applicable) but if it does, Online Systems shall be entitled to extend the Minimum Term;
- (d) The supply of equipment by Online Systems to the Customer shall be subject to availability.
- 8.17** Any Hardware Fund and any equipment supplied that has been charged to a Hardware Fund, are supplied by Online Systems in return that the Customer completes the Minimum Term or the minimum period of the corresponding contract with the Airtime Provider, as applicable.
- 8.18** Where the Mobile Services Contract is completed, then full title of any handsets supplied by Online Systems shall transfer to the Customer, along with the right for the Customer to claim any outstanding amounts held by Online Systems in the Hardware Fund.
- 8.19** At the end of the Minimum Term or the minimum period of the corresponding contract with the Airtime Provider, as applicable, should the Customer's Hardware Fund be in a negative position then the Customer acknowledges and agrees to Online Systems invoicing the full balance of the negative amount, and to pay that amount in line with Online Systems' standard payment terms.
- 8.20** Where the Customer terminates any Connection prior to the expiry of that Connection's minimum period, the Customer shall pay to Online Systems a lump sum termination payment calculated as the total amount of the Hardware Fund initially provided to the Customer at the point of connection or renewal, as applicable, minus any unspent amount currently held by Online Systems.
- 8.21** Where the Customer terminates any Connection prior to the expiry of that Connection's minimum period and the Hardware Fund has been fully utilised by the

- Customer, the Customer shall pay to Online Systems a lump sum equal to the Hardware Fund provided for the Connection(s) in question, based on the value of the Hardware Fund provided at the commencement of the current minimum period.
- 8.22** Where the Customer terminates any Connection prior to the expiry of that Connection's minimum period and equipment has been supplied either free of charge or at a reduced rate, the Customer shall pay to Online Systems a lump sum equal to the equipment provided for the Connection(s) in question, based on the market value of the equipment provided at the commencement of the current minimum period.
- 8.23** The sums stipulated in clauses 8.20, 8.21 and 8.22 will be charged in addition to any cancellation fees applicable in accordance with clause 13 and any contractual early termination fees imposed by either Online Systems, or the applicable Airtime Provider in relation to the contract with said Airtime Provider, for the remainder of the Minimum Term.
- 8.24** Where the Customer terminates any Connection prior to the expiry of the Minimum Term, the Customer shall be subject to a claw-back by Online Systems of any discount that was conditional on the Customer completing the Minimum Term.
- 8.25** An autobar can be selected for Usage Alerts which will restrict the use of a mobile number. This can be used to assist in management of costs & reduce unexpected "bill shock". Online will use their best reasonable endeavors to apply the autobar, as soon as Online become aware that the mobile number has breached the usage alert amount. However, in certain circumstances that are beyond Online's control, such as delays in call data being received from the network, overall charges may exceed the set limit and are still liable to be paid for by the Customer.
- 9. CUSTOMER'S GENERAL OBLIGATIONS AND TERMS APPLICABLE TO ALL SERVICES**
- 9.1** In relation to the Services, the Customer:
- (a) shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) shall co-operate with Online Systems in all matters relating to the relevant Services;
 - (c) shall provide Online Systems, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Online Systems;
 - (d) shall provide Online Systems with such information and materials as Online Systems may reasonably require in order to supply the relevant Services and/or Equipment, and ensure that such information is accurate in all material respects;
 - (e) shall prepare its premises for the supply of the relevant Services (where applicable);
 - (f) shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (where applicable);
 - (g) agrees that Online Systems may from time to time monitor or record calls made to Online Systems or by Online Systems to improve customer service, for training or for marketing purposes;
 - (h) agrees that Online Systems shall not be liable or responsible for any failure or delay in the Services due to or in connection with any third party infrastructure applicable to the supply of any Services;
 - (i) agrees to co-operate with any criminal investigations or any investigation of any regulatory body that is applicable to the supply of any of the Services;
 - (j) be responsible for ensuring the accuracy of all specifications, drawings, sketches, plans, descriptions and instructions provided to Online Systems in connection with the supply of any Services and/or Equipment;
 - (k) shall comply with all Service Specific Conditions; and
 - (l) shall comply with the Fair Use Policy (as applicable).
- 9.2** The Customer is responsible and shall be liable to Online Systems for the use of the Services including for any Charges incurred, by the actions of any of its employees and any other person who has been given access to use the Services by the Customer and any person who gains access to use the Services for fraudulent or illegal purposes including in each case where such use was not authorised by the Customer. The Customer is strongly advised to install robust and effective security provisions to prevent unauthorised and/or fraudulent use.
- 9.3** If Online Systems' performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation or comply with any obligation or policy under the Conditions (**a Customer Default**):
- (a) Online Systems shall without limiting its other rights or remedies have the right to suspend performance of any Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays Online Systems' performance of any of its obligations;
 - (b) Online Systems shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Online Systems' failure or delay to perform any of its obligations as set out in this clause 9.3; and
 - (c) the Customer shall reimburse Online Systems on written demand for any costs or losses sustained or incurred by Online Systems arising directly or indirectly from the Customer Default.
- 9.4** Without prejudice to clause 9.3 or any other remedy available to Online Systems, Online Systems shall be entitled to suspend the performance of any Service or terminate the Contract relating to the relevant Service without further liability to the Customer in the event that Online Systems:
- (a) is obliged to comply with any order, instruction or request of any competent governmental body;
 - (b) terminates the provision of telecommunications services;
 - (c) in its reasonable opinion, Online Systems or the Carrier believes the Service are being used fraudulently or unlawfully; or
 - (d) in its reasonable opinion Online Systems or the Carrier needs to carry out improvements or repairs to any networks or equipment relating to the applicable Services.
- 9.5** Online Systems may at its sole discretion refuse to provide support in respect of the relevant Services and/or support any Equipment if the Customer fails to pay one or

more invoice by the relevant due date, and the Customer acknowledges and agrees that any such support may be withheld until Online Systems is satisfied that any outstanding payment has been made or outstanding balance rectified.

- 9.6** Online Systems shall not be liable for or responsible for any charges, costs, fees, expenses and/or other liability resulting from or in connection with:
- (a) fraudulent or unauthorised use of a Service, Equipment and/or software and the Customer shall be responsible for and pay all charges, costs, fees and expenses resulting from or in connection with any fraudulent or unauthorised use of any Service, Equipment and/or; and/or
 - (b) fraudulent or unauthorised downloads from applications resulting in corruption, attack, viruses, interference, hacking, or other security intrusion and disclaims any liability relating thereto; and/or
 - (c) any security intrusion on the Customer's server or network that is not the direct responsibility of Online Systems.

Third Party Software

- 9.7** Any software (including third party software) supplied, procured and/or installed as part of the Services will be supplied under and in accordance with the relevant licensor's standard terms which will be made available to the Customer upon request.
- 9.8** The Customer agrees to comply with the terms of use of such software licences and will indemnify, keep indemnified and hold harmless Online Systems in full against all losses, liability, damages, costs, claims and expenses (including reasonable legal fees) in relation to any claim by Online Systems or any third party arising out of or in connection with any breach of the terms of the software licence by the Customer and its officers, directors, employees, agents, contractors and any end users.

10. CHARGES AND PAYMENT FOR SERVICES

- 10.1** The Charges for the Services and/or the Equipment shall be charged to and payable by the Customer in accordance with this clause 10 and in the case of Data Services and Fixed Network Services in accordance with this clause 10 and clause 11. Online Systems shall automatically apply an annual increase in the Charges based on the Consumer Price Index (CPI) plus 3.9%. Online Systems uses the CPI figure published by the Office for National Statistics (www.ons.gov.uk) in January and will apply the change in April each year. In the event that the rate of CPI is negative, Online Systems will only increase the Charges by 3.9% in the relevant year. For example, a previous monthly charge of £100 + VAT would become £109.30 + VAT assuming a January CPI of 5.4%.
- 10.2** The Charges for the Equipment and Installation Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Equipment and Installation Services shall be payable on Delivery.
- 10.3** The Customer shall pay any deposit specified in the Order Form within seven days of submitting the Order Form to Online Systems.
- 10.4** The Charges for the Maintenance Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Maintenance Services shall be payable annually in advance with the first payment due on the Commencement Date, and continuing to be payable thereafter on each anniversary of the Commencement Date.
- 10.5** Where clause 4.10 applies in relation to Maintenance Services, Online Systems shall be entitled to make such additional charges as are calculated in accordance with the Tariff.
- 10.6** Online Systems may charge the Customer a call out fee where such call out occurs based on incorrect information being provided to Online Systems or where a call out occurs but the operative is unable to gain access to the premises within the times notified to the Customer for the call out.
- 10.7** Notwithstanding clause 10.1 the Charges for the Maintenance Services shall increase on each anniversary of the Commencement Date by 8%.
- 10.8** The Charges for the IT Support Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form or these Conditions, Charges for IT Support Services shall be payable monthly in advance with the first payment due on the Commencement Date, and continuing to be payable each month thereafter on the anniversary of the Commencement Date.
- 10.9** Where IT Support Services are provided during Out of Hours or at the Customer's premises (or such location as is required by the Customer), the Charges shall be calculated by reference to the applicable hourly rates specified in the Order Form, or, if not stated in the Order Form, such hourly rates as specified in the Tariff. Online Systems may invoice the Customer in respect of such services rendered, immediately after their provision.
- 10.10** Where clause 7.11 applies in relation to the IT Support Services, Online Systems shall be entitled to make such additional charges as are calculated in accordance with or stipulated in the Tariff.
- 10.11** Without prejudice to clause 10.1 Online Systems shall not increase the monthly charge or its hourly rates in respect of the IT Support Services unless the Customer's network or user count has increased and at which point, any increase would need to be agreed by both parties prior to any increase being applied. The Customer's network and user count will be reviewed by Online Systems every six months from the Commencement Date.
- 10.12** Where Charges are calculated according to the Customer's usage, such usage shall be determined by reference to data recorded or logged by Online Systems and not by reference to any data recorded or logged by the Customer.
- 10.13** The provisions of this clause apply to any proposed increase in the Charges other than those referred to in clause 10.1 (CPI increase) clause 10.14 (third party supplier increase) and clause 10.15 (regulatory price increase). Online Systems reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff). Online Systems will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Online Systems in writing within 14 days of the date of Online Systems' notice that the Client wishes to terminate the Contract, failing which the Customer shall be deemed to have accepted the changes.

- 10.14** Subject to applicable regulations, Online Systems shall increase its Charges for any Service (including without limitation by revising any Tariff) as a result of any increase in charges made to Online Systems by third party providers to it by a sum equal to any such increase. In such circumstances the Customer shall not have the right to cancel the Contract.
- 10.15** Where Online Systems proposes to increase its Charges for any Service (including by revising without limitation any Tariff) as a consequence of a regulatory change and that the increase is no greater than the additional cost to Online Systems caused by the regulatory change, it will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. In such circumstances the Customer shall not have the right to cancel the Contract.
- 10.16** Except where otherwise specified in these Conditions or the relevant Order for any Service, the Customer shall pay each invoice submitted by Online Systems:
- within 14 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by Online Systems.
- 10.17** Time for payment of all Charges shall be of the essence of the Contract.
- 10.18** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). The Customer shall pay to Online Systems such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 10.19** Invoices shall be deemed to have been accepted if the Customer does not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to Online Systems within 30 days of the date of the invoice.
- 10.20** If the Customer fails to make any payment due to Online Systems under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.21** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Online Systems may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Online Systems to the Customer.
- 10.22** Online Systems may exercise a lien over any equipment or goods in Online Systems' possession belonging to the Customer, for all monies payable by the Customer to Online Systems.
- 10.23** Any delay in Online Systems raising an invoice for any Charges shall not prohibit Online Systems from raising an invoice for the applicable Charges at a later date and the Customer shall pay such Charges.
- 10.24** Online Systems reserve the right to make additional charges for paper billing, late payment, reconnection, non-direct debit payment methods and incorrect fault reporting by the Customer.
- 10.25** Online Systems may at its sole discretion refuse to provide support in respect of the relevant Services and/or support any Equipment if the Customer fails to pay one or more invoice by the relevant due date, and the Customer acknowledges and agrees that any such support may be withheld until Online Systems is satisfied that any outstanding payment has been made or outstanding balance rectified.
- 10.26** Online Systems reserves the right to recover any costs it incurs, including legal fees, on a full indemnity basis as a result of the Customer's failure to comply with these Conditions and/or any Service Specific Conditions.
- 11. ADDITIONAL TERMS RELATING TO CHARGES FOR DATA SERVICES AND FIXED NETWORK SERVICES**
- 11.1** The Charges for the Fixed Network Services and the Data Services shall be as detailed in the Order Form (subject always to clause 10.7) and as otherwise determined in accordance with the Contract.
- 11.2** Charges for line rental are payable from the Handover Date monthly in advance by direct debit, or such other method as is specified in the Order.
- 11.3** The Customer shall pay for all Charges for calls whether made by the Customer or any third party. Subject to clause 11.4, Online Systems shall invoice the Customer monthly in arrears for all call Charges and the Customer shall pay such invoice within 14 days of the date of the relevant invoice by direct debit.
- 11.4** Notwithstanding clause 11.2 and clause 11.3, Online Systems reserves the right to invoice the Customer for Charges at any time.
- 11.5** If Online Systems supplies the Customer with any temporary Data Services and/or Fixed Network Services, it may charge the Customer in advance for the whole period during which the temporary services are to be provided
- 11.6** Online Systems shall have the right to charge a minimum fee for calls of not less than £4.50 per month in the event that the Customer's call charges do not exceed this sum in any month.
- 11.7** In respect of Fixed Network Services that include or comprise only of inbound voice services and inbound numbers, the Customer acknowledges and agrees that Online Systems shall have based its Charges for the Contract upon forecast information provided by the Customer about total number and duration of calls for the inbound numbers.
- 11.8** The Customer further acknowledges and agrees that Online Systems may apply a charge (calculated monthly and payable by the Customer in arrears) for each inbound number which, either, does not carry any traffic for any one month period, or, carries traffic which is at least 50% lower than that outlined in the forecast provided under clause 11.7.
- 12. ADDITIONAL TERMS RELATING TO CHARGES FOR MOBILE SERVICES**
- 12.1** In respect of Wholesale Mobile Services, and notwithstanding clause 10.1, the Customer acknowledges and agrees that Online Systems may at its discretion increase the Charges for line rental provided that Online Systems gives the Customer not less than 30 days' written notice prior to the increase, such increase to be capped at 5% in any one year.
- 12.2** Charges in respect of calls (including data usage) are subject to fluctuation or change by Online Systems without notice to the Customer.
- 13. CANCELLATION CHARGE**
- If the Customer cancels a Service or an order for Equipment, Online Systems may charge and the Customer shall pay a cancellation or re-stocking fee (as applicable) in respect of each such cancellation.
- 14. CONFIDENTIALITY AND DATA PROTECTION**
- 14.1** A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party may disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall survive termination of the Contract.
- 14.2** Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws. In this clause 14, references to 'Controller', 'Processor', 'Data Subject', 'Personal Data', 'Personal Data Breach', 'Process', 'Processed' and 'Processing', have the meanings set out in, and will be interpreted in accordance with, the Data Protection Laws.
- 14.3** The Customer acknowledges and accepts that Online Systems may use the information that the Customer provides to Online Systems in the course of becoming a 'Customer' (which may include Personal Data) for the purposes of supplying the Equipment and/or Services to the Customer, improving the Services, statistical analysis and marketing. Where relevant, for the purposes of Data Protection Laws, Online Systems is the Controller for any such Personal Data. Online Systems may share such data (or any part of it) with its third party service providers to enable Online Systems to supply the Equipment and/or Services to the Customer in accordance with the Contract. Online Systems will Process Personal Data in accordance with applicable Data Protection Laws and as set out in Online Systems' Privacy Policy, a copy of which can be found at <https://thisfocusgroup.co.uk/downloads/online-systems-privacy-cookies-policy.pdf>
- 14.4** The Customer acknowledges and accepts that the Customer may provide and Online Systems may Process Personal Data belonging to or relating to the Customer's clients, staff and other contacts, on the Customer's behalf, and the Customer further acknowledges and accepts that Online Systems may share such data (or any part of it) with its third party service providers to enable Online Systems to supply the Equipment and/or Services to the Customer in accordance with the Contract. In respect of such Personal Data, Online Systems shall be the Processor, and the Customer shall at all times be the Controller.
- 14.5** Without prejudice to the generality of clause 14.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Online Systems for the duration and purposes of this Contract and the Customer will only disclose to Online Systems the Personal Data required to perform its obligations under the Contract.
- 14.6** The details of the Processing operations conducted by Online Systems are as set out below and as may be updated from time to time as agreed in writing between the parties:
- the subject matter of the Processing of Personal Data by Online Systems is the performance of the Services pursuant to the Contract;
 - subject to clause 14.7(h), Online Systems will Process Personal Data for the duration of the Contract, unless otherwise agreed upon in writing between the parties;
 - Online Systems will Process Personal Data received under the Contract only for the purposes set forth in the Contract and as generated by the Customer's (or its employees', agents' or subcontractors') use of the Services;
 - the data Processed may include the following types of Personal Data:
 - name;
 - title;
 - company;
 - email address;
 - postal address;
 - telephone number;
 - contract records;
 - position;
 - passwords;
 - The data Processed may concern the following categories of Data Subjects, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of Data Subjects:
 - the Customer's employees, directors and contractors;
 - the Customer's customers or third parties authorised by the Customer to use the Services.
- 14.7** Without prejudice to the generality of clause 14.2, Online Systems shall, in relation to any Personal Data Processed in connection with the performance by Online Systems of its obligations under the Contract:
- Process that Personal Data only on the documented written instructions of the Customer unless required to do so by Data Protection Laws to which Online Systems is subject, in such a case, Online Systems shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
 - immediately notify the Customer if, in Online Systems' opinion, an instruction infringes Data Protection Laws and Online Systems will not be required to comply with that instruction;
 - 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,

appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (d) ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;
 - (e) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) appropriate safeguards are provided (by either Online Systems or the Customer) in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Online Systems complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Online Systems complies with reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Personal Data;
 - (f) taking into account the nature of the Processing, including by appropriate technical and organisational measures, insofar as this is possible, assist the Customer, at the Customer's cost, in responding to any Data Subject access requests and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (g) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Data Protection Laws to store the Personal Data;
 - (i) maintain complete and accurate records and information and, upon the Customer's prior written request at reasonable intervals, make available to the Customer all information necessary to demonstrate Online Systems' compliance with this clause 14 and allow for and contribute to audits, including inspections, conducted by the Customer or the Customer's designated auditor, provided that the Customer
 - 1) provides Online Systems reasonable prior written notice, in any event being not less than 30 Business Days, of such audit and/or inspection being required by the Customer;
 - 2) Online Systems and the Customer mutually agreeing upon the scope, timing and duration of the audit and/or inspection;
 - 3) ensures that such audit and/or inspection is conducted during Business Days and business hours, being 9.00am to 5.00pm Monday to Friday with minimal disruption to Online Systems' business, the sub-processors' business and the business and interests of other customers of Online Systems;
 - 4) not causes Online Systems to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
 - 5) reimburse Online Systems' reasonable charges associated with the audit and/or inspection.
- 14.8** The Customer consents to Online Systems appointing third-party sub-processors of Personal Data in connection with the provision of the Services and/or Equipment under the Contract. Online Systems will maintain an up-to-date list of sub-processors which will be available on request. Online Systems confirms that it has entered or (as the case may be) will enter with the sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 14 with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such sub-processor and in either case which Online Systems confirms reflect and will continue to reflect the requirements of Data Protection Laws. As between the Customer and Online Systems, Online Systems shall remain fully liable for all acts or omissions of any sub-processors appointed by it pursuant to this clause 14.
- 15. LIMITATION OF LIABILITY**
- 15.1** Nothing in the Contract shall limit or exclude Online Systems' liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation by Online Systems; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 15.2** Subject to clause 15.1, Online Systems shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information;
 - (g) data loss, compromise or disclosure resulting from a security breach of the Customer's server or network; or
 - (h) any indirect or consequential loss.
- 15.3** Online Systems shall not be responsible for any troubleshooting, interoperability, interface issues or the functionality of any of the Customer's software, products or equipment (whether supplied by Online Systems under this Contract or a separate contract, or supplied by a third party):

- (a) caused by upgrades, fixes or changes to any software, products or equipment by third parties (including directly by or under the instruction of software providers);
- (b) in relation to third party products that do not form part of the scope of the Services; or
- (c) as a result of any upgrades that form part of the scope of Services but in respect of the Customer's software, products or equipment that are excluded from the scope of Services.

15.4 Subject to clause 15.1 and clause 15.2, Online Systems' total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, be limited to the equivalent of the total Charges paid by the Customer in that period for the Equipment and/or the relevant Service in respect of which the claim arose.

15.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

15.6 If the Customer is a consumer, nothing in these Conditions shall prejudice its statutory rights.

15.7 This clause 15 shall survive termination of the Contract.

16. TERMINATION

16.1 Without limiting its other rights or remedies, Online Systems may terminate the Contract (in whole or in part) without further liability to the Customer by giving the Customer not less than 30 days written notice.

16.2 Without limiting its other rights or remedies, Online Systems may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so;
- (b) the Customer 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 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer 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 its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) 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 Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within 10 Business Days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
- (h) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs or a proceedings are taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2(b) to clause 16.2(i) (inclusive);
- (k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the Customer's financial position deteriorates to such an extent that in Online Systems' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16.3 Without limiting its other rights or remedies, Online Systems may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within 30 Business Days after being notified in writing to do so.

16.4 Without limiting its other rights or remedies, Online Systems may suspend provision of the Services under the Contract or any other contract between the Customer and Online Systems if the Customer becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(m), or Online Systems reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Online Systems all of Online Systems' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Online Systems shall submit an invoice, which shall be payable by the Customer immediately on receipt;

