



1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions.

"Charges" means together the Connection Charge, the Set-Up Charge and/or the Service Charge payable by the Customer to the Supplier for the Services as set out in the Contract.

"Connection Charge" means the connection charge set out the Contract.

"Contract" means the Customer's purchase order and the Supplier's acceptance of it under condition 3 or Supplier's proposal or statement of Work and the Customer's acceptance of it under condition 3.

"Customer" means the person, firm or company who purchases Services and hires Service Equipment from the Supplier.

"Customer's Equipment" means equipment, hardware, software, systems, cabling and facilities sold by the Supplier to the Customer or provided by the Customer and connected to the Service Equipment and/or where the Software is installed.

"Customer's Site" means any premises owned, leased or licensed by the Customer and specified in the Contract at which the Services are to be provided.

"Customer's Service Manager" means the Customer's manager for the Services appointed in accordance with condition 5.1.2.

"Deliverables" means all data and materials developed by the Supplier in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts). Deliverables are the rented equipment and service delivery only, excepting installation/connection instructions

"Set-Up Charge" means the charge for the Service Equipment and its set-up as set out in the Contract. The term 'Set-Up Charge' for the equipment is to avoid ambiguity over title of hardware which always remains with InVMA.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and



renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

- "Network"** mean the communication system over which the Supplier provides the applicable Services.
- "Service Charge"** means the recurring or annual charge for use of the Services as set out in the Contract.
- "Services"** means the services to be provided by the Supplier under the Contract.
- "Service Equipment"** means any equipment or cabling agreed in the Contract to be hired by the Customer from the Supplier (including without limitation any part or parts of it) and installed at the Customer's Site in order to enable the Customer to use the Services.
- "Software"** means any operating system installed on the Service Equipment or supplied to the Customer for installation on the Customer's Equipment.
- "Supplier"** means InVma Limited.
- "VAT"** means value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail.
- 1.7 References to conditions are to the conditions of these Conditions.

2. Application of Conditions

- 2.1 These conditions shall:
 - 2.1.1 apply to and be incorporated in the Contract; and
 - 2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.



2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. Effect of Purchase Order

3.1 The Customer's purchase order constitutes an offer by the Customer to purchase the Services and hire the Service Equipment specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services and the hire of the Service Equipment on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract. The purchase order may just be the (digitally or otherwise) signed proposal including the words from this contract

3.2 The Customer shall ensure that its order is complete and accurate.

4. Supplier's Obligations

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Contract.

4.2 The Supplier shall use reasonable endeavours to meet the performance times specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

5. Customer's Obligations

5.1 The Customer shall:

5.1.1 ensure that the terms of the purchase order are complete and accurate;

5.1.2 co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Service Manager, who shall have the authority to contractually bind the Customer on matters relating to the receipt of the Services;

5.1.3 if the Supplier has agreed to install the Service Equipment, provide in a timely manner such access to the Customer's Site, the Customer's Equipment, licenses and data, and such office accommodation and other facilities and consents, as is



- requested by the Supplier to enable the Supplier to install the Service Equipment at the Customer's Site;
- 5.1.4 provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
 - 5.1.5 be responsible (at its own cost) for preparing the Customer's Site and the Customer's Equipment for the supply of the Services;
 - 5.1.6 obtain and maintain throughout the term of the provision of the Services all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
 - 5.1.7 be responsible for testing, verifying and proving (at its own cost) that the Service Equipment, Services and Software comply with all necessary legislation wherever the Service Equipment, Services or Software are used.
 - 5.1.8 inform the Supplier of any existing technical or other facilities including, but not limited to water and gas, which could be damaged during the installation of the Service Equipment at the Customer's Site and the Supplier shall have no liability in respect of any damage or loss arising out of the Customer's failure to comply with its obligations under this condition 5.1.7;
 - 5.1.9 identify, monitor, remove and dispose of any hazardous materials prior to any work being performed by the Supplier at the Customer's Site and the Customer shall indemnify, defend and hold the Supplier harmless from any liability incurred as a result of its failure to comply with this condition 5.1.8; and
 - 5.1.10 at its own expense comply with the Supplier's reasonable instructions in relation to the modification of the Customer's Equipment to enable the Service Equipment to be installed and the Customer to receive the Services.
 - 5.1.11 ensure that the Service Equipment, Services and Software are not used for sustaining and/or supporting human life
- 5.2 The Customer shall be liable for any and all damage to the Service Equipment or the Network which is caused by:
- 5.2.1 the act or omission of the Customer or the Customer's breach of the terms of these conditions; or
 - 5.2.2 malfunction or failure of any equipment or facility owned or operated by the Customer or its agents, employees or suppliers, including but not limited to, the Customer Equipment.
- 5.3 The Customer warrants that it shall ensure that any Customer Equipment connected to the Service Equipment shall comply with all relevant legislation, standards and licence requirements. The Supplier reserves the right to disconnect any Customer Equipment which is not compliant with any legal or regulatory requirements or is liable to cause death or personal injury or to cause damage to or to impair the Service Equipment or the Network. The



Customer shall indemnify, defend and hold The Supplier harmless from any liability incurred as a result of its failure to comply with this condition 5.3.

5.4 The Customer shall advise the Supplier in writing of all health and safety at work rules and regulations, of all dangerous objects and substances, and any other reasonable security requirements applicable at the Customer's Site and the Supplier shall use all reasonable efforts to observe, and to ensure that its employees and authorized representatives observe, such regulations while at the Customer's Site, provided that the Supplier shall not be liable hereunder if as a result of conforming with such regulations The Supplier is in breach of its obligations under the Contract.

5.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or the Customer's agents, sub-contractors or employees, or failure by the Customer to perform any relevant obligation (**Customer Default**):

5.5.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

5.5.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 5.6; and

5.5.3 the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it arising directly or indirectly from the Customer Default (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

6. Change Control

6.1 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

6.1.1 the likely time required to implement the change;

6.1.2 any variations to the Supplier's charges arising from the change; and

6.1.3 any other impact of the change on the terms of the Contract.

6.2 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.



6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.

7. Service Equipment

7.1 The Supplier shall hire the Service Equipment to the Customer for use at the Customer's Site subject to these conditions.

7.2 The Supplier shall not, other than in the exercise of its rights under the Contract, these conditions or applicable law, interfere with the Customer's quiet possession of the Service Equipment.

7.3 The Service Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Service Equipment (save the right to possession and use of the Service Equipment subject to these conditions).

7.4 No order for Service Equipment which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

7.5 The quantity and description of the Service Equipment shall be as set out in the Contract.

7.6 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Service Equipment which are required to conform with any applicable legislation or, where the Service Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance.

7.7 The Supplier is not the manufacturer of the Service Equipment but the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier. The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Service Equipment.

7.8 The Supplier shall use its reasonable endeavours to deliver the Service Equipment on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Service Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.

7.9 If agreed in the Contract, the Supplier shall at the Customer's expense install the Service Equipment at the Customer's Site. The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Service Equipment.

7.10 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Service Equipment and for the provision of all necessary access and



facilities reasonably required to deliver and install the Service Equipment including but not limited to all necessary connections. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

- 7.11 The risk of loss, theft, damage or destruction of the Service Equipment shall pass to the Customer on Delivery. The Service Equipment shall remain at the sole risk of the Customer during term during which the Service Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Service Equipment is redelivered to the Supplier. During the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 7.11.1 insurance of the Service Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - 7.11.2 insurance for such amounts as a prudent owner or operator of the Service Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Service Equipment; and
 - 7.11.3 insurance against such other or further risks relating to the Service Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.
- 7.12 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Service Equipment or arising out of or in connection with the Customer's possession or use of the Service Equipment.
- 7.13 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter the Customer's Site or any premises where the Service Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Service Equipment shall be borne by the Customer.
- 7.14 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 7 shall remain in effect.
- 7.15 The Supplier shall not in any circumstances be liable for any non-delivery of Service Equipment (even if caused by the Supplier's negligence) unless the Customer notifies the Supplier in writing of the failure to deliver within **7** days after the scheduled delivery date.
- 7.16 Any liability of the Supplier for non-delivery of the Service Equipment shall in all circumstances be limited to replacing the Service Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Service Equipment.



- 7.17 The Customer shall be liable for any and all damage to the Service Equipment or the Network which is caused by:
- 7.17.1 the act or omission of the Customer or the Customer's breach of the terms of the Contract or these Conditions; or
 - 7.17.2 malfunction or failure of any equipment or facility owned or operated by the Customer or its agents, employees or suppliers, including but not limited to, the Customer Equipment.
- 7.18 The Customer warrants that it shall ensure that any Customer Equipment connected to the Service Equipment and the Network shall comply with all relevant legislation, standards and licence requirements. The Supplier reserves the right to disconnect any Customer Equipment which is not compliant with any legal or regulatory requirements or is liable to cause death or personal injury or to cause damage to or to impair the Service Equipment or the Network. The Customer shall indemnify, defend and hold the Supplier harmless from any liability incurred as a result of its failure to comply with this condition.
- 7.19 The Customer warrants and undertakes during the term of the Contract that it shall:
- 7.19.1 ensure that the Service Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff;
 - 7.19.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Service Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 7.19.3 that it shall not cause the Service Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of the Supplier;
 - 7.19.4 make no alteration to the Service Equipment and shall not remove any existing component(s) from the Service Equipment;
 - 7.19.5 keep the Service Equipment at all times at the Customer's Site and shall not move or attempt to move any part of the Service Equipment to any other location without the Supplier's prior written consent;
 - 7.19.6 permit the Supplier or its duly authorised representative to inspect the Service Equipment at all reasonable times and for such purpose to enter upon the Customer's Site or any premises at which the Service Equipment may be located, and shall grant reasonable access and facilities for such inspection;
 - 7.19.7 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Service Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;



- 7.19.8 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Service Equipment and, where the Service Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Service Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Service Equipment and a right for the Supplier to enter onto such land or building to remove the Service Equipment;
 - 7.19.9 not suffer or permit the Service Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Service Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Service Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 7.19.10 not use the Service Equipment for any unlawful purpose;
 - 7.19.11 ensure that at all times the Service Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Service Equipment; and
 - 7.19.12 deliver up the Service Equipment at the end of the Contract or on earlier termination of the Contract at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Customer's Site or any premises where the Service Equipment is located for the purpose of removing the Service Equipment.
- 7.20 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Service Equipment arising out of or in connection with any negligence, misuse, mishandling of the Service Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Contract.
- 8. Charges and Payment**
- 8.1 The Connection Charge shall accrue on the date of the Contract and may be invoiced on or at any time thereafter.



- 8.2 All Charges shall be as stated in the Contract. All prices are exclusive of travel and subsistence expenses, delivery, packaging, packing, shipping, carriage, insurance, VAT and other similar charges and duties.
- 8.3 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the Set-Up Charge to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including without limitation any increase in supply costs), any change in delivery dates, quantities or specifications for the Service Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 8.4 If requested by the Supplier, the Customer will pay a deposit in the amount determined by the Supplier as security for payment of Charges or any loss of damage caused to the Service Equipment, as a condition to the Supplier's acceptance of the Contract or continuance of delivery of the Services and the Supplier shall be entitled to apply the deposit against such non-payment or loss of damage. Upon termination of the Contract, the deposit will be refunded without interest after deduction of any outstanding Charges.
- 8.5 Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier may invoice the Customer for the Set-Up Charge on or at any time after delivery of the Service Equipment, unless the Customer wrongfully fails to take delivery of the Service Equipment when the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Service Equipment is ready for collection.
- 8.6 The total Service Charge shall be the amount set out in the Contract. The Service Charges shall accrue from the date the Services commence. The total price shall be paid to the Supplier (without deduction or set-off) in instalments as set out in the Contract. The Supplier shall invoice the Customer monthly **advance** for the Service Charges together with VAT where appropriate for the month concerned.
- 8.7 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds and for the Connection Charges and/or the Service Charges within **30** days of receipt and for the Set-Up Charges upon delivery or when agreed in writing by the Supplier within **30** days of the date of the Supplier's invoice.
- 8.8 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the whole of the balance of the cost of the Services and the price of the Service Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 8.8.1 set off any Charges owed against any deposit provided under condition 8.6;



- 8.8.2 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
 - 8.8.3 terminate the Contract;
 - 8.8.4 suspend all Services or any further deliveries of Service Equipment until payment has been made in full;
 - 8.8.5 make a storage charge for any undelivered Service Equipment at its current rates from time to time.
- 8.9 Time for payment shall be of the essence of the Contract.
- 8.10 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.11 The Supplier reserves the right to increase the Charges, provided that such charges cannot be increased more than once in any 12-month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase.
- 8.12 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

9. Intellectual Property Rights

- 9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 12, this licence will automatically terminate.
- 9.2 If the Supplier applies any process to the Service Equipment, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from the Supplier's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of the Supplier.



- 9.3 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Service Equipment are and shall remain the sole property of the Supplier or (as the case may be) third party rights, owner.
- 9.4 In relation to the Software:
- 9.4.1 the Customer acknowledges that it is buying only the media on which software is recorded and the accompanying user manuals;
 - 9.4.2 nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
 - 9.4.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

10. Confidentiality and Property

- 10.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 10.2 The provisions of condition 10.1 shall not apply to any confidential information which is or comes into the public domain other than by breach of this condition 10, is or has been independently generated by the Receiving Party or is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory body.
- 10.3 This condition 10 shall survive termination of the Contract, however arising.

11. Limitation of Liability

- 11.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 11.1.1 any breach of the Contract howsoever arising;
 - 11.1.2 any use made by the Customer of the Services, the Service Equipment, the Deliverables or any part of them; and

- 11.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract and in particular the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 In relation to the Service Equipment and its hiring to the Customer, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in these conditions. Any condition, warranty or other term concerning the Service Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 11.4 Nothing in these conditions excludes the liability of the Supplier:
 - 11.4.1 for death or personal injury caused by the Supplier's negligence; or
 - 11.4.2 for fraud or fraudulent misrepresentation.
- 11.5 Subject to condition 11.2 and condition 11.3:
 - 11.5.1 the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - 11.5.1.1 loss of profits; or
 - 11.5.1.2 loss of business or revenue; or
 - 11.5.1.3 depletion of goodwill or similar losses; or
 - 11.5.1.4 loss of anticipated savings; or
 - 11.5.1.5 loss of goods; or
 - 11.5.1.6 loss of contract; or
 - 11.5.1.7 loss of use; or
 - 11.5.1.8 loss or corruption of data or information; or
 - 11.5.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - 11.5.2 the Supplier's maximum aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in no circumstances exceed the Charges in the previous 12 months and shall be paid to the Customer by way of service credits for the Services.
- 11.6 This condition 11 shall survive termination of the Contract.



12. Term and Termination

- 12.1 Without limiting its other rights or remedies, the Contract shall last for a minimum term of 2 years and thereafter shall automatically renew annually and for another year until terminated by one party giving to the other party at least 3 months' written notice prior to the renewal date.
- 12.2 Without prejudice to any other rights or remedies to which the Supplier may be entitled, the Supplier party may terminate or suspend further deliveries under the Contract without liability to the Customer if:
 - 12.2.1 the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of the Customer being notified in writing of the breach; or
 - 12.2.2 the ability of the Customer to accept receipt of the Services or hire the Service Equipment is delayed, hindered or prevented by circumstances beyond the Customer's reasonable control; or
 - 12.2.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 12.2.4 an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or
 - 12.2.5 an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 12.2.6 a receiver is appointed of any of the Customer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or
 - 12.2.7 the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - 12.2.8 the Customer ceases, or threatens to cease, to trade.
- 12.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.



- 12.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 12.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.5 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 12.6 On termination of the Contract for any reason:
- 12.6.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied or Service Equipment hired but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.6.2 the Customer shall return all of the Service Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's Site or any premises at which the Service Equipment is located and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose; and
 - 12.6.3 the Customer shall pay to the Supplier on demand any costs and expenses incurred by the Supplier in recovering the Service Equipment and/or in collecting any sums due under these conditions (including any storage, insurance, repair, transport and legal costs).
- 13. Suspension and Force Majeure**
- 13.1 The Supplier may from time to time suspend the provision of the Services in the event that the Supplier needs to carry out any necessary maintenance work to the Network or the Service Equipment.
- 13.2 In the event the suspension is implemented as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay the Supplier all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service and the Supplier may recover any other losses suffered as a result of such breach, fault, act or omission.
- 13.3 The Supplier shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension pursuant to condition 13.1 save where the circumstances requiring the suspension are solely attributable to the negligence of the Supplier and in which event the Supplier's liability shall be limited in accordance with condition 11.



13.4 The Supplier reserves the right to cancel the Contract or reduce the amount of Service Equipment ordered or defer the date of delivery or suspend the provision of the Services and shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, inability to secure materials or equipment, fire, flood, storm or default of suppliers or sub-contractors including but not limited to other monitors of data.

14. Contents of Communications

14.1 The Customer shall only use the Services for lawful purposes and is responsible for all communications and use of the Services. The Customer shall not at any time use (or authorise or suffer any other party to use) the Services:

14.1.1 to receive or transmit material which is in violation of any law or regulation (including the rights of a third party and Internet etiquette of which the Customer is aware);

14.1.2 to, or attempt to, intercept any messages passing over the Network;

14.1.3 knowingly to transmit any messages over the Network (including any viruses) which cause or are likely to cause detriment or harm, to computer systems, networks or otherwise, owned, used or licensed by the Supplier or other Internet users;

14.1.4 to, or attempt to, transact unsolicited commercial e-mail (**UCE**), including hosting or suffering the hosting of sites or information that is advertised by UCE from a third party network or supplier; or

14.1.5 for any other illegal or immoral purpose.

14.2 The Customer shall indemnify the Supplier in respect of all claims and liabilities incurred as a result of a breach by the Customer of condition 14.1 (including claims by governmental entities seeking to impose penal sanctions).

15. General

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.3 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part



- of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.4 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (**Representation**) (whether in writing or not) of any person (whether party to the Contract or not) other than as expressly set out in the Contract or those documents. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in the Contract. Nothing in this condition shall limit or exclude any liability for fraud.
- 15.5 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.6 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.7 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 15.8 Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 15.9 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).