

BCN Managed Limited: General Terms of Business – V8.0

DEFINITIONS

1.1 'Account Application Form' means BCN MANAGED LIMITED's account application form signed by the Client.

1.2 'Additional Term' means any term of a Service Agreement that follows the Minimum Term.

1.3 'Agreement' means these General Terms of Business plus any and all Orders, associated, effective Supplementary Terms and applicable Service Descriptions, all of which together constitute the agreement between the parties for the supply of Goods and / or Services.

1.4 'Applicable Law' means:

1.4.1 The laws of the jurisdiction set out in clause 18 hereof, any re-enactments thereof and regulations imposed by regulatory bodies that apply to the provision and receipt of the Goods and / or Services; and

1.4.2 The laws of the jurisdictions under which BCN MANAGED LIMITED's suppliers operate and any re-enactments thereof, that apply to the provision and receipt of the Goods and / or Services.

1.5 'Applicable Service' means a Service or part thereof for which BCN MANAGED LIMITED makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.

1.6 'Charges' means the charges as set out in any Order and to be paid by the Client to BCN MANAGED LIMITED for the Goods and / or Services in accordance with clause 9.

1.7 'BCN MANAGED LIMITED-Owned Equipment' means Equipment that is the property of BCN MANAGED LIMITED and to which BCN MANAGED LIMITED shall retain title, which is either provided to the Client as part and parcel of the Services or is otherwise loaned to the Client at BCN MANAGED LIMITED's discretion.

1.8 'Commencement Date' means the date of commencement of a Service Agreement, as set out on the applicable Order.

1.9 'Confidential Information' means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging to the other and concerning the business and affairs of the other, including Customer Data and Customer Information.

1.10 'Client' means the person, firm or company as set out on the Order that purchases Goods or Services from BCN MANAGED LIMITED under the terms of this Agreement.

1.11 'Customer Data' means data that is the property of the Client (including any information or data derived there from), which may contain Personal Data and which is:

1.11.1 Transmitted via BCN MANAGED LIMITED's Infrastructure; and / or

1.11.2 Remotely stored within BCN MANAGED LIMITED's Infrastructure or otherwise stored on BCN MANAGED LIMITED's premises; and / or

1.11.3 Used by BCN MANAGED LIMITED for the purposes of configuration of the Services or the configuration of the Client's Equipment or Software.

1.12 'Customer Information' means information supplied by the Client which includes Personal Data

(including names, email addresses, company address, telephone numbers, usernames and passwords) which is required by BCN MANAGED LIMITED to enable it to deliver the Services under the terms of this Agreement.

1.13 'Defective' means in relation to Goods, Goods that are faulty or otherwise do not conform substantially to their specification.

1.14 'Equipment' means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches.

1.15 'Fair Use' means in respect of the number of requests for assistance made by the Client, including Tickets and administration requests raised, is proportionate to the number which would be expected from good faith commercial practice, given the level of Charges levied by BCN MANAGED LIMITED for the supply of the Services.

1.16 'Fault' means any defect or failure in the Services or defect or failure in Equipment or Software that is maintained under the terms of this Agreement.

1.17 'Force Majeure' means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, pandemic, industrial action (except any industrial action relating to BCN MANAGED LIMITED, its

subcontractors or suppliers or any other failure in BCN MANAGED LIMITED's supply chain), government restrictions,

legislation, act of God or any other occurrence of a like nature

1.18 'General Terms of Business' means these General Terms of Business.

1.19 'Goods' means any goods that are supplied to the Client by BCN MANAGED LIMITED under the terms of this Agreement,

including Equipment and Software.

1.20 'Good Industry Practice' means in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a provider of business-critical services having regard to factors such as the nature and size of the parties, the term of the Agreement, the pricing structure and any other relevant factors.

1.21 'Infrastructure' means the network infrastructure, servers and storage owned and operated by BCN MANAGED LIMITED and / or its suppliers.

1.22 'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.

1.23 'Intellectual Property Rights' ('IPR') means the right to title to Intellectual Property.

1.24 'Malware' means software that is specifically designed to disrupt, damage, or gain unauthorized access to a computer system, including Trojan horses, viruses and ransomware.

1.25 'Minimum Term' means the initial term of this Agreement, set out in the Order.

- 1.26 'Order' means the hard copy or online order form (which may be completed online by the Client or supplied by BCN MANAGED LIMITED to the Client) or written otherwise instruction which sets out the Goods to be supplied and summary of Services to be delivered.
- 1.27 'Public Internet' means the world-wide collection of private and public router-based networks that are interconnected via gateways and exchange points.
- 1.28 'Recurring Charges' means Charges that are invoiced periodically for the supply of Services during a fixed term.
- 1.29 'Reseller' means an organisation which is authorised by BCN MANAGED LIMITED to either re-sell BCN MANAGED LIMITED's Services or sell such Services on BCN MANAGED LIMITED's behalf.
- 1.30 'Ready for Use Date' ('RFU Date') means the date from which the Services are available for BCN MANAGED LIMITED to complete its installation / configuration, as notified by BCN MANAGED LIMITED.
- 1.31 'Service Agreement' means these General Terms of Business plus one Order, its associated Supplementary Terms and any applicable Service Description, all of which together constitute the agreement between the parties for the supply of Services that are set out on the Order.
- 1.32 'Services' means services to be provided to the Client by BCN MANAGED LIMITED under the terms of this Agreement, an Order and its associated Supplementary Terms and where applicable, a Service Description.
- 1.33 'Service Component' means an individual component of the Services which is separately itemised on any Order and described in the Service Description.
- 1.34 'Service Credit' means credit applied to the Client's account to be used as credit against future invoices.
- 1.35 'Service Description' means the separate schedule which relates to a specific Order and sets out the detailed services to be provided and any applicable service levels and forms part of this Agreement.
- 1.36 'Software' means any software and associated documentation provided by BCN MANAGED LIMITED to the Client or its end users pursuant to this Agreement or used by BCN MANAGED LIMITED to provide the Services, including any software which is embedded in the Equipment.
- 1.37 'Standard Working Day' means 8am to 6pm Monday to Friday, excluding Easter Monday, Christmas Day, Boxing Day and New Year's Day.
- 1.38 'Supplementary Terms' means the service-specific supplementary terms and conditions which, when associated with an Order, form part of this Agreement.
- 1.39 'Ticket' means the Client's report of a Fault.
- 1.40 'Welcome Pack' means the document provided by BCN MANAGED LIMITED which inter alia contains contact details and escalation procedures.
- 1.41 'Working Hour' means any hour within the Standard Working Day.

2. THE PARTIES

The parties to this Agreement are (I) BCN MANAGED LIMITED Ltd ('BCN MANAGED LIMITED'), Company Number NI038347, whose registered office is at Pilot House, 6 Pilots View Heron Road, Belfast, County Antrim, BT3 9LE and (II) the Client, whose name and place of business are set out on the Account Application Form.

3. GENERAL

3.1 These General Terms of Business govern the overall relationship of the parties and:

3.1.1 Supplemented by an applicable Order and associated Supplementary Terms, sets out the terms and conditions on which BCN MANAGED LIMITED will provide Services to the Client; and / or

3.1.2 Supplemented by an applicable Order, sets out the terms and conditions on which BCN MANAGED LIMITED will provide Goods to the Client.

3.2 From time to time, the Client may engage BCN MANAGED LIMITED to provide Services. Each Service will be subject to its own Order, save changes to existing Services where the sole change is to the number of end users supported or subscriptions purchased; and

3.2.1 In the event that any Services are supplied by BCN MANAGED LIMITED which are not subject to an Order, these terms and conditions and any applicable Supplementary Terms shall apply to the provision of such Services.

3.3 In the event of a conflict between the terms set out in an Order, these General Terms of Business and the Supplementary Terms, the following order of precedence shall apply:

3.3.1 The terms of the applicable Order;

3.3.2 The terms of the applicable Supplementary Terms;

3.3.3 The terms of these General Terms of Business.

3.4 In this Agreement:

3.4.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive;

3.4.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;

3.4.3 References to a 'person' include a natural person, body corporate, unincorporated body of persons, individual, company, firm, government, state or agency of the state;

3.4.4 References to the singular includes the plural and vice versa;

3.4.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;

3.4.6 References to clauses and sub-clauses are references to clauses and sub-clauses in these General Terms of Business and any Supplementary Terms; and references to paragraphs are references to paragraphs within any Service Descriptions;

3.4.7 A reference to a statute, statutory provision, order, regulation, instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;

3.4.8 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;

3.4.9 A reference to the parties is a reference to BCN MANAGED LIMITED and the Client and a reference to a party is a reference to one of them;

- 3.4.10 All periods expressed in days shall mean calendar days unless expressly stated otherwise;
- 3.4.11 Copyright in supplier and other third-party product and service names is hereby acknowledged

4. COMMENCEMENT AND TERM

- 4.1 This Agreement shall be effective from the date of the Client's signature of the Account Application Form and shall run until terminated by either party in accordance with clause 11 hereof.
- 4.2 The termination of any individual Service Agreement, howsoever occasioned, shall not affect any other Service Agreement that may be in effect and nor shall it otherwise affect this Agreement.

5. BCN MANAGED LIMITED'S OBLIGATIONS

At all times when a Service Agreement is effective, and subject to the performance by the Client of its obligations hereunder, BCN MANAGED LIMITED shall:

- 5.1 As soon as reasonably possible following acceptance of an Order provide a target for the RFU Date.
- 5.1.1 As soon as reasonably possible, notify the Client if it becomes aware of any subsequent change thereto;
 - 5.1.2 As soon as reasonably possible following the RFU Date, notify the Client when the Services will be available for use;
 - 5.1.3 Promptly respond to any and rectify any non-conformances in the Services that are raised by the Client.
- 5.2 Provide the Services in accordance with terms of this Agreement.
- 5.3 Warrant that it and its suppliers and subcontractors hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow BCN MANAGED LIMITED, its suppliers and subcontractors to provide the Services in accordance with all Applicable Laws; and
- 5.3.1 Subject to the provisions of sub-clause 10.13, BCN MANAGED LIMITED shall indemnify the Client against any third-party claim arising from BCN MANAGED LIMITED's breach of the warranty given in this sub-clause 5.3.
- 5.4 Being engaged by the Client for its professional expertise, warrant that the Services shall be performed by sufficient competent staff, with reasonable skill and care and in accordance with Good Industry Practice.
- 5.5 Undertake to promptly correct any failure to perform the Services arising from a failure of BCN MANAGED LIMITED, its employees, subcontractors or suppliers at no charge to the Client. Such correction shall be the Client's sole and exclusive remedy for any breach of the warranty in sub-clause 5.4.
- 5.6 Without prejudice to its other obligations or responsibilities, when any of BCN MANAGED LIMITED's obligations are performed on the Client's premises it shall:
- 5.6.1 Endeavour that whenever reasonably possible it will not hinder the Client's employees from performing their duties and;
 - 5.6.2 Endeavour that all rules and instructions in force and published thereat are complied with, provided always that BCN MANAGED LIMITED has been made aware of such rules and instructions.
- 5.7 Ensure that it and if appropriate, use reasonable endeavours to ensure that its suppliers provide

sufficient resources to perform its obligations under the terms of this Agreement.

5.8 BCN MANAGED LIMITED shall ensure that appropriate safety, backup and security systems and procedures are in place and maintained to maintain continuity of and prevent unauthorised access or damage to the Services, its own systems and Customer Data, in accordance with Good Industry Practice.

5.9 Make reasonable endeavours to provide reasonable notice of any bona fide restriction which, for operational reasons BCN MANAGED LIMITED may place on the Services.

5.10 Take full ownership of any Faults that are properly reported to BCN MANAGED LIMITED or of which BCN MANAGED LIMITED ought to be aware and maintain ownership until such Fault is resolved; however BCN MANAGED LIMITED does not guarantee that it will fix all Faults.

5.11 Work directly with its suppliers if such suppliers are involved in the resolution of particular Faults.

5.12 Recognising that the Services may be used in conjunction with services, software and equipment that may be provided and maintained by third parties that are not under BCN MANAGED LIMITED's control:

5.12.1 Whilst BCN MANAGED LIMITED cannot assume responsibility for the repair of any third-party faults, it will however assist the Client in the tracing and identification of problems incurred by the Client which prove not directly attributable to the Services;

5.12.2 Where it is appropriate, BCN MANAGED LIMITED will also take reasonable steps to demonstrate to a third-party supplier where the fault lies; and

5.12.3 If such fault is shown not to result from the Services, BCN MANAGED LIMITED shall be entitled to charge the Client for work carried out in accordance with this sub-clause 5.12, at its prevailing rate.

6. THE CLIENT'S OBLIGATIONS

At all times when a Service Agreement is effective, and subject to the performance by BCN MANAGED LIMITED of its obligations hereunder, the Client shall:

6.1 If installation or implementation Charges are indicated on any Order to be estimates, undertake to pay the actual charge incurred for the installation / implementation of the Equipment or Services.

6.2 Promptly report Faults and / or place calls for support services using the designated telephone number, email-address or web portal as set out in the Supplementary Terms or as notified to the Client from time to time.

6.3 Provide suitably qualified personnel for such times as may be reasonably required by BCN MANAGED LIMITED:

6.3.1 To promptly provide any information within the Client's possession or control which BCN MANAGED LIMITED may reasonably require in order to perform its obligations;

6.3.2 To give BCN MANAGED LIMITED information and assistance in identifying and correcting any malfunctions;

6.3.3 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by BCN MANAGED LIMITED; and / or

6.3.4 To carry out diagnostic tests on the Equipment as requested by BCN MANAGED LIMITED.

6.4 Allow BCN MANAGED LIMITED, its subcontractors or agents proper access to the Client's premises on reasonable notice and a suitable, safe working environment during the Standard Working Day and at other times as may be reasonably requested.

6.5 Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with BCN MANAGED LIMITED's reasonable instructions.

6.6 If BCN MANAGED LIMITED has to install Equipment at a third party's site, seek all necessary permissions prior to BCN MANAGED LIMITED gaining access to the site. In such instances, all provisions relating to the Equipment as installed at a third party's site, shall apply mutatis mutandis as if it were installed at the Client's premises.

6.7 Following BCN MANAGED LIMITED's installation of Equipment at the Client's site be responsible for replacing items of furniture and any necessary redecoration, provided that any such damage is minor, cosmetic and reasonably incurred and;

6.7.1 If, prior to such installation BCN MANAGED LIMITED becomes aware that damage will occur or re-decoration will be required, BCN MANAGED LIMITED shall notify the Client prior to carrying out the installation work.

6.8 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause BCN MANAGED LIMITED or its suppliers to contravene any Applicable Law or authorisation.

6.9 Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Client and any other party for the supply of similar services; and

6.9.1 If the Client requests assistance from BCN MANAGED LIMITED following a breach or suspected breach of Personal Data by the Client; prior to requesting BCN MANAGED LIMITED's assistance, ensure that such request does not breach the terms of any insurance policy held by the Client in relation thereto.

6.10 Disclose to BCN MANAGED LIMITED any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement and breach or suspected breach of its security.

6.11 In the event of a failure or interruption to the Services which has been investigated and or repaired by BCN MANAGED LIMITED and found to be caused by the Client or a third party (not connected with or under the control of BCN MANAGED LIMITED), pay any reasonable charges levied by BCN MANAGED LIMITED in respect of the work carried out.

6.12 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents necessary:

6.12.1 To allow it to use the Services;

6.12.2 For any data, including documentation, software or data which may be supplied to BCN MANAGED LIMITED for the purpose of assisting with the provision of the Services; and

6.13 Subject to the provisions of sub-clause 10.13, the Client shall indemnify BCN MANAGED LIMITED against any third-party claim arising from the Client's breach of the warranty given in sub-clause 6.12.

6.14 Not, unless deemed by BCN MANAGED LIMITED to be a Reseller, supply, sell, sub-license, transfer or otherwise make available the Services to any third party.

6.15 Save as provided by BCN MANAGED LIMITED under the terms of this Agreement; provide all equipment necessary to enable access to the Services.

6.16 Ensure that its use of the Goods or Services supplied under the terms of this Agreement is in compliance with Applicable Law and undertakes not to cause, approve or otherwise facilitate third parties to breach such compliance.

6.17 Be solely responsible for the use of the Services under its control, including that by third parties whether fraudulent or invited by the Client.

7. CONFIDENTIALITY

7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of performing this Agreement and for the evaluation of future products and services. Neither party shall disclose Confidential Information to any other person without the owner's written consent except when it is deemed that such disclosure is required to perform this Agreement, in which case the disclosing party will obtain binding commitment from the receiving party to keep such information confidential.

7.2 Each of the parties to this Agreement shall, and procure that its staff, agents and subcontractors shall, (and in the event of mandatory disclosure to a regulator shall obtain assurances from the regulator that it shall) keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:

7.2.1 To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;

7.2.2 To the extent that it can be shown that the information was lawfully in its possession prior to the date of its disclosure by any other party;

7.2.3 To the extent that the receiving party may have received the information from a third party without (bona fide) restriction as to disclosure;

7.2.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;

7.2.5 To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required;

7.2.6 To the extent that it can be shown that such has been independently developed by the receiving party;

7.2.7 The parties agree in writing that such need not be kept confidential.

7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such Request

7.4 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party.

7.5 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Standard Working Days to make its representations.

7.6 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.

7.7 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

8. DATA PROTECTION

8.1 In this Agreement the terms:

8.1.1 'Data Protection Legislation' means the Data Protection Act 2018, the General Data Protection Regulation (GDPR) EU2016/679, any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;

8.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;

8.1.3 'Sub-Processor' means a subcontractor or supplier to BCN MANAGED LIMITED who Processes Customer Data on BCN MANAGED LIMITED's behalf.

8.2 Each party shall comply with their respective obligations under the Data Protection Legislation as it applies to Personal Data processed under this Agreement and shall maintain all necessary consents, registrations and notifications. This clause is in addition to, and does not relieve, remove, or replace a party's obligations under the Data Protection Legislation.

8.3 The parties to this Agreement agree that in relation to Customer Information that BCN MANAGED LIMITED Processes on its own behalf in order to provide the Services, BCN MANAGED LIMITED shall be a Data Controller and, acting in the capacity as Data Controller shall:

8.3.1 Collect from the Client, Process, use or share with its suppliers or subcontractors Customer Information that BCN MANAGED LIMITED shall determine the purpose of Processing to enable it to provide the Services, including:

- a) Administration, tracking and fulfilment of Client orders;
- b) Management of Fault reports;
- c) Administration of access to BCN MANAGED LIMITED's support portal;
- d) Administration of access to the Services;
- e) Raising and issuing invoices;
- f) Management of this Agreement, including issuing notices and providing management reporting.

8.3.2 Process the Customer Information in accordance with the applicable Data Protection Legislation and where applicable, BCN MANAGED LIMITED's Privacy Policy;

8.3.3 Not disclose to any person Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to BCN MANAGED LIMITED;

8.3.4 BCN MANAGED LIMITED shall be entitled to use selected Customer Information and data pertaining to the Client's use of the Services to advise appropriate members of the Client's staff about additional products, services and offers;

8.3.5 If the Client does not consent to the provisions of sub-clause 8.3.4, it shall be entitled to notify BCN MANAGED LIMITED and forthwith upon receipt of such notice BCN MANAGED LIMITED shall cease to advise the Client about additional products, services and offers.

8.4 The parties agree that in relation to Personal Data contained within Customer Data that BCN MANAGED LIMITED Processes on behalf of the Client, the Client shall be the Data Controller and BCN MANAGED LIMITED shall be the Data Processor and that under the terms of this Agreement:

8.4.1 The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by Applicable Law following the termination thereof;

8.4.2 The nature of Processing is (a) the transmission; (b) the storage; and (c) the use for the purpose of configuration of the Client's Equipment and Software, (collectively, the 'Permitted Uses') of Customer Data as required to deliver the Services and the purpose of the Processing is the delivery of the Services ordered by the Client under the terms of this Agreement;

8.4.3 The parties acknowledge that save email and internet protocol addresses, which may be transmitted via the Services, types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Client and BCN MANAGED LIMITED shall not be privy to such information;

8.4.4 To the extent necessary to enable it to provide the Services, BCN MANAGED LIMITED shall be entitled to and may transfer Customer Data outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of sub-clause 8.7.5;

8.4.5 This Agreement forms inter alia the Client's complete written instruction to Process Customer Data.

8.5 The Client agrees that it shall be solely responsible for its compliance with its obligation under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure where such Customer Data is:

8.5.1 Created and / or stored within BCN MANAGED LIMITED's Infrastructure by the Client using applications including email, desk-top applications, third-party software and software developed by or for the Client, including such being executed in managed desktop and infrastructure as a service environments;

8.5.2 Created and / or stored within BCN MANAGED LIMITED's Infrastructure either automatically or in response to third- party user input using third-party software or software developed by or for the Client, including websites and web-services;

8.5.3 Created and / or stored within BCN MANAGED LIMITED's Infrastructure by any other means, including telephone voice recording.

8.6 The Client hereby agrees that certain Services BCN MANAGED LIMITED provides under the terms of this Agreement will be provided to BCN MANAGED LIMITED by one or more suppliers or subcontractors; and

8.6.1 In respect of Personal Data, BCN MANAGED LIMITED's suppliers or subcontractors may act in the capacity as Sub Processor; and

8.6.2 For the avoidance of doubt, if BCN MANAGED LIMITED appoints a Sub-Processor to Process Customer Data on its behalf, BCN MANAGED LIMITED shall remain fully liable to the Client for the performance of that Sub-Processor's data protection obligations; and

8.6.3 BCN MANAGED LIMITED shall be entitled to change its suppliers or subcontractors at its sole discretion; and

8.6.4 If BCN MANAGED LIMITED elects to change a supplier or subcontractor who is acting in the capacity of Sub Processor, it shall notify the Client without undue delay and:

a) If the Client objects to the appointment of a Sub-Processor, the Client shall notify BCN MANAGED LIMITED

within thirty days of the change and BCN MANAGED LIMITED will address the objection in accordance with the process set out in clause 19 hereof; and

b) BCN MANAGED LIMITED shall be entitled to use the Sub-Processor until the objection is resolved; and

c) If the Client does not object within thirty days of notification of the changed Sub-Processor, such change will be deemed acceptable to the Client

8.7 The Client, in its capacity as Data Controller hereby authorises BCN MANAGED LIMITED, in its capacity as Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity as Sub-Processor to Process Customer Data for the purposes of performing its obligations under this agreement, subject to BCN MANAGED LIMITED's, its suppliers' and subcontractor's compliance with the following conditions:

8.7.1 To restrict Processing of Customer Data to the Permitted Uses thereof;

8.7.2 Notwithstanding the provisions of sub-clause 8.7.1, BCN MANAGED LIMITED and / or its supplier(s) shall be entitled use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:

a) Collating statistics for network planning purposes; and

b) Providing such information to government security agencies in response to specific requests.

8.7.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery services), abstract, summary or précis of the whole or any part of the Customer Data (save as set out in sub-clause 8.7.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;

8.7.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may

be acting in the capacity of Sub-Processor;

8.7.5 Not to transfer Customer Data outside of United Kingdom or the European Economic Area or to an international organisation without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein, unless such transfer is required under Applicable Law in which case BCN MANAGED LIMITED shall, provided that it is not prevented from so doing under the Applicable Law, promptly notify the Client of such transfer.

8.7.6 To promptly notify the Client if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Data;

8.7.7 To implement appropriate processes and technology to ensure that:

- a) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
- b) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
- c) BCN MANAGED LIMITED's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.

8.7.8 To assist the Client with the Client's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to BCN MANAGED LIMITED by:

- a) Communicating to the Client within five Standard Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
- b) In response to written instructions, assisting the Client with Subject Access Requests to the extent practicable;
- c) In the event of a security breach which involves Customer Data, providing to the Client details of the Customer Data that is involved in the breach;
- d) Providing responses to reasonable requests for technical and organisational information in relation to the Processing of Customer Data;
- e) On request making available to the Client any of BCN MANAGED LIMITED's relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation;
- f) Allow the Client or an authorised representative of the Client to audit BCN MANAGED LIMITED's compliance with the Data Protection Legislation, the frequency of such audits to be not greater than once every twelve months; And the Client agrees to reimburse BCN MANAGED LIMITED for its reasonable expenses incurred for any assistance provided under this sub-clause 8.7.8, save sub-clause 8.7.8(c).

8.7.9 To undertake to on termination of this Agreement:

- a) On request, return to the Client copies of all Customer Data;
- b) Delete all Customer Data that is held within BCN MANAGED LIMITED's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law).

8.8 BCN MANAGED LIMITED undertakes that it shall:

8.8.1 Not disclose to any person Customer Data other than to its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Data to facilitate proper performance of their contractual obligations (in relation to this Agreement), to BCN MANAGED LIMITED;

8.8.2 If required to disclose Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable Law, BCN MANAGED LIMITED shall prior to disclosure use reasonable endeavours to promptly notify the Client of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.

8.9 The Client agrees that in the event of BCN MANAGED LIMITED's ceasing to trade and any subsequent novation of this Agreement or part thereof by BCN MANAGED LIMITED's supplier, Customer Data and Customer Information, will be transferred to the supplier or its assignee.

8.10 BCN MANAGED LIMITED will on demand, deliver to the Client all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Client) which may include Personal Data.

8.11 The provisions of this clause 8 shall survive in the termination of this Agreement, howsoever occasioned, until such time as BCN MANAGED LIMITED no longer retains any Customer Data or Customer Information.

9. CHARGES AND PAYMENT

9.1 In consideration of the provision of the Services, the Client shall pay the Charges in accordance with this clause 9 and any applicable Supplementary Terms.

9.2 BCN MANAGED LIMITED shall raise invoices for Recurring Charges not less than thirty days prior to the start of the period to which the invoice relates (the 'Service Period'), according to the billing period set out in the Order. The Charges will be calculated using the details recorded by BCN MANAGED LIMITED; and

9.2.1 The Client shall pay such Recurring Charges by direct debit; and

9.2.2 BCN MANAGED LIMITED will collect payment, by direct debit, on the first Standard Working Day of the Service Period.

9.3 BCN MANAGED LIMITED shall raise invoices for non-Recurring Charges as the Charges are incurred, unless otherwise agreed or stated on the Order.

9.4 The Client agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counterclaim, save any disputed amount), within thirty days of the date of BCN MANAGED LIMITED's invoice unless otherwise agreed in writing.

9.5 BCN MANAGED LIMITED shall be entitled to offset any monies owed to the Client against any monies owed to BCN MANAGED LIMITED.

9.6 Invoices shall be deemed accepted by the Client unless a written objection, which clearly identifies the reason for the dispute is received by BCN MANAGED LIMITED within ten Standard Working Days of the date of the invoice. If the Client disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within fifteen Standard

Working Days of the receipt by BCN MANAGED LIMITED of the Client's written objection, the dispute shall be escalated in accordance with the provisions of clause 19 of these General Terms of Business.

9.7 If the Client fails to make any payment in respect of undisputed invoices for Goods or Services by the due date, and such remains unpaid ten Standard Working Days after receipt of written notice from BCN MANAGED LIMITED to do so, BCN MANAGED LIMITED shall be entitled to take one or more of the following actions:

9.7.1 Suspend the provision of Services to the Client until such time as the outstanding invoice is paid;

9.7.2 Charge the Client interest at the rate of 2% per annum above the prevailing NatWest Bank plc base rate, on any amount outstanding from the due date to the date of actual payment and such interest shall accrue on a daily basis;

9.7.3 Terminate this Agreement;

9.7.4 Recover from the Client damages for any costs or losses suffered by BCN MANAGED LIMITED as a result of the Client's failure to make payment.

9.8 If BCN MANAGED LIMITED is requested to provide Goods or Services in addition to those set out in the Order, BCN MANAGED LIMITED shall charge the Client for the provision of such Goods or Services at its prevailing rates.

9.9 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, unless otherwise stated.

9.10 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.

9.11 All elements of the Charges for Services shall be reviewed by BCN MANAGED LIMITED to be effective at the end of the Minimum Term and each subsequent anniversary thereof; and:

9.11.1 Provided that no material changes occur in suppliers' charges to BCN MANAGED LIMITED, the maximum annual increase in the annual charge will not exceed the prevailing Retail Price Index;

9.11.2 If there is material change to the charges made by BCN MANAGED LIMITED's supplier, BCN MANAGED LIMITED shall be entitled to pass such costs on to the Client;

9.11.3 Any proposed changes in Charges will be notified to the Client in writing not less than ninety days prior to any anniversary.

9.12 Notwithstanding the provisions of clause 9.11, BCN MANAGED LIMITED shall be entitled to increase its Charges for any part of the Services if its suppliers increase their charges at any time by providing the Client not less than twenty-eight days' notice.

9.13 BCN MANAGED LIMITED shall be entitled to require that the Client pays a deposit before the commencement of Services or during the term of this Agreement if BCN MANAGED LIMITED becomes aware of an adverse change to the Client's financial standing and:

9.13.1 BCN MANAGED LIMITED shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;

9.13.2 Deposits shall not attract interest.

9.14 BCN MANAGED LIMITED shall be entitled to:

9.14.1 Correct a previously raised invoice for a period of twelve months following the date of the

invoice; and

9.14.2 Raise an invoice for supply of the Services for a period of twelve months following the Client's incurring the Charges; and

9.14.3 The provisions of this sub-clause 9.14 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.

9.15 If the Client modifies the Order after the Order has been accepted by BCN MANAGED LIMITED, BCN MANAGED LIMITED shall be entitled to charge the Client for all reasonable expenses incurred up to the date of the modification.

10. LIMITATION OF LIABILITY

10.1 This clause 10 sets out the parties' entire financial liability (including any liability for the acts or omissions of its employees, subcontractors, agents and suppliers) to the other in respect of:

10.1.1 Any breach of the express or implied terms of this Agreement by either party, its employees, subcontractors' agents and suppliers;

10.1.2 Any utilisation of the Services by the Client;

10.1.3 Any matter relating to the Services, their supply or failure or delay in the supply thereof by BCN MANAGED LIMITED;

10.1.4 Any fraudulent misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement; Whether arising in contract (including under any indemnity), tort (including negligence), under common law or statutory duty.

10.2 Nothing in this Agreement shall limit:

10.2.1 Either party's liability to the other for:

a) Death or personal injury caused by or arising from the negligence of the other, its employees, subcontractors, agents or suppliers;

b) Any damage resulting from fraud or fraudulent misrepresentation by the other, its employees, subcontractors, agents or suppliers;

c) Any damage resulting from breach of confidentiality by the other, its employees, subcontractors, agents or suppliers;

d) Any damage resulting from breach of Intellectual Property Rights by the other, its employees, subcontractors, agents or suppliers;

e) Any damage resulting from failure by the other to comply with Applicable Law;

f) Any other liability that cannot be excluded or limited by law.

10.2.2 BCN MANAGED LIMITED's liability for any breach by BCN MANAGED LIMITED, its employees, subcontractors' agents or suppliers of warranties as to title, quiet possession and freedom from encumbrance which may be implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979;

10.3 In the event of damage to or loss incurred by the Client as a result of illegal Processing or disclosure by BCN MANAGED LIMITED of Personal Data:

10.3.1 BCN MANAGED LIMITED's liability shall be limited to direct losses, costs and damages which arise in respect of:

- a) Regulatory inspection;
- b) Notification of Data Subjects;
- c) Remediation efforts with Data Subjects;
- d) Data Subject claims;
- e) Restoration of Personal Data;

Up to a maximum liability of one million pounds per event or series of connected events;

10.3.2 BCN MANAGED LIMITED shall not accept liability for:

- a) Any indirect losses, costs or damages;
- b) Losses, costs or damages to the extent that such arise from the Client's breach of its obligations under clause 8 and / or the Data Protection Legislation;
- c) Losses, costs or damages that result directly from the interception by a third party of Personal Data whilst such Personal Data is being transmitted via the Public Internet or telephony network, unless the possibility of such interception arises directly from BCN MANAGED LIMITED's negligence.

10.4 Notwithstanding any other provision of this Agreement either party's maximum aggregate liability in one calendar year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise for any direct loss or damage howsoever caused and not falling under the provisions of sub-clauses 10.2, 10.3, 10.7 and 10.13 hereof shall be limited to one hundred and twenty five percent of the total amount of the Charges (including VAT) collected by BCN MANAGED LIMITED in relation to the Service Agreement in the twelve month period prior to the date of the event which gave cause to the claim, PROVIDED THAT before any such claim is made the breaching party is given reasonable opportunity to make good the breach giving rise to such claim.

10.5 In relation to direct loss of or physical damage to the Client's tangible property, BCN MANAGED LIMITED's maximum liability is one million pounds.

10.6 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.

10.7 Subject to any express terms and conditions of this Agreement to the contrary, neither party shall be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for:

- 10.7.1 Any direct or indirect loss of production, time, goodwill, reputation, use, opportunity, revenue, profit, contracts, business, expenditure or anticipated savings;
- 10.7.2 Any loss or corruption of data or information;
- 10.7.3 Losses incurred by third parties;
- 10.7.4 Any indirect, special loss or damage;
- 10.7.5 Any purely economic losses or punitive damages;
- 10.7.6 Any loss or damage that could not be reasonably foreseen.

And the parties hereby waive and release any claims they might otherwise have to be compensated in respect of such losses (without limitation), even if a party has been advised of the possibility of such loss or damages.

10.8 If any exclusion in clause 10.7 is held to be invalid for any reason the liable party's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in sub-clause 10.4.

10.9 BCN MANAGED LIMITED shall not in any event have any liability for non-provision in the provision of Services which:

10.9.1 Can be reasonably attributed to the acts or omissions of the Client (including fraud), its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to BCN MANAGED LIMITED;

10.9.2 Can be reasonably attributed to the un-serviceability, un-suitability, misconfiguration or misuse of the Client's equipment which is attached to the Services and is under the control of the Client;

10.9.3 Arises from or is a consequence of use of BCN MANAGED LIMITED's Services other than in accordance with the express terms of this Agreement;

10.9.4 Occurs during any period during which the Services have been suspended by BCN MANAGED LIMITED in accordance with clause 12.

10.10 BCN MANAGED LIMITED shall not in any event have any liability for non-provision of the Services arising from a delay to the RFU Date, howsoever caused.

10.11 The Client acknowledges and agrees that data transmitted through the use of technology including the Public Internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that BCN MANAGED LIMITED shall not be liable for any losses the Client may incur resulting from the interception, corruption or loss of such data, and:

10.11.1 The Client shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and

10.11.2 The Client shall be responsible for adopting such security measures as are appropriate to protect the Client's systems and data (including backups).

10.12 The parties acknowledge and agree that:

10.12.1 The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;

10.12.2 The Client shall be liable for all losses incurred by BCN MANAGED LIMITED arising directly from the Client's breach of clause 8 of these General Terms of Business;

10.12.3 BCN MANAGED LIMITED shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services, whether with or without the permission of the Client;

10.12.4 Nothing in this clause 10 excludes or limits the Client's liability to pay the charges due under the terms of this Agreement;

10.12.5 BCN MANAGED LIMITED shall not be liable for any damages, costs, fines or other claims that arise from errors or omissions in information provided to BCN MANAGED LIMITED by the Client;

10.12.6 Neither party shall be liable for any losses, costs or damages whatsoever under the terms of this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.

10.13 The parties acknowledge and agree that in respect of all indemnities given in this Agreement:

10.13.1 The indemnifying party agrees to indemnify the indemnified party from and against any liabilities, actions, losses damages, judgements, costs, fines, claims or expenses incurred by the indemnified party or legal proceedings which are brought or threatened against the indemnified party by a third party (the 'Claim');

10.13.2 If either party becomes aware of any claim contemplated by any indemnity given in this Agreement it shall as soon as reasonably practical, notify the other party of such claim.

10.13.3 The indemnified party shall:

- a) Consult with the indemnifying party regarding the conduct of any action and have due regard for the indemnifying party's representations and not agree any settlement, legal proceedings or make any payment by way of liquidated damages without the prior written agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
- b) Make no admission relating to such claim or legal proceedings without agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
- c) Not agree any settlement of the Claim or make any payment without the consent of the indemnifying party;
- d) Allow the indemnifying party (at its request) to use its chosen advisers and to have the exclusive conduct of all negotiations and proceedings and provide the indemnifying party with such reasonable assistance required by the indemnifying party regarding the claim;
- e) Promptly provide the indemnifying party and its advisers with all information and assistance that they may reasonably require;
- f) Promptly take any action and give any information and assistance as the indemnifying party may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.

10.13.4 Both parties to this Agreement shall have a duty to mitigate any loss which it may incur as a result of a matter giving rise to a right of indemnification under this clause.

10.13.5 The indemnities given in this Agreement shall not apply to the extent that such a Claim results directly or indirectly from the negligence of or wilful misconduct by the party, its employees, subcontractors or agents, against whom the Claim has been made.

10.14 The Client agrees and accepts that the express obligations and warranties made by BCN MANAGED LIMITED in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality, performance and care and skill used in its provision.

10.15 The Client acknowledges that BCN MANAGED LIMITED's obligations and liabilities are exhaustively defined in this Agreement.

10.16 The provisions of this clause 10 shall survive the termination of this Agreement, howsoever occasioned for a period of twelve months.

11. TERMINATION

11.1 This Agreement may be terminated immediately by written notice:

11.1.1 By BCN MANAGED LIMITED if:

- a) BCN MANAGED LIMITED's invoice remains unpaid ten Standard Working Days after receipt of written notice from BCN MANAGED LIMITED to do so;
- b) Two consecutive direct debit requests are rejected;
- c) BCN MANAGED LIMITED's supplier declines to accept its order for the supply of Services.

11.1.2 By either party if:

- a) The other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme of arrangement with (or assignment for the benefit of) its creditors or if is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
- b) The other party ceases to hold the necessary licences or authorisations from any regulatory authority to carry out its business and perform its obligations under this Agreement;
- c) The other party ceases to trade;
- d) The other commits any material breach of any terms of this Agreement which is capable of being remedied but which the breaching party fails to remedy within thirty days of a written request to remedy the same;
- e) The other party commits a breach which cannot be remedied;
- f) The other party is repeatedly in material breach of this Agreement, where "repeatedly" means twice or more in any one calendar year;
- g) A right of termination arises in the event of Force Majeure.

11.2 This Agreement may be terminated by either party giving the other not less than thirty days' notice to terminate at any time PROVIDED THAT at the notified date of termination, there are not any Service Agreements in effect.

11.3 On termination of this Agreement, BCN MANAGED LIMITED shall be entitled to receive all fees and expenses and other monies accrued and due to it up to the date of such termination and any amounts due to

it with respect to settlement of claims or concluding outstanding obligations as at the date of termination of this Agreement and shall be entitled to charge and be paid any additional expenses which are reasonably incurred as a consequence of termination of this Agreement.

11.4 On termination of this Agreement, the Client shall forthwith return all BCN MANAGED LIMITED-Owned Equipment to BCN MANAGED LIMITED.

11.5 If any Equipment that is BCN MANAGED LIMITED's property (including Goods on which payment is outstanding and BCN MANAGED LIMITED Owned Equipment) is not returned to BCN MANAGED LIMITED within fourteen days of the date of termination, BCN MANAGED LIMITED shall be entitled to:

11.5.1 Enter into the Client's premises to recover the property and charge the Client any costs reasonably incurred; or

11.5.2 Charge the Client for the full retail price of the property as at the Commencement Date.

11.6 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

12. SUSPENSION OF SERVICES

12.1 BCN MANAGED LIMITED shall be entitled to suspend the provision of the Services in whole or part, without notice (save as where it is reasonably possible to provide prior written notice) or liability to the Client if:

12.1.1 In BCN MANAGED LIMITED's reasonable opinion, the Services are being used to commit any fraudulent, illegal or wrongful activity or are in breach of any acceptable use clause contained in this Agreement, knowingly or otherwise, by the Client;

12.1.2 In BCN MANAGED LIMITED's reasonable opinion, the Client is in material breach of any other provision of this Agreement;

12.1.3 Payments are unpaid within ten days of BCN MANAGED LIMITED's written request to do so;

12.1.4 Any consent, wayleave or authority required by BCN MANAGED LIMITED or its supplier is withdrawn, revoked or otherwise ceases to have effect;

12.1.5 BCN MANAGED LIMITED is instructed to do so by any legal, governmental or any other competent authority;

12.1.6 There are critical operational reasons or emergency;

12.1.7 Planned or emergency work is required to systems that underpin the delivery of the Services.

12.2 In the event of suspension of Services under the terms of sub-clause 12.1:

12.2.1 Services shall be restored by BCN MANAGED LIMITED during Working Hours when the situation which has given cause to the suspension is resolved by the Client or BCN MANAGED LIMITED (as applicable) and if the suspension had arisen for any reason contemplated in sub-clauses 12.1.1 to 12.1.4 BCN MANAGED LIMITED shall be entitled to charge a reinstatement fee;

12.2.2 Suspension of any part of the Services under the terms of this Agreement shall not constitute a termination and the Client shall continue to pay all of BCN MANAGED LIMITED's charges in relation to this Agreement during the period of suspension of Services;

12.2.3 If the Client fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, BCN MANAGED LIMITED shall be entitled to terminate the Agreement under the terms of clause 11;

12.2.4 BCN MANAGED LIMITED shall not be liable for any costs, expenses or losses or other liabilities incurred by the Client as a result of suspension of the Services.

12.3 BCN MANAGED LIMITED is not obliged to suspend services or give notice of suspension prior to exercising its right to terminate this Agreement.

13. PERFORMANCE AND SERVICE CREDITS

13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement set out in the Supplementary Terms ('Service Level Agreement').

13.2 BCN MANAGED LIMITED commits to ensure that the Applicable Services meet the performance targets set out in the Service Level Agreement.

13.3 If BCN MANAGED LIMITED does not meet the performance criteria set out in the Service Level Agreement, the Client shall be entitled to claim a Service Credit as set out in the Supplementary Terms.

13.4 To make a claim for Service Credit, the Client must notify BCN MANAGED LIMITED within three days of the beginning of the incident that gives rise to the claim.

13.5 The notification of the claim must include:

13.5.1 Client name and contact;

13.5.2 The start and end time for each incident for which a claim is being made;

13.5.3 Clear and accurate evidence to enable BCN MANAGED LIMITED to confirm the claim for Service Credit.

13.6 Failure to provide the required information as set out in this clause shall invalidate the claim for Service Credit.

13.7 In the event of a claim for a Service Credit, BCN MANAGED LIMITED shall review such claim and determine at its sole discretion whether or not a Service Credit is due.

13.8 The Client acknowledges and accepts that:

13.8.1 The Service Level Agreement is conditional upon the Client allowing BCN MANAGED LIMITED unrestricted access to its site during Working Hours and any extended cover period set out in the Service Description without prior notice in the event of a malfunction or other failure of the Services; 13.8.2 For certain performance measures, Service Credit eligibility will be based solely on BCN MANAGED LIMITED's own measures of core performance of the Services (acting reasonably and in good faith);

13.8.3 It is technically impractical to provide the Services free from Faults or interruption and BCN MANAGED LIMITED does not give any undertaking to do so. The Client therefore agrees that Service Credits set out for any Applicable Service shall constitute the Client's sole financial remedy

for BCN MANAGED LIMITED's failure to meet any service level targets set out in the Service Description, and that such financial remedy is full and final satisfaction of BCN MANAGED LIMITED's liability for such failure;

13.8.4 Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target. For the avoidance of doubt, Service Credits shall not be payable for the consequential lack of availability or otherwise of Service Components that are reliant upon the serviceability of the Service Component that has failed to meet its performance target;

13.8.5 If a single event causes the failure of BCN MANAGED LIMITED to meet more than one performance target, the Service Credit will only be due in respect of one failed performance target.

13.9 If a Service Credit is deemed due, such shall be applied to the Client's account within thirty days of the date of BCN MANAGED LIMITED's determination.

13.10 The payment of Service Credits is subject to the following limitations:

13.10.1 The Client's entitlement to claim Service Credits as provided in this Agreement shall be the Client's sole and exclusive remedy for any failure by BCN MANAGED LIMITED to provide the Applicable Services according to the Service Description;

13.10.2 Service Credits are non-refundable and non-transferrable and may only be used as credit against future invoices due in respect of the Client's usage of the Services under the terms of this Agreement;

13.10.3 The aggregate monetary amount of credits payable by BCN MANAGED LIMITED in any month shall not exceed 20% of the recurring monthly charge (excluding VAT and usage-based charges) for the relevant Service.

13.11 Service Credits shall not apply following any failure of BCN MANAGED LIMITED to provide the Applicable Services due to:

13.11.1 Faults that are outside of BCN MANAGED LIMITED's reasonable control including force majeure events;

13.11.2 Law enforcement activity;

13.11.3 Actions of a third-party including denial of service attacks;

13.11.4 Suspension or termination of Services by BCN MANAGED LIMITED under the terms of this Agreement; or

13.11.5 Any action or inaction whatsoever by the Client, its employees, agents or subcontractors in connection with the Applicable Services.

13.11.6 Any incident, action or event that occurs before the RFU Date.

13.12 The Client shall be ineligible to claim for Service Credits under the terms of this Agreement if:

13.12.1 The Client is in breach of any part of the Agreement;

13.12.2 The Services have been suspended or terminated by BCN MANAGED LIMITED under the terms of this Agreement;

13.12.3 Invoices issued by BCN MANAGED LIMITED are due to be paid but remain outstanding.

13.12.4 Notice to terminate this Agreement or the relevant Service Agreement has been served by either party and acknowledged by the other;

13.12.5 The Client has been served notice to remedy a breach of this Agreement and such remedy remains un-discharged.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property in the Goods or Equipment and associated documentation owned or used by BCN MANAGED LIMITED, its subcontractors, agents or suppliers ('Owners') in the performance of this Agreement shall be and will remain vested in the Owners except as expressly provided in this Agreement, the Client shall not acquire any rights, title or interest in or to any Intellectual Property owned by the Owners. To the extent to which it is entitled, BCN MANAGED LIMITED grants to the Client a royalty-free, non-exclusive, revocable, non transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.

14.2 BCN MANAGED LIMITED shall if applicable acquire for the Client a non-exclusive, non-transferable, royalty-free licence to use the Software and associated documentation set out on the Order or Supplementary Terms for the purposes of using the Services.

14.3 The Client hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted by BCN MANAGED LIMITED in accordance with section 50B of the Copyright Designs and Patents Act 1988, the Client hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.

14.4 In the event of the Client's breach of sub-clause 14.3, the Client undertakes to:

14.4.1 Immediately notify BCN MANAGED LIMITED of the breach;

14.4.2 Take reasonable steps to remedy the breach within forty-eight hours of having become aware of the breach.

14.5 Save for the Intellectual Property belonging to the Owners, all Intellectual Property owned or used by the Client and / or its subcontractors, agents and suppliers ('Client Owners') pursuant to this Agreement shall be and will remain vested in Client Owners and except as expressly provided in this Agreement, BCN MANAGED LIMITED shall not acquire any rights, title or interest in or to any Intellectual Property owned by Client Owners.

14.6 Subject to the provisions of sub-clause 10.13, the Client shall indemnify BCN MANAGED LIMITED against all third-party claims arising from the Client's infringement of third-party Intellectual Property Rights in software, images or other data contained within Customer Data.

14.7 Subject to the provisions of sub-clause 10.13, BCN MANAGED LIMITED shall indemnify the Client against any third-party Intellectual Property rights claim ('IPR Claim') by the Owner of Equipment or Software supplied by BCN MANAGED LIMITED under the terms of this Agreement.

14.8 In the event of an IPR Claim arising from Equipment or Software provided by BCN MANAGED LIMITED to facilitate the use of the Services, the Client acknowledges that BCN MANAGED LIMITED may, at its discretion and cost, licence to the Client or procure a licence to the Client of an alternative item and / or modify or procure the modification of the infringing item in each case provided that (i) this resolves the

original IPR Claim, (ii) it does not give rise to another IPR Claim; (iii) is of no extra cost to the Client and (iv) it does not materially affect the performance of the Services.

14.9 BCN MANAGED LIMITED acknowledges that Customer Data is and shall remain the property of the Client and the Client reserves all IPRs which may at any time subsist in the Customer Data. To the extent that any Customer Data vest in BCN MANAGED LIMITED by operation of law, such IPRs shall be assigned by BCN MANAGED LIMITED to the Client immediately on the creation of such Customer Data.

14.10 BCN MANAGED LIMITED shall:

14.10.1 Not alter, store, copy, disclose or use Customer Data other than in strict accordance with this Agreement;

14.10.2 Preserve, so far as possible, the integrity of Customer Data and prevent any loss, disclosure, theft, manipulation or interception of Customer Data and shall advise the Client immediately in the event thereof;

14.10.3 Return Customer Data to the Client when requested by the Client.

15. MISCELLANEOUS

15.1 BCN MANAGED LIMITED may recommend that another party carries out work, supplies goods, software or services to the Client. The Client shall not be obliged to engage any such recommended party and shall not be prejudiced in any way should it choose not to do so. However, if it does engage any such recommended party, BCN MANAGED LIMITED does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.

15.2 In the case where BCN MANAGED LIMITED provides goods or software originally manufactured or developed by third parties it passes on statements, warranties and representations in good faith but doesn't verify them or guarantee their accuracy.

15.3 BCN MANAGED LIMITED cannot accept responsibility for any statements or representations unless such are made in writing.

15.4 If Goods or Services are provided to the Client at a reduced or no charge for a trial period, BCN MANAGED LIMITED shall commence charging for the provision of the Goods and / or Services at the price agreed between the parties prior to the commencement of the trial period, from the end of the trial period unless the Client serves thirty days' notice to terminate this the relevant Service Agreement at the end of the trial period; and

15.4.1 The Minimum Term shall be deemed to commence at the end of the trial period.

15.5 The signing by BCN MANAGED LIMITED of any of the Client's documentation shall not imply any modification to this Agreement.

15.6 For the purpose of this Agreement, communications made between BCN MANAGED LIMITED and the Client by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 27.

15.7 BCN MANAGED LIMITED shall be entitled to correct any clerical or typographical error made by its employees at any time.

15.8 The parties agree to comply with the provisions of the Bribery Act 2010; and

15.8.1 Maintain such processes and procedures to ensure compliance therewith; and

15.8.2 Each party represents and warrants that no undue financial or other advantage of any kind has been or will be given or received by any party in connection with the performance of this Agreement.

15.9 Nothing in this Agreement shall prohibit BCN MANAGED LIMITED from supplying the same or similar Goods or Services to other persons.

15.10 If the Client wishes to change the scope of the Services, including the addition of equipment or end users, it shall submit details of the requested change ('Change Request') to BCN MANAGED LIMITED, in writing; and

15.10.1 BCN MANAGED LIMITED shall within a reasonable time provide a written response which shall identify:

a) An estimate of the time required to make the change;

b) Any variations to the Charges;

c) Any impact of the change on this Agreement or the delivery of Services hereunder.

15.10.2 BCN MANAGED LIMITED will not be obliged to implement the changes until the Client has agreed in writing to the necessary variations.

15.11 In the event that BCN MANAGED LIMITED provides BCN MANAGED LIMITED-Owned Equipment to the Client:

15.11.1 BCN MANAGED LIMITED-Owned Equipment shall at all times remain the property of BCN MANAGED LIMITED;

15.11.2 Without prejudice to any of its other rights, BCN MANAGED LIMITED may recover or resell the BCN MANAGED LIMITED-Owned equipment supplied and its servants or agents may enter upon the Client's premises for that purpose should any events as contemplated in clause 11.1 occur or BCN MANAGED LIMITED has reasonable grounds to believe that its interest in the BCN MANAGED LIMITED-Owned Equipment is or is likely to be in jeopardy;

15.11.3 In the event that the BCN MANAGED LIMITED-Owned Equipment becomes Defective through no fault of the Client or any third party under the control of the Client, unless otherwise stated in the Service

Description BCN MANAGED LIMITED shall at its sole discretion either repair or replace the Defective BCN MANAGED LIMITED-Owned Equipment with equipment of equal or greater functional specification;

15.11.4 The Client undertakes to:

a) Only use the BCN MANAGED LIMITED-Owned Equipment for the purposes for which it is intended and in conjunction with the Services for which it has been provided;

b) Store the BCN MANAGED LIMITED-Owned Equipment in a manner that makes it readily identifiable as BCN MANAGED LIMITED's property;

c) Keep the BCN MANAGED LIMITED-Owned Equipment properly insured;

d) Obtain and pay for all necessary licences, consents and approvals required for the installation and operation of the BCN MANAGED LIMITED-Owned Equipment;

- e) Notify BCN MANAGED LIMITED promptly of any defects in, loss of or damage to the BCN MANAGED LIMITED-Owned Equipment;
- f) At any time during or on termination of this Agreement, pay BCN MANAGED LIMITED the cost of replacement of the BCN MANAGED LIMITED-Owned Equipment, such cost to be based on the list price of the BCN MANAGED LIMITED-Owned Equipment at the Commencement Date, in the event of loss of or damage to the BCN MANAGED LIMITED Owned Equipment caused by the act, omission or negligence of the Client or any third party for which it is responsible;
- g) The Client shall return the BCN MANAGED LIMITED-Owned Equipment to BCN MANAGED LIMITED within fourteen days of any request by BCN MANAGED LIMITED to return such.

15.11.5 The Client undertakes not to:

- a) Pledge the BCN MANAGED LIMITED-Owned Equipment or documents to title thereon, or allow any credit to arise thereon;
- b) Dispose of the BCN MANAGED LIMITED-Owned Equipment or documents of title thereon or any interest therein; or
- c) Hold itself out as BCN MANAGED LIMITED's agent in respect of the BCN MANAGED LIMITED-Owned Equipment; or
- d) Repair, modify or otherwise maintain, or allow any other party to do same to the BCN MANAGED LIMITED Owned Equipment.

16. SALE OF GOODS

16.1 Prices and Charges

16.1.1 The Charges for Goods is set out in the Order and are subject to the provisions of clause 9 hereof and this sub-clause 16.1.

16.1.2 BCN MANAGED LIMITED shall at any time be entitled to change the Charges for Goods set out in the Order:

- a) Should the Client alter its specification or instructions after the date of Order or BCN MANAGED LIMITED otherwise has to alter, modify or otherwise carry out work on any Goods;
- b) Should there be any increase in the cost to BCN MANAGED LIMITED of purchasing any Goods for any reason including foreign or currency fluctuations, alterations in any taxes or duties, variations in the cost of BCN MANAGED LIMITED's materials, components, labour, transport and any other reason beyond the reasonable control of BCN MANAGED LIMITED.

16.1.3 Unless otherwise stated, all prices quoted by BCN MANAGED LIMITED are exclusive of Value Added Tax and other taxes, duties and other impositions and the Client shall pay all taxes, duties and other governmental charges (where applicable) in respect of the Goods at the rate ruling at the tax point, together with any transport costs for delivery of the Goods to the Client as set out on the Order.

16.2 Payment

16.2.1 Notwithstanding the provisions of sub-clause 9.4, BCN MANAGED LIMITED shall be entitled at its sole discretion, to request payment or part payment for Goods prior to the despatch of such Goods to the Client.

16.2.2 If BCN MANAGED LIMITED allows provisional credit or extends credit in respect of any part of the Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods, save against payment.

16.2.3 Where the Goods are to be supplied or payment theretofore is to be made by instalments the failure of the Client to pay any of the instalments in due time shall entitle BCN MANAGED LIMITED to:

- a) Demand that all amounts for all outstanding instalments are immediately paid;
- b) Treat such failure as repudiation of the whole Order by the Client and to recover any damages incurred as a result of such breach of this Agreement.

16.2.4 If the Client is unable to accept delivery of the Goods on the agreed delivery date, BCN MANAGED LIMITED shall be entitled to invoice the Client as if such delivery had taken place.

16.3 Warranty

16.3.1 With respect to Goods that are manufactured by a third party and sold by BCN MANAGED LIMITED:

- a) BCN MANAGED LIMITED's only warranty to the Client is that the Goods shall conform substantially to the description provided by BCN MANAGED LIMITED and are free of any rightful claims of their manufacturer.
- b) To the extent that any warranties extended to BCN MANAGED LIMITED by their manufacturer are transferable, BCN MANAGED LIMITED shall transfer such warranties to the Client.
- c) BCN MANAGED LIMITED cannot pass onto the Client any greater warranty in respect of the Goods than that which has been conferred on BCN MANAGED LIMITED under the terms of BCN MANAGED LIMITED's agreement with its own supplier.

16.3.2 BCN MANAGED LIMITED's only warranty in respect of Software provided under this Agreement shall be strictly limited to the medium of storage and BCN MANAGED LIMITED shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.

16.3.3 The warranty contained in sub-clauses 16.3.1 and 16.3.2 are given in lieu of and shall be deemed to exclude all other implied warranties and conditions, except for the terms implied by section 12 of the Sale of Goods Act 1979, and whether arising by common law, statute or otherwise.

16.3.4 If the supplied Goods are Defective or become Defective during the period of any warranty extended to the Client under the provisions of sub-clause 16.3.1(b) and the manufacturer agrees to accept a claim under its warranty provisions, the Client shall promptly return the Goods to the location specified by BCN MANAGED LIMITED for the purpose of repair under such warranty.

16.4 Delivery

16.4.1 If Goods are to be delivered by BCN MANAGED LIMITED to the Client, such Goods shall be delivered to the location set out in the Order. Unless it is otherwise agreed in writing, such Goods shall be delivered by any means chosen by BCN MANAGED LIMITED and BCN MANAGED LIMITED shall not be under any obligation to provide personnel, plant or power to assist the unloading of the Goods.

16.4.2 If the Client is unable to take delivery of the Goods, BCN MANAGED LIMITED may at its sole discretion store the Goods at its risk, but may be entitled to charge the Client its reasonable costs for doing so.

16.4.3 BCN MANAGED LIMITED shall make reasonable endeavours to avoid delay, however BCN MANAGED LIMITED will not accept any liability for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of BCN MANAGED LIMITED or not.

16.4.4 BCN MANAGED LIMITED shall be entitled to deliver the Goods in one or more consignments unless otherwise agreed.

16.4.5 The Client shall inspect the Goods immediately on delivery thereof and shall within two Standard Working Days from such delivery give BCN MANAGED LIMITED notice of any claim that the Goods are Defective. If the Client fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Order; and

a) If the Client establishes to BCN MANAGED LIMITED's reasonable satisfaction that the Goods are not in accordance with the Order or are so Defective, BCN MANAGED LIMITED may elect to repair the Goods or to replace the Goods or to refund the purchase price against the return of the Goods.

16.4.6 If the Goods are lost or damaged in transit the Client shall notify both BCN MANAGED LIMITED and the carrier of the loss or damage within two Standard Working Days of the delivery (or anticipated delivery date, as may be the case).

16.4.7 BCN MANAGED LIMITED shall not be responsible for the installation of Goods at the Client's site under the terms of these Supplementary Terms, unless otherwise agreed in writing.

16.5 Returns

16.5.1 Goods supplied to the Client under the terms of this Agreement which the Client wishes to return for reasons other than those set out in sub-clause 16.4.5 cannot be returned without BCN MANAGED LIMITED's prior written consent.

16.5.2 The Client shall be responsible for delivering the Goods to BCN MANAGED LIMITED's premises and the Client shall be liable for all packaging and carriage costs.

16.5.3 All Goods returned to BCN MANAGED LIMITED shall be returned in the same condition and packaging in which such was originally delivered to the Client.

16.5.4 BCN MANAGED LIMITED shall be entitled to charge the Client a handling / re-stocking charge.

16.6 Passing of Risk

16.6.1 The Goods shall be at the Client's risk from the time of delivery of the Goods to the Client or

a third party identified by the Client and if the Client returns Goods to BCN MANAGED LIMITED, until the time of delivery back to BCN MANAGED LIMITED.

16.6.2 Where Goods are to be collected by the Client, or by the Client's carrier the Goods shall be at the Client's risk from the time of collection of the Goods.

16.6.3 BCN MANAGED LIMITED shall not be liable for any loss of any kind to the Client arising from any damage to the Goods occurring after the risk has passed to the Client howsoever caused, nor shall any liability of the Client to BCN MANAGED LIMITED be diminished or extinguished by such loss.

16.7 Retention of Title

16.7.1 The Goods agreed to be sold shall remain the property of BCN MANAGED LIMITED until all sums due to BCN MANAGED LIMITED have been paid in full.

16.7.2 Until such time as the Client becomes the owner of the Goods, without prejudice to any of its other rights, BCN MANAGED LIMITED may recover and resell the Goods supplied and its servants or agents may enter upon the Client's premises for that purpose on the occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f); or

- a) BCN MANAGED LIMITED has reasonable grounds to believe that the Client is insolvent or that BCN MANAGED LIMITED's right to receive payment or its interest in the Goods is or is likely to be in jeopardy.

16.7.3 Until title in the Goods has passed to the Client hereunder the Client shall not:

- a) Pledge the Goods or documents to title thereon, or allow any credit to arise thereon; or
- b) Dispose of the Goods or documents of title thereon or any interest therein; or
- c) Hold itself out as BCN MANAGED LIMITED's agent in respect of the Goods.

16.7.4 Until such times as the Client becomes the owner of the Goods supplied to it, the Client will:

- a) Keep the Goods properly insured for not less than the price, gross of any applicable discount, which is set out on the Order.
- b) Store the Goods on its premises separately from its own goods in a manner which makes it readily identifiable as the Goods.

16.8 Use of Goods

16.8.1 The Client shall bring to the attention of all persons using the Goods all of BCN MANAGED LIMITED's instructions and recommendations for the use thereof.

16.8.2 The Client shall not remove or deface any label affixed to the Goods referring any user thereof to BCN MANAGED LIMITED's instructions and or recommendations for use.

16.8.3 If any item comprised in the Goods is resold by the Client, the Client shall bring to the attention of its purchaser all of BCN MANAGED LIMITED's or the manufacturer's instructions and recommendations for use of the Goods.

16.8.4 On such resale as contemplated in sub-clause 16.8.3 the Client shall exact an enforceable undertaking from its purchaser not to remove any label affixed to the Goods which refers any user thereof to BCN MANAGED LIMITED's or the manufacturer's instructions and recommendations for use of the Goods and that such purchaser shall take such steps as are necessary to ensure that

there will be available in connection with the use of the Goods adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health; and

a) Subject to the provisions of sub-clause 10.13, the Client shall indemnify BCN MANAGED LIMITED against all third-party claims which arise in connection with the Client's breach of the terms of sub clauses 16.8.3 and 16.8.4.

16.8.5 The Client shall be solely responsible for the disposal of the Goods and packaging; and

a) Shall be solely responsible for its obligations under the Waste Electrical and Electronic Equipment Directive (2012/19/EU), the Packaging Waste Directive (94/62/EC) and Batteries Directive (2006/66/EC), as applicable.

16.9 Cancellation

16.9.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Client shall be effective unless communicated in writing to BCN MANAGED LIMITED and agreed in writing by BCN MANAGED LIMITED.

16.9.2 Upon any such cancellation BCN MANAGED LIMITED shall be entitled to be paid the price of the Goods purchased by BCN MANAGED LIMITED or supplied to the date of the cancellation and the Client shall take over and pay for at the current price such materials as have been allocated by BCN MANAGED LIMITED to the Order.

16.10 Computer Software

All Software shall be supplied to the Client for use under the terms of the licence granted by the owner of the Software to the Client and all intellectual property and title and the rights in the Software shall remain vested in any third party owning such property, title and rights.

16.11 Exclusion of Liability

16.11.1 In no circumstances except under sub-clause 16.3 above shall BCN MANAGED LIMITED's liability whether in contract or in respect of any negligence or otherwise to the Client arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Client in replacing or repairing the said Goods. Except in any case where a claim is made under section 12 of the Sale of Goods Act 1979, BCN MANAGED LIMITED shall not be under any liability for any cost or expenses incurred by the Client in repairing or replacing such Goods unless BCN MANAGED LIMITED is first afforded a reasonable opportunity of repairing or replacing them provided that the Client shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Client.

16.11.2 Subject to the provisions of sub-clause 10.13, the Client shall indemnify BCN MANAGED LIMITED and keep BCN MANAGED LIMITED indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by acts, omissions or negligence of the Client, its servants or agents and any material breach by the Client of its obligations to BCN MANAGED LIMITED hereunder.

16.12 Patents and Trademarks

The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Client will in this respect accept such title to the Goods as BCN MANAGED LIMITED may have.

16.13 Termination

16.13.1 If the Client fails to take and pay for Goods sold in accordance with this Agreement BCN MANAGED LIMITED shall be entitled to treat the Order as repudiated by the Client. Without prejudice to BCN MANAGED LIMITED's right to recover from the Client by way of damages any loss or expense which BCN MANAGED LIMITED may suffer or incur by reason of the Client's default, BCN MANAGED LIMITED shall be entitled to dispose of the Goods as it shall think fit and shall not be under any liability to account to the Client for the price received therefore or otherwise.

16.13.2 BCN MANAGED LIMITED shall be entitled immediately to terminate the Agreement at any time upon occurrence of any of the events contemplated in sub-clauses 11.1.1(a) or 11.1.2(a) to 11.1.2(f). Upon any such termination BCN MANAGED LIMITED shall be entitled to be paid the price of Goods purchased by BCN MANAGED LIMITED or supplied to the Client prior to the date of termination.

16.14 Finance

If the Client requests BCN MANAGED LIMITED to arrange finance for the purchase of Goods on the Client's behalf, the Client agrees that:

16.14.1 BCN MANAGED LIMITED will act as an agent for the Client and for the avoidance of doubt, not for the finance provider;

16.14.2 If BCN MANAGED LIMITED is unable to procure finance terms or is unable to procure finance terms that are acceptable to the Client, the agreement to supply the Goods shall be terminated and any deposit made by the Client shall be returned by BCN MANAGED LIMITED and the Client will have no further liability under the terms of this Agreement;

16.14.3 If the Client fails to provide third-party indemnities that are required by the finance provider, such failure will be deemed to be a breach of this Agreement;

16.14.4 It is a condition of this Agreement that regardless of any provisions made by the finance provider in its contracts, the Client shall finalise the finance arrangement immediately upon BCN MANAGED LIMITED's delivery of the Goods to the Client's site;

16.14.5 If the Client fails to finalise the finance agreement or fails to commence payment under the terms of the finance agreement, the Client shall forthwith become liable for the full cost of the Goods supplied under the terms of this Agreement.

17. THIRD-PARTY RIGHTS

Save as expressly stated, these terms and conditions do not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act of 1999 and it is not the intention of the parties to this Agreement to confer such rights.

18. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts and if this Agreement is translated into any other language, the English Language version shall prevail.

19. DISPUTE RESOLUTION

19.1 If the Client is not satisfied with any aspect of the delivery of the Services, in the first instance the Client should make a complaint to BCN MANAGED LIMITED using the procedure set out in the Welcome Pack.

19.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

19.3 Except in the case of disputes arising from non-payment of invoices which are deemed accepted by the Client:

19.3.1 If the dispute is not resolved through negotiation within ten Standard Working Days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the Centre for Effective Dispute Resolution's Communication and Internet Service Adjudication Scheme (CISAS);

19.3.2 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 19.3 until they have attempted to settle said dispute by mediation and that mediation has terminated;

19.3.3 The fees and the costs of such mediation or arbitration shall be borne equally by the parties.

19.4 Nothing in this clause 19 shall prevent either party from:

19.4.1 Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;

19.4.2 Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

20. FORCE MAJEURE

20.1 Subject always to the provisions of this clause 20, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.

20.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:

20.2.1 Notify the other in writing as soon as reasonably possible and in any case within five Standard

Working Days of the onset of such Force Majeure, specifying its nature and extent of the circumstances;

20.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and

20.2.3 Notify the other party as soon as the Force Majeure event has ceased to affect performance of the Agreement and resume performance of its obligations as soon as reasonably possible.

20.3 If either party is unable to perform its obligations due to Force Majeure, the other party shall be released to an equivalent extent from its obligations relating thereto, including making payment for affected Services.

20.4 If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving notice in writing, in which case neither party shall have any liability to the other except rights and liabilities which accrued prior to such termination shall continue to subsist.

21. ADVERTISING

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly, in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

22. ASSIGNMENT

22.1 BCN MANAGED LIMITED shall be entitled to subcontract all or any part of the Services. For the avoidance of doubt, such subcontracting will not relieve BCN MANAGED LIMITED of any of its obligations under this Agreement.

22.2 BCN MANAGED LIMITED shall be entitled to:

22.2.1 Assign, transfer, novate or otherwise dispose of any of, or any interest in, its rights or obligations under this Agreement by giving written notice to the Client but without requiring its consent; and

22.2.2 Notwithstanding the provisions of clauses 7 and 8, disclose to a proposed assignee any information in its possession that relates to this Agreement solely for the purposes of the proposed assignment.

22.3 The Client shall not assign, transfer, novate or otherwise dispose of any of, or any interest in, its rights or obligations under this Agreement without the prior written consent of BCN MANAGED LIMITED (such consent not to be unreasonably withheld or delayed).

23. VARIATION

23.1 If the Client requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made in writing and will not be deemed accepted until acknowledged and agreed in

writing by BCN MANAGED LIMITED; and

23.1.1 If BCN MANAGED LIMITED fails to accept such change, such failure shall not affect the provision of any foregoing Services.

23.2 Subject to the provisions of sub-clause 23.3, BCN MANAGED LIMITED shall be entitled to change the terms of this Agreement by giving the Client not less than one month's notice, in order to:

23.2.1 Comply with legal or regulatory obligations;

23.2.2 Maintain the security and integrity of the Services;

23.2.3 Improve or clarify the Agreement;

23.2.4 Reflect contractual changes imposed by its suppliers;

23.2.5 Protect the use of Intellectual Property;

23.2.6 Add, change or withdraw Services or service levels;

23.2.7 Change the Charges under the provisions of sub-clause 9.10.

23.3 If BCN MANAGED LIMITED makes any change to the terms of this Agreement other than those listed in clause 23.2 and such change results in material adverse effect, the Client shall be entitled to terminate this Agreement by giving one month's notice without incurring cancellation Charges, PROVIDED THAT such notice is given within fourteen days of the variation being made; and

23.3.1 If notice is not given by the Client within fourteen days of the notification of the variation, the variation shall be deemed agreed by both parties.

23.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

23.5 No modification, amendment or other variation to this Agreement made by the Client shall be valid unless agreed in writing and signed by both parties.

24. STAFF

24.1 Each party agrees not to approach employees or subcontractors of the other in order to entice them to join the other in a role that relates directly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this clause 24.1 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other a sum equal to the annual salary or otherwise of the employee or subcontractor concerned except where that employee has responded to a bona fide advertisement or other offer published or made to the general public.

24.2 Nothing in this Agreement or BCN MANAGED LIMITED's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, joint venture or any mutual obligation between the parties other than set out in this Agreement.

24.3 BCN MANAGED LIMITED shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.

24.4 The parties consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations') will not apply on the commencement or cessation (in whole or in part) of the

provision of Services by BCN MANAGED LIMITED; and

24.4.1 Subject to the provisions of sub-clause 10.13, each party agrees to indemnify the other in respect of any liabilities arising out of or in connection with any claim or decision by a court or tribunal that the contract of employment of any staff has transferred to the other under the TUPE Regulations or otherwise as a result of the parties entering into this Agreement, including (without limitation), any liability for failure to inform and consult under the TUPE Regulations;

24.4.2 If any contract of employment of any staff of either party has effect (or is argued to have effect) as if originally made between one party and staff of the other as a result of the TUPE Regulations or otherwise at any time, then the affected party shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the other party agrees, subject to the provisions of sub-clause 10.13, to indemnify the affected party against any liabilities arising out of such termination and against any sum payable to or in respect of such staff prior to termination of employment.

25. WAIVER

25.1 No forbearance, delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them.

25.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.

25.3 Any waiver to be affected must be agreed in writing and shall:

25.3.1 Be confined to the specific circumstances in which it is given;

25.3.2 Not affect any other enforcement of the same or any other right;

25.3.3 Unless expressly stated, be revocable at any time (in writing).

26. SEVERABILITY

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

27. NOTICES

27.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the company secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Standard Working Days of sending.

27.2 Notices shall not be deemed validly served if sent only by email.

27.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (for example notices to terminate) may be communicated by email.

27.4 Either party may at any time notify the other of a change of address or person for the purpose of the

serving of notices under the terms of this Agreement, subject to the terms of this clause 27.

27.5 The provisions of this clause 27 do not apply to the service of any proceedings or other documents in any legal action or proceedings or, where applicable, any mediation or other method of dispute resolution.

28. ENTIRE AGREEMENT

28.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and terms and conditions attached to the Client's purchase order.

28.2 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute a single agreement.

28.3 The parties acknowledge and agree that:

28.3.1 The parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, promise, inducement or any other assurance not set forth herein;

28.3.2 Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein;

28.3.3 Each party confirms that it is acting on its own behalf and not for the benefit of any third party;

28.3.4 Each party has the power to enter into, exercise its rights under and perform and comply with its obligations under the terms of this Agreement.

28.4 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by BCN MANAGED LIMITED shall not form part of this Agreement.

28.5 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

BCN MANAGED LIMITED: Pilot House, 6 Pilots View, Heron Road, Belfast, BT3 9LE

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