

# ACR NETWORKS LIMITED STANDARD TERMS AND CONDITIONS

## APPLYING TO THE SUPPLY OF NETWORK SERVICES

### 1 GENERAL

These Standard Terms and Conditions shall apply to the supply of all Equipment and Services by ACR Networks Limited incorporated and registered in England with company number 4035505 of Unit 3 Landscape Close, Weston-on-the-Green, Oxfordshire, OX25 3JQ (the "Supplier") to the Customer.

These Standard Terms and Conditions together with the Order shall constitute the entire agreement jointly entered into between the Supplier and the Customer. Unless expressly agreed in writing by the Supplier, no other general or specific condition shall apply. Where there is conflict between the Standard Terms and Conditions and any special terms contained in the Order, the Order shall prevail.

### 2 DEFINITIONS

In this Agreement the following terms shall have the following meanings:

"**Acceptable Use Policy**" means any policy for the use of Services that may be issued by the Supplier as revised by the Supplier from time to time;

"**Agreement**" means the Order Form and these Standard Terms and Conditions;

"**Charges**" means the charges payable in respect of the Services as set out in the Agreement or as specified in the Suppliers current price list (as amended from time to time in accordance with this Agreement");

"**Customer**" means the person or company which enters into the Contract with ACR Networks Limited for the provision of the Services;

"**Customer Equipment**" means any hardware and or software owned, controlled or licensed by the customer and provided to the Supplier by the Customer or otherwise made available for the purposes of providing the Services;

"**Effective Date**" means date Order is accepted;

"**Initial Charges**" means those charges are designated as such on the Order Form;

"**Initial Term**" means 12 months or as otherwise indicated on the Order Form;

"**Intellectual Property Rights**" means all copyright, database rights, rights in software, topography rights, design rights, trade marks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world now or in the future;

"**OFCOM**" means the Office of Communications;

"**Operator**" means the provider of access to the Telecommunications Network;

"**Order**" means an Order Form that has been accepted by ACR Networks Limited together with any special terms agreed in writing by ACR Networks Limited;

"**Order Confirmation**" means the confirmation of acceptance of the Customer's order by ACR Networks Limited;

"**Order Form**" means the order for Services submitted to ACR Networks Limited by the Customer;

**"PhonePayPlus"** means the regulatory body now known as PhonePayPlus and formerly known as the independent Committee for the Supervision of Standards of Telephone Information Services;

**"Rebate"** is defined in clause 7.3

**"Regulation"** means any law or regulation affecting the provision of the Services, including the General Conditions published by OFCOM from time to time, and any applicable or relevant rule or regulation;

**"Services"** means the services provided by ACR Networks Limited to the Customer under these Terms and Conditions;

**"Service Failure"** means any failure, error or defect in the provision of the Services by the Supplier but excludes failures, errors or defects arising from, caused by or contributed to by the Customer's acts or omissions or by third parties including other providers of telecommunications, computers or other equipment or services including internet services or any failure, error or defect arising as a result of causes beyond the Supplier's reasonable control;

**"Supplier"** means ACR Networks Limited;

**"Telecommunications Network"** means the public and private telecommunications systems accessed by the Telephone Number or by which the services are made available;

**"Telephone Numbers"** means the telephone numbers allocated to or managed on behalf of the Customer as part of the Services.

### **3 SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier shall provide the Services as described in the Order.
- 3.2 The Supplier shall provide the Services in a professional manner and exercise reasonable skill and care in the provision of the Services.
- 3.3 The Supplier reserves the right from time to time to improve or alter the Services as it deems appropriate, provided that such changes do not substantially change the nature of the Services.

### **4 EFFECTIVE DATE, INITIAL TERM AND ACCEPTANCE OF ORDER**

- 4.1 This Agreement shall commence on the Effective Date and shall be for the Initial Term and after that shall continue until terminated by either party in accordance with the terms of this Agreement.
- 4.2 The provision of Services shall be subject to due ordering by the Customer and acceptance by the Supplier. The Customer's Order Form will be acknowledged by the Supplier but this is not an acceptance of the Order by the Supplier. Each order will only be accepted by the Supplier once it has sent the Customer its Order Confirmation at which point the Contract shall be binding upon the Customer.

### **5 CUSTOMER OBLIGATIONS**

- 5.1 The Customer shall at all times:-
  - 5.1.1 comply with any reasonable directions or instructions (including requests for assistance or information) issued from time to time by the Supplier in connection with the Services or any of them;

- 5.1.2 pay the Supplier's Charges under this Agreement on or before the due date for payment without set off or deduction;
- 5.1.3 take all reasonable measures to ensure that the Telephone Numbers and any equipment are not used in any unlawful, improper or damaging manner;
- 5.1.4 indemnify and hold harmless the Supplier against all liabilities, claims, damages, losses, costs and proceedings howsoever arising from any improper use of the Services or any equipment or other breach of the Agreement and all costs and expenses reasonably incurred by the Supplier in investigating and/or defending itself in relation to any such claim or proceedings;
- 5.1.5 indemnify and hold harmless the Supplier against all liabilities, claims, damages, losses, costs and proceedings howsoever arising from a claim by a third party where the third party claims it has the right to prevent the Customer from using the Telephone Number;
- 5.1.6 provide all information and assistance reasonably required by the Supplier to enable the Supplier to perform its obligations under this Agreement, including providing or procuring access to the Customer's premises and a suitable and safe working environment;
- 5.1.7 promptly notify the Supplier if it becomes aware of any threat to the security of the Services.

5.2 The Customer shall not use the Services in any way which would:

- 5.2.1 contravene the Acceptable Use Policy;
- 5.2.2 compromise the security of any telecommunications, computer other systems, including by introducing viruses or failing to employ appropriate security procedures;
- 5.2.3 enable or permit unauthorised access by the Customer or third parties to data stored on the Telecommunications Network;
- 5.2.4 contravene or cause the Supplier to contravene any Regulation;
- 5.2.5 be for any improper, immoral or unlawful purpose;
- 5.2.6 cause a degradation of service to any other customer of the Supplier;
- 5.2.7 involve the sending of unsolicited marketing or advertising materials;
- 5.2.8 result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or material which is a nuisance, hoax, abusive, racist or indecent or which would result in the breach of any third party's intellectual property rights, confidential information or privacy;
- 5.2.9 breach or cause the Supplier to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998;

5.2.10 cause any overload of any Telecommunications Network without providing the Supplier with reasonable notice;

5.2.11 cause the Supplier to lose or breach any authorisation by which it is authorised to provide the Services.

5.3 The Customer is solely responsible for safeguarding its data by taking backup copies, maintaining a disaster recovery process and through any other means that it judges appropriate.

5.4 To enable the Supplier to perform its obligations under this Agreement, the Customer shall obtain all requisite licenses, consents and permissions and permit or procure permission for the Supplier, its agents or subcontractors to have access to the Customer's premises and shall provide such reasonable assistance and information as the Supplier requests from time to time.

5.5 The Supplier will routinely work during normal office hours. Any request by the Supplier to carry out work at other times may be refused by the Customer. Any request by the Customer that the Supplier carry out work at other times may be refused by the Supplier, but if accepted such work will be charged to the Customer at the Supplier's then current rates.

5.6 The Customer shall be responsible for preventing the unauthorised leakage of Customer calls onto the Supplier's systems. The Supplier shall not be liable in any way for the leakage of Customer calls onto the Supplier's systems. The Supplier shall reserve the right to charge the Customer at the rates set out in its current price list for handling any calls resulting from Customer call leakage.

## **6 CUSTOMER EQUIPMENT**

6.1 Except as expressly set out in this Agreement, the Customer shall be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services.

6.2 The Customer shall ensure that its telecommunications equipment conforms at all times with the relevant standard designated by all relevant legislation and all applicable regulations, instructions and orders. The Supplier shall not be under any obligation to connect or keep connected any Customer Equipment if it does not so conform or if in the Supplier's reasonable opinion it is liable to cause death, personal injury or damage to property or to impair the quality of the Services or to put the Supplier in breach of its licenses or its obligations to any third party.

## **7 SERVICE FAILURES**

7.1 The Supplier will use reasonable endeavours to provide the Services but the Supplier shall not be liable for any Service Failure resulting from factors outside the Supplier's control. In particular the Supplier is not responsible for the operation of the Telecommunications Network.

7.2 The Supplier does not guarantee that the Services will be continuously available to the Customer or free from Service Failures.

7.3 Where any Service has been unavailable to the Customer for a continuous period of more than 7 days (the "Unavailable Period") and not as a result of any action or omission of the Customer or any event beyond the reasonable control of the Supplier, the Customer may apply to the

Supplier for a rebate of any time based Charges in respect of the Unavailable Period (from the time the fault report is logged by the Supplier until the Service is restored) and the Supplier shall allow the Customer a proportionate rebate of such time based Charges and may credit such amount against subsequent invoice(s). The Supplier shall have no other liability for failure or unavailability of the Telecommunications Network.

## **8 CHARGES AND PAYMENT**

- 8.1 The Initial Charges where specified in the Order Form are payable immediately on entering into the Agreement.
- 8.2 Charges are calculated on a monthly basis and are payable within 14 days of the date of invoice. Such invoices shall include such minimum level of itemisation as may be prescribed in the Regulations and such further itemisation as the Customer may reasonably require except in relation to any calls made from any Telephone Number which are free of Charge to the Customer, including calls to help lines. If Charges are ascertainable in advance they may be invoiced in advance. In respect of unascertainable future charges the Supplier may require a reasonable security deposit.
- 8.3 The Supplier requires the Customer to pay all Charges by monthly direct debit unless otherwise agreed in writing. The Supplier reserves the right to levy an administration fee for all invoices paid by any other method.
- 8.4 Certain Services are subject to additional costs which are outside the control of the Supplier, and Operators may increase their charges to the Supplier from time to time. Where any such charges to the Supplier are increased it shall forthwith advise the Customer and be entitled to increase its Charges for the relevant Services accordingly.
- 8.5 Overdue payments shall be subject to interest at an annual rate equal to the statutory interest rate chargeable under the Late Payment of Commercial Debts (Interest) Act 1998 both before and after judgment.
- 8.6 Charges are exclusive of Value Added Tax which will additionally be payable at the applicable rate(s).
- 8.7 The Supplier shall in respect of each Service be entitled to review and vary from time to time the Charges and introduce new charges. Without prejudice to Condition 8.4 the varied or new charges shall take effect no earlier than 14 days after notification to the Customer.
- 8.8 Charges may also be imposed in the following circumstances brought about by a Customer request for:-
  - 8.8.1 change of Operator for any Telephone Number;
  - 8.8.2 change of service provider upon termination of this Agreement in respect of any Telephone Number;
  - 8.8.3 transfer of any Telephone Number to another subscriber; or
  - 8.8.4 change of any Service, including a change of address or location for the Services.

- 8.9 The Customer shall not dispute the amount of any Operator generated Charges unless and then only to the extent that the Supplier is entitled to dispute such Charges with the Operator.
- 8.10 The Supplier shall be entitled to impose a Charge in the event that the Customer requests, and the Supplier agrees, to reconnect the Telephone Number following disconnection under Condition 11.
- 8.11 The Supplier shall be entitled to set off any Charges due to the Supplier or GPD Communications Limited against any Rebate due to the Customer, but the Customer shall have no right to deduct any Rebate from any Charges due to the Supplier, unless otherwise agreed in writing by the Supplier.

## **9 LIABILITY**

- 9.1 The Supplier does not exclude or restrict any liability to the Customer for death or personal injury attributable to its own negligence or that of its employees or agents, fraud or fraudulent misrepresentation or for any other liability which may not be excluded by law.
- 9.2 The Supplier will have no liability for the security of the Services or any equipment including any hacking or abuse of the Services, systems or equipment or for any loss or corruption of any of the Customer's data and the Customer shall be responsible for providing such safeguards as it deems appropriate.
- 9.3 The Supplier shall not be liable for any indirect or consequential losses, damage or expenses suffered by the Customer including (but not limited to) loss of anticipated sales, special damage; loss of profits; loss of reputation; loss of anticipated savings; loss of business opportunity and loss of goodwill.
- 9.4 Subject to Condition 9.1, in no circumstances shall the Supplier's liability to the Customer of any nature arising out of or in connection with this Agreement exceed the amount of the Charges paid to the Supplier by the Customer under the terms of this Agreement during the 12 months immediately prior to the date on which such liability arose.

## **10 ALLOCATION AND USE OF TELEPHONE NUMBERS AND CODES**

- 10.1 Where the Supplier allocates to the Customer any Telephone Numbers or codes as part of the Services, the Customer acknowledges that it will not acquire any legal, equitable or other rights in relation to any numbers or codes.
- 10.2 The Supplier may on giving the Customer notice withdraw or change any such numbers or codes.
- 10.3 The Customer may not sell or transfer or seek to sell or transfer any numbers or codes allocated by the Supplier without the prior written consent of the Supplier.
- 10.4 The Customer may port numbers to the Supplier and may also port numbers to other carriers with whom the Supplier has porting agreements. Any porting is subject to:
- 10.4.1 the payment of all outstanding sums due to the Supplier; and

- 10.4.2 payment of the Charges that would have been due until the expiry of the Initial Period if the porting takes place prior to that date. Such Charges shall be calculated using the average Charges incurred over the previous 6 months (or over the duration of this Agreement if less than 6 months) to calculate the estimated monthly Charges for the each of months remaining until the expiry of the Initial Period.
  - 10.4.3 The Customer being responsible for ensuring the destination number it supplies to the Supplier is accurate for the purposes of porting.
- 10.5 All intellectual property rights or other rights in any numbers or codes allocated by the Supplier shall at all times, as between the Supplier and the Customer, remain vested in the Supplier.

## **11 SUSPENSION OF SERVICES**

- 11.1 Without prejudice to its rights under Condition 12, the Supplier may suspend all or part of the Services or any of them for so long as reasonably required or disconnect any Telephone Number at any time subject to Condition 11.3 if:-
- 11.1.1 the Customer has not paid all or any part of any invoice for the Services in accordance with Condition 8 within 14 days of receiving written notice from the Supplier that it is due and demanding payment;
  - 11.1.2 the Customer has not paid all or any part of any invoice for services or equipment in accordance with any agreement it has with GPD Communications Limited in accordance with the terms of the invoice;
  - 11.1.3 the Customer is in material or persistent breach of this Agreement or any other agreement between the parties;
  - 11.1.4 the Supplier has reasonable cause to believe that the Customer or any third party is acting in breach of the Acceptable Use Policy;
  - 11.1.5 technical limitations (including without limitation the non availability of parts and/or software) exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
  - 11.1.6 if and to the extent that in the Supplier's opinion the Customer's conduct is likely to result in the breach of any law or is otherwise prejudicial to the Supplier's interests;
  - 11.1.7 the Customer acts in such a way or permits anything to be done which, in the reasonable opinion of the Supplier, relates to the Services and may impair or jeopardise the operation of the Services or any part of the Telecommunications Network;
  - 11.1.8 required to do so directly or indirectly by law, the Operator, OFCOM or PhonePayPlus or under any Regulation;
  - 11.1.9 such action is required for modification or maintenance or in cases of emergency;

11.1.10 The Supplier has reason to believe the Services are being used for unlawful, fraudulent or improper purposes.

11.2 In the case of any proposed disconnection pursuant to Condition 11.1, the Supplier shall give the Customer due notice of any consequent service interruption or disconnection and, except in cases of fraud, persistent late payment or non-payment, any such service interruption shall be restricted, as far as technically feasible, to the Service concerned. In other cases, the Supplier shall give, as far as technically feasible, such notice as is reasonable in the circumstances.

11.3 The Customer shall remain liable for all Charges during any period of suspension or disconnection attributable to the actions or omissions of the Customer and for any subsequent reinstatement or re-connection.

## **12 TERMINATION**

12.1 The Supplier may terminate this Agreement by giving the Customer not less than 30 days' written notice expiring at or after the end of the Initial Period. The Customer may terminate this Agreement by giving the Supplier not less than 30 days' written notice to expire at the end of the Initial Period, or any anniversary thereof.

12.2 the Supplier may terminate this Agreement as a whole or in part immediately by notice in writing to the Customer if:-

12.2.1 the Customer is in material breach of any of the terms of this Agreement which cannot be remedied, or in material breach which can be remedied but is not remedied within 14 days of the date of written notice from the Supplier specifying the breach and requiring it to be remedied, or commits persistent breaches of the Agreement;

12.2.2 the Customer fails to pay any sum due and owing to the Supplier or GPD Communications Limited in accordance with the relevant invoice;

12.2.3 technical limitations (including without limitation the non availability of parts and/or software) exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;

12.2.4 the Customer refuses to pay sums due under the Agreement in advance following a request by the Supplier in the event that the Customer has previously failed to pay a sum due under the contract or has paid such sums late.

12.2.5 the Customer (being an individual) becomes bankrupt or is unable to pay his debts within the meaning of ss 267 and 268 Insolvency Act 1986 or (being a company) becomes insolvent or goes into liquidation either voluntary or compulsory (other than for the purposes of reconstruction or amalgamation) or is wound up, or an administrator, receiver or administrative receiver is appointed over all or any assets of such company or an encumbrancer takes possession of all or any such assets;

12.2.6 any licence, permission, agreement or authorisation granted to the Customer, the Operator or to the Supplier necessary for the provision of the Services is suspended, revoked or terminated; or

- 12.2.7 the Supplier is unable to recover from the Operator revenue payments due to the Customer;
  - 12.2.8 The Supplier has reasonable grounds to suspect that the customer is involved in fraudulent or unlawful activity;
  - 12.2.9 The Supplier in its opinion considers that the supply of the Services to the Customer is no longer commercially viable
- 12.3 The Customer may terminate this Agreement, as a whole or as it relates to any Telephone Number or any Service, as applicable:
- 12.3.1 at any time by reasonable notice upon the transfer of the Telephone Number where it is owned by the Customer to another Operator or service provider; or
  - 12.3.2 in accordance with Condition 10.2; or
  - 12.3.3 immediately by written notice if the Supplier is in material breach of this Agreement which is not remedied within 30 days of the date of written notice from the Customer specifying the breach and requiring it to be remedied.
- 12.4 Any termination of this Agreement shall be without prejudice to the rights of either party accrued to the date of termination.
- 12.5 If the Customer terminates the Agreement in whole or in part under Condition 12.3.1 or 12.3.2, the Customer shall be liable to pay the Supplier:
- 12.5.1 any compensation for the loss of revenue due in respect of the period from the date of termination to the expiry of the Initial Period (if still current at the time of termination) which shall be calculated as set out in 12.5.2 together with any termination charges specified in the Customer Order Form or otherwise notified to the Customer.
  - 12.5.2 lost revenue for the purposes of clause 12.5.1 means the revenue which the Supplier could have reasonably have expected to earn from this Agreement until the expiry of the Initial Period, and shall be calculated using the average monthly revenue earned over the previous 6 months (or over the duration of this Agreement if less than 6 months) to calculate the estimated monthly revenue for the each of months remaining until the expiry of the Initial Period.
- 12.6 On termination of this Agreement for whatever reason, each party shall promptly return to the other any property or information belonging to such other party.

### **13 VARYING THE TERMS AND CONDITIONS**

- 13.1 the Supplier may at any time amend the terms of this Agreement:-
- 13.1.1 On giving not less than one month's notice to the Customer such notice to be sent to the Customer by email or letter; or

13.1.2 with immediate effect on giving to the Customer such notice as is reasonable in the circumstances if so required by Regulation or by PhonePayPlus or OFCOM or any other relevant authority, or to reflect changes to any relevant contract with an Operator.

13.2 The Customer will be bound by such amended terms if it continues to use the Services after the date of any such amendment, save that the Customer may by not less than one month's counter-notice expiring on or before the date of the change terminate this Agreement.

#### **14 ORDERS**

14.1 Any new provision of Service or any change to an existing provision of Service to a Customer (including an upgrade) must be requested in an Order Form signed on behalf of the Customer.

14.2 An Order shall not be accepted by the Supplier until the Customer has received an Order Confirmation from the Supplier.

14.3 Upon acceptance of the Order by the Supplier the Customer shall be bound by any additional Charges that may apply.

#### **15 FORCE MAJEURE**

15.1 Neither party shall be liable to the other party for any delay in performing or failure to perform any of its obligations under this contract (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control (a Force Majeure Event) including (but not limited to) terrorist attacks, riots, fire, explosion, epidemic, accidental damage, adverse weather conditions, power failures, non-availability of any third party telecommunication equipment and performance of the Internet.

15.2 If the Force Majeure Event continues for a continuous period of more than three months, then either party may terminate this contract by giving not less than 14 days' written notice to the other party.

#### **16 CONFIDENTIALITY**

16.1 Neither party shall disclose to any third party without the prior consent of the other party any confidential information which is received from the other party as a result of this contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing and receiving Services. These restrictions do not apply to any information which

16.1.1 was or becomes generally available to the public other than as a result of a breach of an obligation under this Condition 16; or

16.1.2 was acquired by a third party owing no obligation of confidence in respect of the information; or

16.1.3 was known to a party before the information was disclosed to it by the other party.

16.2 Notwithstanding Condition 16.1 the Supplier will be entitled to disclose the Customer's confidential information to a third party to the extent required by any court of competent

jurisdiction or by a governmental or regulatory authority, or where there is a legal right, duty or requirement to disclose such confidential information.

## **17 INTELLECTUAL PROPERTY**

- 17.1 Except as expressly set out in this Agreement, all Intellectual Property Rights in the Supplier's equipment will remain with the Supplier or the Supplier's suppliers or licensors.
- 17.2 Where Software is provided to enable the Customer to make use of the Services, the Supplier grants to the Customer a non-exclusive non-transferable licence to use the Software solely for the purpose of receiving the Services. Where any additional terms and conditions apply to its use of Software the Supplier will make these known to the Customer and the Customer will, if requested, sign any agreement reasonably required to protect the owner's rights in the Software.
- 17.3 The Customer will not copy, decompile or modify the Software without the Supplier's prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party.
- 17.4 The Customer acknowledges that the Supplier has no obligation to review or edit any of its information or third party information which the Customer stores on or transmits through any equipment or uses in connection with the Services. However, the Supplier reserves the right to access, retain and disclose copies of such information for purposes of:-
- 17.4.1 correcting, maintaining and improving the Services;
  - 17.4.2 complying with any applicable laws, regulations, statutory instruments or the terms of the Supplier's licences and contracts;
  - 17.4.3 observing the performance of the Services including for service level monitoring;
  - 17.4.4 retaining a record of activity on the Supplier's equipment or systems;
  - 17.4.5 complying with any request for information or disclosure from a court or other appropriately authorised body;
  - 17.4.6 ensuring that the Customer is complying with the Acceptable Use Policy.
- 17.5 The Customer acknowledges that the Supplier provides no warranties or guarantees in relation to any Software and excludes all liability to the Customer in relation to any viruses or similar that may be contained in the Software. It is the Customers responsibility to check any Software prior to it being uploaded onto the Customer's systems.

## **18 DATA PROTECTION ACT**

- 18.1 Information that the Customer provides to the Supplier about private individuals relevant to the Supplier's dealings with the Customer will be stored within the Supplier's computer system and manually for so long as may be necessary to provide the Services and until any Charges cannot

be lawfully challenged, subject to any maximum and/or minimum periods prescribed by any Regulation.

18.2 For the purpose of the Data Protection Act 1998 ("the Act") the Supplier will only use such information for legitimate purposes, including:-

18.2.1 communicating with the individuals concerned as necessary in connection with the Customer's dealings with the Supplier;

18.2.2 communicating with the Customer in connection with the Supplier services generally;

18.2.3 providing it to the Operator to enable the provision of the Services or to third parties as required by the Customer or by law or as necessary in connection with the Customer's dealings with the Supplier (including for inclusion in publicly available directories). Those third parties may be outside the European Economic Area;

18.2.4 providing it to licensed credit-reference agencies for credit checks to be undertaken;

18.2.5 providing it to the police and other enforcement agencies for the investigation of fraudulent, criminal, terrorist or other illegal activities.

18.3 By giving the Supplier that information the Customer consents to the Supplier holding, using and disclosing it for those purposes.

18.4 The Supplier is permitted under the Act to hold and use personal data for the purposes specified above. It will not process such data provided by the Customer otherwise than for those purposes or as otherwise required by the Customer.

18.5 The Supplier confirms that it will comply with the Seventh Data Protection Principle under the Act (data security) in relation to all personal data supplied by the Customer.

## **19 NOTICES**

19.1 The Supplier shall address all invoices and serve any notices on the Customer pursuant to this Agreement in writing (which shall include e-mail) or by post to the address set out in this Agreement or the Customer's registered office or any other address provided by the Customer for this purpose.

19.2 The Customer shall address all invoices and serve any notice pursuant to this Agreement in writing (which shall include e-mail) or by post on the Supplier at its address specified in this Agreement or any other address notified by the Supplier to the Customer from time to time for this purpose.

19.3 All posted documents shall be deemed served 48 hours after posting. All e-mailed documents shall be deemed served immediately subject to confirmation of such e-mail being sent by post.

19.4 The Customer shall be deemed to have received notification of any information on the Supplier's applicable prices and tariffs and on the Supplier's standard terms and conditions from time to

time in respect of access to and use of the Services which are sent to the Customer or published by the Supplier on its website or otherwise made generally available to its customers.

## 20 DISPUTE RESOLUTION

20.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Agreement, the parties shall follow the dispute resolution procedure set out in this Clause 17:

20.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the parties shall use reasonable endeavours to resolve any Dispute by discussion at a managerial level appropriate to the Dispute;

20.1.2 if the parties are for any reason unable to resolve the Dispute within 30 days of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party requesting a mediation. A copy of the ADR Notice should be sent to CEDR.

20.1.3 the mediation will start not later than 14 days after the date of the ADR Notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

20.2 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

## 21 GENERAL

21.1 No delay or failure by the Supplier to exercise any of its rights under these terms and conditions or concession granted shall prevent subsequent enforcement of those rights or constitute an agreement to provide the same concession again.

21.2 The Customer acknowledges that it has not been induced to enter into this Agreement by any representations made before or on entering into this Agreement (whether made negligently or innocently or whether oral or written) that are not set out in this Agreement.

21.3 The Customer acknowledges that the only remedy it has against the Supplier for any misrepresentation or untrue statement shall be a claim for damages for breach of this Agreement. However, if the Supplier has made any fraudulent representations upon which the Customer has relied, the Customer may pursue the Supplier, and the Customer shall be entitled to all available remedies under English law.

21.4 This Agreement sets out the entire agreement between the parties in relation to its subject matter. No variation of this Agreement or waiver hereunder shall be effective unless agreed in writing by the Supplier.

- 21.5 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provisions in questions shall not be affected as a result.
- 21.6 The Customer shall not assign transfer or sub-contract or try to assign any or all of its rights and responsibilities under the Agreement. The Supplier may sub-contract transfer its rights and obligations hereunder to any third party or transfer the same to a new service provider.
- 21.7 The Customer shall not resell or otherwise make the Services available to any other person, or sell or transfer any Telephone Number to any third party without the prior written consent of the Supplier, save that the Customer may port any Telephone Number to the Supplier or to any other carrier with which the Supplier has a porting arrangement.
- 21.8 Where two or more persons constitute the Customer their liability is joint and several.
- 21.9 It is acknowledged and agreed that this Agreement shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto.
- 21.10 Nothing within this Agreement is intended to create third party rights pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 21.11 This Agreement is governed by English Law and the English Courts shall have exclusive jurisdiction as regards any dispute.