

Terms and Conditions for the Supply of Goods and Services

SCG Wales LIMITED trading as KLOUDWIFI

<p><b>1. INTERPRETATION</b></p> <p><b>1.1 Definitions.</b> In these Conditions, the following definitions apply:</p> <p><b>Acceptable Use Policy</b> means a policy which governs the Customer, its employees' and End Users use of the Services/Goods at the Venue, as set out on the Website from time to time, including but not limited to internet and data usage limits.</p> <p><b>Business Day</b> means a day other than a Saturday, Sunday or public holiday in England and Wales when banks in London are open for business.</p> <p><b>Call Charges</b> means the rates of charges for all land line and mobile calls as issued in writing by the Supplier or as set out in the Tariff applied to Contracts in which the Services include line rental and mobile services.</p> <p><b>Commencement Date</b> has the meaning set out in clause 2.2.</p> <p><b>Conditions</b> means these terms and conditions as amended from time to time in accordance with clause 14.7.</p> <p><b>Contract</b> means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions, the Order Form and the Service Specification.</p> <p><b>Customer</b> means the person or firm specified on the Order Form who purchases the Goods and/or Services from the Supplier for use at the Venues.</p> <p><b>Data Charges</b> means the charges applied to Customers who exceed the data usage allowance. The data allowance and charge per unit of data overused are set out in the Service Specification.</p> <p><b>Deliverables</b> means the deliverables set out in the Order Form.</p> <p><b>Delivery Location</b> means has the meaning set out in clause 4.1.</p> <p><b>End User</b> means a client or patron of, or visitor to, the Customer.</p> <p><b>Force Majeure Event</b> means has the meaning given to it in clause 13.1.</p> <p><b>Goods</b> means the goods (or any part of them) set out in the Order Form.</p> <p><b>Line Rental</b> means telephone line rental fees in connection with Services.</p> <p><b>Minimum Term</b> means a Contract term of 36 months unless otherwise stated on the Supplier's written acceptance of the Customer's Order Form.</p> <p><b>Network Provider</b> means a telecommunications or internet service provider that provides wireless voice and data communication for mobile telephone users and Wi-Fi End Users.</p> <p><b>Order Form</b> means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, including but not limited to network service agreements, minimum term hire agreement, mobile agreements and phone system agreements.</p> <p><b>Personal Data</b> has the meaning set out in section 1(1) of the Data Protection Act 1998.</p> <p><b>Privacy Policy</b> means the privacy policy of the Supplier contained on the Website.</p> <p><b>Services</b> means the mobile or fixed line telephone and internet communication services, Wi-Fi network facility and internet hosting services, including any Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.</p> <p><b>Service Specification</b> means the description or specification for the Services provided in writing by the Supplier to the Customer or set out on the Website.</p> <p><b>Supplier</b> means SCG Wales Limited registered in England and Wales with company number 06367634 trading as KloudWifi.</p> <p><b>Tariff</b> means the list of prices for different Call Charges, Data Charges and Line Rental set out on the Website from time to time.</p> <p><b>Venues</b> means each physical location offering the access to the Goods and Services as specified on the Order Form.</p> <p><b>Website</b> means the Supplier's website, www.kloudwifi.com.</p>	<p><b>Wi-Fi</b> means the wireless fidelity technology which allows Wi-Fi enabled devices to connect to the internet when within a range at a Venue</p> <p><b>1.2 Construction.</b> In these Conditions, the following rules apply:</p> <p><b>1.2.1</b> a <b>person</b> includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);</p> <p><b>1.2.2</b> A reference to a party includes its personal representatives, successors or permitted assigns;</p> <p><b>1.2.3</b> A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;</p> <p><b>1.2.4</b> Any phrase introduced by the terms <b>including</b>, <b>include</b>, <b>in particular</b> or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and</p> <p><b>1.2.5</b> A reference to <b>writing</b> or <b>written</b> includes faxes and e-mails.</p> <p><b>2. BASIS OF CONTRACT</b></p> <p><b>2.1</b> The Order Form constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions for use at the Venues, for the Minimum Term.</p> <p><b>2.2</b> The Order Form shall only be deemed to be accepted when the Supplier issues written acceptance of the Order Form at which point and on which date the Contract shall come into existence (<b>Commencement Date</b>).</p> <p><b>2.3</b> This Contract contains the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter. The parties acknowledge that this agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Contract. Each party agrees that the rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this agreement which it might otherwise have had in relation to them. All warranties, conditions, terms and representations not set out in this Contract whether implied by statute or otherwise are excluded to the extent permitted by law. Nothing in this Contract shall exclude any liability in respect of misrepresentations made fraudulently. No variation or alteration of any of the terms of this Contract, including but not limited to Order Forms, invoices, or other business forms, shall have effect unless in writing and signed by authorized representatives of Supplier and Customer. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures, or Website, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.</p> <p><b>2.4</b> These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.</p> <p><b>2.5</b> Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.</p> <p><b>2.6</b> All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.</p> <p><b>3. GOODS</b></p> <p><b>3.1</b> The Goods are described on the Website and in the Order Form.</p> <p><b>3.2</b> The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.</p> <p><b>4. DELIVERY OF GOODS</b></p> <p><b>4.1</b> The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order Form, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered. The Supplier shall deliver the Goods to the location set out in the Order Form or such other location as the parties may agree (<b>Delivery Location</b>) at any time after the Supplier notifies the Customer that the Goods are ready.</p> <p><b>4.2</b> Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.</p> <p><b>4.3</b> Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.</p> <p><b>4.4</b> If the Supplier fails to deliver the Goods, its liability shall be limited to a full refund of the price paid by the Customer for the undelivered Goods plus any delivery costs paid by the Customer. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.</p> <p><b>4.5</b> If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused</p>	<p>by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:</p> <p><b>4.5.1</b> delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and</p> <p><b>4.5.2</b> the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).</p> <p><b>4.6</b> If 5 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier reserves its rights to apply a cancellation charge at 50% of the price of the Goods.</p> <p><b>4.7</b> The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.</p> <p><b>5. QUALITY OF GOODS</b></p> <p><b>5.1</b> Unless agreed otherwise in writing between the parties by entering into a separate maintenance agreement on the Order Form providing extended warranty, labour cover and service levels as set out in the Service Specification on the Website (<b>Maintenance Agreement</b>), the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (<b>Warranty Period</b>), the Goods shall:</p> <p><b>5.1.1</b> be free from material defects in design, material and workmanship; and</p> <p><b>5.1.2</b> be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).</p> <p><b>5.2</b> Subject to clause 5.5, if:</p> <p><b>5.2.1</b> the Customer, at its earliest convenience and no later than one week from the date of discovery of any fault, gives notice in writing during the warranty period that some or all of the Goods do not comply with the warranty set out in clause 5.1;</p> <p><b>5.2.2</b> the Customer does not use, tamper with, alter, or attempt to undertake its own repairs to the Goods;</p> <p><b>5.2.3</b> the Supplier is given a reasonable opportunity of examining such Goods; and</p> <p><b>5.2.4</b> the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, liaise with the manufacturer on the Customer's behalf, and arrange for the manufacturer to inspect the Goods, or repair or replace the defective Goods.</p> <p><b>5.3</b> The Supplier may be required at the Customer's expense, to attend the Customer's premises to provide Services or disconnect and remove the Goods, before examining the Goods pursuant to clause 5.2 and the Supplier reserves its rights to charge the Customer its standard hourly rates as set out on the Website.</p> <p><b>5.4</b> The Supplier accepts no responsibility for the manufacturer's assessment of the Goods and in circumstances where the manufacturer concludes that the Goods do not come within the scope of the warranty, the manufacturer's decision is final.</p> <p><b>5.5</b> The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:</p> <p><b>5.5.1</b> the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;</p> <p><b>5.5.2</b> the defect arises because the Customer failed to follow the Supplier's or manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;</p> <p><b>5.5.3</b> the Customer alters or repairs such Goods without the written consent of the Supplier; or</p> <p><b>5.5.4</b> the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.</p> <p><b>5.6</b> Where an engineer attends the Venue in response to the Customer's notice pursuant to clause 5.2.1, and identifies that the Goods are in good working order and/or that the fault lies with the Customer's equipment, the Supplier shall apply a charge in accordance with the rates set out on the Website.</p> <p><b>5.7</b> Where the use of the Goods is essential for the Customer's day to day activities, the Supplier may replace faulty Goods before conducting an in depth examination. If upon subsequent examination the Supplier concludes that, in accordance with clause 5.5, the Supplier is not liable for the Goods failure to comply with the warranty, the Customer will be charged for the replacement of Goods, and time and costs incurred for labour and investigation.</p> <p><b>5.8</b> Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.</p> <p><b>5.9</b> The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.</p> <p><b>5.10</b> For the avoidance of doubt, where the warranty period as set out in clause 5.1 expires, the Customer shall at its own option, either extend the term of the Maintenance Agreement, or replace the Goods at its own expense as necessary.</p> <p><b>6. TITLE AND RISK</b></p> <p><b>6.1</b> The risk in the Goods shall pass to the Customer on completion of delivery. For the avoidance of doubt, where Goods are delivered in instalments, risk in the Goods in each instalment shall pass upon completion of each instalment delivery.</p>
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### SCG WALES LIMITED trading as KLOUDWIFI

- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Where Goods are being hired by the Customer, title in the Goods shall remain with the Supplier at all times and the Customer must maintain appropriate insurance policies in respect of these Goods. For the avoidance of doubt, title to the Goods shall not pass to the Customer at any time unless otherwise agreed in writing. Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.4.2 to clause 12.4.11; and
- 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.6.2 to clause 12.6.11, then, without limiting any other right or remedy the Supplier may have:
- 6.4.1 the Customer's right to use Goods in the ordinary course of its business ceases immediately; and
- 6.4.2 the Supplier may at any time:
- 6.4.2.1 require the Customer to deliver up all Goods in its possession; and
- 6.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Customer shall register, and shall procure that any End User, shall register with Supplier and access the Venue control panel. As part of the registration process, Supplier shall provide Customer and End User with a username and password which will allow the Customer and End User to access the Wi-Fi Services.
- 7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Supplier's written acceptance of an Order Form, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 Where broadband is provided as part of the Services, the bandwidth speeds set out in the Service Specification are anticipated speeds and the Supplier shall not be liable for any failure of the Services to perform at such speeds.
- 7.5 Supplier does not guarantee that goods, services or any websites accessible via the Service are uninterrupted, error or virus free, and any dealings that the Customer and End User may have with promotions, services or merchants via the Service are solely between the Customer and / or the End User and the person with whom they are dealing.
- 7.6 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulatory requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.7 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.8 Supplier has the right to disable any access code, username, password or other information provided to the Customer or End User if in the Suppliers opinion, the Customer or any End User fails to comply with these Conditions or the Acceptable Use Policy.
- 7.9 From time to time the Supplier may (i) change access codes, usernames, passwords or other security information necessary to access the Wi-Fi Service for operational reasons or (ii) issue instructions to the Customer and / or End Users which Supplier believes is necessary for reasons of health, safety and security or the quality of any telecommunications Services. The Customer shall procure that the End User complies with any such instructions that Supplier issues to Customer or End Users or (iii) temporarily suspend the Service because of any emergency or for operational maintenance or improvements or for the purpose of ensuring network security. In such case the Service shall be restored and soon as practically possible.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order Form are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Services;
- 8.1.3 be liable for any disconnection costs levied by a previous supplier. For the avoidance of doubt, the Supplier shall not be liable for any termination, disconnection or transfer fees, unpaid fees, or any costs whatsoever that have been levied on the Customer by third party;
- 8.1.4 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Venue, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 8.1.5 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 8.1.6 prepare the Venue for the supply of the Services;
- 8.1.7 abide by, and procure that the End User abides by, the terms of the Acceptable Use Policy relating to specific Services, which are published on the Website from time to time;
- 8.1.8 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Commencement Date; and
- 8.1.9 keep and maintain all materials, equipment, tools, cabling, documents and other property of the Supplier (**Supplier Materials**) at the Venue in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or End User or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; or
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer or End User arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 8.3 Where the Customer is hiring the Goods from the Supplier, the Customer must enter into a Maintenance Agreement with the Supplier throughout the term of the Contract.
- 8.4 Where the Supplier is providing web hosting or Wi-Fi access as part of the Services, the Customer or the End User shall not be permitted to use the Services to upload any content which may be considered illegal, libellous, immoral, blasphemous, morally offensive, politically extreme, obscene, or fraudulent in nature, or an infringement of the intellectual property rights or other rights of any third party. The Customer shall indemnify and hold harmless Supplier against any loss or damage arising from any third party demand or claim that any content provided by Customer / End Users or Customer / End Users use of the Services in breach of the terms either infringes a third parties intellectual property right or violates any law.
- 8.5 Where the Customer relocates its Venue during the term of the Contract, it shall be responsible for all costs for transferring the Goods and the provision of Services to the new Venue.
- 8.6 When disposing of Goods purchased from the Supplier, the Customer shall do so in accordance with by the Waste Electrical and Electronic Equipment Directive, and any other relevant legislation in effect and as amended from time to time.
- 9. CHARGES AND PAYMENT**
- 9.1 The price for Goods and Services shall be the price set out in the Order Form or, if no price is quoted, the price set out in the Supplier's published Tariff on the Website as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 Any additional charges for Services shall be on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Supplier's standard hourly or daily fee rates, as set out on the Website and the Supplier's written acknowledgment of the Order Form;
- 9.2.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of a 9.00 am to 5.30 pm day worked on Business Days unless otherwise agreed in writing between the parties; and
- 9.2.3 the Supplier shall be entitled to charge an overtime rate for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2, and the overtime rate shall be agreed in writing between the parties;
- 9.2.4 additional Call Charges shall be calculated in accordance with Supplier's Tariff as published on the Website and updated from time to time;
- 9.2.5 additional Data Charges may be applied where the Customer's or End User's data usage exceeds the allowance specified on the Website or the Acceptable Use Policy; and
- 9.2.6 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 Where the Services purchased by the Customer take advantage of any promotion offered in writing by the Supplier, any such promotions will be subject to the limitations set out in the Acceptable Use Policy.
- 9.4 The Supplier reserves the right to:
- 9.4.1 increase its fees and charges from time to time. Any changes in charges shall be outlined on the Website. The Supplier will give the Customer written notice of any material increase to charges for the Services 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 30 days of the date of the Supplier's notice and the parties shall negotiate a resolution in good faith. If the parties fail to resolve the matter within 30 days of the date of the Customer's notice of non-acceptance, the Customer shall have the right without limiting its other rights or remedies to terminate the Contract by giving 30 days written notice to the Supplier;
- 9.4.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 9.4.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.4.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods; or
- 9.4.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in advance, and the Supplier shall invoice the Customer for all accrued Call and Data Charges monthly in arrears.
- 9.6 The Customer shall pay each invoice submitted by the Supplier as set out in the Order Form:
- 9.6.1 either monthly in arrears by direct debit;
- or unless agreed otherwise in writing between the parties, within 30 days of the date of the invoice; and in full and in cleared funds to a bank account nominated in writing by the Supplier; and time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall be required to pay a late payment charge (as set out on the Website) per overdue invoice, and shall pay interest on the overdue amount at the rate of 8% per annum above Bank Of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 9.10 In the event of suspension of the provision of Goods and Services by the Supplier in accordance with clause 12.8, the Customer shall be required to pay a suspension fee for each month the provision of Goods and Services is suspended (as set out on the Website).
- 9.11 The Supplier reserves its rights to charge the Customer the following fees as set out on the Website:
- 9.11.1 non-direct debit fee payable each month by Customers who do not establish direct debit payments; and
- 9.11.2 failed direct debit fee applied to each failed direct debit payment.
- 9.12 The Customer may incur charges from third parties in connection with the supply of the Services. The Customer shall be required to pay such charges in full and in accordance with the terms and conditions applied by that third party and as notified by the Supplier from time to time, and must not withhold any fees, payments or charges. Where the Customer disputes any amount or payment owed to a third party, the Supplier shall dispute charges on behalf of the Customer where sufficient information is provided to justify the dispute, however, third party decisions are final.
- 10. CONFIDENTIALITY**
- 10.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

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- 10.2 Supplier shall process all information about Customers and End Users (including all the Personal Data provided by the End User or Customer in accordance with the Suppliers Privacy Policy). The Customer warrants that all Customer and all End Users agree to the provisions of the Privacy policy, that it has procured all necessary consents from End Users to the processing of their Personal Data in accordance with the provisions of the Privacy Policy and otherwise in accordance with the applicable law, and that all data provided by the Customer or any End User is true, complete and accurate.
- 11. LIMITATION OF LIABILITY**
- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 11.1.5 defective products under the Consumer Protection Act 1987.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for:
- 11.2.1.1 loss of profits;
- 11.2.1.2 loss of sales or business;
- 11.2.1.3 loss of agreements or contracts;
- 11.2.1.4 loss of anticipated savings;
- 11.2.1.5 loss of use or content or corruption of software, data or, information hosting services;
- 11.2.1.6 network downtime;
- 11.2.1.7 loss arising from fraud committed by a third party;
- 11.2.1.8 loss of damage to goodwill;
- 11.2.1.9 any indirect or consequential loss; and
- 11.2.1.10 any loss as result of unauthorised use of accounts.
- 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £50,000, or a sum equal to the charges paid by the Customer in the 6 month period prior to the claim arising, whichever is the lesser amount.
- 11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 90 days written notice before the expiry of the Minimum Term.
- 12.2 If termination has not occurred prior to the Minimum Term, the term of the Contract shall continue after the Minimum term on a twelve (12) month rolling basis until termination in accordance with these Conditions.
- 12.3 Either party may terminate the Contract by giving the other party no less than 30 days written notice after the expiry of the Minimum Term.
- 12.4 Any termination or suspension of the Contract by the Customer before the expiry of the Minimum Term or the delivery of Goods, as applicable, will be subject to the following cancellation charges equal to:
- 12.4.1 100% of the charges for Services multiplied by the number of remaining months of the Minimum Term; and
- 12.4.2 100% of the average monthly Call Charges for the three month period prior to termination, multiplied by the number of remaining months of the Minimum Term; or
- 12.4.3 50% of the value of the Goods ordered, and/or yet to be installed.
- 12.5 Notwithstanding clause 12.4, where a Customer terminates a Contract before the expiry of the Minimum Term, or where the Supplier terminates the Contract in accordance with clause 12.6, or suspends the Services in accordance with clause 12.8, if the Services provided under the Contract include mobile telephone services by a Network Provider, the Customer shall be liable for any cancellation charges or exit fees levied by the Network Provider.
- 12.6 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.6.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- 12.6.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.6.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.6.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 12.6.5 a creditor or encumbrancer of the other party 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.
- 12.6.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 12.6.7 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 12.6.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.6.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.4.2 to clause 12.4.8 (inclusive);
- 12.6.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 12.6.11 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.7 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.8 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.4.2 to clause 12.4.11, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 12.9 On termination of the Contract for any reason:
- 12.9.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.9.2 the Customer shall return all of the Supplier Materials, Goods and any Deliverables which have not been fully paid for. If the Customer fails to do so within 30 days of termination, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.9.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 12.9.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13. FORCE MAJEURE**
- 13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 14. GENERAL**
- 14.1 Assignment and other dealings.**
- 14.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 Notices.**
- 14.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be made verbally, or in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 14.2.2 A notice or other communication shall be deemed to have been received whether made verbally or writing, upon acknowledgement by the Supplier.
- 14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.3 Severance.**
- 14.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 **No Partnership or Agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing by the parties.
- 14.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).