TMR Agility Communications Ltd – IT Terms and Conditions

1. Definitions

1.1. The following words have the following meaning: “Account” means the Account opened by Agility Communications in the name of the Customer relating to the Services. “Agreement” means these terms and conditions and the Customer Order Form. “Affiliate” means any subsidiary of Agility Communications or any entity that directly or indirectly controls, is controlled by, or is under common control with Agility Communications. “BT” means British Telecommunications Plc. “Commencement date” means the date the Services ordered (as set out on the Customer Order Form) become live, for clarity this is not the order date mentioned on the Customer Order Form. If your order contains packaged services (i.e. a number of Services for a fixed monthly amount) your commencement date is the date the final Service went live with Agility Communications. “Customer” or “You” means the company, partnership, sole trader or other legal entity named in the Customer Order Form. “Customer Order Form” means the accompanying document titled Customer Order Form containing details of the Customer and the Services. “Data Services” means the Services relating to data as specified in the Customer Order Form. “Equipment” means any Equipment supplied by Agility Communications to the Customer. “Agility Communications” or “we” or “us” means TMR Agility Communications Ltd, including its successors and assigns and any Affiliates thereof. “Agility Communications Designated Carrier Network” means the telecommunications network. “Least Cost Routing Software” means software installed on a telephone system which automatically the enables the routing of calls via different telephone networks. “Line Rental” means rental of the Customer’s ISDN or Analogue line(s). “Microenterprises” means microenterprises, small enterprises and not-for-profit Customer for which no more than 10 individuals work (employees, volunteers or otherwise). “Minimum Term” means the minimum duration for each Service which, unless otherwise expressly stated on the Customer Order Form, will be as stated in this Agreement under the Service Specific Terms and Conditions. “MLU Access” means the automatic insertion of the unique Agility Communications access code by a unit of Agility Communications. “Network Services Plan” means the particular Network Services Plan specified in the Customer Order Form. “Preferred Commencement Date” means the preferred date on which that particular Service is due to commence. “Services”

means the services requested by the customer as particularised in the Customer Order Form. “Services Literature” means Agility Communications’s literature specific to the Services. “Site” means the place of business at which the Services and Equipment are to be provided as specified in the Agreement. “Software” means any computer programme that was on the Equipment when supplied or that the Customer received separately. “Support Services” means the support and maintenance services purchased by the Customer as set out in a Customer Order Form. “User” means the Customer and any individual or company permitted to use the Services.

1.2. Headings are inserted for the ease of reference only and do not affect the interpretation of this Agreement.

1.3. Any words following the words including, include for example or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those words.

2. The Services

2.1. Customer Order Form.

The Customer will complete, sign and return to Agility Communications a Customer Order Form or Purchase Order prior to Agility Communications agreeing to provide the Services. In any event, the Customer agrees that the receipt by Agility Communications of a Purchase Order from the Customer or the use by Customer of any of the Services shall be deemed to be acceptance by the Customer of the Customer Order Form and these terms and conditions.

2.2. Reasonable care and skill.

We will use all reasonable care and skill to provide you with the Services throughout the term of the Agreement.

2.3. Estimated dates and times.

Dates and times for provision of the Services are estimates only and no liability will accrue to Agility Communications for failure to meet any such dates.

3. CUSTOMER’S OBLIGATIONS

3.1. Use of Services.

The Customer undertakes to Agility Communications that the Services will be used only as follows:

3.1.1. in accordance with the Agreement;

3.1.2. only the Customer and the Users will use the Services and no other person will be permitted;

3.1.3. the Services Literature and any other instructions regarding the use of the Services as may be notified to the Customer by Agility Communications from time to time will be complied with promptly and deemed to form part of the Agreement; and

3.1.4. for the duration of the Minimum Term it will route all its inbound, non-geographic and outbound calls (including without limitation all its voice, fax and data traffic) via Agility Communications on an exclusive basis. For the avoidance of doubt the Customer acknowledges and accepts that during the Minimum Term it will not use any services offered by a third party which are competitive.

3.2. Restrictions on Use of Services.

The Customer will ensure that the Services are not used in the following manner:

3.2.1. For the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character;

3.2.2. Use fraudulently in connection with a criminal offence or in any other way which is unlawful or immoral;

3.2.3. Use which constitutes a violation or infringement of the rights of any other or may, at Agility Communications's discretion, be otherwise objectionable;

3.2.4. Use which allows third parties to interfere with or corrupt the Services in any way; or

3.2.5. Otherwise than for the purposes of a telecommunications system.

3.3. Timely Installation.

If the Customer prevents Agility Communications from delivering or installing the Services and/or Equipment, including where the Site(s) is unprepared, or if the time from order date to installation of the Services and/or Equipment exceeds 6 months, Agility Communications reserves the right to: (i) charge its costs, including without limitation legal costs, to the Customer; and/or (ii) deliver the Services and/or Equipment to site and the Customer must pay in full via the agreed payment method.

3.4. Other obligations.

The Customer agrees that at all times during the term of the Agreement it :

3.4.1. Provide access to all appropriate sites for Agility Communications personnel during the Customer's normal working hours and allow the removal, installation and maintenance of any Equipment;

3.4.2. Keep its telecommunications equipment in good working order and ensure that such equipment complies with all applicable standards and approvals so as to enable Agility Communications to provide the Services;

3.4.3. Provide all reasonable assistance required by Agility Communications to enable it to provide the Services;

3.4.4. promptly provide Agility Communications (free of charge) with any information Agility Communications may reasonably require to enable it to proceed with the performance of its obligations under the Agreement including any information which Agility Communications may reasonably request for the purposes of credit verification and debt collection and the Customer permits Agility Communications to use such information and to provide it to third parties acting on behalf of Agility Communications for such purposes;

3.4.5. Give Agility Communications at least three (3) month's prior written notice of any premises' relocation for telephone number(s) on which the Services are registered; and

3.4.6. Pay Agility Communications (at its then current published rates) for all call-out visits required if Agility Communications determines that the problem with the Services is not the fault of Agility Communications or Access Equipment has been damaged by the Customer.

3.5. Indemnity.

Customer will Indemnify Agility Communications fully against all losses, liabilities, costs (including legal costs) which Agility Communications may incur as a result of any breach of the Customers obligations under this Agreement or any misuse of the Services. The Customer must report to Agility Communications as soon as it becomes aware of any fraud, deception, or unauthorised or unlawful use relating to the Equipment or Services. The Customer must advise Agility Communications in writing if it changes its address.

4. AGILITY COMMUNCATIONS' RIGHTS

4.1. Flexibility.

Agility Communications will be entitled to alter any access or authorisation number or method of Services from time to time and may reprogram the Customer's equipment as a result. Agility Communications may at any time change the Agility Communications Designated Carrier Network, the Services or any Equipment if it needs to do so to comply with any applicable safety or other statutory requirements; or where the change does not materially detract from the quality or performance of the Services. Agility Communications will pay for any change to the Agility Communications Designated Carrier Network, Services or Equipment made under this clause.

4.2. Data collection and use.

Agility Communications may collect data and information about the Customer's use of the Services and Equipment and share such data and information with:

(i) Affiliates of Agility Communications; and
(ii) (II) third parties; but solely for the purposes of providing the Services to the Customer.

5. CHARGES AND PAYMENT

5.1. Payment.

The Customer must pay all sums due to Agility Communications within 14 days after the date of the invoice by Direct Debit. If Customer fails to complete the direct debit form, a monthly surcharge of £5 (plus VAT) will be added to the charges to cover Agility Communications's increased administrative costs. The Customer is responsible for all charges arising from the use of the Services by any person utilising the Customer's registered Services (with or without the Customer's authorization).

5.2. Failure to pay.

If the Customer fails to make payment within 14 days of the date of the invoice, without prejudice to its other rights hereunder, Agility Communications may:

5.2.1. require the Customer to pay all sums due under this Agreement on demand;

5.2.2. charge interest at a rate equal to the lesser of 3% per month above the Bank of England's Base Lending Rate applicable at the time or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full; and

5.2.3. charge the Customer Agility Communications's reasonable collection costs, including £85 (plus VAT) for administrative costs. For the avoidance of doubt, non-payment will be deemed to be a material breach of this Agreement.

5.3 Increase in Charges: The license charges under this Agreement will be increased annually by £0.50 per license for licenses under £10/month, or £1.00 per license for licenses £10/month or more. Bolt-on services (e.g., monitoring, security, call optimisation) may increase annually by £4.99 per license per month. Connectivity services (if applicable) may increase annually by £20–£40 per month depending on service type. All other services not specified will increase by RPI plus 3.9%.

5.4. VAT. All sums due to Agility Communications under the Agreement are subject to Value Added Tax ("VAT"), and any applicable taxes, levies or charges which from time to time may be introduced.

5.5. Invoices.

If there are any errors or omissions in a Agility Communications invoice for any period, Agility Communications may issue an invoice at a later date. Customers who require paper billing will be charged at the cost of up to £5 (plus VAT) per paper invoice provided.

5.6. If the Customer obtains any services from a third party which are competitive with or substantially similar to the Services during the Minimum Term, materially breaches this Agreement, gives less than the specified amount of written notice to terminate this Agreement, ceases to use the Services or a part thereof (including reduced usage), terminates this Agreement prior to the expiry of the Minimum Term or any subsequent period equivalent to the Minimum Term or fails to achieve any minimum call spend as set out on the Agreement, the Customer accepts that Agility Communications will be entitled to invoice the Customer for the loss it suffers, including, for example, loss of revenue for the short notice given for the balance of the Minimum Term based upon an average of 6 calendar months bills of the Customer in which periods the Customer has made
full use of the Services (or such lesser period as is available). Agility Communications reserves the right to apply this clause in the alternative to any other provisions in this Agreement.

5.7. Where the agreed payment method states 'lease', Agility Communications reserves the right to use a third-party finance/lease company to facilitate the purchase of any equipment supplied as part of the Agreement.

6. ACCESS EQUIPMENT

6.1. The Customer will provide without charge or cost to Agility Communications appropriate equipment space, environment and continuous stable electrical power to install and maintain the equipment at its premises.

6.2. All Agility Communications Access Equipment will remain in the ownership of Agility Communications. For Access Equipment on Customer's premises, the Customer will ensure that it is kept safe and upon termination of the Agreement, the Customer will ensure that Agility Communications is allowed prompt access to all relevant premises to remove its Access Equipment.

6.3. For the avoidance of doubt, if any item of Equipment fails, it will not affect the rights and liabilities of either party for the other items. The Customer's duties under the Agreement will continue and will not be affected by the breakdown, theft, loss, destruction of, or damage to any Equipment.

7. INTELLECTUAL PROPERTY RIGHTS Intellectual Property Rights in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with the Agreement remain vested in Agility Communications or the intellectual property right owner. Such documents, drawings and information are confidential and must not be copied, disclosed or used (except for the purpose for which they were supplied) without Agility Communications's prior written consent.

8. SUSPENSION

8.1. Suspension.

Agility Communications may suspend the Services to the Customer at its sole discretion including but not limited to the following:

8.1.1. if any credit limit between Agility Communications and the Customer is breached

8.1.2. If Customer materially breaches the Agreement (including, without limitation, failure to make any payment or to provide any deposit required to be made or provided under the Agreement).

8.1.3. In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority;

8.1.4. technical problems or work on the network or for reasons of safety;

8.1.5. Fraud or attempted fraud is suspected by Agility Communications (in its reasonable opinion) in connection with your use of the Services; or

8.1.6. to maintain or upgrade the Agility Communications Designated Carrier Network at the Site.

8.2. Effect on Fees.

Agility Communications may levy an administration fee of £52.50 (plus VAT) per number for lifting such a suspension under clauses 8.1.1 and 8.1.2. If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the monthly access charge for the period of the suspension.

8.3. Notice.

In certain circumstances it may not be possible for Agility Communications to provide notice of the suspension. Agility Communications will use reasonable endeavours taking account of the circumstances to provide the Customer with as much notice of the suspension and to maintain the suspension for as short a period as is reasonably possible.

9. TERMINATION

9.1. Termination Notice.

If the Customer wishes to terminate the Services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than 120 days) must be provided to Agility Communications by recorded delivery. If such notice is not received by Agility Communications, the Services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) (“Rollover Term”). This clause does not apply to Microenterprises.

9.2. Termination.

Either party (without prejudice to its other rights) may terminate the Agreement forthwith in the event that the other party:

9.2.1. materially breaches the Agreement and (if such breach is remediable) fails to remedy it within 14 days of receiving written notice to do so; or

9.2.2. takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy,

administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause.

9.3 Effect of Termination or Expiration

You may terminate the Services with 90 calendar days' written notice after the Minimum Service Period. If you terminate within the Minimum Service Period, or if the Agreement is terminated by either party or expires, the following terms apply:

9.3.1. Outstanding Charges:
You must pay all charges due to Agility Communications for the remainder of the Minimum Service Period.

9.3.2. Administration Fee:
An administration fee of £250 per license applies (this replaces the previous "per line" clause).

9.3.3. Calculation of Fees:
Fees will be calculated as the higher of: The remaining months' license charges; or £250 per license.

9.3.4. Post-Termination Deprovisioning:
If, after termination, you require any licenses, accounts, endpoints, or user environments to be deprovisioned, an additional administration charge of £145 per license will apply.

10. CONFIDENTIALITY

10.1. Except as expressly permitted under this Agreement, the Customer and any User will at all times keep confidential the terms of this Agreement and all matters relating to the Services, and will not disclose the same to any third party without the prior written consent of Agility Communications, unless required to do so by a court order or legislation. This obligation will not apply to information which the recipient can prove was in its possession on a non-confidential basis before it was received or which the recipient obtains on a non- confidential basis from some other person who is not under any confidentiality obligation in respect of that information or which is in the public domain otherwise than through breach of confidentiality by the recipient.

10.2. Details of the Agreement and the conduct of the Account may be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions, for fraud prevention or the tracing of debtors.

11. DATA PROTECTION

Both parties must comply with the current Data Protection Legislation when dealing with personal data given to the other party under the Agreement.

12. LIMITATION OF LIABILITY

12.1. Agility Communications accepts liability for death or personal injury resulting from our negligence or for our fraud or fraudulent misrepresentation or for any other liability that we cannot by law exclude or limit.

12.2. We also accept liability for loss or damage to your physical property arising from our negligence. We'll pay up to £10,000 for such loss or damage in total in any 12 month period.

12.3. Except as set out in Clauses 12.1 and 12.2, Agility Communications will not be liable to the Customer in relation to the Services and this Agreement, whether in contract, tort or otherwise (including negligence) for more than £5,000 for one event or series of related events and £15,000 in total for all events arising in any 12 month period.

12.4. Agility Communications and its suppliers and service providers do not offer or guarantee a fault free service. Except as expressly set out in this clauses 12.1 and 12.2, Agility Communications will not be liable to the Customer in relation to the Services and this Agreement, whether in contract, tort or otherwise (including negligence) for any:

12.4.1. consequential or indirect loss;

12.4.2. loss of actual or anticipated profits;

12.4.3. loss of revenue;

12.4.4. loss of contracts or business;

12.4.5. loss of anticipated savings;

12.4.6. loss of reputation or goodwill;

12.4.7. loss of or interruption of business;

12.4.8. loss of use or corruption of software, data or information;

12.4.9. acts and omissions of other telecommunications operators;

12.4.10. faults in the Customer's telecommunications equipment

12.4.11. any damages whatsoever caused any reprogramming of the Customer's existing Least Cost Routing Software unless such damage is caused by Agility Communications's negligence;

12.5. In the event of any failure in the Services, Agility Communications will not be liable to the Customer for any charges incurred by the Customer should it direct its telecommunications traffic to another carrier.

12.6. Agility Communications reserves the right not to provide the Services due to any technical limitations of the telephone system, telephone exchange, or Agility Communications Access Equipment.

12.7. Agility Communications is not responsible for call charges resulting from fraudulent use of the Equipment or Services by the Customer or any third parties and the Customer agrees to pay all additional charges related to such fraud. Agility Communications will automatically provide Exceptional Call Reporting for the Customer to cover this risk and this will be provided free of charge to the Customer for a period of 3 months from the start date of the Customer Order Form. Thereafter, charges will apply and the cost of Exceptional Call Reporting will be paid by the Customer unless Customer informs Agility Communications within the first 3 month period that they do not wish for Exceptional Call Reporting to continue. . This clause will always apply unless the Customer specifically states in writing to Agility Communications that the Customer does not want this Exceptional Call Reporting cover to apply. Customer acknowledges that there is an excess charge of £250 (plus VAT) for any monies claimed against Exceptional Call Reporting.

13. DEPOSIT AND CREDIT LIMIT

13.1. Deposit.

Agility Communications may, on 7 days prior written notice to the Customer, require a payment specified by Agility Communications to be held as a deposit against any charges arising from the use of the Services and Agility Communications will be entitled to offset such deposit against any amounts due under this Agreement from time to time including interest. Any deposit held by Agility Communications will not accrue any interest.

13.2. Credit Limit. Agility Communications may, on 7 days prior written notice to the Customer, stipulate a reasonable monetary limit that will apply to all charges due or which may become due to Agility Communications from the Customer. If at any time the amount of charges payable to Agility Communications exceeds the stipulated monetary limit, Agility Communications will immediately notify the Customer and any amounts incurred in excess of the stipulated monetary limit will immediately become due and payable.

14. MICROENTERPRISES AND SMALL ENTERPRISES

14.1. The below applies only to Microenterprises and prevails over any conflicting clauses in this Agreement:

14.1.1. Minimum Contract Term – Minimum Term for our services will be no longer than 24 months unless otherwise agreed in writing by you.

14.1.2. Automatically Renewable Contracts – clauses in this Agreement which automatically renew our Agreement with you do not apply to you. Once you have completed the Minimum Term of your contract, you are on a rolling 30 day contract until you renew, change or cancel your contract.

14.1.3. If you are in the process of transferring your services and have 10 days or more before the transfer date, then you can request that we cancel the transfer. You will be subject to cancellation charges for the Services stated in the Agreement.

14.1.4. Agility Communications will not extend your contract without your express consent when you buy additional services.

14.1.5. If we make changes to the Services, we will give you at least one (1) month’s prior written notice of such changes. You may terminate this Agreement at no additional cost within one month after notification if the changes are not exclusively of benefit to you. This does not apply if the change is purely administrative and has no negative effect on you.

15. ASSIGNMENT

15.1. The Customer may not assign, transfer or otherwise deal with any of its rights under the Agreement without prior written consent from Agility Communications, such consent not to be unreasonably withheld.

15.2. Agility Communications may assign, transfer, sub-contract or deal with any of its rights hereunder to an Affiliate or other person by providing at least one (1) month's prior written notice to the Customer.

16. FORCE MAJEURE

Neither party will be liable to the other for any loss or damage which may suffered by the other party due to any cause beyond the first party's reasonable control including drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, pandemic or epidemic, the act or omission of Government, highway authorities, public telecommunication operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Services or any part thereof. If any force majeure event lasts for more than 3 months and that event prevents either party from performing all or a material part of its obligations during that period, either party may terminate this Agreement, by giving 14 days prior written notice to the other party.

17. THIRD PARTY RIGHTS

No person who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of this Agreement.

18. NO WAIVER; SEVERANCE Failure by either Agility Communications or the Customer to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any other right on any later occasion. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this agreement.

19. ENTIRE CONTRACT

The Agreement represents the entire understanding between the parties in relation to the subject matter of the Agreement and supersedes all other agreements and representations made by either party, whether oral or written.

20. SERVICE OF NOTICE

Except as otherwise set out in this Agreement, any notice, invoice or other document which may be given under the Agreement will be deemed to be duly given if sent by recorded post to the registered office of the party to be served (or any other address notified by the party to be served to the other party in writing), or by electronic mail to: (a) Agility Communications at billing@agilitycomms.co.uk; or (b) Customer at

Customer's email address stated on the Customer Order Form. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. SURVIVAL

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, will remain in full force and effect.

22. CUSTOMER'S PURCHASE ORDER.

Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of the Customer to Agility Communications do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Agility Communications.

23. ORDER OF PRECEDENCE

To the extent of any inconsistency, the Service Specific Terms and Conditions will prevail over the General Terms.

24. GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

SERVICE SPECIFIC TERMS AND CONDITIONS

25. NETWORK SERVICES (INCLUDING LINE RENTAL)

25.1. Charges.

Agility Communications will invoice the Customer monthly in advance for the Line Rental and monthly in arrears for other Network Services at the prices set out in the Network Services plan (as amended in accordance with clause 5.3).

25.2. Set up charge.

All calls made on Agility Communications tariffs are subject to 1p setup charge on local and national calls and 3p setup charge for all calls made to mobiles. Calls to international destinations are subject to a call setup fee.

25.3. Minimum call charge.

All calls made on Agility Communications discount and saver tariffs are subject to 1p minimum call charge.

25.4. Inclusive or bundled call packages.

For Inclusive or bundled call packages that include mobile destinations, the inclusive mobile allowance only includes calls to the main UK carriers (Vodafone, O2, EE, Three). Calls to any other destination commencing 07 will be charged at the standard tariff rate.

25.5. Previous Agreements.

The Customer agrees that signing this Agreement will terminate any previous network services/line rental agreement. The Customer authorises Agility Communications to use all information the Customer provides in order to liaise directly with another service provider.

25.6. Minimum Term.

The Customer agrees to purchase the network services/line rental services specified in the Customer Order Form for a Minimum Term of 24 months, which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form.

25.7. Termination Notice.

If the Customer wishes to terminate the network services/line rental services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than 120 days) must be provided to Agility Communications by recorded delivery. If such notice is not received by Agility Communications, the network services/line rental services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) (“Rollover Term”).

25.8. Early Migration.

If the Customer migrates its call traffic from Agility Communications’s network before the expiry of the notice required under this Agreement, Agility Communications reserves its right to invoice an amount equal to the Customer’s average monthly gross

profit multiplied by the number of months remaining in the Minimum Term for any products migrated away.

25.9. Early Termination.

If this Agreement ends before the Minimum Term or subsequent fixed period ends (other than as a result of force majeure or any breach of this Agreement by us) you will pay us: 25.9.1. the Monthly Rental Charges or Package Price which would have been payable if the Agreement had not ended early;

25.9.2. a disconnection fee of £159.00 (plus VAT) for every line and channel whether the Agreement has reached the full minimum period or not;

25.9.3. a charge equal to four times the value of average monthly call billing during the term of this Agreement up to and including the month of termination. If you are on a package which includes bundled minutes, the value is the average excess monthly call charges that are not included in your bundle.

25.10. Charges for Cancellation and Deferment.

If Customer requests Agility Communications to cancel any network transfer or line work order being processed on behalf of the Customer, Customer will pay to Agility Communications the full value of the charges due for the Minimum Term within 14 days of the cancellation request being made. If the Customer defers or delays their network transfer or line work order, Agility Communications reserves the right to charge an administration fee of £159 (plus VAT) to be paid within 14 days of the request for deferment
or delay by the Customer.

25.11. Third Party Service Provider Charges.

The Customer is solely responsible for any third party service provider's charges, including those that that relate to faults, equipment used by third party service provider engineers, missed appointments, engineer visits or any other charges that third party service provider may make.

25.12. Backdated Charges.

All charges relating to line rental are normally charged in a timely manner; however, Agility Communications reserves the right where necessary to apply and charge the

Customer backdated line rental or other charges. The Customer is responsible for the payment of these charges in accordance with the payment terms under this Agreement.

25.13. Fair Usage.

Any unlimited services provided are subject to a fair usage policy of up to 2000 minutes per channel or user. You will be liable to pay for any usage above this at the Agility Communications standard pence per minute rate available at www.agilitycomms.co.uk.

25.14. Call Recording.

Call recording storage is for a maximum of 30 days unless otherwise specified in the Customer Order Form.

25.15. Routing Equipment.

All routers and routing equipment supplied by Agility Communications must be returned to Agility Communications by Customer within 14 days after the termination or expiration of the Customer Order Form, failing which Customer must pay to Agility Communications a charge of £500 (plus VAT) for the router(s) and routing equipment.

26. MOBILE SERVICES

26.1. Charges.

The Customer will be charged for all use of the lines supplied including;

26.1.1. A monthly access charge which is payable one month in advance, together with payment for any extra services which Agility Communications is providing to the Customer;

26.1.2. Call charges for all calls made in the previous month according to the Agility Communications tariff which the Customer has chosen;

26.1.3. If the Customer chooses to use the telephone abroad, these charges will include all incoming calls that the Customer receives during that period.

26.2. Adjusting charges.

If the network provider exercises any right against Agility Communications to withhold or claw-back payments made by the network provider to Agility Communications, Agility Communications will be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by Agility Communications to the Customer to the extent that they are based upon payments from the network provider.

26.3. Non-Commercial Use Charges.

If any cellular connection is not being used for commercial purposes, then Agility Communications will be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.

26.4. Minimum Term.

The Customer may be supplied with a number of cellular connections (lines) at different times at the Customer's own request. Each supply will be for a Minimum Term of 24 months from the date of the order which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form. Subject to any other right of termination under the Agreement, this may only be terminated by giving 90 days' prior written notice not to expire before the end of the Minimum Term.

26.5. Additional Equipment / Upgrade. Where Agility Communications has provided further equipment in respect of any line at a subsidised price (upgrade) or financial support in lieu of equipment (upgrade support) then the Minimum Term that relates to that line is extended by a further period equal to the Minimum Term from the date of supply of the upgrade or upgrade support. This clause does not apply to Microenterprises.

26.6. Termination.

If the Customer terminates the Agreement in breach of these terms and conditions, the Customer will be obliged to pay the monthly access charges in relation to each line supplied until the earliest date that the Customer would have been entitled to end each supply. When this Agreement is terminated Agility Communications will disconnect the Customer from the network and it must pay all charges owed to Agility Communications.

26.7. Change of Supplier.

In the event that the Customer wishes to change its mobile services supplier after the relevant Minimum Term has expired, Agility Communications will arrange for the transfer of the telephone number to the new supplier providing that the Customer has:

(i) given the appropriate period of notice to terminate that supply; (ii) paid a reasonable administration fee;

(ii) (iii) paid all sums due to Agility Communications under this Agreement; and (iv) paid a deposit in respect of unbilled calls. 26.8. Mobile Sims - Mobile sims supplied by TMR Agility Communications Ltd, for all mobile network

carriers will remain the property of Agility Communications. TMR Agility Communications Ltd, reserve's the right to charge £100.00 + vat for any unreturned sim, following the cessation, migration or number port for the service's provided on that sim.

27. DATA SERVICES

27.1. Charges.

Agility Communications will provide the Customer with the Data Services and associated installation at the charges set out in this Agreement. Unless otherwise agreed in writing, the charges will be payable monthly in advance from the start of the Minimum Term.

27.2. Fair Usage.

Any unlimited services provided are subject to a fair usage policy of 40gb per month. Any usage above 40gb per month will be charged to you at up to £2 (plus VAT) per excess gb used.

27.3. Excess Charges.

If you are subject to a monthly data limit and you exceed this then you will be liable to pay for any usage above this at up to £2 (plus VAT) per excess gb used.

27.4. Disconnection Charges.

Agility Communications will always charge the customer a broadband disconnection fee of £45 (plus VAT).

27.5. Fee Increases.

All fees are subject to change from time to time in the event that the carrier increases its fees to Agility Communications. Details of any such increase will be provided to the customer as soon as reasonably possible and in any event, at least 30 day prior written notice of the increase will be provided. Microenterprises may terminate the Agreement within 30 days of notification of the increased price, at no additional cost.

27.6. Minimum Term.

The Customer agrees that a Minimum Term of 24 months applies to Data Services supplied to Customer by Agility Communications. This Minimum Term cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form

27.7. Termination Notice.

If the Customer wishes to terminate the Data Services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than120 days) must be provided to Agility Communications by recorded delivery. If such notice is not received by Agility Communications, the Data Services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) ("Rollover Term").

27.8. Early Termination.

If the Customer terminates the Agreement before the end of the Minimum Term or Rollover Term Agility Communications may charge the Customer the charges that would have been payable for the balance of the Minimum Term or Rollover Term.

27.9. Carrier.

Agility Communications may obtain telecommunication services from a carrier in order to supply the Data Services to the Customer and may change the data provider at any time.

27.10. Technical restrictions.

The Customer accepts that it may not be able to receive the Data Services due to certain technical restrictions. If such technical restrictions are discovered after the date of the Agreement, Agility Communications may immediately terminate the Agreement in whole or in part without prejudice to any of its rights under the Agreement.

27.11. Change of Site. If the Customer moves from the Site(s), Agility Communications will be entitled to charge the fees that would have been payable by the Customer for the balance of the Minimum Term. If the customer wishes to receive the Data Services at a new Site(s), it may be required by Agility Communications to start a new Agreement.

28. SUPPORT SERVICES

28.1. Charges.

The Customer will pay 40% of the total order value or £500 (plus VAT) (whichever is the greater) on signing the Agreement and the remaining amount on the installation date. Payment will be due on receipt of the invoice. Agility Communications will have the right to stop servicing the Equipment if the Customer does not pay on time.

28.2. Fee Increases. Agility Communications may from time to time increase the charge for Support Services to account for cost increases and we will provide at least 30 days

prior written notice before this increase. Microenterprises may terminate the Agreement within 30 days of notification of the increased price, at no additional cost. For all other Customers, if this increase exceeds 10%, the Customer may terminate the Agreement by writing to Agility Communications within 30 days of the date of the invoice for the increased price. Customers will not be allowed to terminate the Agreement if the increase has resulted from additions made to the system.

28.3. Minimum Term. The period of Support Services will start on the Preferred Commencement Date. It will continue for the Minimum Term of 60 months (which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form) and then from year to year until terminated at any time by either party giving termination notice in accordance with clause 9.1.

28.4. Ownership of Equipment. Ownership of the Equipment will remain with Agility Communications unless it is paid for in full by the Customer. Until that time the Customer will hold it as Agility Communications's fiduciary agent and bailee. The Customer must keep the Equipment separate from other equipment and it must be properly stored, protected,
insured and identified as Agility Communications's property. The Customer is not permitted to sell the Equipment and Agility Communications can insist on its return.

28.5. On expiry of Agility Communications's associated lease agreements, the leased system(s) become(s) the property of Agility Communications. An invoice will be raised for secondary rental or title of the Equipment unless the Equipment is returned to Agility Communications at 14 Church Street, Ormskirk, L39 3AN in good working condition by the customer within 30 days of the expiry of the lease.

28.6. Faulty Equipment. If requested within the manufacturer's warranty period, Agility Communications will replace faulty items free of charge with an identical model or one with similar capabilities. Agility Communications will do this only if Agility Communications supplied the Equipment to the Customer, the Equipment has been maintained only by Agility Communications, the Customer is not at fault and liability is not excluded.

28.7. Support Services. Throughout the term of the Agreement Agility Communications will ensure that the performance of the Equipment and the servicing meet the approved standard of the manufacturer including telephone technical support, an engineer's visit to Site when required, service of the central control unit and all components within it, service of key phone instruments, service of Voicemail – auto attendant hardware.

Agility Communications will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by Agility Communications to do so be construed as a material breach of the Agreement. Support Services will not cover failure due to changes to or disconnection from the approved system, failure of any supplies or connected services, changes in the environment, ancillary items including but not limited to answer phones, call loggers, payphones, public address systems, printers, external music on hold sources, system cabling and consumables unless otherwise agreed in writing and a force majeure event as defined in the Agreement. Any wilful or accidental damage caused to the Equipment will not be covered by any of the provisions of this Agreement. This would include, any wilful or accidental damage caused by any liquids, or any damage caused by electrical faults, lightning strikes, floods or any other act of God. Normal wear and tear is not covered by this Agreement.

28.8. If the Equipment is to be connected to the BT Network or other outside services, it is the Customer's responsibility to arrange for provision of any required circuits. The Customer must pay all costs for circuit rentals, connection charges, inspections, commissioning and any other costs necessary to provide the services. Agility Communications will not be responsible for any delays in the provision of services. Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to us.

28.9. After Agility Communications has installed the Equipment at the Site, our engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed, the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days.

28.10. The Customer must prepare the Site(s) in accordance with Agility Communications's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s). The Customer must provide adequate electricity supply and suitable earth connection for the operation of any Equipment to be installed at the Site(s) and, in the case of MLU Access, a designated carrier network test and termination point. The Customer must assist and co-operate with Agility Communications to enable Agility Communications to carry out its obligations under the Agreement including giving access to the Site(s) to install and maintain the Equipment. Agility Communications will normally carry out installation and maintenance work during normal working hours but may, on reasonable notice; require the Customer to provide access at other times. At the Customer's request, Agility Communications may agree to work outside normal working hours but the Customer

will be liable for paying to Agility Communications any overtime charges for relevant staff.

28.11. Installation. Agility Communications will attempt to install the Equipment at the Premises so that the Service can be provided on or before the Preferred Commencement Date agreed by Agility Communications. Any installation date will be an estimate only and Agility Communications will not be liable for any failure to meet such installation date. Should the Customer prevent Agility Communications from delivering or installing the Equipment, including where the Site(s) is unprepared, or if the time from order date to installation of the Equipment exceeds 6 months, Agility Communications reserves the right to:

(i) charge its costs, including without limitation legal costs, to the Customer; and/or

(ii) deliver the Equipment to site and the Customer must pay in full via the agreed payment method.

Agility Communications will attempt to comply with the Customer's reasonable requests in respect of installation but Agility Communications's decision on the routing of cables and wires and the positioning of outlets and Equipment will be final.

Agility Communications accepts no liability whatsoever for any loss the Customer or any third party may suffer as a result of installation of the Service.

28.12. Invalidation.

Support Services will not apply if any part of the Equipment that has been serviced, maintained or worked on for whatever reason or purpose by any party other than Agility Communications or a party authorised by Agility Communications.

28.13. Settlements and Reimbursements.

If your equipment funding includes any settlement or reimbursement this must be claimed from Agility Communications within 12 months after the date of installation of equipment otherwise it becomes void and unenforceable and Agility Communications will have no liability to pay any invoice from you delivered after that period of 12 months has expired. To clarify the claim must be submitted in writing to Agility Communications and acknowledged in writing by Agility Communications.

28.14. Fault Assurance Service.

The Customer is not eligible for Fault Assurance credits in the event the lines, as notified within the BT engineering report, have been physically damaged by the Customer or another 3rd party. Fault Assurance Service will be provided free of charge to the Customer for a period of 3 months from the start date of the Customer Order Form. Thereafter, charges will apply and the cost of Fault Assurance Service will be paid by the Customer unless Customer informs Agility Communications within the first 3 month period that they do not wish for Fault Assurance Service to continue.

29. MANAGED IT SERVICES

Definitions

29.1. Additional Products & Services means those stated in the Order Form.

29.2. Conditions means the terms and conditions set out in this document and any special terms and conditions agreed in writing between the Customer and TMR Agility Communications Limited.

29.3. Consultant means TMR Agility Communications Limited's employees and/or any subcontractors who have been assigned by the Supplier to carry out work in the execution of the Contract.

29.4. Contract means the contract entered into between the Customer and TMR Agility Communications Limited.

29.5. Customer means the person or business as stated in the Contract. Customer Data means any information that is provided by or on behalf of the Customer to the Supplier as part of the Customer's use of the Services, including any information derived from such information.

29.6. Data Protection Legislation means up to but excluding 25th May 2018, the Data Protection Act 1998 and thereafter

(i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then

(ii) any successor legislation to the GDPR or the Data Protection Act 1998. 29.7. Delivery and Commencement Date means the date specified by TMR Agility Communications Limited when the Products and/or Services are to be delivered and the Services start.

29.8. Initial Term means the minimum Commitment Term defined on the Order Form.

29.9. Extended Term means the period described in clause 23.2.

29.10. Order Form means the form that is signed for the Products and Services purchased by the Customer.

29.11. Personal Data means any personal data comprised in the Customer Data.

29.12. Price the costs payable to Agility Communications, as described in the Order Form.

29.13. Products means the items which the Customer agrees to buy from TMR Agility Communications Limited as detailed in the Contract, including any Additional Products.

29.14. Scope of Work is the outline of work detailed on the Order Form that is to be carried out referred to in the Contract setting out details of any Additional Products & Services to be supplied by TMR Agility Communications Limited to the Customer.

29.15. Services means the services which the Customer agrees to buy from TMR Agility Communications Limited as detailed in the Contract, including any Additional Services.

29.16. Background

29.17. TMR Agility Communications Limited has agreed to provide and the Customer has agreed to take and pay for the Products and Services subject to the Conditions.

29.18. Conditions Applicable.

29.19. The Conditions shall apply to all contracts for the supply of Products and Services by TMR Agility Communications Limited to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any Order Form, confirmation of order or similar document.

29.20. If there is any inconsistency between any of the provisions of the Scope of Work and those of the contract above and / or the Conditions, the provisions in the Scope of Work shall prevail in relation to the Scope of Work in question.

29.21. All orders for Products and/or Services shall be deemed to be an offer by the Customer to purchase Products and/or Services pursuant to the Conditions.

29.22. Any advice or recommendation given other than by the Consultant to the Customer or its employees or agents as to the storage, application or use of the Products and/or Services is followed or acted upon entirely at the Customer's own risk.

29.23. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by TMR Agility Communications Limited shall be subject to correction without any liability on the part of TMR Agility Communications Limited.

29.24. Subject as expressly provided in the Conditions all conditions, warranties, guarantees or other terms whether implied or expressed by Statute, Common Law, Trade Custom or otherwise, are hereby expressly excluded to the fullest extent permitted by law.

29.25. The expression "TMR Agility Communications Limited" shall include any associated companies of the TMR Agility Communications Limited.

29.26. The expression "the Customer" shall include any associated companies of the Customer.

29.27. The headings to clauses herein are inserted for convenience of reference only and shall not in any manner affect the construction meaning or effect of anything herein contained or governs the rights and liabilities of the parties hereto.

29.28. Order & Specifications

29.29. The Customer shall be responsible to TMR Agility Communications Limited for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving TMR Agility Communications Limited any necessary information relating to the Products and/or Services within a sufficient time to enable TMR Agility Communications Limited to perform the Contract in accordance with its terms.

29.30. If the Products and/or Services are provided by TMR Agility Communications Limited in accordance with a specification submitted by the Customer, the Customer shall indemnify TMR Agility Communications Limited against all loss, damages, costs and expenses awarded against or incurred by TMR Agility Communications Limited in connection with or paid or agreed to be paid by TMR Agility Communications Limited in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from TMR Agility Communications Limited‘s use of the Customer's specification.

29.31. TMR Agility Communications Limited reserves the right to make any changes in the specification of the Products and/or Services which are required to conform with any applicable statutory or requirements or, where the Products and/or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

29.32. If the order is cancelled by the Customer, the Customer shall indemnify TMR Agility Communications Limited in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by TMR Agility Communications Limited as a result of cancellation.

29.33. Service Provision

29.34. TMR Agility Communications Limited shall provide the Products and Services on the Order Form to the Customer until expiry or termination of the Contract and will do so with all reasonable care and skill and substantially in accordance with the Contract.

29.35. In the event that TMR Agility Communications Limited does not conform with Clause 5.1 above, it will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

29.36. Provided that it has no adverse effect on TMR Agility Communications Limited‘s obligations under the Contract, TMR Agility Communications Limited reserves the right to:

29.36.1. modify its’ system, network, system configurations or routing configuration; or

29.36.2. modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network.

29.37. The Services shall not include any maintenance or support of hardware or software which is necessitated as a result of the following:

29.37.1. software which has been unlawfully obtained or is unregistered with TMR Agility Communications Limited;

29.37.2. improper operation of the supported hardware or software by the Customer, its’ employees or agents;

29.37.3. the operation by the Customer of third party software not supplied by TMR Agility Communications Limited under the Contract;

29.37.4. the operation by the Customer of a release or version of the supported software which is not current or is outside of the manufacturers recommended support timescales;

29.37.5. interference with or alteration of the Services by the Customer or third parties not authorised or directed by TMR Agility Communications Limited;
29.37.6. the Customer's failure to operate the supported software and / or hardware in accordance with recommended operating procedures;

29.37.7. the Customer's use of the Services, Products, hardware or software for a purpose for which they were not designed;

29.37.8. the failure of the hardware on which the supported software has been operated;

29.37.9. the failure or fluctuation of electric, power, air conditioning, humidity control or other environmental conditions;

29.37.10. any fault in any attachments or associated equipment;

29.37.11. any attempt by any person other than TMR Agility Communications Limited's employees or agents to adjust, repair or maintain the hardware or software other than under TMR Agility Communications Limited's explicit instruction;

29.37.12. any head crash or failure of fixed or removable storage media;

29.37.13. recovery, re-configuration or reconstruction of any data relating to software lost, damaged or destroyed as a result of any unauthorised access or misuse of the hardware or software.

29.38. Where any of the events in Clause 5.4 occur, where requested by the Customer, TMR Agility Communications Limited shall use its reasonable endeavours to resolve the issue in consideration for which it shall be entitled to make an agreed charge to the Customer.

29.39. Use of the Products / Services

29.40. The Customer shall not store, distribute or transmit any material through the Products and/or Services that:

29.40.1. is unlawful, harmful, threatening, defamatory, obscene, harassing or racially ethnically offensive;

29.40.2. facilitates illegal activity;

29.40.3. depicts sexually explicit images; and / or

29.40.4. promotes unlawful violence, discrimination, based on race, gender, age, disability, sexual orientation, religion, belief, gender reassignment, or any other illegal activities.

29.41. The Customer shall remain responsible for the use of the Products and/or Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

29.42. The Customer shall not provide the Products or Services to third parties.

29.43. Pricing & Payment

29.44. The Customer shall pay to TMR Agility Communications Limited the Price, fees, costs and charges set out in the Order Form for the duration of the Initial Term and any Extended Term, subject to the clauses set out below.

29.45. TMR Agility Communications Limited reserves the right to increase the Price on an annual basis with effect from the beginning of each Extended Term in line with the percentage increase in the official UK Retail Price Index in the preceding 12- month period.

29.46. TMR Agility Communications Limited also reserves the right to pass on to the Customer, upon TMR Agility Communications Limited giving to the Customer 30 days' written notice, any increase in the price of supply of a product or service by a third party to TMR Agility Communications Limited which TMR Agility Communications Limited supplies to the Customer under the Contract.

29.47. The price of any Product or Services not stated in the Contract shall be TMR Agility Communications Limited's quoted price, which shall remain valid for 30 days from the date stated on the quotation.

29.48. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of TMR Agility Communications Limited's invoice. The Price is exclusive of any charges that may be applied by third party companies.

29.49. The Customer must pay all Price and VAT due to Agility Communications within 14 days after the date of the invoice by Direct Debit. If Customer fails to complete the direct debit form, a monthly surcharge of £5 (plus VAT) will be added to the charges to cover Agility Communications's increased administrative costs. 29.50. Where Products are supplied by TMR Agility Communications Limited to the Customer, the Customer may be requested to pay a deposit of 50% on placement of the order and the balance by Direct Debit 14 days after the invoice date, as notified by TMR Agility Communications Limited.

29.51. The Customer must notify TMR Agility Communications Limited of any error or discrepancy in any invoice(s) as soon as reasonably practicable or in any event within 10 days of receipt of the invoice(s).

29.52. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% per annum above the applicable Bank of England base rate.

29.53. charge the Customer Agility Communications's reasonable collection costs, including £85 plus VAT for administrative costs.

29.54. Non-payment of any invoice(s) in accordance with the Conditions shall permit TMR Agility Communications Limited to

29.54.1. cease performance of the Contract without liability whatsoever and howsoever caused to the Customer and / or

29.54.2. terminate the Contract with immediate effect. TMR Agility Communications Limited shall be entitled to recover from the Customer any and all commissions, legal fees, costs, disbursements, VAT, and all sums that TMR Agility Communications Limited is required to pay in order to take any action to collect any monies owing to it by the Customer.

29.55. TMR Agility Communications Limited reserves the right to amend the Price, and any other prices quoted, after acceptance of the Customer's order in respect of the following contingencies

29.55.1. alteration of design at the Customer's request

29.55.2. suspension of work on Customer's instructions or failure to give instructions, or where uncertainties or ambiguities exist in the instructions provided by the Customer

29.55.3. increased cost of labour and materials

29.55.4. cost of storage after the expiration of 45 days from the date when the Customer was notified that the Products are ready for despatch, and / or

29.55.5. any loss or damage suffered after the Products have been delivered to the Customer.

29.56. The Price does not include the provision of additional or replacement hardware or software required by the Customer to be provided by TMR Agility Communications Limited either as a result of breakdown or any upgrade or replacement requirement. TMR Agility Communications Limited shall however be entitled to provide a related quotation for such items to the Customer as and when necessary.

29.57. Delivery & Service Commencement

29.58. Delivery and or Commencement of the Products and/or Services shall be made to an address stipulated by the Customer on the Delivery Date. The Customer shall make all arrangements necessary to take delivery of the Products and/or Services whenever they are tendered for delivery.

29.59. While every effort is made to effect delivery at any prescribed time TMR Agility Communications Limited cannot accept liability for any loss or expense arising from delay in delivery for whatever reason.

29.60. Risk of damage to or loss of the Products shall pass to the Customer at the time of delivery or if the Customer wrongfully fails to take delivery of the Products at the time the TMR Agility Communications Limited tendered the Products for delivery notwithstanding property in the Products may have remained with TMR Agility Communications Limited pursuant to the Conditions.

29.61. Intellectual Property Rights

29.62. Unless agreed in writing between TMR Agility Communications Limited and the Customer, all copyright and other intellectual property rights in work, documents, software, data, papers, or other material produced by TMR Agility Communications Limited for the Customer belong to TMR Agility Communications Limited subject only to the right of the Customer to use the same pursuant to the Contract.

29.63. All copyright and other intellectual property rights relating strictly to the Customer’s business shall at all times be retained by the Customer.

29.64. Property

29.65. Notwithstanding delivery and the passing of risk in the Products, or any other provision of the Conditions, the property in the Products shall not pass to the Customer until TMR Agility Communications Limited has received in cash or cleared funds payment in full.

29.66. Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products in a fiduciary capacity and as bailee for TMR Agility Communications Limited and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as TMR Agility Communications Limited's property, but, subject to the below, the Customer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to TMR Agility Communications Limited for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

29.67. Any products which are loaned to the Customer by TMR Agility Communications Limited shall remain the property of TMR Agility Communications Limited and shall be returned upon termination of the Contract. TMR Agility Communications Limited reserves the right to charge the Customer for the cost of repair and / or replacement where any such Products are damaged, lost or unreturned.

29.68. Data

29.69. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

29.70. The parties acknowledge that:

> 29.70.1. if the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation);
>
> 29.70.2. the Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and TMR Agility Communications Limited's other obligations under the Contract.

29.71. Without prejudice to the generality of Clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to TMR Agility Communications Limited for the duration and purposes of the Contract so that TMR Agility Communications Limited may lawfully use, process and transfer the Personal Data in accordance with the Contract on the Customer's behalf.

29.72. Without prejudice to the generality of Clause 11.1, TMR Agility Communications Limited shall, in relation to any Personal Data processed in connection with the performance by TMR Agility Communications Limited of its obligations under the Contract:

29.72.1. process that Personal Data only on the written instructions of the Customer unless TMR Agility Communications Limited is required by the laws of any member of the European Union or by the laws of the European Union applicable to TMR Agility Communications Limited to process Personal Data (Applicable Laws). Where TMR Agility Communications Limited is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, TMR Agility Communications Limited shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit TMR Agility Communications Limited from so notifying the Customer;

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

29.72.3. not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled: • the Customer or TMR Agility Communications Limited has provided appropriate safeguards in relation to the transfer; • the data

subject has enforceable rights and effective legal remedies; • TMR Agility Communications Limited complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and • TMR Agility Communications Limited complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of Personal Data;

29.72.4. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; 29.72.5. notify the Customer without undue delay on becoming aware of a Personal Data breach;

29.72.6. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by
Applicable Law to store the Personal Data; and

29.72.7. maintain complete and accurate records and information to demonstrate its compliance with this clause.

29.73. The Customer does not consent to TMR Agility Communications Limited appointing any third party processor of Personal Data under the Contract.

29.74. The Supplier shall follow its archiving and security procedures for Customer Data.

29.75. TMR Agility Communications Limited shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. TMR Agility Communications Limited shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by TMR Agility Communications Limited to perform services related to the Customer Data and the Contract). This Clause is without prejudice to the generality of Clause 11.1.

29.76. Confidentiality

29.77. All facts relating to the business, products and services including oral information, written information recorded in any other media which is disclosed by TMR Agility Communications Limited and the Customer to each other shall be treated as confidential in perpetuity even where the Contract is terminated for whatever reason, save where the same

29.77.1. is or becomes public knowledge other than by breach of this clause

29.77.2. is in the possession of the receiving party without restriction before the date of receipt from the disclosing party, and / or

29.77.3. is obtained from a third party who is lawfully authorised to disclose the same.

29.78. A party may only disclose the information disclosed by the other party set out in Clause 12.1 to the extent that it is required to be disclosed by law, by any governmental or other regulatory authority or by court or other authority of competent jurisdiction.
29.79. Supervision by the Customer

29.80. The Customer undertakes to provide all necessary and sufficient supervision and verification of the Services as provided by the TMR Agility Communications Limited and/or Consultant in accordance with the advice and recommendations given by the TMR Agility Communications Limited and/or the Consultant.

29.81. Warranties and Force Majeure

29.82. The parties warrant that they shall comply with any applicable laws in performing their obligations under the Contract.

29.83. The parties warrant that they own or have valid licences, consents, permissions and rights to use and where necessary to licence to each other any materials, rights or things reasonably necessary for the fulfilment of their obligations under the Contract and that they shall not infringe the rights of any third party.

29.84. Neither party shall be liable to the other party or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the obligations under the Contract, if the delay or failure was due to any cause beyond the reasonable control of the other party, without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond reasonable control but not as a conclusive list:

29.84.1. act of God, explosion, flood, tempest, fire or accident;

29.84.2. war or threat of war, sabotage, insurrection, riot, civil disturbance or requisition;

29.84.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.

29.84.4. import or export regulations or embargoes;

29.84.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of TMR Agility Communications Limited or of a third party);

29.84.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

29.84.7. power failure or breakdown in machinery.

29.85. Any products, including the Products, supplied and installed by TMR Agility Communications Limited may be covered by a manufacturer's warranty. In that circumstance, TMR Agility Communications Limited will liaise with the manufacturer on behalf of the Customer to effect the supply of a replacement for any part that fails during the warranty period. If the manufacturer's warranty does not provide for on-site repair or replacement, the Customer agrees to reimburse TMR Agility Communications Limited at the standard rate (or any other rate agreed in writing in advance) for any engineer's time spent removing the faulty part and installing the replacement.

29.86. Limitation of Liability

29.87. This sets out the entire financial liability of TMR Agility Communications Limited (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

29.87.1. any breach of the Agreement;

29.87.2. any use made by the Customer of the Services; and

29.87.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

29.88. Except as expressly provided in the Agreement:

29.88.1. the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Agility

Communications shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Agility Communications by the Customer in connection with the Services, or any actions taken by Agility Communications at the Customer's direction; and

29.88.2. all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Agreement.

29.89. Nothing in the Agreement excludes or limits the liability of Agility Communications for:

29.89.1. death or personal injury caused by Agility Communications's negligence;

29.89.2. fraud or fraudulent misrepresentation; or

29.89.3. any other liability which cannot lawfully be excluded or limited; or

29.89.4. in the case of the Customer, the Customer’s obligation to pay the Fees.

29.90. Agility Communications excludes liability under this Agreement , whether in contract, tort or otherwise, for any and all losses incurred by the Customer arising out of in connection with:

29.90.1. the acts, omissions or defaults of Microsoft under the Microsoft Customer Agreement, or such other third party supplier directly contracted with the Customer;

29.90.2. modifications, maintenance or enhancements made by the Customer which would otherwise be performed by Agility Communications under the Managed Services;

29.90.3. Customer’s use of Third Party Software not approved or supplied by Agility Communications;

29.90.4. failures in connectivity or transmission by a third party internet service provider; or

29.90.5. Customer’s failure to comply with the Operating Requirements.

29.91. Subject to 15.3 and 15.4:

29.91.1. Agility Communications shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation

(whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and

29.91.2. Agility Communications's total aggregate liability in contract, tort (including negligence or breach
of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.

29.92. Consultants

29.93. Consultants provided by tmr Agility Communications Limited are and remain to be employees, agents or servants of Agility Communications Limited and nothing in the Contract shall give rise to a claim by the Customer or the presumption that the Consultant is an employee, agent or servant of the Customer.

29.94. Non-Solicitation 29.95. The parties shall not for a period of 12 months from the expiry of the Contract, howsoever occurred, endeavour to entice away from the other party or offer to employ any person who is employed by the other party at any time during the course of the Contract.

29.96. Insolvency

29.97. Should the Customer default, suspend or threaten to suspend payments of its debts, be unable or deemed unable to pay its debts as they fall due, become bankrupt, go into liquidation or become subject to a receivership or make a voluntary arrangement with its creditors or become the subject of an administration order; or if the Customer ceases or threatens to cease carrying on business or if TMR Agility Communications Limited reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly, TMR Agility Communications Limited may, at its option, cancel any undelivered portion of the Contract but shall be entitled to claim for any loss or damage sustained in consequence of noncompletion of the Contract.

29.98. Mitigation

29.99. Each party has a duty to mitigate any losses that are or may be suffered by it as a result of a breach of any of the Conditions by the other party.

29.100. Severance

29.101. If any provision or part-provision of the Conditions 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 Conditions.

29.102. If any provision or part-provision of the Conditions 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.

29.103. Entire Agreement

29.104. Each party acknowledges that the Conditions contain the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it. Nothing in this clause shall limit or exclude any liability for fraud.

29.105. Miscellaneous

29.106. No one other than a party to the Contract, their successors and assignees shall have any right to enforce any of its terms.

29.107. Any notice required or permitted to be given by either party to the other party under the Conditions shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service providing proof of postage addressed to that other party at
its registered office or principal place of business or such other address as may at the relevant time have
been notified pursuant to this provision to the party giving the notice. For the purposes of this Clause, “writing” shall not include e-mail.

29.108. The Contract and any dispute 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 and each party agrees to submit to the non-exclusive jurisdiction of the English Courts.

29.109. Term and Termination

29.110. The Contract shall run for the Initial Term stated in the Order Form subject to the below.

29.111. Upon expiry of the Initial Term, the Contract shall automatically renew for a further period email to the Initial Term, thereafter known as the Extended Term unless and until terminated in accordance with the below.

29.112. A party may cancel the Contract by providing to the other party 90 days' prior written notice to expire at the end of the Initial or Extended Term or, if expired or there are less than 90 days remaining before the expiry of the Term, the end of the Renewal Term. If there are less than 90 days remaining before the end of the current Initial or Extended Term, the notice shall expire at the end of the next Extended Term.

29.113. In the event that notice is provided in accordance with the above, the Customer shall be required to make payment to TMR Agility Communications Limited for all monies due or becoming due up to and including the date of termination.

29.114. In the event that notice is not provided in accordance with the above, the Customer shall be required to make payment to TMR Agility Communications Limited for:

> 29.114.1. where there are 90 days or more of the Term remaining, all monies due or becoming due up to the end of the Term;
>
> 29.114.2. where there are less than 90 days of the Term remaining, or where the Term has expired, all monies due or becoming due up to the end of the Extended Term;
>
> 29.114.3. where there are less than 90 days of the current Extended Term remaining, all monies due or becoming due up to the end of the next Extended Term.

29.115. Either party may terminate the Contract at any time by providing written notice to the other party where:

29.115.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

29.115.2. the other party commits a series of breaches of the Contract, which are individually not material but which occur sufficiently often to have, in aggregate, the effect of being a material breach.

29.116. Termination of the Contract shall not prejudice or affect any right of action or remedy of either party which may have accrued up to the date of termination.

29.117. On termination of the Contract:

29.117.1. TMR Agility Communications Limited and the Customer shall each promptly return to the other any materials or equipment belonging to the other which was delivered under or in connection with the Contract;

29.117.2. the Customer shall pay all monies due under the Contract to TMR Agility Communications Limited up to and including the date set out above in Clause 23.5 by Direct Debit no later than 14 days before such date;

29.117.3. any hosting services provided by TMR Agility Communications Limited to or for the Customer will be transferred to the Customer or the Customer's nominated provider, in consideration for which TMR Agility Communications Limited shall be entitled to charge to the Customer a reasonable fee, such fee to be agreed and paid no later than 14 days before the date set
out above in Clause 23.5.

29.117.4. in the event that the Contract is terminated by the Customer and any sums due from the Customer pursuant to Clauses

29.117.5. and / or 23.8.3 above remain unpaid 21 days before the expiry of the Initial Term or the Extended Term as applicable, the notice of termination shall be deemed to be void and the Contract will continue in accordance with Clause 23.2 above.

29.118. Waiver

29.119. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law, including the continued provision of Products and Services by TMR Agility Communications Limited, the Consultant, or the TMR Agility Communications Limited's agents or servants, shall constitute a waiver of that right or remedy or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict further exercise of that or any other right or remedy.

29.120. Service

29.121. Hosted services, including those forming part of the Services, are paid for monthly in advance at the agreed date. Where payment for services falls 30 days or more past the due date of any invoice, the continuation of those services is solely at the discretion of TMR Agility Communications Limited. In those circumstances, TMR Agility Communications Limited reserves the right to suspend services until outstanding payments are paid in full.

29.122. Site and Remote Access

29.123. The Customer agrees to make provision for access to its offices both during and outside of normal business hours, the latter being a possible requirement when disruptive work is to be carried out, as and when necessary to enable TMR Agility Communications Limited to provide the Products and Services.

29.124. The Customer agrees to the setup of a remote support solution to allow systems to be accessed and controlled remotely by TMR Agility Communications Limited as and when required.

29.125. Assignment

29.126. The Customer shall not, without the prior written consent of TMR Agility Communications Limited, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. 29.127. TMR Agility Communications Limited may assign, transfer, sub-contract or deal with any of its rights hereunder to an Affiliate or other person by providing at least one (1) month's prior written notice to the Customer.

29.128. Signature

29.129. By signing the Order Form the Customer hereby confirm my agreement to the Conditions set out in the document. Registered Office - TMR Agility Communications Ltd, 2nd Floor, C/O Bevan Kidwell LLP, 113–117 Farringdon Road, London, England, EC1R 3BX Registration No. 6838593 VAT No. GB221442453 Contact us - Tel: 0330 094 9030 Web: www.agilitycomms.co.uk Email: sales@agilitycomms.co.uk

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9.3 Effect of Termination or Expiration:

You may terminate services with 90 calendar days' written notice after the Minimum Service Period.If you terminate **within the Minimum Service Period.** If the agreement is terminated by either party or expires, the following will terms apply:

-

  You must pay all charges due for the remainder of the Minimum Service Period.
- A **£250 per license administration fee** applies (replacing the old "per line" clause).
- Fees are calculated as either:
  - The remaining months' license charges, OR
  - £250 per license (whichever is higher)

If, after termination, you require any licenses, accounts, end points or user environments to be **deprovisioned**, an administration charge of **£145 per license** will apply.