

# MASTER TERMS AND CONDITIONS OF CONTRACT ("Conditions")

## 1. PURPOSE OF THESE CONDITIONS

- 1.1. The purpose of these Conditions is to establish the general terms and conditions applicable to services and/or goods to be rendered or supplied by the Company to the Client from time to time.
- 1.2. The parties shall enter into one or more Service Agreements (as defined below) describing the responsibilities and obligations specific to the applicable services.
- 1.3. The Client's attention is particularly drawn to the provisions of condition **Error! Reference source not found.** (Limitation of Liability).

## 2. DEFINITIONS & INTERPRETATIONS

### 2.1. Definitions

In these Conditions, and any Contract (as defined below), the following definitions shall apply unless the context requires otherwise.

**"Authorised Representative"** means, in respect of each party, the person identified as such in the Quotation Form or the Order Form, or such other person as may be notified in writing by a party from time to time to the other party.

**"Authority"** means OFCOM or any other relevant regulating authority which has the right to frame Guidelines for the Services.

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

**"Client"** means the entity identified as such in the Order Form.

**"Client Equipment"** means any equipment, including any software, for use with the Services that is not Company Equipment or equipment purchased or leased from the Company, and which is owned or controlled by the Client;

**"Company"** means the supplier of the Services and/or Goods identified in the Order Form being either Orbtalk Limited, a company incorporated under the laws of England & Wales with registration no. 05382664 and whose registered office is at 5 Frederick Terrace, Frederick Place, Brighton, BN1 1AX, United Kingdom or one of its Group Companies.

**"Company Equipment"** means any equipment (including any software on it) which is used by the Company to provide the Services (including any such equipment on the Client's premises) the ownership of which vests with the Company, any of its Group Companies or its third party suppliers.

**"Contract"** means the contract between the Company and the Client for the supply of Services and/or Goods in accordance with these Conditions comprising these Conditions, an Order Form and the Service Agreement(s) describing the responsibilities and obligations specific to the applicable Services, and including for the avoidance of doubt contracts formed via the Client's submission of a request for Services via the Company's online portal, or via email or via other means accepted by the Company, and the Company's acceptance of the same.

**"Contract Manager"** bears the meaning given in condition 5.4.1.

**“Deliverables”** means all documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**“Effective Date”** bears the meaning given in condition 3.2.

**“Fair Use Policy and Acceptable Use Policy”** means our fair use policy and acceptable use policy available at <https://www.orbtalk.co.uk/fair-use-and-acceptable-use-policy>;

**“Fees”** means the fees payable by the Client for the supply of Services as set out in the Order Form and/or the relevant Service Agreement.

**“Goods”** means the communications equipment and other hardware the Client purchases from the Company (or any part of them), if any, set out in the Order Form or otherwise.

**“Group”** means, in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**“Group Company”** means, in relation to a company, any member of its Group, and **“Group Companies”** shall be interpreted accordingly.

**“Guidelines”** means any guidelines, rules or regulations made by any Authority that are applicable to the Services.

**“Incident”** means the loss or failure of any of the Services affecting Service performance or Service availability in a way that affects the Client's business;

**“Initial Term”** means the initial period (starting on and including the Service Start Date) during which the Company is to provide the Services to the Client and is that period specified as such in the Order Form or the Service Agreement or on the Company's online portal (where the Client is permitted to order or provision services by this means), as the case may be, or, if none is specified, a period of 12 months starting on and including the Service Start Date. Where more than one Service is provided pursuant to an Order Form, the Initial Term will start on the Service Start Date of the last of the Services to be made available for use by the Client.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all 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.

**“Order Form”** means the Client's order for the Services and/or the Goods as set out in an order form (in the Company's prescribed form) completed by the Client or the Client's written acceptance of a Quotation Form, as the case may be. “Order Form” shall be deemed to include the Client's order for Services and/or Goods placed by the Client via the Company's online portal (where the Client is permitted to order or provision services by this means).

**“Pre-existing Materials”** means all documents, information and materials provided by the Company relating to the Services which existed prior to the Effective Date, including computer programs, data, reports and specifications.

**“Quotation Form”** means the written quotation that Company provides to Client that lists the services, the duration of their provision, and/or the Goods, and the prices applicable thereto.

**“Renewal Term”** means the further period (following the Initial Term or another Renewal Term) during which the Company is to provide the Services to the Client and is that period specified as such in the Order Form or the Service Agreement or on the Company’s online portal (where the Client is permitted to order or provision services by this means), as the case may be, or, if none is specified, a period of twelve months commencing on and including the day immediately following the last day of the Initial Term or the previous Renewal Term, as the context requires.

**“Service Agreement”** means the written agreement which describes or specifies the Services and contains additional terms particular to those Services.

**“Small Business Customer”** means a company where no more than ten individuals work (whether as employees or volunteers or otherwise);

**“Service Levels”** means the performance standards set out in the Service Agreement in accordance with which the Company is to provide the Services.

**“Service Start Date”** means the date on which Company first makes a Service available for use by the Client.

**“Service Specific Information Form”** means a form sent to you for a Service you request which will be used to gather more in depth detail about the nature of the Services requested;

**“Services”** means the services, including the Deliverables, supplied by the Company to the Client as set out in the Order Form and the Service Agreement.

**“Site”** means the premises at which the Company agrees to provide the Services to the Client as specified in the Order Form, or any other location as may be agreed by the parties in writing from time to time.

**“Term”** means the Initial Term together with any Renewal Term.

**“Unforeseen Event”** bears the meaning given in condition 18.2.1.

**“User”** means the Client's employees, directors, agents, sub-contractors or any other person who is authorised by you to use or access the Services;

## 2.2. Interpretation

The following rules of interpretation shall apply in these Conditions (and any Contract made under or incorporating them):

- 2.2.1. condition, clause and paragraph headings are for ease of reference only and shall not affect interpretation;
- 2.2.2. a reference to a condition is to a condition of these Conditions;
- 2.2.3. a reference to one gender includes any other gender;
- 2.2.4. words in the plural shall include the singular and likewise the other way around;
- 2.2.5. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- 2.2.6. a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 2.2.7. if there is a conflict between these Conditions and the terms of a Service Agreement or other documents applicable to the Contract, the following order of precedence shall apply and the document higher in the order of precedence shall prevail in respect of such conflict:
- a) Order Form;
  - b) Service Agreement;
  - c) these Conditions.
- 2.2.8. where the words **include(s), including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them; and
- 2.2.9. any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

### 3. BASIS OF CONTRACT

- 3.1. The Order Form constitutes an offer by the Client to purchase Services and/or the Goods in accordance with these Conditions and the terms of the relevant Service Agreement. For the avoidance of doubt, these Conditions and the terms of the relevant Service Agreement shall apply to the supply of Goods and Services ordered or provisioned by the Client via the Company's online portal (where the Client is permitted to order or provision services by this means).
- 3.2. The Order Form shall only be deemed to be accepted when the Company issues written acceptance of the Order Form or the Company starts providing the Services at which point and on which date the Contract shall come into existence (the "**Effective Date**").
- 3.3. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 3.4. Subject to condition 3.5, any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues, brochures or websites, are issued or published for the sole purpose of giving an approximate idea of the Services or the Goods described in them and they shall not form part of the Contract or have any contractual force.
- 3.5. For particular Services or Goods, the Company may publish the description applicable for that Service or those Goods on the Company's website and, in such circumstances, the Company may incorporate a URL to that description in the relevant Service Agreement or Order Form.
- 3.6. These Conditions and the relevant Service Agreement apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing or (to the fullest extent permitted by law) which may be implied or incorporated into the Contract by statute or at common law.

- 3.7. Any Quotation Form issued, or quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 (thirty) days from its date of issue.
- 3.8. The Company reserves the right to invoice the Client for any administration charges it incurs as a result of the Client providing a materially incorrect or incomplete Order Form.
- 3.9. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 3.10. Where applicable (e.g. for fibre optic or ethernet Services), the Company will provide the Client with a Service Specific Information Form, which the Client shall fill in and return to the Company promptly. The Company (or its suppliers) will then carry out any necessary surveys and the Company will then inform the Client of any other extra Charges which have been identified at this time which the Client may be required to pay in advance.
- 3.11. The Company will not be obliged to supply any Services or Goods to the Client until the Client settles any advance payments requested by the Company.

#### **4. TERM**

- 4.1. The Company shall start to provide the Services to the Client on the first day of the Initial Term.
- 4.2. The Company shall continue to provide the Services for the Initial Term unless the Contract is terminated earlier in accordance with condition 15. Subject to condition 4.3, the term of the Contract shall automatically extend for the Renewal Term at the end of the Initial Term and at the end of each Renewal Term, unless the Client gives written notice to the Company 30 (thirty) days before the end of the Initial Term or the relevant Renewal Term, to terminate the Contract at the end of the Initial Term or the relevant Renewal Term, as the case may be.
- 4.3. Where the Order Form expressly provides that automatic renewal of the Contract does not apply or the Client is a Small Business Customer, auto renewal of the Contract pursuant to condition 4.2 shall not apply, and the Client may terminate the Contract by giving to the Company not less than 30 (thirty) days' written notice (or such other period of notice as may be specified on the Order Form), such notice not to expire before the end of the Initial Term or any Renewal Term which the Client has expressly agreed to enter into.
- 4.4. In circumstances where the Services comprise of more than one element or Sites, the Initial Term shall run from the Service Start Date of the last Service element/Site to be delivered ready for service or the solution as a whole.

#### **5. SERVICES**

- 5.1. The Company shall provide the Services to the Client on the terms and conditions of the Contract.

##### **5.2. Client obligations and Use of Services**

5.2.1. The Client shall:

- (a) provide, for Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises (or any premises of an end user), office accommodation, data and other facilities as reasonably required by the Company in order to supply the Services, including to maintain, repair, alter, modify or adjust the Company Equipment, and such access shall be within the Client's

normal business hours unless agreed otherwise, and the Client shall not prevent or delay the Company carrying out maintenance work;

- (b) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, and without prejudice to the generality of the foregoing, the Client shall:
  - (i) provide any electricity and telecommunications connection points required by the Company at the Site in connection with the Services;
  - (ii) (save to the extent that the same is dealt with directly as between the Company and any landlord in respect of multi-tenanted buildings) provide any openings in buildings on the Site which are required to enable the Company to install the Services; and
  - (iii) provide any internal cabling required between the Company Equipment and the Client's equipment;
- (c) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
- (d) ensure that all its equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and is technically compatible with them, and conforms to all relevant United Kingdom standards or requirements (and the Company reserves the right to disconnect any Client equipment which does not comply with this condition or to require the Client to do so);
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services before the date on which the Services are to start;
- (f) comply with, and where applicable procure that Users comply with, the Company's reasonable instructions in connection with the use of the Services and the Company's policies in force from time to time (including any Acceptable Use Policy of the Company as may apply in respect of a Service); and
- (g) without prejudice to condition 5.2.1 (f), not use or permit the Services to be used:
  - (i) in breach of any applicable law or for any unlawful purpose or in such a way as to infringe a third party's rights;
  - (ii) to send, communicate, knowingly receive, upload, download or use any material or make any calls which are offensive, abusive, defamatory, obscene, menacing, which cause annoyance or needless anxiety or which are intended to deceive;
  - (iii) in such a way as may cause interruption, interference, impairment or degradation of any communications system used to provide the Services or services provided by the Company to any of its other customers;
- (h) ensure that the network used to deliver the Company's Hosted Voice Services has the bandwidth and quality required to deliver such Services.

- 5.2.2. The Client must comply with the Company's Security Policy in force from time to time (available at <https://www.orbtalk.com/password-security-policy> or such other place as may be notified by the Company from time to time), including the Company's guidelines in respect of passwords and its recommendations for the adoption of security measures in respect of the Client's system or apparatus used to access or connect to the Services (including for example by the use of a firewall). The Company shall not be liable to the Client under the Contract in respect of any loss or damage suffered by the Client or its customers as a result of the Client's failure to follow any such guidelines or recommendations. The Client is responsible for and shall pay all Fees in respect of the Services whether the Services are used by the Client or its customers or someone else.
- 5.2.3. The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises and that have been communicated to it under condition 5.2.1(c), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 5.2.4. The Client will be charged for each aborted Site survey or installation visit and any costs which the Company incurs from its third party providers, where the aborted visit and/or costs are as a result of the Client's failure to provide access as arranged or its other failure to cooperate.
- 5.2.5. Where the Company has been unable to start or finish installation by any agreed date by reason of the Client's failure to provide any information reasonably required or the Client's other failure to cooperate, the Company may invoice the Client for its full installation or set-up charges as if the installation had been completed and the Client agrees to reimburse to the Company any third party provider costs which the Company incurs as a result of any such delay.
- 5.2.6. The Client hereby agrees to indemnify and hold the Company harmless at all times from any claim suffered or incurred by the Company (including all losses, damages, costs and expenses of any kind suffered or incurred by the Company in connection with such a claim) by virtue of the Client's (or its Users) misuse of the Services or the Company Equipment, and any charges levied by its third party providers to which the Company is exposed as a result of the Client's actions.
- 5.2.7. The Client shall remain liable for all acts or omissions of its Users and shall procure that each User does not act, or fail to act, in a way, which would (or could) cause the Client to breach its obligations under this Contract.
- 5.2.8. The Services are provided solely for the Client's use and the Client must not make available, sub-lease, resell or attempt to resell the Services (or any part of them) to any third party unless the Company agrees otherwise in writing.
- 5.2.9. The Client does not own any number or have any right to sell the number(s) related to any Service.
- 5.2.10. The Client is responsible for terminating, at its own expense, any contracts it may have with its previous suppliers for services similar to the Services or which are not compatible with the Services. The Client is solely responsible for any liabilities it may incur when it terminates its agreements with them.
- 5.2.11. The Client shall comply with, and ensure that its Users comply with, the Fair Use Policy and the Acceptable Use Policy.

### 5.3. **Company Equipment**

- 5.3.1. In respect of any Company Equipment installed at the Site, the Customer shall:

- a) ensure that the Company Equipment is kept under suitable conditions (including suitable electrical power) in accordance with the relevant instructions and standards and follow any operating instructions as the Company may give from time to time;
- b) not permit any equipment or apparatus to be attached to Company Equipment except as may be approved by the Company from time to time;
- c) notify the Company promptly if it discovers the Company Equipment is operating incorrectly in accordance with the Company's fault reporting procedures;
- d) at all reasonable times permit full and free access to the Site and to the Company Equipment to the Company, its employees, contractors and agents, and provide them with adequate and safe working space and any facilities as are reasonably required to enable the Company to perform corrective maintenance services while at the Site (as the Company deems appropriate), including for purposes of disconnecting and removing Company Equipment after the Contract has ended;
- e) keep the Company Equipment at the Site, and not move it from the Site without the prior written approval of the Company;
- f) not allow any person other than the Company, or the Company's employees, contractors or agents, to maintain, repair, alter, modify or adjust the Company Equipment without the prior written approval of the Company;
- g) not sell, transfer, dispose of, let, mortgage or charge the Company Equipment or allow any distress, seizure or execution of or against it or otherwise do anything prejudicial to the Company's or the owner's rights in it; and
- h) return the Company Equipment to the Company for maintenance as may be requested by the Company.

5.3.2. The Company Equipment will at all times belong to the Company.

5.3.3. The Company shall bear the risk of loss or damage to the Company Equipment, or any other equipment the Company delivers to the Client, until the point of delivery to the Client, after which point the Client shall bear the risk of loss or damage thereto.

5.3.4. The Client shall be responsible for all loss or destruction of, or damage to, the Company Equipment whilst it is situated on the Site (save for loss, damage or destruction caused by the Company's actions or the actions of its employees, contractors or agents) and will ensure that its insurance covers Company Equipment whilst situated on the Site(s) to its full replacement value.

5.3.5. The Company may modify or replace the Company Equipment from time to time provided that any such modification or replacement does not materially impair performance of the Services.

#### 5.4. **Key Personnel**



5.4.1. Each party shall appoint a contract manager (“**Contract Manager**”) who shall have authority contractually to bind that party on all matters relating to the Services and shall notify the other party of the identity of and contact details for such Contract Manager. Each party shall use reasonable endeavours to ensure that the same person acts as the Contract Manager for that party throughout the Term, but may replace them from time to time where reasonably necessary in the interests of that party’s business.

5.4.2. Each party warrants that its Authorised Representative has authority contractually to bind it on all matters relating to the Contract.

5.4.3. A party’s Contract Manager may be the same person as its Authorised Representative.

5.5. **Account Management**

5.5.1. During the Term, the parties’ respective Contract Managers shall meet from time to time to review the performance of the Contract. The parties shall mutually agree the timing and location of such meetings but in the absence of agreement the Company’s position shall prevail.

5.5.2. If a Contract Manager is not available to attend a meeting held under condition 5.5.1 that party’s Authorised Representative shall attend in their place.

5.6. **Assignment and Subcontractors**

5.6.1. The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.

5.6.2. The Client shall not assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under Contract without the prior written consent of the Company.

5.7. **Services to and from competitors**

5.7.1. The Client agrees and acknowledges that the Company may provide similar services to the Services to competitors of the Client.

5.7.2. The Company agree and acknowledges that the Client is free to procure services from the Company’s competitors provided that such services do not restrict or preclude performance of the Services by the Company and subject to the provisions of condition 7.3.

5.8. **Services provided on trial basis**

5.8.1. Where the Company provides Services to the Client on a trial basis, the Client may use such Services for purposes of evaluation for up to 30 days from the date such Services begin to be provided or are first made available by the Company for use by the Client or for such other period as may be agreed in writing by the Company (including any trial period as may be specified on an Order Form).

5.8.2. If the Client decides to use any such Services after expiry of the trial period, it must place an Order for them, and the Client shall be liable for the Company's Fees in respect of such Services for the period after expiry of the trial period at the rate specified in the Order Form or, where no Order Form has been entered into, at the Company's standard rates from time to time.

5.8.3. Services provided on a trial basis are provided “as is” and notwithstanding the other provisions of the Service Agreement the Company does not provide any technical

support or offer any service level commitments in respect of them and disclaims all liability arising out of or in connection with such Services or their use.

## **6. SERVICE LEVELS**

### **6.1. Quality**

- 6.1.1. The Company shall supply the Services to the Client materially in accordance with the Service Agreement (and any specification provided in writing by the Company referred to in it).
- 6.1.2. The Company shall use its reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.1.3. The Company warrants to the Client that: (a) the Services will be provided using reasonable care and skill; (b) where the Company has agreed a Service Level, it shall use reasonable endeavours to ensure the standard of performance meets or exceeds the Service Levels specified in the relevant Service Agreement; and (c) where the parties have not agreed a Service Level, the Company will use reasonable endeavours to provide Services at a level that meet or exceed generally accepted industry standards.
- 6.1.4. Where the Company has agreed a Service Level in respect of a Service, where the standard of performance falls below the Service Level, subject to the provisions of the relevant Service Agreement the Client may be entitled to Service Credits as specified within the corresponding Service Agreement. Where Service Credits are available to the Client in respect of any failure to meet Service Levels or in respect of any Service failure, these shall be the Client's sole and exclusive remedy in respect thereof.
- 6.1.5. Without prejudice to any right or remedy which the Company may have (whether under the relevant Contract or otherwise), the Company will not be liable to the Client in respect of any failure to meet Service Levels in respect of any period during which any Fees or other amounts payable to the Company are overdue (whether or not payable pursuant to that Contract) or the Client is otherwise in breach of any Contract.

### **6.2. Reporting**

The Company shall provide the Client with performance reports in a form and at time intervals determined by the Company acting reasonably.

### **6.3. Remedies**

If the Company fails to meet the Service Levels, then, subject to conditions 6.1.4 and 6.4 and to any provisions of the relevant Service Agreement, the Client's sole remedies shall be to require the Company: (a) to complete the performance of the Services as near as commercially reasonable possible to the applicable Service Level; and (b) to use commercially reasonable efforts to carry out such additional work as is necessary, without charge to the Client, to correct the Company's failure.

### **6.4. Exclusions**

The Company shall not be in breach of the Contract nor have any liability to the Client for failing to attain a particular Service Level if such breach or failure is due to:

- 6.4.1. planned maintenance or service change of which the Company has given the Client advance notice;

- 6.4.2. a failure of, or fault in, equipment not covered by the scope of the Service or of the Client's own equipment or network;
- 6.4.3. an Unforeseen Event (subject to the provisions of condition 18.2);
- 6.4.4. a negligent act or omission of the Client or its officers, employees or agents;
- 6.4.5. a negligent act or omission of a Client's third party contractor (other than the Company);
- 6.4.6. the Client's failure to follow the Company's reasonable instructions or preventive measures of which the Company has, in either case, previously given written notice to the Client as being necessary to attain or maintain the Service Levels; or
- 6.4.7. suspension of the Service where the Company is entitled to do so under the Contract;
- 6.4.8. where the provision of the Services is dependent on the availability of the internet and the connection of the Services to the internet and the Company is not responsible for providing such connectivity;
- 6.4.9. without prejudice to clause 6.4.8, the Company shall have no liability to the Client whatsoever for any failure to provide Hosted Voice Services in accordance with the Contract (including applicable Service Levels) to the extent that such failure is attributable to any deficiency in the chosen network or to any third party connectivity services including any third party IP connectivity network failure.

## 6.5. Supply of Goods

- 6.5.1. Any sales of Goods by the Company to the Client will be regulated by this Condition 6.5 and by the Equipment Agreement.
- 6.5.2. The Goods are described in the Company's catalogue. The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 6.5.3. The risk in the Goods shall pass to the Client on completion of delivery. Title to the Goods shall not pass to the Client until the Company has received payment in full (in cash or cleared funds) for the Goods. Until title to the Goods has passed to the Client, the Client shall:
  - (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - (c) notify the Company immediately if it becomes subject to any of the events listed in clause 15.1.4 to clause 15.1.10; and
  - (d) give the Company such information relating to the Goods as the Company may require from time to time,

but the Client may use the Goods in the ordinary course of its business.

- 6.5.4. If before title to the Goods passes to the Client it becomes subject to any of the events listed in clause 15.1.4 to clause 15.1.10, or the Company reasonably believes that any such event is about to happen and notifies the Client accordingly, then (without limiting any other right or remedy the Company) may have, the Company may at any time require the Client to deliver up the Goods and, if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

6.5.5. Subject to clause 16.4, the Company offers no warranty or condition of any kind in respect of Goods supplied. However, to the extent it is permitted to do so under the relevant third party supplier terms of supply, the Company assigns to the Client the benefit of any rights which the Company may have under any warranties given by any third party supplier in respect of any Goods supplied by the Company, and the Company agrees to provide the Client with reasonable assistance (at the Client's sole cost and expense) to enforce any such rights.

6.5.6. Without prejudice to the other provisions of these Conditions, all conditions, warranties, undertakings, representations and other terms of any kind whatsoever, express or implied (whether by statute, common law or otherwise), in respect of the Goods are hereby excluded by the Company to the fullest extent permitted by law (including but not limited to all warranties or conditions implied by law concerning satisfactory quality, fitness for purpose or as to description) and save as expressly set out in clause 6.5.5 the Company shall have no obligation, duty or liability whatsoever to the Client in respect of the Goods.

## **7. CHANGES IN THE SCOPE**

### **7.1. Change Control Procedure.**

7.1.1. If the Client wishes to change the scope or execution of the Services (a "Change"), it shall submit details of the Change to the Company in writing. In either circumstance, the Company shall, within a reasonable time, provide a written estimate to the Client of: (a) the likely time required to implement the Change; (b) any necessary variations to the Fees arising from the Change; and (c) any other impact of the Change on the relevant Service Agreement or the Contract generally.

7.1.2. Any recommendation for a Change made by the Company shall remain valid for the Client's consideration for a period of 20 Business Days unless agreed otherwise in writing.

7.1.3. If the Client wishes the Company to proceed with the Change, the Company has no obligation to do so unless and until the parties have agreed the necessary variations to its Fees, the Services, and any other relevant terms of the Contract to take account of the Change and the Contract has been varied in accordance with condition 18.5.

7.1.4. The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements or for technical or operational reasons or change any third party services procured by the Company in connection with the provision of the Services, provided that such changes do not materially affect the nature or scope of the Services or the Fees.

7.1.5. The Company may charge for the time it spends assessing a request for change from the Client on a time incurred basis at its then applicable rates.

### **7.2. New Services**

7.2.1. The Company shall not be obliged to provide any new services to the Client unless: (a) both the parties have signed a written agreement varying the Contract or entered into a new Contract and, in either case, this shall include agreement as to the fees for such new services.

7.2.2. Without prejudice to condition 7.2.1, where the Client is permitted by the Company to order or provision new or additional Services via the Company's online portal (or by any other means), the Contract shall be deemed to be varied so as to include any such Services. Such new or additional Services shall be subject to any Initial Term and Renewal Term specified on the Company's online portal

or in the relevant Service Agreement for such Services or, where not so specified, they will be subject to the default Initial Term and Renewal Term provided for in these Conditions. The fees for such new or additional Services shall be those set out in the Company's standard price list or rate card from time to time.

### **7.3. Cooperation with Third Parties**

If the Client appoints a third party to provide services which may directly or indirectly impact on the Company's provision of the Services, the Company shall cooperate with such a third party subject to the following:

7.3.1. the Company shall not be obliged to disclose its Confidential Information to that third party unless the Client procures that that third party enters into binding confidentiality undertakings with the Company on terms no less onerous than those set out in the Contract; and

7.3.2. if the Company, acting reasonably, believes the third party's provision of the new service is likely to impact on the scope of the Services or require the Company to expend extra effort or materials, the parties shall agree any necessary changes to the Contract (including the Fees) in accordance with condition 7.1.

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1. Rights in Deliverables and Pre-existing Materials.**

As between the Client and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials and all Intellectual Property Rights otherwise arising out of performance of the Contract (including any such rights in any software provided by the Company in connection with a Service) shall be owned by the Company. Subject to condition 8.2, the Company licenses all such rights to the Client free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If the Contract is terminated the licence granted under this condition 8.1 shall automatically terminate. If the Service provides the Client with software which is licensed by third parties who require the Client to accept their terms of use, the Client must adhere to those terms. Except as permitted by applicable law or as expressly permitted by the Contract, the Client agrees not to copy, decompile, disassemble or modify any software provided to the Client or permit anyone else to do so.

### **8.2. Third Party Rights in Pre-Existing Materials.**

8.2.1. The Client acknowledges that, where the Company does not own any of the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Client, and the Client acknowledges and accepts that its use of any such Pre-existing Materials shall be subject to the licence terms of the relevant licensor(s).

8.2.2. The Company shall defend the Client against any claim arising as a result of the Company's failure to obtain a licence required under condition 8.2.1, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that: (a) the Company is given prompt notice of any such claim; (b) the Client provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and (c) the Company is given sole authority to defend or settle the claim.

## **9. CHARGES AND PAYMENTS**

### **9.1. Fees**

9.1.1. In consideration of provision of the Services by the Company, the Client shall pay the Company the Fees, as varied from time to time in accordance with the terms of the Contract.

9.1.2. The price for Goods shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery.

9.2. **Additional Fees for Changes in Scope**

The Client shall pay such additional Fees to the Company as the parties agree pursuant to a change in the scope under condition 7.

9.3. **Fees - All Inclusive**

Unless otherwise indicated, the Fees are inclusive of (a) all costs and expenses including hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services and (b) in the case of Goods, inclusive of all costs and charges of packaging, insurance and transport of the Goods.

9.4. **Taxes and Duties**

The Fees are exclusive of all taxes (including Value Added Tax), levies, duties, fees or charges. All such taxes, levies, duties, fees or charges that pertain to the Services and/or the Goods shall be shown separately in the invoices raised under condition 9.5.

9.5. **Invoicing**

9.5.1. The Company shall invoice the Client for the Fees together with any applicable taxes, levies, duties, fees or charges at the appropriate rate. Each invoice shall describe the Services and/or the Goods to be provided and any applicable taxes, levies, duties, fees or charges.

9.5.2. The Client shall pay each invoice submitted to it by the Company in full and in cleared funds, without any set-off, counterclaim, deduction or withholding except as required by law, within 30 days of receipt to a bank account nominated in writing by the Company.

9.6. Billing disputes must be notified within 10 Business Days of the date of invoice. After such period, any undisputed invoice will be deemed correct. The Client must pay the full amount of any disputed invoice, if the amount disputed is less than 5% of the total the invoice. The Client must pay the amount not in dispute in a disputed invoice if the disputed amount is more than 5% of the total invoice.

9.6.1. If at any time the Client fails to meet the standard of creditworthiness deemed acceptable by the Company from time to time, the Company may:

- a) require the Client to make such regular instalment payments in advance on account of any future Fees as the Company shall reasonably deem necessary; and
- b) impose such other measures on the Client's right to use the Services as the Company shall reasonably deem necessary including imposing a credit limit.

In the event that the Client does not comply with condition 9.5.2, the Company may terminate the Contract immediately.

9.6.2. The Client acknowledges and agrees that save for manifest error, Fees are calculated from data recorded by the Company and its suppliers and not from the Client's own records.

#### 9.6.3. Pre-paid Services

The majority of the Company Services are post-paid but the Company may also offer pre-paid services to the Client. If the Company provides pre-paid services to the Client:

- (a) the Company will deduct from the amount(s) the Client pre-pays, any Fees incurred plus any periodic Fees as applicable;
- (b) the Client acknowledges and agrees that all pre-paid sales of Services are final. The Company will not issue a refund of any purchase except where required by law or at the Company's sole discretion.
- (c) the Client shall ensure it always has enough credit on the Client pre-paid account. The Company may automatically suspend any pre-paid Services if the Client does not have enough credit in the Client's account. The Client is also responsible for any negative balance.
- (d) the Client acknowledges and affirms that some Services cancelled by the Client will continue to function and be billed for, until a cessation notification is received from the relevant supplier and all internal processes are complete. Upon cancellation of the relevant pre-paid Service, the Company will also deduct any applicable cessation fees (e.g. Cancellation Fees) from any credit the Client has in the Client's account.
- (e) the Company will issue to the Client an online receipt (or invoice as applicable) for any Fees the Company applies to the Client.
- (f) the Company reserve the right to expire prepaid credit on accounts that have been dormant for more than 6 months.
- (g) World Number accounts require a calling credit balance above £0.00 to be in service. To ensure this is the case we will automatically top-up the account balance if you allow it to fall below £0.50p by adding an additional £10.

#### 9.6.4. Periodic Fees:

- (a) the Company will calculate the periodic Fees before the beginning of each billing cycle depending on the number of Users and Services the Client receives from the Company.
- (b) all the periodic Fees will either be deducted from the Client's pre-paid balance, or added to the Client next monthly invoice in advance, before the beginning of each new billing cycle (as applicable).
- (c) the Client acknowledges and agrees that the periodic Fees paid by the Client are not refundable, unless the Company agrees otherwise in writing.

9.6.5. The Company will send the Client monthly or quarterly invoices as applicable to the relevant Service. The monthly (or quarterly) invoice will normally include:

- (a) in advance the line rental (where applicable), and any other periodic Fees (including inclusive monthly call price plans, calls and connectivity packages);
- (b) in arrears, any Fees for the Client's use of the Services that the Client do not have to pay in advance, including, calls outside any inclusive call price plan (e.g.

minutes outside the Client monthly allowance or for additional services or administration Fees) which the Client incurred in the last period (normally the last month);

- (c) the Company may also add to the invoice, or send the Client a separate invoice for, any other Fees such as installation and maintenance Services, and may request the Client to pay any of these Fees in advance;
  - (d) the Company will send the Client the invoices by email unless the Client opt-out to e-billing. If the Client do opt-out to e-billing the Company reserves the right to apply a reasonable administration Fee for sending the Client its invoices by post;
  - (e) the Company may charge the Client an administration Fee for payments tendered by means other than direct debit;
  - (f) where a direct debit is unpaid due to insufficient funds or direct debit cancellation, an administration Fee will be included on the Client's next monthly bill;
- 9.6.6. the Company may charge the Client a reasonable Fee for restricting outgoing calls;
- 9.6.7. If the Client breaches the Contract (including any breach of the Client's payment obligations under this Condition 9), and as a result the Company suspends, restricts or disconnects all or part of the Services or terminates the Contract or any Service, the Company reserves the right to charge the Client a reasonable Fee:
- (a) per line or Service the Company ceases, should the Company terminates the Contract (or any specific Service);
  - (b) to reinstate Services suspended, restricted or disconnected; or
  - (c) to reinstate any lines that have been ceased.
- 9.6.8. The Company may charge the Client a monthly maintenance Fee depending on the Care Level the Company agree with the Client.
- 9.6.9. In the event that the Company have agreed to provide the Client with a bundle for all or part of the Services and the Client terminates any of these Services, the Company will automatically apply to the Client its then current separate Fees for any Services the Company continues providing to the Client.
- 9.6.10. The Client shall pay to the Company all Fees relating to calls made through the Service as are set out in the Price Guide as in force from time to time (a copy of which is available on request).
- 9.6.11. The Client shall pay to the Company an administration fee of £25 per individual number port request if prior to the end of the contracted period.

## 9.7. **Pro-ration**

- 9.7.1. The Company shall calculate all periodic Fees on a calendar month basis and these will be pro-rated for any partial month, unless otherwise agreed in writing.
- 9.7.2. In circumstances where the Services comprise of more than one element and the Fees are structured accordingly, the Fees in respect of any particular element will become payable with effect from the Service Start Date for that particular element notwithstanding that other elements may not yet have reached their particular Service Start Date.



9.8. **Non-Payment**

Without prejudice to any other right or remedy that it may have, if the Client fails to pay any amount payable by it under the Contract by the due date for payment, the Company may:

- 9.8.1. charge interest on such sum from the due date for payment (as provided for in condition 9.5.2) at the annual rate of 4% above the base rate from time to time of Royal Bank of Scotland Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment or, in the alternative, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and, in either case, the Client shall pay the interest (together with the sum due) immediately on demand; and
- 9.8.2. having escalated the issue of non-payment to the Client's Contract Manager, suspend all Services until payment has been made in full.

9.9. **Change in Rates**

- 9.9.1. The Client acknowledges and agrees that any call rates provided for under a Service Agreement are not controlled by the Company and those rates may change. The Client is advised to follow the Company's web site for the latest applicable rates. All such call rates will be billed in accordance with the terms of the relevant Service Agreement. The Client shall not be entitled to terminate the Contract under condition 9.9.1 by reason of any increase in call rates made by the Company further to changes to rates charged by its third party providers for a Service.
- 9.9.2. The parties agree that the Company may review and increase the Fees where it is required to do so by law or by any governmental or other regulatory authority. The Company will give the Client as much notice of any such increase as is reasonably practicable in the circumstances.
- 9.9.3. At the end of each financial year the Fees will increase by an amount up to the RPI rate, published in February that year. If the RPI rate is negative, there will be no change to the Fees.

The Client acknowledges and agrees that any increase in the Fees pursuant to conditions 9.9.1 to 9.9.3 (inclusive) shall not be deemed to be of material detriment to the Client for the purposes of condition 18.5.1.

9.10. **Site survey and Excess Construction Charges**

Availability of certain Services, or the Fees payable in respect of them, may be subject to Site survey. Where this is the case, following the survey the Company may either (where applicable) confirm a date(s) for commencement of Services later than previously advised and/or increase the Fees (including where excess construction Fees will apply) or, exceptionally, withdraw its offer to provide the Services. The Company will give the Client written notice of the same as soon as reasonably practicable. If any such delay in implementation or increase in Fees is not acceptable to the Client, it may, within 2 Business Days of the Company's notice (or such longer period as may be advised in the Company's notice), terminate the Contract or the affected Service by written notice to the Company. If within such period the Company does not receive from the Client either notice of termination or confirmation of the Client's acceptance, the Company may terminate the Contract without penalty and charge the Client for any abortive work done or costs incurred by the Company in installing and provisioning the Services to date of termination.

9.11. **Effect of Termination**

9.11.1. All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 9.11 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

9.11.2. In the event that the Client cancels or terminates a Service or the Contract before the end of the Initial Term or the Renewal Term (as the case may be) otherwise than pursuant to condition 9.8.1, the Company may at its discretion claim from the Client, and the Client shall pay:

- a) any remaining Fees which would have been due under the Contract for the terminated Service(s) from the date of termination to the end of the Initial Term or the Renewal Term (as the case may be); and
- b) where pursuant to a promotional offer made by the Company any Service is provided “free of charge” or the Fees in respect of it are discounted for any period (**Promotional Period**), the Fees (at the Company’s standard rates) which would have been payable for the relevant Service for the Promotional Period or (in the case of discounted Fees) the aggregate amount of the discount given;

and the Company may submit an invoice in respect thereof which shall be payable by the Client immediately on receipt.

9.12. The Client shall pay the Client invoices by monthly variable direct debit unless the Company offer an alternative payment method to the Client (or by recurring credit or debit card payments if the Company offers this payment option). The Client is responsible for notifying the Company as soon as possible of any changes to the Client's bank details that may affect its payment of the Fees.

9.13. Recurrent credit or debit card payments:

If the Company allows the Client and the Client agrees to pay the Fees by recurrent credit card or debit card payments the provisions of this condition 9.13 will apply to the Client:

9.13.1. by sending the Company an order or setting up an auto top up, the Client grants the Company continuous authority to charge the Client debit or credit card for the Services until such time as the Service(s) or auto top up are cancelled by the Client and any outstanding monies have been paid. This includes all administration, cessation and porting fees. Should the Client chooses to cancel the Client monthly service(s) or auto top ups then the Client continuous authority will be immediately ceased.

9.13.2. In the event that the Company is unable to take a continuous card authority payment from the Client, then the Client will be informed by email and will be prompted to make an immediate payment in order for the Services to continue.

9.13.3. If the Client credit or debit card details change or expire the Client must notify the Company immediately to avoid suspension or termination of the Services due to non-payments.

9.13.4. The Company reserves the right at its sole discretion any time to stop accepting credit cards or debit cards from one or more issuers.

9.14. The Client agrees that it will advise the Company by telephone and in writing immediately if the card becomes lost, stolen or if the Client wishes to stop using a card account or to cancel the authority, at which point the Client will need to provide a new continuous direct debit authority. The Client also expressly acknowledges that by providing the details referred to

above the Client have the authority to authorise the Company to deduct payment for the Services in accordance with the Contract.

- 9.15. Arrears and/or unwillingness to maintain payment by direct debit or recurrent credit or debit card payments may result in one or more of the Services being restricted or suspended and/or in the termination of the Contract.
- 9.16. Cancellation of the Client direct debit does not constitute notice of termination of the Contract by the Client, but the Company reserves the right to terminate the Contract immediately if the Client cancels the Client's direct debit for the payment of the Services and/or the Client chooses another payment method not previously approved by the Company.
- 9.17. If the Client pay its Fees by direct debit, the Client is protected at all times by a direct debit guarantee.
- 9.18. The Client shall pay any Fees incurred through the Services if the Services are used by the Client, its Users or by any authorised or unauthorised third parties (even in the event of fraud, or other improper use of the Services such as hacking of the Services by third parties). Upon receiving a notice in writing from the Client, the Company shall use reasonable endeavours to prevent any unauthorised or fraudulent use of the Services as soon as reasonably practicable and the Company reserves the right to suspend the affected Services immediately.

## **10. DATA AND REPORTS**

### **10.1. Provision of data**

The Client shall provide the Company with any data or information the Company may reasonably require to enable the Company to provide Services in accordance with the terms of the Contract. The parties shall agree in good faith the form and timescales for the provision of such data or information. All of the Client's data and information shall remain the exclusive property of the Client.

## **11. CONFIDENTIALITY**

### **11.1. For the purposes of this condition 11,**

**“Confidential Information”** means confidential information (however recorded, preserved or disclosed) disclosed by a party to the other party including but not limited to any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans of the Disclosing Party or any member of its Group Companies; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party or any member of its Group Companies, but not including any information that: (a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party in breach of this agreement; or (b) was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party; (c) is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party; or (d) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;

**“Disclosing Party”** means a party to the Contract which discloses or makes available directly or indirectly Confidential Information; and

**“Receiving Party”** means a party to the Contract which receives or obtains directly or indirectly Confidential Information.

- 11.2. The Receiving Party shall keep in strict confidence all Confidential Information disclosed to it by the Disclosing Party, its employees, agents or subcontractors.
- 11.3. 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.
- 11.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this condition 11.4, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.
- 11.5. The Receiving Party may, provided that the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office (or any successor body) without first notifying the Disclosing Party of such disclosure.
- 11.6. All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, Intellectual Property Rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in the Contract.
- 11.7. The Receiving Party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this condition 11. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this condition 11.
- 11.8. The obligations of confidentiality in this condition 11 shall survive termination or expiry of the Contract and shall endure for 12 months immediately following such termination or expiration.

## 12. DATA PROTECTION

- 12.1. For the purposes of this condition 12,

“**Data Controller**” bears the meaning set out in section 1(1) of the Data Protection Act 1998;

“**Data Subject**” means an individual who is the subject of Personal Data;

“**Personal Data**” bears the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Company is the Data Controller and in relation to which the Processor is providing services under this agreement; and

“**Processing**” and “**process**” bear the meaning set out in section 1(1) of the Data Protection Act 1998.

### 12.2. Company's Obligations

- 12.2.1. When the Company acts as a data processor in connection with the Contract, the Company shall process the Personal Data only in accordance with the Client's

instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Client.

12.2.2. When the Company acts as a Data Controller in connection with the Contract, the Company will comply with the Data Protection Act 1998 and in accordance with its privacy policy available at the Company's website at [www.orbtalk.co.uk](http://www.orbtalk.co.uk).

### 12.3. **Warranties**

12.3.1. Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

12.3.2. The Company warrants that, having regard to the state of technological development and the cost of implementing any measures, it will: (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to: (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected; and (b) take reasonable steps to ensure compliance with those measures.

### 12.4. **Data Subjects**

Where the Company acts as a data processor, the Client acknowledges that the Company is reliant on the Client for direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for any claim brought by a Data Subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Client's instructions.

### 12.5. **“Credit checks”**

The Client acknowledges and agrees that the Company may submit details of the Client (including its name, address, details of its officers, and payment records) to a credit reference agency for the purpose of determining its credit-worthiness. The Client agrees to co-operate to the fullest extent possible with any reasonable request made in relation to a credit check.

12.6. The Client acknowledges and agrees that the Company may use the Personal Data of the Client's representatives and of its Users for the following purposes:

12.6.1. processing the Client's order(s) for the provision the Services (which may involve disclosing certain personal and account details to a bank for the purposes of setting up a direct debit account);

12.6.2. providing or arranging for third parties to provide any part of the Services including, without limitation, customer care/help desk facilities and billing the Client for the Services (which may involve disclosing Client's information to third parties solely for those purposes);

12.6.3. to disclose all or part of this Personal Data to a regulator (e.g. Ofcom or, the Information Commissioner Office), a court, or to a public body to comply with any regulatory, government or legal requirement (including but not limited for prevention and detection of crime and terrorism); and

12.6.4. to communicate information that describes the habits or usage patterns and/or demographics of the whole or a part of our customer base (including you) but which is anonymous and does not describe or reveal the identity of any particular customer to any third party.

- 12.7. The Company shall be entitled to make the Users' name, address and telephone number available to the emergency services.

**13. FURTHER WARRANTIES**

As at the Effective Date, the Company and the Client each represent, warrant and covenant for the benefit of the other, the following:

- 13.1. it has taken all necessary action and has all requisite power and authority to enter into and perform the Contract in accordance with its terms;
- 13.2. compliance with the terms of the Contract shall not breach or constitute a default under: (a) any agreement or instrument to which it is a party or by which it is bound; or (b) any order, judgment, decree or other restriction applicable to the warranting party; and
- 13.3. it agrees to comply, and to reasonably assist the other in complying, with all applicable laws, regulations and ordinances as they apply to the Contract.

**14. DISPUTE RESOLUTION**

If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a “**Dispute**”) then, except as expressly provided in the Contract, the parties shall follow the dispute resolution procedure set out in this condition 14.

If the Client is a Small Business Customer the Client shall follow the dispute resolution procedure specified at <https://www.orbtalk.co.uk/dispute-resolution>.

If the Client is not a Small Business Customer the Client shall follow the procedure described in conditions 14.1 to 14.3 below.

**14.1. Negotiate in good faith**

14.1.1. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a “**Dispute Notice**”), together with relevant supporting documentation. On service of the Dispute Notice, the parties’ respective Authorised Representatives shall attempt in good faith to resolve the Dispute; and

14.1.2. if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, either party may initiate mediation in accordance with condition 14.2.

**14.2. Mediation**

14.2.1. The parties will attempt to settle any Dispute that remains unresolved under condition 14.1.2 by mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (“**ADR Notice**”) to the other party requesting a mediation. A copy of the request shall be sent to CEDR Solve, c/o CEDR, International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU.

14.2.2. The mediation shall start not later than 28 days after the date of the ADR Notice.

14.2.3. The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings.

**14.3. Continued Performance**

Subject to condition 9.8.2 and condition 15, both parties will continue to perform their respective duties and obligations under the Contract, while the parties seek to resolve the dispute, unless such obligations are lawfully terminated or expire.

## 15. TERMINATION

- 15.1. Without prejudice to any other rights or remedies which the Company may have, the Company may terminate the Contract without liability to the Client immediately on giving notice to the Client if:
  - 15.1.1. the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 15.1.2. the Client commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Client being notified in writing of the breach;
  - 15.1.3. the Client repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 15.1.4. the Client suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 15.1.5. the Client commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors;
  - 15.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Client;
  - 15.1.7. an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Client;
  - 15.1.8. a floating charge holder over the assets of the Client has become entitled to appoint, or has appointed, an administrative receiver;
  - 15.1.9. a person becomes entitled to appoint a receiver over the assets of the Client, or a receiver is appointed over the assets of the Client;
  - 15.1.10. a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 15.1.11. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.1.4 to condition 15.1.10 (inclusive); or
  - 15.1.12. the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 15.2. The Company may terminate the Contract without liability to the Client on giving 30 days' written notice to the Client if there is a change of control of the Client (within the meaning of section 1124 of the Corporation Tax Act 2010). If there is such a change of control of

the Client, the Client shall give written notice to the Company of that change within 30 days of its occurrence and the Company may terminate the Contract in accordance with the previous sentence.

15.3. The Company may terminate the Contract for convenience by giving 3 months' advance written notice to the Client.

15.4. The Company may terminate the Contract or the affected Service(s) without liability to the Client on giving written notice to the Client:

15.4.1. if the Company or any of its suppliers in respect of the relevant Services are obliged to comply with an order or direction of any governmental or other regulatory authority which has the effect of requiring the Company to terminate the Contract or to cease providing the Services or any of them; or

15.4.2. if any third party service or supply which is necessary for the provision of a Service does not become available to the Company or ceases to be available to it or is terminated for any reason, whether at all or on appropriate terms (including as to quality), and no suitable replacement is available to the Company on commercially reasonable terms;

and in each case the Company will give the Client such advance notice as it is reasonably able to do.

15.5. The Client may terminate the Contract on 30 days' notice: (a) in accordance with condition 4.2.

15.6. The Company may cease any Services provided free to the Client (including pursuant to any Company promotion) if it becomes apparent that the Client is not using such Services.

15.7. On termination of the Contract for any reason:

15.7.1. the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

15.7.2. where the Contract is terminated by the Company pursuant to condition 15.1 or 15.2, or is otherwise terminated before the end of the Initial Term or the Renewal Term (as applicable) for any reason other than the Company's fault or by the Client pursuant to conditions 9.8.1, 9.9 or 18.2.3, the Client shall be liable to pay any remaining Fees which would have been due under the Contract from the date of termination to the end of the Initial Term or the Renewal Term (as the case may be), and the Company may submit an invoice in respect thereof which shall be payable by the Client immediately on receipt;

15.7.3. the Client shall return all of the Pre-existing Materials and Deliverables and any Company Equipment provided to it in connection with the Contract. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;

15.7.4. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination;

15.7.5. will, for the sake of clarity, result in the termination of all Service Agreements in force at the time of such termination; and



- 15.7.6. conditions which expressly or by implication have effect after termination shall continue in full force and effect, including the following conditions: condition 8 (Intellectual Property Rights), condition 11 (Confidentiality), condition 12 (Data Protection), condition 14 (Dispute Resolution), condition 16 (Limitation of liability), condition 18.4 (Notices) and condition 18.8 (Governing law, Jurisdiction).
- 15.8. Unless agreed otherwise, the Fees payable by the Client under condition 15.7.1 for Services supplied by the Company shall be calculated in proportion to the actual number of days that the Company supplied the Services and the number of days in the relevant billing cycle.
- 15.9. Without limiting its other rights or remedies, the Company may (without liability) suspend the supply of Services (or any of them) under the Contract or any other contract between the Client and the Company in the following circumstances:
- 15.9.1. the Client becomes subject to any of the events listed in condition 15.1.4 to condition 15.1.10 (inclusive) or the Company reasonably believes that the Client is about to become subject to any of them; or
  - 15.9.2. the Company otherwise becomes entitled to terminate the Contract pursuant to condition 15.1; or
  - 15.9.3. the Client is in breach of any restrictions on use of a Service contained in the relevant Service Agreement or these Conditions (including any as may be incorporated in the Company's acceptable use policy as updated from time to time) or is in breach of any Guidelines or the Client commits an act of fraud in respect of a Service or otherwise misuses the Services, or the Company reasonably suspects the same; or
  - 15.9.4. the Company is required to do so to comply with an order or direction or request of any governmental or other regulatory authority or any emergency services authority; or
  - 15.9.5. for purposes of planned or emergency maintenance or repairs; or
  - 15.9.6. to protect the integrity or security of the Company's network or any third party network used in connection with the supply of a Service; or
  - 15.9.7. if any third party services used in connection with the provision of the Services are suspended; or
  - 15.9.8. suspension is required for any other reason that is beyond Company's reasonable control;
- and in the case of suspension pursuant to any of conditions 15.9.4 to 15.9.8 (inclusive) the Company will give the Client as much advance notice as is reasonably practicable in the circumstances. The Client shall continue to be liable to pay the Fees during such suspension (but without prejudice to any Service Credits for which the Client may be eligible during such suspension where such suspension is not pursuant to the Client's default). Where such suspension is due to the Client's default, the Client shall reimburse the Company any third party costs or expenses for which the Company is liable as a result of such suspension or recommencement of Services.
- 15.10. The Client authorises the Company to use its personal data and any information which it provided the Company with in relation to the Contract in connection with any investigation of any suspected or alleged breach of the Contract or suspected compromise to the Company's or any third party provider's network systems or security, including by

disclosing it to any third party the Company considers has a legitimate interest in any such investigation or its outcome.

## **16. LIMITATION OF LIABILITY**

### **THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 16**

- 16.1. This condition 16 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
- 16.1.1.any breach of the Contract however arising;
  - 16.1.2.any use made by the Client of the Services, the Deliverables, the Goods or any part of them; and
  - 16.1.3.any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 16.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 16.3. Nothing in the Contract limits or excludes the liability of the Company for:
- 16.3.1. death or personal injury resulting from its negligence;
  - 16.3.2. fraud or fraudulent misrepresentation;
  - 16.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
  - 16.3.4.defective products under the Consumer Protection Act 1987; or
  - 16.3.5.any other liability which may not be excluded at law.
- 16.4. Subject to condition 16.2 and 16.3 condition:
- 16.4.1.the Company shall not under any circumstances whatever be liable for: (a) loss of profits; (b) loss of revenue; (c) loss of business; (d) depletion of goodwill and/or similar losses; (e) loss of anticipated savings; (f) loss of contract; (g) loss or corruption of data or information; and (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - 16.4.2. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the provision of a Service during a Contract Year shall in all circumstances be limited to an amount equal to 125% of the aggregate Fees paid by the Client to the Company for that Service in that Contract Year;
  - 16.4.3.without prejudice to clause 16.4.2 above, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Contract or otherwise under or in connection with the Contract shall in all circumstances be limited to an amount equal to 125% of the aggregate Fees paid by the Client to the Company pursuant to the Contract.
- 16.5. The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence,

failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Client in writing.

- 16.6. Subject to clause 16.3, any claim by the Client in respect of any breach of Contract shall only be actionable if the Client has served written notice of it, giving details of the circumstances of the breach, within 12 months of the date the Client became aware (or ought reasonably to have become aware) of the circumstances giving rise to the breach.
- 16.7. This condition 16 will continue to apply notwithstanding termination of the Contract.
- 16.8. The Company shall have no liability to the Client in respect of any fraud perpetrated by the Client and/or its Users, or any third party, howsoever occurring (save for any fraud perpetrated by the Company).
- 16.9. The Client shall be responsible for ensuring that the Services which it orders are suitable for its requirements. The Company shall not be liable for any losses suffered or costs incurred as a result of Services not meeting the Client's or Users' requirements.
- 16.10. The Company shall not be liable for the consequences of any incorrect information the Client or its Users supplies to the Company in relation to the provision of the Services.
- 16.11. The Client acknowledges and accepts that the Company's directors, employees, agents, sub-contractors, licensors, and suppliers (including its Service Providers) shall have the benefit of the limits and exclusions of liability set out in this condition 16 and any other exclusions or limitations of liability under the Contract.

## **17. REPAIRS TO THE SERVICES**

- 17.1. The Company provides to its customers a service and administration help desk facility which the Client can access by telephone, email, live online chat, and the Company online ticketing system as applicable (the “**Customer Support Desk**”). The Company will accept chats, tickets, emails and calls in English language in connection with Incidents during Business Days 0900hrs-1800hours. In addition, the Company may offer enhanced care levels (e.g. 24/7):
  - 17.1.1. to the Client for an extra Fee; or
  - 17.1.2. for specific Services (as described in the relevant Service Agreement or in the Order Form).
- 17.2. The Company will use reasonable endeavours to provide an uninterrupted service, but the Client acknowledges and agrees that from time to time Incidents may occur, including faults (such as intermittent faults) which may recur and have no identifiable cause.
- 17.3. The Company will try to address Incidents, which the Company is responsible for, quickly when reported to the Company.
- 17.4. The Company is not responsible for faults on, or caused by:
  - 17.4.1. Client Equipment and if the Company (or the Company sub-contractors) are called out and find the fault is with, or is caused by, the Client Equipment, the Client may have to pay the relevant Fees at the Company then current rates; or
  - 17.4.2. misuse or neglect of or accidental or willful damage caused by the Client or the Users; or
  - 17.4.3. failure by the Client to comply with any of the provisions of the Contract.

- 17.5. Unless the Company says otherwise in writing, if the Company sends an engineer to the Premises to check any faulty equipment or Company Equipment the Client will be responsible for the engineer call out Fee.

## **18. GENERAL**

### **18.1. Severability**

18.1.1. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.1.2. If any provision of the Contract is declared or found to be illegal, unenforceable or void, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

### **18.2. Unforeseen Events**

18.2.1. A party shall not be in breach of the Contract, nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (an “**Unforeseen Event**”), including but not limited to acts of God, fire, flood, earthquake, windstorm or other natural disaster; war, embargo, terrorist attack, civil commotion or riots, compliance with any law, adverse weather conditions, strike, or the intervention of any governmental authority, interruptions to power supplies, breakdown or failure of plant or machinery, and any failure or default of a supplier or sub-contractor of the relevant party. In such circumstances, subject to condition 18.2.3, the time for performance of the obligations shall be extended accordingly.

18.2.2. Any party that is subject to an Unforeseen Event shall promptly notify the other party in writing of the nature and extent of the Unforeseen Event causing its failure or delay in performance.

18.2.3. If the Unforeseen Event prevails for a continuous period of more than 60 days, either party may terminate this agreement by giving 7 days' written notice to all the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

### **18.3. Relationships**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

### **18.4. Notices**

18.4.1. Any notice to be given under the Contract by a party to the other party: (a) shall be sent for the attention of the receiving party's Authorised Representative, at the address or fax number specified in the Order Form (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this condition 18.4); and (b) shall be: (i) delivered personally (including delivery by any commercial delivery service) with acknowledgment received; (ii) by registered or special delivery mail, postage prepaid; or, (iii) by fax.

18.4.2.If a notice has been properly sent or delivered in accordance with this condition 18.4, it will be deemed to have been received: (a) if delivered personally, at the time of delivery; (b) if delivered by commercial courier, at the time of signature of the courier's receipt; (c) if sent by fax, at the time of transmission provided an original is received by the addressee by any commercial delivery service within two (2) Business Days of such fax; or (d) if sent by registered or special delivery mail, at the time of signature on the mail receipt.

18.4.3.For the purposes of this condition 18.4: (a) all times are to be read as local time in the place of deemed receipt; and (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.

18.4.4.The provisions of this condition 18.4 shall not apply to the service of any process in any legal action or proceedings.

18.4.5.A notice required to be given under the Contract shall not be validly served if sent by e-mail.

## 18.5. **Variation**

18.5.1.The Company may vary the terms of this Contract, including its price guide and the Fees, from time to time. In the event that the Company makes changes to this Contract that (in the Company's reasonable opinion) are likely to cause the Client a material detriment, the Client will be entitled to terminate the Contract within 30 days of the Company notifying the Company such changes. In order to ensure continuity, time will be of the essence for the Client's notice to be received by the Company and if the Company has not received the Client's notice within that time, the Client will be bound by the terms of the Contract as varied.

18.5.2.Subject to condition 18.5.1 above, the Company shall be entitled to notify the Client of any updates and/or variations of the terms of this Contract and the Fees, by email, by post, through a notice in its invoices, through the Client's account or by posting its updated Contract or price guide on the Company's website at [www.orbtalk.co.uk](http://www.orbtalk.co.uk).

18.5.3.Unless the Company gives the Client prior consent in writing, the Client shall not be entitled to make any variations to this Contract.

## 18.6. **Waivers**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 18.7. **Third Party Rights**

18.7.1. Subject to condition 16.11 and condition 18.7.2, the parties do not intend that this Contract be enforceable by any person not a party to this Contract including under the Contracts (Rights of Third Parties) Act 1999.

18.7.2. Any member of the Supplier's Group of Companies may enforce the terms of this Contract.

18.7.3. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

## 18.8. **Governing Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with the laws of England. The courts of England shall have the exclusive jurisdiction to any matter, claim or dispute arising out of or in relation to the Contract.

CONFIDENTIAL