



## GENERAL TERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of condition 30 (*Limitation of Liability*).

### 1. Introduction

- 1.1 These general terms and conditions ("**General Terms**") detail the general terms and conditions applicable to all Equipment and/or Services supplied by Jelly Communications Limited ("**Jelly**") to you ("**Customer**") from time to time, in addition to such Supplementary Terms (if any) as confirmed in the Order Form describing the responsibilities and obligations of the parties in relation to the Equipment and/or the Services being provided ("**Supplementary Terms**"). The General Terms and the Supplementary Terms shall together be referred to as the "**Terms**".
- 1.2 The General Terms which are specific to Equipment are contained in condition 18 (*Sale of Equipment*) to condition 23 (*Remedies*) (inclusive) and those which are specific to Services are contained in condition 24 (*Supply of Services*) to condition 27 (*Change of Services*) (inclusive).
- 1.3 In some areas different rights will apply to the Customer depending on whether they are a business or a consumer. The Customer is a consumer if they are an individual and are buying the Equipment and/or Services from Jelly wholly or mainly for personal use (not for use in connection with the Customer's trade, business, craft or profession).
- 1.4 If the Customer is a business, the Terms constitute the entire Contract between Jelly and the Customer in relation to the purchase of the Equipment and/or the Services. By entering into the Contract, the Customer (who is a business) acknowledges that they have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Jelly which is not set out in the Contract and the Customer shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

### 2. Interpretation

The definitions and rules of interpretation in the Order Form and the Terms apply in all documents giving effect to the Contract.

#### 2.1 Definitions:

**Assessment:** means any assessment or other investigations carried out by or on behalf of Jelly that Jelly in its absolute discretion deems necessary prior to the installation of the Equipment and/or the provision of the Services.

**Cashback:** such sum of funding provided by Jelly to the Customer as referred to in condition 7.1 of the Supplementary Terms.

**Charges:** such charges payable by the Customer for the Equipment and/or the Services, as the case may be, as detailed in the Order Form for the Initial Term and thereafter Jelly's Standard Charges or as amended by

the parties in writing from time to time. All Charges are subject to an annual increase in line with the Retail Price Index.

**Confidential Information:** any information which has been designated as confidential by either party in writing that ought to be considered as confidential including information which relates to the business, affairs, properties, assets, trading practices, Equipment, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party.

**Contract:** the Contract between Jelly and the Customer for the supply of the Equipment and/or the Services in accordance with the Terms, comprising the Order Form, the Supplementary Terms and the General Terms.

**Contract Date:** the date defined as such in the Order Form being the date on which both parties have signed the Order Form.

**Customer:** the person, firm or company who purchases the Equipment and/or the Services from Jelly identified in the Order Form.

**Customer Data:** any data:

- (a) held by the Customer which is supplied or transferred to or disclosed by or on behalf of the Customer to Jelly, or which is held by the Customer and is accessible by Jelly pursuant to the Contract, or that Jelly may obtain from another source; and
- (b) the data inputted into any documentation supplied by the Customer to Jelly.

This may include the Customer's name, address, date of birth, gender, telephone number, email address, bank and credit/debit card information, occupation and employment data, lifestyle information and details of how the Customer uses Jelly's products and services, together with information about the way the Customer pays and manages their account.

**Data Protection Legislation:** (i) unless and until it 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 thereto or the Data Protection Act 1998.

**Equipment:** the equipment, if any, to be purchased by the Customer from Jelly under the Contract as detailed in the Order Form.

**Extended Term:** has the meaning given in condition 5 (*Term*).

**General Terms:** means these general terms and conditions which apply to the provision of the Equipment and/or the Services under the Contract as amended from time to time with the most recent version being available here <LINK>.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Jelly:** means Jelly Communications Limited, a company incorporated in England and Wales with company number 05425907 whose registered office is at 44 Barwell Business Park, Leatherhead Road, Chessington, Surrey KT9 2NY.

**Kit Fund:** such sum of funding provided by Jelly to the Customer as referred to in condition 6.1 of the Supplementary Terms.

**Order Form:** means the Customer's order for the Equipment and/or the Services as set out in the Order Form (in the Jelly's prescribed form).

**Privacy Policy:** means Jelly's privacy policy as amended from time to time in the form available here <LINK>.

**Services:** the services, if any, to be provided to the Customer under the Contract as detailed in the Order Form.

**Service Specific Information Form:** means Jelly's prescribed form titled as such used by the Customer to detail relevant specifics relating to the Services as referred to in condition 4.6.

**Standard Charges:** set out in Schedule 1 and updated from time to time with the most recent version being available here <LINK>.

**Supplementary Terms:** means the supplementary terms and conditions specific to the Equipment and/or the Services to be supplied under the Contract which apply in addition to the General Terms, as amended from time to time. A copy of such Supplementary Terms at the Contract Date are contained in Schedule 2, with the most recent version being available here <LINK>.

**Telephone Kit:** the telephone kit provided by Jelly to the Customer at the Contract Date and identified by Jelly in the Order Form as being free of charge subject to condition 20.3 being satisfied.

**Trial Period:** means a limited period of time of no more than three months during which the Customer is provided with the Services to ascertain whether or not those Services meet the Customer's expectations.

**User:** means the Customer's employees, directors, agents, sub-contractors, clients, customers or any other person who is authorised by the Customer to use or access the Equipment and/or the Services.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 2.2 Condition and Schedule headings shall not affect the interpretation of the Terms.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 A reference to **writing** or **written** includes email.
- 2.9 References to conditions and Schedules are to the conditions and Schedules of the Terms.

- 2.10 If there is a conflict between these General Terms and the Supplementary Terms, the following order of priority shall apply and the document higher in the order of priority shall prevail in respect of such conflict:
- (a) Order Form;
  - (b) Supplementary Terms;
  - (c) General Terms.

### **3. Appointment**

The Customer hereby appoints Jelly to provide to the Customer the Equipment and/or the Services identified in the Contract.

### **4. Basis of Contract**

- 4.1 The Order Form constitutes an offer by the Customer to purchase the Equipment and/or the Services in accordance with the Terms. For the avoidance of doubt, any quotation given by Jelly shall not constitute an offer for the purposes of the Contract.
- 4.2 The Order Form, once signed by the Customer, shall only be deemed to be accepted when Jelly also signs the Order Form or when Jelly provides the Customer with Equipment and/or Services (to include Jelly providing the Customer Kit Funds and Cashback) whichever is the earliest at which point and on which date the Contract shall come into existence ("**Contract Date**").
- 4.3 Any samples, drawings, descriptive matter or advertising issued by Jelly, and any descriptions or illustrations contained in Jelly's catalogues, brochures or websites, are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or the Services described in them and they shall not form part of the Contract or have any contractual force.
- 4.4 For particular Equipment and/or Services, Jelly may publish the description applicable for that Equipment and/or Service on Jelly's website and, in such circumstances, Jelly may incorporate a URL to that description in the relevant Supplementary Terms or Order Form.
- 4.5 The Terms 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 or (to the fullest extent permitted by law) which may be implied or incorporated into the Contract by statute or at common law.
- 4.6 Where applicable (e.g. for fibre optic or ethernet services), Jelly will provide the Customer with a Service Specific Information Form, which the Customer shall fill in and return to Jelly promptly. Jelly (or its suppliers) will then carry out any necessary surveys and Jelly will then inform the Customer of any other extra costs which have been identified at this time which the Customer may be required to pay in advance.
- 4.7 Jelly will not be obliged to supply any Equipment or Services to the Customer until the Customer settles any advance Charges which are due.

### **5. Term**

In relation to the provision of the Services, if any, and subject to the Contract or the Terms providing otherwise, the Contract shall commence on the earliest of the dates to occur between the Contract Date or

the date the Customer starts using the Services or the date the Services become available to the Customer, and shall continue in force for the Initial Term and thereafter the Contract shall be automatically renewed for successive periods of one (1) year (each an “**Extended Term**”) unless either party gives the other party ninety (90) days written notice of termination, with such notice expiring on or after the end of the Initial Term or any Extended Term, as the case may be, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Extended Term (as the case may be).

## **6. Customer’s right of termination**

6.1 The Customer’s rights to terminate the Contract will depend on what has been purchased, whether there is anything wrong with it, how Jelly is performing, when the Customer decides to end the Contract and whether the Customer is a consumer or business Customer:

- (a) If what has been purchased is faulty or misdescribed, the Customer may have a legal right to terminate the Contract (or to get the Equipment repaired or replaced or a Service re-performed or to get a full or partial refund), see clause 9.1 if the Customer is a consumer and clause 22 if the Customer is a business;
- (b) If the Customer wishes to terminate the contract because of Jelly’s actions, see clause 6.2; and
- (c) If the Customer is a consumer who has simply changed their mind, see clause 6.3. The Customer may be able to get a refund if they are within the cooling-off period, but this may be subject to deductions and the Customer will have to pay the costs of return of any Equipment.

6.2 If the Customer wishes to terminate the Contract for a reason set out at (a) to (d) below, the Contract will terminate immediately and Jelly will refund the Customer in full for any products which have not been provided. The reasons are:

- (a) Jelly have committed a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within twenty (20) days after receipt of notice in writing to do so;
- (b) Jelly have advised of a forthcoming change to the product or the Terms which the Customer does not agree to (this does not include any increases to the Charges);
- (c) Jelly have advised of an error in the Charges or description of the product and the Customer does not wish to proceed; and
- (d) there is a risk that supply of the products may be significantly delayed because of events outside Jelly’s control.

6.3 If the Customer is a consumer they may have fourteen (14) days from the Contract Date to terminate the Contract and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.

6.4 The Customer’s (who is a consumer) right under condition 6.3 does not apply in respect of:

- (a) Services, once these have been completed, even if the cancellation period is still running;
- (b) sealed audio or sealed video recordings or sealed computer software or any other sealed Equipment once these products are unsealed after received by the Customer; and
- (c) any products which become mixed inseparably with other items after their delivery.

- (d) [INSERT LIST OF PRODUCTS AVAILABLE TO PURCHASE TO WHICH THE CANCELLATION RIGHTS DO NOT APPLY]

6.5 If the Customer is a consumer, the period to terminate will depend on what has been purchased and how it is delivered.

- (a) Services: The Customer may terminate fourteen (14) days after the Contract Date, provided always that once the Services have been completed, the Customer may not terminate, even if the Initial Term or Extended Term, as the case may be, is still running. If the Contract is terminated during the provision of the Services, the Customer must pay Jelly for the Services provided up until termination.

- (b) Equipment: The Customer may terminate fourteen (14) days after delivery of the Equipment.

6.6 Where a Trial Period for Services has been agreed, the Customer may terminate the Contract without penalty at the end of the Trial Period if the Services did not meet the Customer's expectations during that period.

## **7. Jelly's right of termination**

7.1 Jelly may terminate the Contract immediately at any time in writing if:

- (a) the Customer has committed a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within twenty (20) days after receipt of notice in writing to do so.
- (b) the Customer does not make any payment to Jelly when it is due and the Customer continues to not make payment within twenty (20) days of Jelly reminding the Customer that payment is due;
- (c) any Assessment is not, in Jelly's absolute discretion, satisfactorily completed;
- (d) any licence, permission or other approval the Customer or Jelly require from time to time to receive or provide the Services expires, is revoked or otherwise ceases to be valid and is not immediately replaced by a further licence, permission or approval conferring on the Customer or Jelly the appropriate rights;
- (e) any contract between Jelly and a third party supplier is terminated where such termination affects the provision of the Services;
- (f) the Customer does not, within a reasonable time of Jelly asking for it, provide Jelly with information that is necessary for Jelly to provide the products;
- (g) the Customer does not, within a reasonable time, allow Jelly to deliver the products to the Customer or collect them from Jelly;
- (h) the Customer does not, within a reasonable time, allow Jelly access to the Customer's premises to supply the Services;
- (i) the Customer (being a company) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (j) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;  
or
- (k) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

7.2 Without affecting any other right or remedy available to it, Jelly may suspend all further deliveries of Equipment or the supply of Services under the Contract or any other contract between the Customer and Jelly if the Customer fails to pay any amount due under the Contract on the due date for payment, or the Customer becomes subject to any of the events listed in condition 7.1(a) to condition 7.1(k) (inclusive), or Jelly reasonably believes that the Customer is about to become subject to any of them.

## **8. Consequences of termination of the Contract**

8.1 On termination of the Contract:

- (a) all licences granted under the Contract shall immediately terminate and the Customer shall (at its sole cost) return (or at Jelly's option, destroy) all media on which any software used under licence is held;
- (b) subject to condition 8.2, the Customer shall immediately pay to Jelly all of Jelly's outstanding unpaid invoices and interest and, in respect of Equipment and Services supplied but for which no invoice has been submitted (this shall include any relevant proportion of Cashback or Kit Fund to be refunded back to Jelly in accordance with condition 8.2), Jelly shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (c) the Customer shall return all of Jelly's Equipment and materials which have not been fully paid for. If the Customer fails to do so, then Jelly 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, and Jelly shall be entitled to continue to charge the Customer and the Customer shall pay such Charges together with any additional costs and expenses caused to Jelly by such delay.

8.2 On termination of the Contract by reason of the Customer's default, the Customer shall be liable to pay Jelly all Charges that would otherwise have been payable by the Customer during the Initial Term and this shall include Jelly's right to charge the Customer for a relevant proportion of any Kit Fund or Cashback provided in advance. Subject to the Contract providing otherwise, Jelly shall not be obliged to refund any Charges paid in advance.

8.3 Jelly will pay the costs of return of Equipment:

- (a) if the Equipment is faulty or misdescribed; or
- (b) if the Customer is terminating the Contract due to Jelly having advised of an upcoming change to the Equipment or the Terms, an error in pricing or description, or because the Customer has a legal right to terminate as a result of Jelly's actions.

In all other circumstances (including where the Customer is a consumer exercising their right to change their mind) the Customer must pay the costs of return.

8.4 If the Customer is a consumer and terminates the Contract without cause, or terminates the Contract prior to expiry of the Initial Term or the Extended Term (as the case may be), the following deductions may be made by Jelly from any refund due:

- (a) Equipment: A deduction to reflect any reduction in the value of the Equipment if caused by the Customer's handling of the Equipment in a way which would not be permitted a shop. If Jelly refunds the Charge paid before they are able to inspect the Equipment and later discover the Customer has handled them in an unacceptable way, the Customer must pay us an appropriate amount.
- (b) Services: A deduction corresponding with the amount for the supply of the Services for the period for which it was supplied, ending with the date of termination. The deduction will be in proportion to what has been supplied, in comparison with the full coverage of the Contract.

8.5 If the Customer is a business and cancels or without cause, terminates the Contract prior to expiry of the Initial Term or the Extended Term (as the case may be), no refunds of any Charges paid in advance shall be made by Jelly. Furthermore, Jelly shall invoice the Customer and the Customer shall pay to Jelly:

- (a) any Charges due but unpaid at such date of cancellation or termination; and
- (b) Jelly's reasonable costs incurred in the removal and storage of the Equipment; and
- (c) an amount equal to any additional charges (such as line rental) payable for the Initial Term or the Extended Term (as the case may be) less the amount of such additional charges already paid by the Customer; and
- (d) any other cancellation or termination charges referred to in the Order Form or as otherwise agreed by the parties in writing.

8.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

8.7 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 9. Consumer Customer: defective products

9.1 If the Customer is a consumer Jelly is under a legal duty to supply products that are in conformity with the Contract. The box below provides a summary of the Customer's key legal rights and nothing in these terms will affect those legal rights.

### Summary of key legal rights

These key legal rights are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.



If the product is **Equipment**, the Consumer Rights Act 2015 states that the Equipment must be as described, fit for purpose and of satisfactory quality. During the expected lifespan of the Equipment the Customer's legal rights entitle them to the following:

- a) Up to thirty (30) days: if the Equipment is faulty = immediate refund.
- b) Up to six (6) months: if the Equipment cannot be repaired or replaced = full refund in most cases.
- c) Up to six (6) years: if the Equipment does not last a reasonable length of time = potential partial refund.

See also the cooling-off period under condition 6.3.

If the product is **Services**, the Consumer Rights Act 2015 states that:

- a) Services can be repeated or fixed if not carried out with reasonable care and skill in the first instance, or a partial refund if it cannot be fixed.
- b) If a price for the Services is not agreed beforehand, the price must be reasonable.
- c) If a timeframe for delivery of the Services has not been agreed beforehand, they must be carried out within a reasonable time.

See also clause 6.2.

9.2 If the Customer, who is a consumer, rejects the products, they must either return the rejected products in person to where they were originally purchased from, post them back to Jelly or (if they are not suitable for posting) allow Jelly to collect them from the Customer. Jelly will pay the costs of postage or collection. Please call customer services on 0208 634 5060 or email us at [customer.services@jellycoms.co.uk](mailto:customer.services@jellycoms.co.uk) for a return label or to arrange collection.

## 10. **Business Customer: defective products**

If the Customer is a business, the rights applicable are detailed in condition 22 (*Equipment warranties*).

## 11. **Charges and payment for Equipment and Services**

### **Equipment**

11.1 The Charge for Equipment:

- (a) shall be the Charge set out in the Order Form or, if no Charge is quoted, the price set out in Jelly's published price list as at the Contract Date;
- (b) shall not include the cost of fitting the Equipment unless Jelly provides a written statement to this effect; and
- (c) shall be exclusive of delivery, packaging, shipping, carriage, insurance, VAT and other charges and duties which shall be invoiced to the Customer.

11.2 Subject to any special terms agreed in writing between the Customer and Jelly, Jelly shall be entitled to invoice the Customer and the Customer shall pay for the Charges in relation to the Equipment either upon collection or prior to despatch or delivery.

## **Services**

- 11.3 Condition 11.4 shall apply if the Services are to be provided on a time-and-materials basis. Condition 11.5 and condition 11.6 shall apply if the Services are to be provided for a fixed Charge. The remainder of this condition 11 shall apply in either case.
- 11.4 Where the Services are provided on a time-and-materials basis:
- (a) the Charges payable for the Services shall be calculated in accordance with Jelly's standard daily fee rates as amended from time to time;
  - (b) Jelly's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
  - (c) Jelly shall be entitled to charge at an overtime rate of one hundred and fifty percent (150%) of the normal rate for part days and for time worked by Jelly outside the hours referred to in condition 11.4(b) on a pro-rata basis;
  - (d) Jelly shall invoice the Customer on completion of the Services.
- 11.5 Where the Services are provided for a fixed Charge, the total Charge for the Services shall be the amount set out in the Order Form. The total Charge shall be paid to Jelly on completion of the Services
- 11.6 Any fixed Charge contained in the Order Form may exclude the cost of any materials or services reasonably and properly provided by a third party supplier required by Jelly for the supply of the Services. Such costs will be advised to the Customer in advance of being incurred and shall be invoiced to the Customer by Jelly at cost.

## **Miscellaneous**

- 11.7 Jelly may increase or implement new Charges:
- (a) throughout the Initial Term or the Extended Term, as the case may be, by giving the Customer not less than thirty (30) days' prior written notice before such revised Charge is applied; and
  - (b) on each anniversary of the Contract Date by giving the Customer not less than fourteen (14) days' prior written notice before such revised Charge is applied provided that such increase shall not exceed the greater of:
    - (i) five percent (5%) of the existing Charge; or
    - (ii) the percentage, increase in the retail price index as maintained by the Office of National Statistics (or such index as replaces it) during the period since the last such increase or, if there has been no such increase, since the Contract Date,

Jelly may decrease Charges at any time without notice and the Customer shall have no right to terminate the Contract as a result of such decrease or increase under this clause 11.7.

- 11.8 Jelly reserves the right to charge a deposit to secure amounts payable by the Customer under the Contract. Such deposit may be applied by Jelly against any outstanding Charges due by the Customer under the Contract from time to time. No interest shall be payable on any such deposit.
- 11.9 Jelly reserves the right to invoice the Customer for any administration charges it incurs as a result of the Customer providing a materially incorrect or incomplete Order Form.

- 11.10 The Customer shall pay each invoice submitted by Jelly:
- (a) within thirty (30) days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Jelly, and
- time for payment shall be of the essence of the Contract.
- 11.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by Jelly to the Customer, the Customer shall, on receipt of a valid VAT invoice from Jelly, pay to Jelly such additional amounts in respect of VAT as are chargeable on the supply of the Equipment and/or the Services at the same time as payment is due for the supply of the Equipment and/or the Services.
- 11.12 If the Customer fails to make a payment due to Jelly under the Contract by the due date, then, without limiting Jelly's remedies under condition 7 (*Jelly's right of termination*), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this condition 11.12 will accrue each day at four percent (4%) a year above the base lending rate of HSBC Bank Plc as published from time to time, but at four percent (4%) a year for any period when that base rate is below zero percent (0%).
- 11.13 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12. Maintenance**
- 12.1 Jelly shall provide such preventative and corrective maintenance services as it reasonably considers necessary for the proper functioning of the Service.
- 12.2 If the Customer detects any defect or impairment in the operation or performance of the Services, the Customer must notify Jelly of the nature of such defect or impairment. Jelly will endeavour to respond as promptly as possible after such notification and endeavour to make the necessary corrections as necessary under the Contract.
- 12.3 All Equipment is supported on a return to base warranty for the first twelve (12) months unless otherwise agreed in writing by both parties. All rented Equipment is supported on an advanced parts replacement basis for the duration of the term of the Contract. Jelly reserves the right to use refurbished Equipment for this purpose.
- 12.4 Jelly will be entitled to charge and the Customer will pay a service fee at Jelly's then current charging rates in the event that the need for any maintenance results from any one or more of the following:
- (a) misuse or neglect of or accidental or wilful damage to the Equipment and/or the Services; or
  - (b) accidental or wilful disconnection of the Equipment and/or the Services; or
  - (c) the Customer's failure to comply with any of the provisions of the Contract; or
  - (d) fault in, or other problem associated with, any telecommunications system not run by Jelly or in the Customer's own equipment; or
  - (e) faults of a minor or intermittent nature which do not significantly affect the provision of the Services.

### **13. Suspension and other Jelly powers**

13.1 Jelly may:

- (a) temporarily suspend the Services or any part thereof to vary the technical specification of the Services or for repair, maintenance or improvement or to protect life, limb or property;
- (b) give such instructions to the Customer about the use of the Services it deems reasonably necessary;
- (c) do whatever is required of it to comply with instructions issued by the Government, an emergency service or other competent authority; and
- (d) suspend the Services in any circumstance in which it is entitled to terminate the Contract;

13.2 Except in an emergency when no such notice is required, Jelly shall give the Customer as much notice as reasonably practicable if the Services are to be suspended but the Customer shall have no claim against Jelly for any suspension of the Services pursuant to condition 13.1. Any exercise by Jelly of its right to suspend the Contract shall not exclude Jelly's right subsequently to terminate the Contract.

13.3 If the Services are suspended pursuant to the Customer's default, the Customer must continue to pay Charges during such suspension and shall reimburse Jelly's costs and expenses reasonably incurred by the implementation of such suspension together with all outstanding amounts due under the Contract. Where Jelly agrees (at its discretion) to recommence the Services, the Customer must pay Jelly's reasonable charges in relation to such re-commencement and, at Jelly's discretion, the Customer shall pay a reasonable deposit against future payments.

### **14. Indemnity**

14.1 The Customer shall indemnify Jelly against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Jelly arising out of or in connection with:

- (a) the Customer or any User's breach or negligent performance or non-performance of the Contract;
- (b) the enforcement of the Contract;
- (c) any claim made against Jelly by a third party arising out of or in connection with the provision of the Equipment and/or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the contract by the Customer or any User; or
- (d) any claim made against Jelly by a third party for death, personal injury or damage to property arising out of or in connection with defective Equipment or Services, to the extent that the defect in the Equipment or Services is attributable to the acts or omissions of the Customer or any User.

14.2 This indemnity shall apply whether or not Jelly has been negligent or at fault.

## **15. Trial Periods and Offers**

Jelly may from time to time supply services for Trial Periods and/or promotional offers (“**Offers**”) to some or all of its customers. Such Trial Periods and Offers shall be subject to the Terms and any additional terms and conditions (“**Promotional Terms and Conditions**”) notified by Jelly to its customers. Unless otherwise stated in the Promotional Terms and Conditions, Jelly shall not incur any liability under the Contract in relation to such Trial Periods and Offers. Promotional Terms and Conditions may require a variation to the Contract in which case the Customer shall be deemed to have accepted in writing such variation on acceptance of Trial Period or the Offer. Unless otherwise stated in the Promotional Terms and Conditions, a Trial Period or an Offer may be amended or withdrawn by Jelly (in relation to some or all of its customers) at any time and without notice. For the avoidance of doubt Jelly is not obliged to include the Customer in any Trial Period or Offer it makes to its other customers.

## **16. Intellectual property rights**

- 16.1 Each party or their respective licensors retain ownership of all Intellectual Property Rights that they own before the Contract Date or create independently of their obligations under the Contract.
- 16.2 The Customer shall take all such steps as shall be necessary to protect Jelly, and their licensors’ Intellectual Property Rights and Confidential Information. The Customer shall have appropriate security in place to protect information and communication systems from any threat from whatever source.
- 16.3 Jelly grants to the Customer, or shall procure the direct grant to the Customer of, a non-exclusive, royalty-free, revocable licence during the term of the Contract to use such materials supplied for the purposes of the Services (excluding materials provided by the Customer) for the purpose of receiving and using the Services in its business.
- 16.4 The Customer grants to Jelly a non-exclusive, royalty-free, revocable licence during the term of the Contract to use, copy and process the Customer Data (subject to the Privacy Policy <LINK>) to the extent necessary to supply the Equipment and/or the Services.
- 16.5 If Jelly manufactures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify, and keep indemnified, Jelly against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by Jelly in connection with, or paid or agreed to be paid by Jelly in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from Jelly's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of Jelly.
- 16.6 The Customer shall indemnify on demand, defend and hold harmless Jelly against all claims, actions, proceedings, losses, damages, fines, judgements, demands, fees, costs, expenses and liabilities of any nature suffered or incurred by Jelly arising out of or in connection with any claim or allegation that the use or possession of the Customer Data infringes the Intellectual Property Rights of any third party.
- 16.7 Jelly's Intellectual Property Rights in and relating to the Equipment and/or the Services shall remain the exclusive property of Jelly and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its Users to do so.

## **17. Allocation and use of telephone numbers**

- 17.1 Any telephone numbers allocated to the Customer by Jelly (if any) do not belong to the Customer. The Customer hereby accepts that they do not acquire any rights whatsoever in such telephone numbers and they must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style.
- 17.2 The Customer must not sell or agree to transfer to a third party any telephone number allocated to it by Jelly.
- 17.3 Jelly shall be entitled, for commercial, operational or technical reasons or in order to comply with any competent authority to withdraw or change any telephone number or code or group of telephone numbers or codes allocated or provisionally allocated to the Customer. Where a telephone number is already in operational use by the Customer, Jelly shall use all reasonable endeavours to give the Customer reasonable prior notice. Jelly shall not be liable for any costs, inconvenience or other losses (including without limitation marketing and stationery costs) incurred by the Customer as a result of any change or withdrawal as described in this condition 17.3.
- 17.4 If, at the Customer's request, a specific telephone number is allocated to it, the Customer shall be responsible for all necessary investigations and inquiries as to the legitimacy or use of such number and Jelly shall have no liability whatsoever with respect to the number chosen and its use by the Customer.
- 17.5 If the Customer is allocated a number which falls within a range of numbers classified by OFCOM (or any other competent authority) as being for the provision of a particular type of service, then the Customer must ensure that any service provided to the Customer on that number conforms at all times with the type allocated to that number range.

## **EQUIPMENT**

### **18. Sale of Equipment**

- 18.1 Jelly shall sell the Equipment to the Customer in accordance with the terms of the Contract. The quantity and description of the Equipment shall be as set out in the Order Form.
- 18.2 Subject to condition 6.1(a), 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 Jelly shall be subject to correction without any liability on the part of Jelly.
- 18.3 Jelly reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Jelly is not the manufacturer of the Equipment, Jelly shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Jelly.
- 18.4 Jelly's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

### **19. Delivery of Equipment and acceptance**

- 19.1 Jelly shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Order Form, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and Jelly is not in any circumstances liable for any delay in delivery, however caused.

- 19.2 The Equipment may be delivered by Jelly in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 19.3 Delivery shall be made during normal business hours (excluding bank or public holidays). Jelly may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 19.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If Jelly is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Jelly may levy additional charges to recover its loss arising from this event.
- 19.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had seven (7) days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with condition 22.1.
- 19.6 Jelly shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Jelly (or its carrier, if applicable) within seven (7) days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Jelly's stipulations. Any remedy under this condition 19.6 shall be limited, at the option of Jelly, to the replacement or repair of any Equipment which is proven to Jelly's satisfaction to have been lost or damaged in transit.

**20. Risk and property**

- 20.1 The Equipment shall be at the risk of Jelly until collected by the Customer, and/or fitted (if appropriate), or otherwise received by the Customer, at which point all risk of damage to, or loss of, the Equipment shall pass to the Customer. Jelly shall off-load the Equipment at the Customer's risk.
- 20.2 Subject to clause 20.3 ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Jelly has received in full in cleared funds all sums due to it in respect of:
- (a) the Equipment; and
  - (b) all other sums which are or which become due to Jelly from the Customer under the Contract.
- 20.3 The Telephone Kit provided by Jelly to the Customer at the start of the Contract shall be free of charge provided that Jelly receives in full and in cleared funds all sums due to it under the Contract from the Customer for the complete Initial Term and any Extended Term.
- 20.4 Until ownership of the Equipment has passed to the Customer under conditions 20.2 and 20.3, the Customer shall:
- (a) hold the Equipment and Telephone Kit on a fiduciary basis as Jelly's bailee;
  - (b) store the Equipment and Telephone Kit (at no cost to Jelly) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Jelly's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment and Telephone Kit; and
  - (d) keep the Equipment and Telephone Kit insured on Jelly's behalf for its full Charge against all risks with a reputable insurer to the reasonable satisfaction of Jelly, ensure that Jelly's interest in the

Equipment and Telephone Kit is noted on the policy, and hold the proceeds of such insurance on trust for Jelly and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

- 20.5 The Customer's right to possession of the Equipment and Telephone Kit before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 7.1 arise or if the Customer encumbers or in any way charges the Equipment or Telephone Kit, or if the Customer fails to make any payment to Jelly on the due date.
- 20.6 Until ownership of the Equipment and Telephone Kit is transferred to the Customer in accordance with conditions 20.2 and 20.3, the Customer grants Jelly, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment and Telephone Kit is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Jelly in repossessing the Equipment and Telephone Kit shall be borne by the Customer.
- 20.7 On termination of the Contract for any reason, Jelly's (but not the Customer's) rights in this condition 20 shall remain in effect.
- 20.8 Jelly may appropriate payments by the Customer to such Equipment and Telephone Kit as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## **21. Inspection, testing and specification of Equipment**

- 21.1 Jelly shall:
- (a) test and inspect the Equipment on delivery to ensure that it complies with the requirements of the Contract; and
  - (b) if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).
- 21.2 The Customer shall be responsible for ensuring the Equipment purchased is of the correct specification for its intended use and location.

## **22. Equipment warranties**

- 22.1 The terms of this condition 22 shall be subject to the rights afforded to a Customer who is a consumer as detailed in condition 9.1 and condition 9.2.
- 22.2 Jelly warrants to the Customer that the Equipment is free from defects of workmanship and materials. Jelly undertakes (subject to the remainder of this condition 22), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within six (6) months of delivery and installation.
- 22.3 Jelly shall not in any circumstances be liable for a breach of the warranty contained in condition 22.1 unless:
- (a) the Customer gives written notice of the defect to Jelly within seven (7) days of delivery of the Equipment; and
  - (b) after receiving the notice, Jelly is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by Jelly) returns such Equipment to Jelly's place of business at Jelly's cost for the examination to take place there.



- 22.4 Jelly shall not in any circumstances be liable for a breach of the warranty in condition 22.1 if:
- (a) the Customer makes any use of Equipment in respect of which it has given written notice under condition 22.3(a); or
  - (b) the defect arises because the Customer failed to follow Jelly's or the Equipment manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
  - (c) the Customer alters or repairs the relevant Equipment without the written consent of Jelly.
- 22.5 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the six (6) month period referred to in condition 22.1.
- 22.6 The warranty contained in condition 22.1 does not extend to parts, materials or Equipment not manufactured by Jelly in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Jelly.
- 22.7 Jelly shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

### **23. Remedies**

In the event of any claim by the Customer under the warranty given in condition 22.1, the Customer shall notify Jelly in writing of the alleged defect. Jelly shall have the option of testing or inspecting the Equipment at its current location or moving it to Jelly's premises (or those of its agent or sub-contractor) at the cost of Jelly. If the Customer's claim is subsequently found by Jelly to be outside the scope or duration of the warranty in condition 22 (*Equipment warranties*), the costs of transportation of the Equipment, investigation and repair shall be borne by the Customer.

## **SERVICES**

### **24. Supply of Services**

- 24.1 Jelly shall supply the Services to the Customer in accordance with the Contract in all material respects.
- 24.2 Jelly reserves the right to amend the Services to be provided if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Jelly shall notify the Customer in any such event.
- 24.3 Jelly warrants to the Customer that the Services will be provided using reasonable care and skill.

### **25. Jelly's obligations**

Jelly shall use reasonable endeavours to manage and complete the Services in accordance in all material respects with the Contract, including meeting any performance dates, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

### **26. Customer's obligations**

- 26.1 The Customer shall:
- (a) co-operate with Jelly in all matters relating to the Services;

- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Jelly;
- (c) provide in a timely manner such information as Jelly may request, and ensure that such information is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
- (e) comply with, and where applicable procure that Users comply with, Jelly's reasonable instructions in connection with the use of the Services and Jelly's policies in force from time to time; and
- (f) not make available, sub-lease, resell or attempt to resell the Services (or any part of them) to any third party unless Jelly agrees otherwise in writing.

26.2 The Customer shall not, without the prior written consent of Jelly, at any time from the Contract Date to the expiry of six (6) months after the completion of the Services, solicit or entice away from Jelly or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Jelly, except that the Customer shall not be in breach of this condition 26.2 if it hires an employee or sub-contractor of Jelly as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of Jelly.

## **27. Change of Services**

27.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

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

- (a) the likely time required to implement the change;
- (b) any variations to Jelly's charges arising from the change;
- (c) the likely effect of the change on the Contract; and
- (d) any other impact of the change on the Terms.

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

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

## **MISCELLANEOUS**

### **28. Confidentiality**

28.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five (5) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by condition 28.2.

28.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each

party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this condition 0; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

28.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **29. Data protection**

Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 29 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Jelly will only use Customer Data as set out in Jelly's Privacy Policy <LINK>.

## **30. Limitation of liability**

### ***THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 30***

30.1 Nothing in these Terms shall limit or exclude Jelly's liability where it would be unlawful to do so, including:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the Customer's legal rights in relation to the products.

30.2 The following provisions set out the entire financial liability of Jelly (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer (including its officers, employees and contractors) of the Equipment and/or the Services; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

30.3 Except to the extent expressly stated in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

30.4 If the Customer is a consumer, Jelly is responsible for loss or damage the Customer suffers that is a foreseeable result of Jelly breaking the Contract or Jelly failing to use reasonable care and skill. Loss or damage is foreseeable if either it is obvious that it will happen or if, on the Contract Date, both parties knew it might happen, for example, if the loss was discussed during the sales process.

30.5 If the Customer is a consumer, Jelly only supplies the products for the Customer's domestic and private use. If the Customer uses the products for any commercial, business or re-sale purposes, Jelly's liability to the Customer will be limited as if the Customer is a business.

30.6 Subject to condition 30.3 and condition 30.4 Jelly shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, arising under or in connection with the Contract for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill or similar losses; or
- (iv) loss of goods; or
- (v) loss of contract; or
- (vi) loss of use; or
- (vii) loss or corruption of data or information; or
- (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 30.7 Jelly shall not in any circumstances be liable for any non-delivery of Equipment (even if caused by Jelly's negligence) unless the Customer notifies Jelly in writing of the failure to deliver within seven (7) days after the scheduled delivery date.
- 30.8 Any liability of Jelly for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 30.9 Jelly shall not be liable to the Customer or to any third party under the Contract in respect of any loss or damage suffered by the Customer or any third party, or the Users, as a result of the Customer's or the User's failure to follow any instructions or policies referred to in the Terms.
- 30.10 The Customer shall remain liable for all acts or omissions of its Users and shall procure that each User does not act, or fail to act, in a way, which would (or could) cause the Customer to breach its obligations under the Contract.
- 30.11 If Jelly's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Users (other than by reason of a Force Majeure Event under condition 32 (*Force majeure*)), the Customer shall in all circumstances be liable to pay to Jelly on demand all reasonable costs, charges or losses sustained by it as a result of such act or omission of the Customer, subject to Jelly notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 30.12 Jelly's total liability to the Customer whether in contract, tort (including negligence), for breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the Charge paid for the Equipment and/or the Services, as the case may be under the Contract.
- 30.13 This condition 30 shall survive termination of the Contract.

**31. Insurance**

It is the responsibility of the Customer to insure any equipment that is on their premises for the purpose of connectivity to the services provided.

**32. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**33. Assignment and other dealings**

33.1 Jelly may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

33.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Jelly.

**34. Notices**

34.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number; or
- (c) sent by email to the address specified in the Contract or such other email address as notified by one party to the other.

34.2 Any notice or other communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by fax or email, at 9.00 am on the next Business Day after transmission.

34.3 This condition 34 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**35. Severance**

35.1 If any provision or part-provision of the Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Term.

35.2 If any provision or part-provision of the Term is deemed deleted under condition 35.1, the parties shall negotiate in good faith to amend such provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**36. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

**37. No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**38. Entire agreement**

38.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

38.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

38.3 Nothing in this condition 38 shall limit or exclude any liability for fraud.

**39. Third parties rights**

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**40. Rights and remedies**

Except as expressly provided in the Terms, the rights and remedies provided under the Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

**41. Variation**

Except as set out in the Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**42. Governing law**

The Contract 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 shall be governed by and construed in accordance with the law of England and Wales.

**43. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**Schedule 1      Charge and payment terms for the Equipment and/or the Services**

**Schedule 2      Supplementary Terms**

**[EITHER**

INTENTIONALLY BLANK

**OR**

INSERT COPY OF SUPPLEMENTARY TERMS]