

# Thorntons Terms & Conditions for the Provision of Equipment, Maintenance Services, Consultancy Services, Hosting Services, Conference Calling Services, DDSP Services, Wi-Fi Services, Fraud Guardian and/or Fixed Network Services – September 2022

## 1. DEFINITIONS

1.1 In these conditions the following terms shall have the following meanings:-

**“Abusive”** shall be as defined in condition 5.9.2 and **“Abuse”** shall be construed accordingly;

**“Additional Charges”** means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 6.3;

**“Annual Support Charge”** means the support charge for the Maintenance Services as set out on the Order Form;

**“Anti-Bribery Laws”** means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act;

**“Attack”** means an attack on a computer system or network which causes a loss of service to users, typically the loss of network connectivity and services consuming the bandwidth of the victim network or overloading the computational resources of the victim system. Attacks for these purposes are volumetric and may include but are not limited to DNS UDP floods, DNS query floods, SSL floods, SSL re negotiation, Syn floods, UDP floods, Push and ACK floods, Ping floods, Smurf attacks, ICMP floods;

**“Black Hole”** means discarding all data destined for a particular IP Address to prevent the disruption, and or flow of, data destined for other IP Addresses;

**“Bribery Act”** means the Bribery Act 2010;

**“Broadband Acceptable Use Policy”** means the Company's policy for the acceptable use of its broadband Service, the current version of which is available at [www.thorntonscomms.com](http://www.thorntonscomms.com) (or at such other URL as is notified to the Customer by the Company from time to time);

**“Business Day”** means any and all days from Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;

**“Call Commissions”** means such sums payable by the Company to the Customer in accordance with condition 10.2.7;

**“Carrier”** means the relevant third party public telecommunications operator or third party network service provider;

**“Charges”** means the charges payable by the Customer to the Company for Services performed (excluding Installation Services);

**“CLI”** means the telephone number of the originating user (i.e. the calling party) or the default number of the Customer (as applicable);

**“CLI Presentation”** allows customers to authorise the Company to carry voice traffic with a geographic or non-geographic presentation number. This presentation number may be different from the Customer's underlying CLI;

**“Code”** means any code of practice for Premium Rate Services published by Phone-paid Services Authority (or equivalent) from time to time;

**“Commencement Date”** means the commencement date of the applicable Services (excluding Fixed Network Services) as specified on the Order Form;

**“Company”** means Thorntons Communications Limited a company registered in England and Wales with company registration number 5743984 whose registered office is Suite 321 Reaver House 12 East Street, Epsom, Surrey, KT17 1HX;

**“Company Number”** means as defined within the definition of **“Number”** below;

**“Conference Calling Services”** means the conference calling services more particularly detailed on the Order Form (as modified or substituted by the Company from time to time), which for the purposes of interpreting the applicable Contract shall be deemed to be Fixed Network Services;

**“Conditions”** means these terms and conditions;

**“Connection Date”** means the date when the Carrier, having received the relevant information from the Company, is in a position to and has agreed to commence provision of the Fixed Network Services to the Customer;

**“Consultancy Services”** means the consultancy services more particularly detailed on the Order Form (as modified or substituted by the Company from time to time) to be provided hereunder by the Company to the Customer;

**“Contract”** means the agreement between the Customer and the Company for the provision of the Equipment and / or Services (or any of them) incorporating these Conditions, the Order Form and the Thorntons as a Supplier Data Processing Addendum and any other Service Specific Conditions and / or Promotional Terms incorporated into the Contract in accordance with condition 2.1;

**“Contract Year”** means a period of twelve months commencing from either (i) the Effective Date of the Contract; or (ii) any subsequent annual anniversary of the Effective Date;

**“Contractor”** means any person who, on or prior to the Effective Date of the Contract (and/or prior to the date of the transfer of such services to the Company), supplied services to the Customer which were the same as or similar to those provided or to be provided by the Company to the Customer under the Contract;

**“Customer”** means the person, firm or company specified on the Order Form and any other person appearing to act within that person's, firm's, or company's authority and includes where relevant the Customer's permitted assigns;

**“CPE”** means Customer Premise Equipment used in connection with the Service;

**“Thorntons as a Supplier Data Processing Addendum”** means the data processing addendum, the current version of which is set out at [www.thorntonscomms.com/terms-and-conditions/](http://www.thorntonscomms.com/terms-and-conditions/) (or at such other URL as is notified to the Customer by the Company from time to time);

**“Fraud Guardian”** means the call analytics service known as Fraud Guardian (as modified or substituted by the Company from time to time) and which for the purposes of interpreting the applicable Contract shall be deemed to be Fixed Network Services;

**“DDoS”** means Distributed Denial of Service;

**“DDSP Services”** means the DDoS protection services described as such in an Order Form (as modified or substituted by the Company from time to time), whether these be described as DDP Gold, DDP Lite, DDP Emergency or otherwise and which for the purposes of interpreting a Contract shall be deemed to be Fixed Network Services;

**“Delivery”** means the point at which the Equipment arrives at the Site immediately prior to the unloading of such Equipment from the delivery vehicle and **“Delivered”** shall be construed accordingly;

**“Effective Date”** shall mean the earlier of the date on which the Company signs the relevant Order Form or commences performance of a Contract;

**“Emergency”** means a state of emergency that demands immediate action resulting from a danger or threat of danger to the United Kingdom from foreign or domestic sources and declared to be in existence by governmental authority;

**“Emergency Call”** means a call to 999 or 112 or any other number associated with UK emergency services;

**“Employee”** means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

**“Employment Regulations”** means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

**“End User”** means any end user of the Services and/or WIFI Software;

**“End User Service”** means such entertainment, live or recorded information or other service (including, but not limited to, Premium Rate Services) made available by the Customer from time to time for itself or any Information Provider;

**“Equipment”** means the equipment and/or Software related products to be supplied under a Contract as set out in an Order Form (and also has extended meaning under condition 5.4.2 in the case of and for the purpose of that condition only);

**“Facility”** means the location in which the Hosting Services are performed;

**“Fixed Network Services”** means the network services (including where applicable DDSP Services and/or Conference Calling Services and/or the Fraud Guardian service) more particularly detailed on the Order Form (as modified or substituted by the Company from time to time) to be provided hereunder by the Company to the Customer;

**“General Conditions”** means the general conditions of entitlement set by OFCOM, in accordance with section 45 of the Communications Act 2003, as may be amended, modified or

replaced from time to time and which may not necessarily apply to all Services described as Fixed Network Services;

**"Group"** means together a party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;

**"Hosted Data"** means the data which is hosted pursuant to the Hosting Services;

**"Hosting Services"** means the hosting services more particularly detailed in an Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

**"Information"** means information or other content which is made available to callers and which represents the subject matter of a Premium Rate Service in whole or in part;

**"IP"** means Internet Protocol;

**"IP Access Circuit"** means an IP circuit used to carry IP traffic;

**"Information Provider"** means any organisation or person providing Information or with whom the Customer contracts in respect of the provision of Premium Rate Services;

**"Installation"** means the physical installation of Equipment at the Site;

**"Installation Services"** means services for the Installation of Equipment as more particularly described in the Order Form;

**"Intellectual Property Rights"** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**"Licence"** means the licence granted by the Company to the Customer to use the WIFI Software in accordance with the terms of this Contract;

**"Maintenance Services"** means the maintenance services in respect of the Supported Equipment more particularly detailed in an Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

**"Minimum Term"** means the minimum contract period for the applicable Services which shall commence on the Commencement Date for all Services except Fixed Network Services which shall commence on the Connection Date and expire on the day at the end of the minimum contract period set out in an Order Form;

**"Monthly Minimum Call Spend"** means the minimum monthly sum of money as set out in an Order Form that will be spent by the Customer on call charges commencing on the Connection Date;

**"Non-Geographic Service"** means any service comprising a non-geographic Number and/or Company Number and inbound calls to the relevant number;

**"Normal Working Hours"** means 9.00am to 5.30pm on any Business Day;

**"Nuisance Call"** means an unwanted call (meaning a signal, message or communication which can be silent, visual or spoken) that causes annoyance to the receiver of the call and/or is a hoax call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene or menacing nature including unauthorised or 'spam' calls and 'silent' calls as defined by OFCOM in its 'Revised statement of policy on the persistent misuse of an electronic communications service 2010', and any subsequent update;

**"Number"** means either (i) a telephone number from within a national number group range (used by the Customer in connection with an End User Service) as may be allocated by the Company to the Customer from time to time ("**Company Number**") or (ii) a telephone number not being a Company Number and which may be programmed by the Company for the purposes of making available a Fixed Network Service in respect of such telephone number;

**"OFCOM"** means the Office of Communications and/or any successor body;

**"Order Form"** means the order form or other document to which either these Conditions are attached or which is expressed to incorporate or be subject to these Conditions which sets out (amongst other things) the Customer's details and the Equipment and/or Services to be supplied pursuant to a Contract, together with any Service Specific Conditions or Promotional Terms (if applicable) and the Thorntons as a Supplier Data Processing Addendum;

**"Parent Undertaking"** has the meaning given to it in section 1162 of the Companies Act 2006;

**"Phone-paid Services Authority"** means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of Phone-paid Services Authority by any competent authority;

**"Premium Rate Service"** means any service comprising live or recorded telephone information and/or entertainment and/or similar

services which are charged at a premium and which are defined as such in the Code;

**"Price"** means the price payable by the Customer for the Equipment and Installation Services (where applicable);

**"Promotional Terms"** means any additional terms which apply to the Price and/or Charges and which may be specified in an Order Form and/or notified by the Company in writing to the Customer in relation to the Equipment and/or Services, at the time the relevant Order Form was submitted;

**"PSTN"** means a public switched telephone network;

**"Rate of RPI"** means the retail price index percentage change over 12 months announced by the Office for National Statistics (or successor body) in the month preceding an increase in the Charge pursuant to condition 10.2.9, 10.3.3, 10.4.4, 10.7.6, 10.8.3 10.9.4 or 10.10.4;

**"Relevant Laws"** means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

**"Service(s)"** means any of the services supplied by the Company and as set out further in an Order Form including, without limitation, the Installation Services, the Conference Calling Services, the DDSP Services, the Fraud Guardian service, the Fixed Network Services, the Maintenance Services, the Hosting Services and/or the Consultancy Services (as applicable);

**"Service Feature"** means a distinguishable software function included in the Fixed Network Services;

**"Service Specific Conditions"** means any additional terms and conditions which are to apply to a Contract as specified in an Order Form or these Conditions in respect of specific Services, for example (and without limitation) the Broadband Acceptable Use Policy (but excluding Promotional Terms);

**"Site"** means a place of business of the Customer or a nominated third party at which the Services and/or Equipment are to be provided as specified in an Order Form;

**"Small Business Customer"** means a Customer who has been identified on the Order Form as being a Customer who: (i) is not a communications provider; and (ii) has 10 or fewer workers (whether as employees or volunteers or otherwise);

**"Software"** has the meaning given to it in condition 16.1;

**"Special Entry"** means any additional entry to the appropriate phone book requested by the Customer in addition to the regular information published about the Customer in any phone book issued by or on behalf of British Telecommunications plc;

**"Subcontractor"** means any subcontractor of a Contractor;

**"Subsidiary Undertaking"** has the meaning given to it in section 1162 of the Companies Act 2006;

**"Supported Equipment"** means the items of equipment (which may include the Equipment) to be subject to the Maintenance Services as set out in an Order Form;

**"Tariff"** means the Company's tariff for calculating Charges for each of the Services which is set out at [www.thorntons.com](http://www.thorntons.com) or at such other URL as is notified to the Customer by the Company from time to time;

**"User Instructions"** has the meaning given to it in condition 6.5.2;

**"WIFI Service"** means the WIFI Software and connected services to be provided to the Customer by the Company subject to the terms of this Contract; and

**"WIFI Software"** means the software provided to the Customer by the Company in connection with the WIFI Service which is owned by or licensed to the Company and purchased by the Customer in the volumes set out in the Order Form.

## 2. CONTRACT FORMATION

2.1 An Order Form constitutes the Customer's offer to the Company to purchase the relevant Equipment and/or Services. The Company is under no obligation to accept any Order Form and may, in its absolute discretion, reject or amend any proposed Order Form. A Contract shall only come into force and bind both parties once:

2.1.1 the Customer's offer is accepted by an authorised representative of the Company signing the Order Form or the Company commencing the performance of the Services or provision of the Equipment;

2.1.2 the credit status of the Customer being to the satisfaction of the Company (in the Company's sole and absolute discretion); and

2.1.3 in respect of a Contract which provides for the supply of:

2.1.3.1 Equipment and/or Installation Services, (without limitation) the conditions in condition 4.1.1 being met;

2.1.3.2 Fixed Network Services, (without limitation) the conditions in condition 5.2.1 being met;

2.1.3.3 Maintenance Services, (without limitation) the condition in condition 6.1.1 being met;

2.1.3.4 Consultancy Services, (without limitation) the condition in condition 7.1.1 being met; and/or

2.1.3.5 Hosting Services, (without limitation) the condition in condition 7.3.1 being met.

2.2 All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon the terms of a Contract which cannot be varied unless agreed in writing by the Company in accordance with condition 19. These Conditions are the only terms and conditions on which the Company will supply any Equipment and/or Services to the Customer under an Order Form and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Customer purports to apply under any purchase order, confirmation, of order or similar document, (whether or not such document is referred to in a Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. Unless expressly set out in a Contract, all other terms, conditions and warranties which are implied by law are excluded to the fullest extent permitted by law.

2.3 In the event of a conflict or inconsistency between any of the documents which constitute the Contract, the following descending order of precedence shall apply:

2.3.1 the Order Form;

2.3.2 any applicable Service Specific Conditions;

2.3.3 any applicable Promotional Terms;

2.3.4 the Conditions;

2.3.5 any other documents referred to on the Order Form or in these Conditions.

For the avoidance of any doubt, the fact that the Promotional Terms are silent on a particular matter whereas any of these Conditions, the Order Form and/or the Service Specific Conditions make provision for the same, shall not be deemed to give rise to a conflict or inconsistency.

2.4 Any illustrations, samples or descriptive material provided by the Company, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred by the Customer. The Customer acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.

2.5 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the Contract for the supply of Equipment) shall (for the purposes of this condition 2.5) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate a Contract for other Equipment and/or Services or any other contract entered into under these Conditions.

2.6 Any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the Customer shall procure that any user of the Services and/or Equipment including (without limitation) any of the Customer's employees, agents or contractor, shall not do such act or thing.

2.7 The Customer warrants and undertakes to the Company that it is entering into a Contract for the purposes of its trade, business and/or profession, and is not acting as a consumer.

2.8 DDSP Services and the Fraud Guardian service shall be deemed to be Fixed Network Services for the purposes of determining the Company's and the Customer's rights and obligations pursuant to a Contract, but not pursuant to the General Conditions.

2.9 To the extent an Order Form specifies any Conference Call Services, such services shall be deemed to be Fixed Network Services for the purposes of determining the Company's and the Customer's rights and obligations pursuant to the relevant Contract.

### **3. CUSTOMER'S ORDER AND SPECIFICATIONS**

3.1 The Customer shall be responsible for providing the Company with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within reasonable time to enable the Company to perform its obligations under a Contract.

3.2 Without limitation to the generality of condition 3.1, the Customer shall ensure that the details set out in an Order Form and any drawings, sketches, specifications (including without limitation in respect of the type and capacity of any available or installed

connectivity), descriptions or instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or Services (as the case may be) by the Company ("**Customer Information**") are accurate and fully describe the Customer's requirements and the Customer shall be liable for and shall indemnify the Company in respect of each liability, loss, injury, damage, demand, claim, cost, charge or expense which may be incurred by or awarded against the Company by reason of or arising directly or indirectly out of or in connection with any inaccuracy in respect of the Customer Information, or where the compliance with, or use of any Customer Information by the Company constitutes the infringement of the Intellectual Property Rights or other rights of a third party.

### **4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that the section related to Equipment is completed on the relevant Order Form or in the event that the Company otherwise does provide any Equipment and/or Installation Services to the Customer this condition 4 shall apply to the relevant Contract.

#### **4.1 DELIVERY**

4.1.1 The conditions referred to in condition 2.1.3.1 are that:

4.1.1.1 the Company provides written confirmation to the Customer that the Equipment referred to in an Order Form is available and can be supplied in the stated timescales; and

4.1.1.2 the Company providing confirmation by email to the Customer that the terms stated on the relevant Order Form as far as it is aware at the time of the review do not contain any errors or omissions.

4.1.2 In consideration of the Customer's payment of the Price pursuant to condition 11.1 the Company will take reasonable steps to deliver the Equipment and, where expressly stated by the Company, supply the Installation Services, using reasonable skill and care, within an estimated period of time. Such period shall commence from the date of receipt by the Company of all instructions and information required for Delivery. Time for Delivery or Installation of the Equipment will not be (nor be deemed) of the essence of a Contract and any stated times for Delivery or Installation in an Order Form are estimates only and shall not be binding on the Company.

4.1.3 Without prejudice to the generality of condition 3, the Customer shall be responsible for providing the Company with any necessary instructions for Delivery of the Equipment within a reasonable period prior to the estimated date of Delivery advised by the Company to the Customer.

4.1.4 If the Customer fails to take Delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the Delivery of any Equipment in accordance with a Contract is delayed for more than twenty-eight days after the Company has given notice in writing to the Customer that the Equipment is ready for Delivery, the Equipment shall be deemed to have been Delivered by the Company. The Customer shall pay to the Company the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight days.

4.1.5 If a Contract provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the relevant Contract as at an end or to reject any other instalment.

4.1.6 If by reason of refusal or delay of Delivery or Installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.4 then payment shall be made by the Customer to the Company of the balance of the Price within seven days of such deemed Delivery date.

#### **4.2 CONNECTION**

4.2.1 The responsibility for the cost of connection to the public switch telecommunications network and/or the provision of additional lines to the public telephone system lies with the Customer.

4.2.2 The Customer shall prepare the Site(s) (at its own cost) in accordance with the Company's instructions so that Installation of any necessary Equipment can take place.

4.2.3 The Customer shall be responsible for the cost to supply, install, maintain and operate any and all infrastructure required to accommodate the power and environmental specifications as specified by the Equipment manufacturer (as published and as amended from time to time) to comply with all local electrical code requirements including the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery.

4.2.4 The Customer shall (at its cost) install an uninterruptable power supply at the Site providing not less than 60 minutes of standby power at the Site for the Equipment.

4.2.5 The Customer shall only connect and use equipment (whether supplied by the Company pursuant to the terms of a Contract or not) connected (directly or indirectly) to use the Fixed Network Services in accordance with any published instructions, safety and security procedures applicable to the use of that equipment.

4.2.6 The Customer shall ensure that steps have been taken to configure any equipment (whether supplied by the Company pursuant to the terms of a Contract or not) so as to prevent such equipment being used in the commission of criminal offences including the making of fraudulent, unauthorised or bad faith calls.

4.2.7 If the Company becomes aware that any unsupported equipment is connected to the Fixed Network Services, the Company may serve notice on the Customer requesting that the Customer removes such equipment. The Customer will on receipt of such notice, remove such unsupported equipment.

#### 4.3 PROPERTY AND RISK

4.3.1 The risk of loss or damage to the Equipment shall vest with the Customer from the moment of Delivery or deemed Delivery (as described in condition 4.1.4) irrespective of whether title to the Equipment has passed or payment or part payment made. From the moment of Delivery or deemed Delivery (as described in condition 4.1.4), the Customer shall be responsible for insuring the Equipment.

4.3.2 Notwithstanding Delivery and the passing of risk, the legal and beneficial interest in the Equipment supplied under a Contract shall not pass to the Customer until the Company has received in cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable) and to the extent the Equipment constitutes Software in whole or in part, this condition 4.3 shall not prejudice any proprietary rights of the Company or any of its licensors or any other entity with any rights in respect of such Software.

4.3.3 Until such time as the legal and beneficial interest in the Equipment has passed to the Customer, the Customer shall hold such Equipment as the Company's fiduciary agent and bailee, and keep such Equipment properly stored, protected and kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value and identified as being the Company's property until title passes.

4.3.4 Until such time as the legal and beneficial interest in the Equipment passes to the Customer, the Company shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to the Company at its nominated location and, if the Customer fails to do so within a reasonable time, to enter upon any premises of the Customer or any third party where the Equipment is stored and remove and repossess such Equipment at the Customer's expense.

4.3.5 The Customer shall not, without the prior written consent of the Company, pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

#### 4.4 LIABILITY FOR REPLACEMENT OR REPAIR

4.4.1 Subject to the following sub-conditions of this condition 4.4, at the Company's option, for a period of twelve months from the date of Delivery, without cost to the Customer, the Company will (at its sole and absolute discretion) either repair or replace any defective Equipment or make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacture or re-perform any Installation Services (only where the Company has supplied Installation Services under a Contract) provided that, subject to condition 4.4.3, the Company shall have no liability for any such defects unless the Customer notifies the Company, within five Business Days from Delivery or the completion of the Installation Services (where applicable) whichever is the later event, of any defect arising prior to and/or after Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty four hours of any latent defect arising within such twelve month period.

4.4.2 If the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for defects in the Equipment shall cease, save for the Company's liability for defects arising on or before Delivery of the Equipment, in accordance with condition 4.4.1.

4.4.3 Where the Company is to supply Maintenance Services in respect of the relevant Equipment under a Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

4.4.4 The liability of the Company shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Company by the Customer prior to entering into a Contract, and in particular shall not apply to defects which arise from neglect, misuse, or faulty maintenance of the Equipment by the Customer or any of its other contractors, or from alterations carried out without the prior written consent of the Company or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

4.4.5 Any repaired or new parts provided by the Company under this condition 4 will be delivered by the Company to the Customer free of charge. Any Equipment (or part) which has been returned to the Company and replaced by the Company shall become the property of the Company upon collection by or delivery to the Company.

4.4.6 The Company reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs if the Company considers that the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer or any third party, or from normal wear and tear.

4.4.7 Neither acknowledgement of receipt, nor investigation, by the Company of any claim or consent given hereunder shall constitute or imply admission by the Company of any liability in respect of such claim.

4.4.8 Save where the Customer has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 6 shall apply) and subject to condition 12.5, the rights and remedies provided to the Customer under this condition 4.4, in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or Installation or defect in the Installation shall be the Customer's exclusive remedies in respect of the same.

#### 4.5 TRADE MARKS AND BRANDING

4.5.1 The Company shall be entitled to fix legends bearing the Company's and/or its third party supplier's name and/or trade marks or other marks to any Equipment. The Customer shall ensure that no such marks are removed or defaced at any time.

#### 5. FIXED NETWORK SERVICES

In the event that the section(s) relating to Fixed Network Services is/are completed in an Order Form or in the event that the Company otherwise does provide any Fixed Network Services to the Customer, this condition 5 shall, to the extent applicable to those Fixed Network Services, apply to the relevant Contract.

##### 5.1 DURATION OF FIXED NETWORK SERVICES.

Subject to earlier termination under condition 14 or as otherwise stated in this condition 5:

5.1.1 Unless either (a) the Customer terminates a Contract in accordance with condition 5.1.2 or (b) the Customer is a Small Business Customer (in which case condition 5.1.3 shall apply) then, upon the expiry of the Minimum Term the Contract will renew automatically for a further period of twelve months (a "Rollover Period").

5.1.2 Unless the Customer is a Small Business Customer (in which case condition 5.1.3 shall apply), the Customer may terminate the provision of Fixed Network Services under a Contract by giving ninety days' prior notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or (if the relevant Contract has automatically renewed under condition 5.1.1) upon the expiry of the relevant Rollover Period. If the Customer does not give notice to terminate the provision of Fixed Network Services under a Contract during a Rollover Period, the relevant Contract will automatically renew for a further Rollover Period.

5.1.3 Where the Customer is a Small Business Customer, the Customer may terminate the provision of Fixed Network Services (save to the extent it relates to DDSP Services or the Fraud Guardian service) by giving ninety days' prior notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term.

##### 5.2 PROVISION OF FIXED NETWORK SERVICES

5.2.1 The conditions referred to in condition 2.1.3.2 are:

5.2.1.1 the Company carrying out a survey and/or testing which reveals to the Company's satisfaction that it is possible for the Company to supply the Fixed Network Services;

5.2.1.2 that the Company determines that any details or information used by the Company to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey (including, without limit, where there are excess construction charges associated with a Site); and

5.2.1.3 the provision by the Company of confirmation by email to the Customer that the terms stated on the Order Form for Fixed Network Services do not contain any errors or omissions.

5.2.2 The Company will use reasonable endeavours to provide the Fixed Network Services from the Connection Date subject to these Conditions. Any Fixed Network Services so provided shall be provided with reasonable skill and care. The Fixed Network Services may not be fault free and use of the Fixed Network Services may not be uninterrupted.

5.2.3 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Fixed Network Services the Company will use reasonable endeavours to rectify the

fault as soon as practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Fixed Network Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network; any act or omission by the relevant carrier, or any known or unknown viruses which cause interruption or interference with the network).

5.2.4 The Company may for operational reasons; introduce Service Features, introduce process changes to improve the quality of the Fixed Network Services or upgrade the Fixed Network Services, provided always that such changes do not have a materially detrimental effect on the performance or provision of the Fixed Network Services.

5.2.5 The Company may, at any time, withdraw Service Features providing that the Company shall provide a materially equivalent or better Service Feature.

5.2.6 Except where stated on the Order Form, the broadband element (if any) of any Fixed Network Services does not include the provision of any modems or other equipment.

5.2.7 The Customer acknowledges that the speed of any broadband element (if any) of the Fixed Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line capability. The Company shall have no liability to the Customer whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise if the Customer's line does not produce a top speed of the maximum speed advertised.

### 5.3 SUPPLY OF TELEPHONE NUMBERS AND CLI PRESENTATION

5.3.1 OFCOM and/or the relevant Carrier each have the power to withdraw an allocation of telephone numbers and therefore any telephone numbers offered to the Customer under the relevant Contract, cannot be guaranteed as being available. The Company shall not be liable for any costs incurred by the Customer in relation to any such telephone number (including, without limitation, in the advertising of such telephone number) which is withdrawn by OFCOM and/or the relevant Carrier (save where and to the extent that such withdrawal is due to the negligence of the Company).

5.3.2 Without prejudice to any rights the Customer may have to port a number allocated to it, the Customer acknowledges it does not own or have any right to sell any number provided to it by the Company. Where the Customer has a number from a national numbering plan, the charges and process for porting such number shall be as set out in the Tariff. Information relating to porting and migration and associated charges may be found at [www.thorntonscomms.com/](http://www.thorntonscomms.com/) or at such other URL as is notified to the Customer by the Company from time to time.

5.3.3 The Customer, in using the CLI Presentation service, hereby consents to allow the Company or any third party supplier of the Company to present out a number that is different to that of the Customer's underlying CLI.

5.3.4 The Customer hereby consents to allow the Company to change the presentation number as and when required.

5.3.5 The Customer acknowledges and agrees that the presentation number is owned by the Customer and neither the Company nor any third party suppliers need any other permissions to present that presentation number and where the presentation number is owned elsewhere, the Customer warrants, represents and undertakes that it has permission to use this number.

### 5.4. USE OF THE FIXED NETWORK SERVICES

5.4.1 The Customer shall be responsible for the safe custody and safe use by it of the Fixed Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:

- (a) to use the Fixed Network Services in accordance with such additional conditions as may be notified to it in accordance with condition 19 from time to time;
- (b) not to cause any attachments, other than those that meet requirements under the General Conditions and all other Relevant Laws, to be connected to the Fixed Network Services and the Company shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of the Company it is liable to cause death, personal injury or damage or to impair the quality of the Fixed Network Service;
- (c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission, cause the Company to contravene, any Relevant Laws or General Conditions;
- (d) not to use (and procure that no End User shall use) the Fixed Network Service as a means of communication for a purpose other

than that for which the Fixed Network Service is provided and as may be set out in any relevant literature supplied by the Company from time to time;

(e) not to use (and procure that no End User shall use) the Fixed Network Service to make, provide, communicate, publish, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services, Nuisance Call or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name (or any of its third party suppliers' name) into disrepute or which in any way causes damage to or disruption to the Fixed Network Services;

(f) not to use the Fixed Network Service in a manner which constitutes a violation or infringement of the rights (including, without limitation, any Intellectual Property Rights) of any other person;

(g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws for the item as from time to time applicable;

(h) to provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;

(i) to implement adequate control and security over the use of the Fixed Network Services provided to the Customer including but not limited to the prevention of viruses, worms, logic bombs, Trojan horses and any other type of disruptive, destructive or nuisance programs and/or any calls generated by rogue diallers or hackers;

(j) not to use the Fixed Network Services in a way that breaches any Relevant Laws, the Code or any guidelines, regulations or instructions of the Phone-paid Services Authority or any licence applicable to the Customer or that is in any way unlawful or fraudulent;

(k) not to send or procure the sending of any unsolicited advertising or promotional material; and

(l) not to use the Fixed Network Services in a manner that is in any way unlawful, fraudulent or in bad faith or which has any unlawful, fraudulent or bad faith purpose or effect.

5.4.2 Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Fixed Network Services (excluding any Equipment purchased under a Contract by the Customer to which condition 4 applies) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition 5.4.2 only such equipment shall be deemed Equipment under those conditions. The Customer shall be liable to the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the negligence of the Company).

5.4.3 Unless stated otherwise in an Order Form, if the Customer takes a line rental from the Company, the Customer is also committed to using the Company for calls over that line. Should the Customer (during the applicable Minimum Term) use an alternative carrier for calls once the Contract for the provision of the telephone line has commenced, or prevent the Company from carrying calls in any monthly period so that the Company considers that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that the Company may charge the Customer the difference between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).

5.4.4 The Fixed Network Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Fixed Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.

5.4.5 The Customer warrants, represents and undertakes that any information the Customer makes available on its website, including the Customer's information and that of a third party ("**Third Party Content**") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

5.4.6 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by the Company to the Customer.

5.4.7 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with

any misuse or suspected misuse of the Fixed Network Services, and the Customer consents to the Company co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Fixed Network Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge any information which the Company holds which may be relevant to any investigation, including the name, address and account information relating to the Customer to such third parties.

5.4.8 The Customer acknowledges that the broadband element (if any) of the Fixed Network Services is provided from infrastructure which is shared by other users and the Company owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation, the Company may change the Customer's chosen access rate or manage the Customer's Services as the Company sees fit in the circumstances.

5.4.9 To prevent spam from entering and affecting the operation of the Company's systems and the Fixed Network Services, the Company may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. The Company may also, but is not obliged to, use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. The Company shall have no liability whether in contract, tort (including without limitation negligence and breach of statutory duty) or otherwise if the virus screening technology is not completely effective in any way, including (without limitation) against unsolicited emails or against any viruses, worms, Trojan horses or other programmes or devices that are apparently intended to access and modify, delete or damage data file(s) or computer programme(s).

5.4.10 The Customer shall comply with the Broadband Acceptable Use Policy. The Company may change the Broadband Acceptable Use Policy at any time by publishing the changes on its website ([www.thorntonscomms.com](http://www.thorntonscomms.com) or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect. In addition any changes to the Broadband Acceptable Use Policy will be referenced in the invoice sent to the Customer with a link to the new Broadband Acceptable Use Policy.

5.4.11 The Customer acknowledges that, in order to use the broadband element (if any) of the Fixed Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer ("PC") of a minimum specification suitable for the application. The Customer is responsible for ensuring that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.

5.4.12 In circumstances where the Customer receives only the broadband element of the Fixed Network Services from the Company, the Customer remains responsible for making payment to the Customer's fixed line telephony services provider for all rental charges relating to the Customer's relevant telephone line (together with any repair and maintenance charges) and all call charges from the Customer's fixed line telephony service provider.

5.4.13 The Customer agrees that the Phone-paid Services Authority may monitor any End User Service at any time.

5.4.14 In respect of each End User Service which requires the approval of the Phone-paid Services Authority pursuant to any regulation or code of practice, the Customer shall, before such End User Service (or any change thereto) is made available to callers, submit to the Company written evidence of such approval.

5.4.15 The Customer shall use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Customer's capacity to answer such calls or cause congestion (the existence of congestion to be reasonably determined by the Company taking into account normal levels of traffic on the network). Where the Company notifies the Customer of the occurrence of any such congestion or misuse, then the Customer shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Customer's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

5.4.16 The Customer acknowledges that the Fixed Network Services are not designed to be a carrier interconnect and that the Fixed Network Services will not support diallers of any description.

5.4.17 Use of any call recording feature and/or storage use or access of any data regarding or taping any use of the Services by or on behalf of Customer or its customers or End Users may be subject

to laws or regulations and Customer is solely responsible for and obligated to determine the lawful basis for such activity and provide any required notification to participants or users prior to commencement of said recording, storage, use or access. Customer acknowledges and agrees that the Company has not and is not required to provide the Customer with any analysis, interpretation or advice regarding such data or applicable laws or regulations and nor does the Company guarantee the accuracy, integrity, security or quality of the Customer's content.

#### 5.5 TRANSFER FROM THIRD PARTY SUPPLIERS

5.5.1 Where the transfer of lines and services from third party suppliers is selected by the Customer in an Order Form, then the provision of any and all relevant existing services supplied to the Customer by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Tariff.

5.5.2 The Customer and not the Company shall be liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Company formally accepting such Order Form that the Company will pay for specified charges.

#### 5.6 VOICE OVER INTERNET PROTOCOL ("VOIP") FIXED NETWORK SERVICES

5.6.1 Whilst the Company will use its reasonable endeavours to provide any VOIP Fixed Network Services set out in a Contract, the Company shall have no liability for the standard of quality or performance of the VOIP Fixed Network Services and the Company draws the following features of the VOIP Fixed Network Services to the Customer's attention:

- (a) the VOIP service may not offer all the features, quality or resilience the Customer may expect from a conventional phone line;
- (b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond the Company's control e.g. power disruptions, failures or the quality of any connection;
- (c) wherever possible, alternative arrangements should be made by the Customer and a traditional PSTN telephone line maintained at each Site;
- (d) the quality of a call made via VOIP is more akin to that experienced when making a call from a mobile network service to another mobile network service and this means that it is typically less than the quality experienced on a traditional land line;
- (e) if the Customer uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated, and as such the Customer may be required to provide information about the Customer's location to the emergency services to allow them to respond;
- (f) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;
- (g) the ability for the Customer to make Emergency Calls cannot be guaranteed;
- (h) a VOIP originated Emergency Call will not receive the same network priority at all points on the network as that which an Emergency Call made on a mobile network or on a circuit-switched fixed line will receive; and
- (i) the Customer's equipment used to access the VOIP Fixed Network Services requires mains power to make Emergency Calls.

5.6.2 The Customer shall not use the bandwidth allocated to the VOIP service for any other purpose other than making and receiving VOIP calls. Should this prohibition not be complied with it is likely that the quality and availability of the VOIP services shall be materially reduced.

5.6.3 The Customer acknowledges and agrees that the following items may be required at the Customer's Site before the VOIP Fixed Network Services can be commissioned:-

- a) IP phones or soft phones; and/or
- b) IP Access Circuit and any corresponding data hardware including but not limited to routers and port switches.

5.6.4 The Customer shall provide to the Company (and update the Company in the event of any change in such details), the following records:-

- a) a telephone number that may be used to call the Customer;
- b) the Customer's Site address including post code; and
- c) where the Customer has nomadic applications that use more than one network termination point or equivalent, the address where the number is normally used.

#### 5.7 DDSP SERVICES

In the event that the section(s) relating to DDSP Services is/are completed on the relevant Order Form or in the event that the Company otherwise does provide any DDSP Services to the Customer, conditions 5.7 to 5.9 shall apply to the relevant Contract.

5.7.1 Unless expressly stated otherwise in an Order Form, the provision of DDSP Services is dependent on the Company providing the connectivity element over which the Attack is routed as part of the Fixed Network Services to the Customer pursuant to the relevant Contract. If for any reason the Company ceases to provide the connectivity element of Fixed Network Services to the Customer, the DDSP Services shall terminate with immediate effect and without liability for the Company. Where the DDSP Services to any Customer Sites are terminated in this way, the Customer shall pay to the Company an early termination charge in respect of those Sites calculated in accordance with condition 10.7.4 below.

5.7.2 The Company will make the DDSP Services available to the Customer in accordance with the Service Levels applicable to the DDSP Service set out on the Order Form. For the avoidance of doubt, where no specific DDSP Service has been stated on the Order Form, the Company shall provide the DDSP Services in accordance with the Service Levels applicable to DDP Lite only.

5.7.3 The DDSP Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the DDSP Services (or any part of them) to any third party.

5.7.4 The Company makes no representation that the DDSP Services will be error-free, will withstand or mitigate the effects of any or all DDoS Attack traffic, will not block or affect any legitimate traffic, or will deny access to any service of the Customer. The Company disclaims any warranty of any kind, expressed or implied, including, but not limited to, warranties of fitness for a particular purpose, merchantability or satisfactory quality, with regard to the nature, quality and accuracy or validity of the DDSP Services.

5.7.5 Subject to the continuing supply of the service by the relevant Carrier or other third party supplier, in the event of a fault occurring in the DDSP Services the Company will use reasonable endeavours to rectify the fault as soon as reasonably practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the DDSP Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by the relevant carrier or third party supplier, or any known or unknown viruses which cause interruption or interference with the network).

5.7.6 The Company reserves the right, using its sole and absolute discretion, to divert all of the Customer's traffic (bona fide or otherwise) into a Black Hole if the severity of any Attack directly or indirectly threatens the Services or the integrity of the Company's network and its ability to provide service to its customers. The Customer acknowledges that it may irretrievably lose such traffic and associated data and the Company shall not be held responsible for such loss of traffic (including any bona fide traffic).

5.7.7 The Company may suspend the DDSP Services immediately in the event that the Company believes that such suspension is reasonably necessary to mitigate damage or liability that may result from Customer's continued use of the DDSP Services.

5.7.8 The Company shall use reasonable endeavours to make mitigation infrastructure available to the Customer at all times once the Customer's IP traffic is routed to the mitigation infrastructure in response to a confirmed Attack until the Customer's IP traffic is re-routed back to normal following cessation of such an Attack.

5.7.9 The determination of an Attack shall be determined solely by the Company.

#### 5.8 CUSTOMER OBLIGATIONS APPLICABLE TO DDSP SERVICES

5.8.1 The Customer shall provide the Company with an up-to-date point of contact with 24x7 availability who the Company shall coordinate with upon the detection of an Attack. The Customer is solely responsible for updating such point of contact information as necessary.

5.8.2 The Customer shall have documented internal emergency/incident response procedures for Attacks.

5.8.3 The Customer acknowledges that the DDSP Service is an on-demand service for use during an Attack only and is not meant to be used as an always-on service during periods when an Attack is not occurring.

5.8.4 The Customer shall take all such action as is necessary to enable the Company to perform the DDSP Services.

5.8.5 Only the Customer is authorised to provide content to the Company for provision of the DDSP Services and the Customer is responsible for such content (whether or not such content belongs to the Customer or its customers).

5.8.6 The Customer will be deemed to have taken any action that the Customer permits, assists or facilitates any person or entity to take related to a Contract, the content or the DDSP Services

5.8.7 The Customer shall be responsible for obtaining and providing at its cost, resources and data to enable the Company to provide the DDSP Services.

5.8.8 The Customer shall;

- (a) provide all resources and data to the Company at the Site as may be required to enable Company to perform the Services;
- (b) provide the Company with access to appropriate personnel, information, Sites and facilities of the Customer as requested by the Company to enable the Company to perform the Services;
- (c) inform the Company promptly of any changes made to its IT infrastructure that affect the DDSP Services;
- (d) ensure that suitably qualified and experienced operators as are able to discharge the Customer's responsibilities in connection with the DDSP Services including but not limited to replying to and executing such steps as are reasonably necessary to address a fault or an Attack;
- (e) notify the Company of any special health and safety hazards of which the Customer is or has become aware which may exist or arise at the Site which may affect the Company. The Customer is responsible for the health and safety of the Company employees, agents or representatives while they are at the Customer's premises or at a Site;
- (f) adhere to third party software licence agreements and not intentionally or negligently permit or require the Company to breach any third party software licence agreements; and
- (g) advise the Company in advance of any software or hardware changes it intends to implement that will or may affect the DDSP Services (including but not limited to changes to its network, systems, policies) and regardless of how these are implemented (including but not limited to, by way of upgrade, policy change).

#### 5.9 CUSTOMER WARRANTIES APPLICABLE TO DDSP SERVICES

5.9.1 Customer represents and warrants that:

- (a) in the performance of its obligations and use of the DDSP Services by the Customer and any of its representatives, users, employees, subcontractors, agents or any other person under its responsibility ("**Customer Representatives**"), the Customer and the Customer Representatives shall not breach any applicable laws and/or infringe the intellectual property rights of any third party;
- (b) the Customer and the Customer Representatives shall not use the DDSP Services in an Abusive manner (as described below);
- (c) the information and other data that the Customer transmits and receives in connection with the use of the DDSP Services complies with and shall at all times comply with all applicable laws and does not and shall not infringe the intellectual property rights of any third parties;
- (d) the Customer and the Customer Representatives shall not knowingly and/or intentionally transmit introduce or allow to be introduced either through it, any third party over which the Customer has control, any virus, worm, Trojan Horse, time bomb or similar contaminating or destructive feature or other malicious code using the DDSP Services; and
- (e) when using the DDSP Services (or allowing others to use the DDSP Services), the Customer and the Customer Representatives shall comply with all applicable acceptable use policies and shall not cause or allow others to cause the disruption of other parties' use or enjoyment of the internet.

5.9.2 Without limiting the foregoing, the following shall be deemed as Abusive uses of the DDSP Services and each shall constitute a material breach by the Customer of a Contract:

- (a) causing, aiding, encouraging or facilitating a domain or URL hosted by Company for Customer or Customer Representative to point or otherwise direct traffic to any material that violates any applicable law or regulation;
- (b) using or facilitating the use of the DDSP Services (including by pointing to websites or locations) to create, transmit, distribute or store materials that include tools designed for compromising security (including but not limited to password guessing programs, cracking tools or network probing tools) data protection or anti-terrorism laws, impair the privacy of communication or knowingly contain viruses; and / or
- (c) violating the Company's Broadband Acceptable Use policy.

5.9.3 The Customer's failure to correct any Abuse within thirty (30) days after receipt of notice shall entitle the Company to terminate the DDSP Services.

5.9.4 The Customer shall indemnify and hold harmless the Company against any and all losses, costs, liabilities, judgments, damages (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation or damages to business) and expenses, including without limitation, legal fees and expenses arising out of or in connection with any claim, action, allegation, investigation or proceeding concerning any:



- (a) conduct by the Customer or the Customer Representatives which is Abusive;
- (b) third-party claim arising from or in connection with any content provided or delivered by or for the Customer or Customer Representative in connection with the DDSP Services;
- (c) content provided or delivered by or for Customer or Customer Representatives in connection with the DDSP Services; and / or
- (d) breach of Customer's warranties, representations, or obligations set forth in these Conditions.

#### 5.10 FRAUD GUARDIAN

In the event that the section(s) relating to the Fraud Guardian service is/are completed in an Order Form or in the event that the Company otherwise does provide the Fraud Guardian service to the Customer, conditions 5.10.1 to 5.10.14 shall apply to the relevant Contract. For the purposes of interpreting the provisions relating to the Fraud Guardian service only, 'line' or 'lines' shall mean a PSTN line, a MultiLine PSTN, ISDN2, ISDN 30 or SIP Endpoint. **The Fraud Guardian service shall not apply to or benefit any VOIP services.**

5.10.1 The provision of the Fraud Guardian service is dependent on the Company providing to the Customer both the lines and calls in relation to which the service is to be delivered as part of the Fixed Network Services provided pursuant to the relevant Contract. If for any reason the Company ceases to provide such lines and/or calls to the Customer, the Fraud Guardian service shall terminate with immediate effect in relation to those lines and calls without liability for the Company. Where the Fraud Guardian service is terminated in this way, the Customer shall not be entitled to any refund of any monthly Charges paid in respect of such service.

5.10.2 The Fraud Guardian service shall only apply to the lines specified as benefiting from the Fraud Guardian service in the relevant Order Form (or as otherwise agreed in writing by the Company).

5.10.3 The Fraud Guardian service is provided solely for the Customer's use and the Customer may not resell or attempt to resell the Fraud Guardian service (or any part of it) to any third party.

5.10.4 The Customer acknowledges and agrees that the Company shall be entitled (but not obliged) to automatically suspend any line that reaches or exceeds a daily spend limit of £500 (or any other daily spend limit for that line which may otherwise be specified in the relevant Order Form) (the "Cap") and the Customer's liability to pay for call Charges, which did not arise due to any act or omission of the Customer or breach of the relevant Contract by the Customer and which are proven to arise from fraudulent activity perpetrated by a third party, in respect of any line which benefits from the Fraud Guardian service shall (provided that the Customer provides the Company with an Action Fraud reference number in relation to any alleged fraudulent activity (please see <https://www.actionfraud.police.uk/contact-us>)) be limited to a daily amount equal to the Cap for that line.

5.10.5 The Customer further acknowledges and agrees that regardless of whether or not the daily Cap has been reached in respect of any line the Company may also (at the Company's sole discretion) suspend access to the Services pursuant to condition 20.2.1.

5.10.6 The Customer shall provide the Company with an up-to-date point of contact with 24x7 availability who the Company shall notify by email of any suspected fraudulent usage of the Equipment and/or Services or of any suspension of any Service. The Customer is solely responsible for updating such point of contact information as necessary. In the event the Customer has not provided an email address for the notification anticipated by this condition, the Company will endeavour to notify the Customer using any other email address it may have on record for the Customer. The Customer shall immediately reply to any email received from the Company notifying it of potential fraudulent activity with its instructions regarding suspending or otherwise relating to such activity and if the Customer does not reply (or until the Customer does reply), the Company shall be under no duty or obligation to suspend such activity.

5.10.7 The Customer acknowledges and agrees that in order to suspend and/or reactivate any lines the Company will be required to place and remove barring orders with the relevant third party suppliers and Carriers. In certain circumstances this may result in all outgoing calls from the line being restricted except Emergency Calls.

5.10.8 The Company will reactivate any suspended Services when the Customer has satisfied the Company (in its sole discretion) that the reason for the suspension has been resolved and the relevant Services are unlikely to be at material immediate risk of fraudulent usage.

5.10.9 The Company makes no representation that the Fraud Guardian service will be error-free or will detect, limit or prevent any fraudulent usage of the Services and/or Equipment or will not block

or affect any legitimate use of the Services and/or Equipment. The Company disclaims any warranty of any kind, expressed or implied, including, but not limited to, warranties of fitness for a particular purpose, merchantability or satisfactory quality, with regard to the nature, quality and accuracy or validity of the Fraud Guardian service. In particular (but without limitation), the Company accepts no liability for any delays in suspending or reactivating any Service which are beyond its reasonable control (including, without limitation, delays by third party suppliers or Carriers in activating or removing barring orders).

5.10.10 Subject to the continuing supply of call data by the relevant Carrier or other third party supplier, in the event of a fault occurring in the Fraud Guardian service the Company will use reasonable endeavours to rectify the fault as soon as reasonably practicable, however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Fraud Guardian service whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by the relevant carrier or third party supplier, or any known or unknown viruses which cause interruption or interference with the network).

5.10.11 The Customer may terminate the Fraud Guardian service at any time on or after the expiry of the Minimum Term specified in the relevant Order Form by giving thirty days' notice in writing to the Company.

5.10.12 The Company may terminate the Fraud Guardian service with immediate effect and without any liability for the Company if the Customer is subject to more than one suspension under condition 5.10.4 and/or condition 20.2.1 in any consecutive three month period.

5.10.13 The Customer acknowledges and agrees that condition 20 applies to the Customer notwithstanding any Fraud Guardian service taken by the Customer.

5.10.14 For the purposes of condition 5.10.4 a "day" shall be deemed to be the period commencing at one second past midnight on any particular day and ending at midnight that day, and "daily" shall be construed accordingly.

#### 5.11 PUBLISHING OF CUSTOMER DETAILS

5.11.1 Unless the Customer requests it of the Company, the Company will not publish the Customer's name address and the telephone number for the Fixed Network Service in the relevant phone book serving the Customer's area and the Company will not make the said telephone number available from a directory enquiries service.

5.11.2 If the Customer requests a Special Entry to be placed in the relevant phone book issued by the Carrier it must inform the Company at the earliest available opportunity. The Company agrees to use its reasonable endeavours to register a Special Entry upon receipt of such request and upon receipt of: (i) any additional charge which may be levied by the Company for such registration and (ii) signature by the Company of any separate contract which may be required in respect of that registration.

#### 5.12 DISPUTE RESOLUTION

5.12.1 The Customer shall refer any dispute it has with the Company to the Company's complaints procedure at [www.thorntonscomms.com](http://www.thorntonscomms.com) (or at such other URL as is notified to the Customer by the Company from time to time).

5.12.2 Nothing in this condition 5.12 shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of a Contract.

#### 6. MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed in an Order Form or in the event that the Company otherwise does provide any Maintenance Services to the Customer, this condition 6 shall apply to the relevant Contract.

##### 6.1 DURATION OF MAINTENANCE SERVICES

6.1.1 The condition referred to in condition 2.1.3.3 is that the Company provides confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Maintenance Services do not contain any errors or omissions.

6.1.2 In consideration of (and subject to) the payment of the Annual Support Charge each year by the Customer, the Company will use its reasonable endeavours to supply to the Customer the Maintenance Services in accordance with the relevant Contract.

6.1.3 Subject to earlier termination in accordance with its terms, a Contract for Maintenance Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, the Contract shall renew automatically for a further period of twelve months (a "Rollover Period").

6.1.4 The Customer may terminate the provision of Maintenance Services by giving ninety days' notice in writing to the Company,



such notice to become effective no earlier than the expiry of the Minimum Term or (if the Contract for Maintenance Services has automatically renewed under condition 6.1.3) upon the anniversary of such date thereafter. If the Customer does not give notice to terminate the Maintenance Services provided under a Contract during the Rollover Period, the Maintenance Services will automatically renew for a further Rollover Period.

#### 6.2 PROVISION OF MAINTENANCE SERVICES

6.2.1 The Maintenance Services shall apply only in respect of the Supported Equipment expressly stated on the Order Form to be subject to the Maintenance Services

6.2.2 The Company shall have no obligation to provide any Maintenance Services unless all necessary testing has been completed by or on behalf of the Company to ensure that it is possible for the Company to provide such Maintenance Services. If the Company becomes aware of any such limitations that may impact the provision of Maintenance Services or if the Maintenance Services cannot be provided, the Company will contact the Customer within five Business Days of such testing and cancel the affected Maintenance Services without charge.

6.2.3 Unless it is otherwise stated in an Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will use its reasonable endeavours to, within two Business Days of receipt of notification from the Customer of a request for the provision of Maintenance Services and the Supported Equipment being made available, commence during Normal Working Hours the Maintenance Services. Any time period stated in respect of the Company's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

6.2.4 Where the Company replaces defective Supported Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Supported Equipment embodying such substituted items.

6.2.5 The Company does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 6.3.1 and 6.3.2) will ensure that the Supported Equipment operates without interruption or error.

6.2.6 Subject to spare part availability, the Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required to keep the Supported Equipment in satisfactory operation. All replaced parts shall become the property of the Customer.

6.2.7 The Customer shall take adequate copies of data, operating and application software such that the system and files may be restored in the event of corruption or other similar loss howsoever occasioned.

6.2.8 The Customer agrees that it is the responsibility of the Customer to restore data, operating and application software in the event of loss due to system failure or disk exchange. Restoration of system and data from the Customer's last good backup copies may be undertaken by the Company at the request of the Customer and will be chargeable in accordance with condition 6.3.2.

6.2.9 Subject to condition 6.3.1, Maintenance Services shall not include the following (the "Excepted Services"):

- (a) the repair of damage to the Supported Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the Company or the original Supported Equipment manufacturer or supplier) regarding the operation of the Supported Equipment;
- (b) labour or materials required to repair Supported Equipment as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection or installation of unapproved accessories, attachments, software or other devices or as a result of a breach by the Customer of condition 6.5;
- (c) the alteration, modification or maintenance of the Supported Equipment by any person other than the Company without the Company's prior written consent;
- (d) the transportation or relocation of the Supported Equipment save where the same has been performed by the Company at the request of the Customer;
- (e) the maintenance or repair of any extension wiring (after the initial twelve month warranty period under condition 4.4.1 has passed), any Supported Equipment not at the Site, or of anything other than the Supported Equipment;
- (f) any defect or error in any software (including as a consequence of modifications and customisation) used upon or in association with the Supported Equipment;
- (g) the supply of replacement cassettes, aerials, aerial systems and batteries;
- (h) the reprogramming of the Supported Equipment to provide improved or modified service or facilities;

(i) Supported Equipment faults caused by telephone area code changes or changes in Carriers;

(j) maintenance or replacement of ancillary items including but not limited to answer phones, analogue or digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, and any cables or consumables unless otherwise agreed in writing;

(k) maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis;

(l) a dedicated helpdesk.

(m) any defect in design, manufacture, installation or performance of the Supported Equipment (unless otherwise stated in a Contract);

(n) the restoration, uploading or reconstitution of any data relating to the Supported Equipment;

(o) the provision of any Maintenance Services for any items that either do not appear in the relevant Order Form or which appears in the relevant Order Form with an inaccurate or misleading description;

(p) where the Supported Equipment includes software, the Customer's failure to install any enhancements which have been made available to the Customer or any fault in the Supported Equipment for which a patch, fix or update has not been made available by the applicable Supported Equipment supplier; and/or

(q) moves and changes.

#### 6.3 ADDITIONAL CHARGES

6.3.1 The Company may, in its sole and absolute discretion, upon request by the Customer use its reasonable endeavours to provide all or any of the Excepted Services (as referred to in condition 6.2.9 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 6.3.3 below. For the avoidance of doubt, should the Company elect to carry out any of the Excepted Services, the time spent carrying out such services shall not be included for the purposes of calculating the time period referred to in condition 6.2.3.

6.3.2 Without prejudice to condition 6.3.1 above the Company shall be entitled to levy (and receive from the Customer) Additional Charges in the manner described in condition 6.3.3 below if:

(a) Maintenance Services are provided in circumstances where any person who is reasonably skilled and competent in the field of maintaining telecommunications equipment would have judged the Customer's request to have been unnecessary; and/or

(b) the Customer reports an apparent fault of the Supported Equipment to the Company and upon investigation by the Company the Supported Equipment and/or its Installation is found not to be defective. Such Additional Charges may include (without limitation) a charge for the investigation and/or for any call-out and for any Supported Equipment changed in a postal exchange (in respect of which the Company reserves the right to make a charge up to the replacement value of the Supported Equipment in question);

(c) where the Company determines that a fault that has been reported to the Company is a fault of the Carrier. Such Additional Charges may include (without limitation) a charge for the call-out in accordance with the Company's then current Tariff; and/or

(d) the Customer requests the restoration of data as described in condition 6.2.8.

6.3.3 Additional Charges shall be levied by the Company as follows:

(a) following completion of the additional services supplied under condition 6.3.1 and 6.3.2(a) and 6.3.2(d); or

(b) following completion of the investigation and/or call out in respect of condition 6.3.2(b) and 6.3.2(c).

6.3.4 Such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Customer within ten days of the date of an invoice.

#### 6.4 DISCONTINUED SERVICES

6.4.1 Without prejudice to condition 15 or any other right of suspension or termination of Services under these Conditions, the Company shall have the right to discontinue the Maintenance Services in respect of any Supported Equipment (without liability to the Customer) in the event that the Company's supplier and/or the manufacturer of the Supported Equipment has ceased to supply or manufacture such Supported Equipment provided that the Company will notify the Customer as soon as reasonably practical after it is aware of any cessation in supply or manufacture of the Supported Equipment and shall either (upon agreement with the Customer) (i) terminate the relevant Contract or (ii) replace or upgrade the affected Supported Equipment at the Customer's expense.

6.4.2 Without prejudice to condition 15 or any other right to terminate any Services under these Conditions, the Company shall have the right to terminate forthwith the supply of the Maintenance Services (without liability to the Customer) in the event that any necessary approvals required by the Company to maintain any of the

Supported Equipment are not granted or revoked by any government or regulatory agencies or any third party.

6.5 The Customer shall:

6.5.1 ensure that the Supported Equipment is used in a normal and proper manner;

6.5.2 take all steps, measures and meet all requirements (including the environmental conditions) contained in the customer operating instructions and manufacturer's written recommendations supplied with the Supported Equipment ("**User Instructions**");

6.5.3 carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;

6.5.4 not carry out or permit alteration to call routing apparatus or extension wiring (except by the Company, or by the Company's authorised agents), save that in relation to the connection of other apparatus to the Supported Equipment, such connection may be performed by another person at the Customer's expense if either;

(a) the Company so agrees in writing, or

(b) the Company fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed.

6.5.5 appoint at least one member of its staff as a "**Principal Operator**", who will be trained in the use of the Supported Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with the Company;

6.5.6 not employ or permit a third party to make any alterations to the programming or physical structure of the Supported Equipment;

6.6 If the Supported Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Supported Equipment and undertake such repair work as may be necessary to put the Supported Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

## 6.7 CHANGE OF LOCATION

6.7.1 The Customer will not move any of the Supported Equipment, nor remove the Supported Equipment from its location as at the Commencement Date without the prior written consent of the Company, such consent not to be unreasonably withheld. Where the Company consents to such relocation, the Company will provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with the Company's then current Tariff, and such payment shall be in addition to the Annual Support Charge.

## 7. CONSULTANCY SERVICES AND/OR HOSTING SERVICES

In the event that the section relating to Consultancy Services is completed on the relevant Order Form or in the event that the Company otherwise does provide any Consultancy Services to the Customer, conditions 7.1 and 7.2 shall apply to the relevant Contract.

### 7.1 DURATION OF CONSULTANCY SERVICES

7.1.1 Any Contract including the provision of Consultancy Services based on an order which is accepted by the Company pursuant to condition 2.1 is, until the Effective Date, conditional on the Company providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Consultancy Services do not contain any errors or omissions. Subject to this condition 7.1.1 and in consideration of (and subject to) the payment of the Consultancy Charges by the Customer, the Company shall supply to the Customer the Consultancy Services in accordance with the relevant Contract.

7.1.2 Subject to earlier termination in accordance with its terms, the relevant Contract for Consultancy Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract in relation to the Consultancy Services will renew automatically for further periods of twelve months.

7.1.3 The Customer may terminate the Contract in relation to the Consultancy Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or upon each anniversary of such date thereafter (as applicable).

### 7.2 PROVISION OF CONSULTANCY SERVICES

7.2.1 The Company undertakes to use reasonable endeavours to provide the Consultancy Services to the Customer subject to these Conditions.

7.2.2 The Customer undertakes to co-operate with the Company in all matters relating to the Consultancy Services and undertakes to

comply with the reasonable requirements or instructions of the Company and promptly give the Company all such information as it may reasonably require in connection with the provision of Consultancy Services to the Customer.

In the event that the section relating to Hosting Services is completed on the relevant Order Form or in the event that the Company is providing Hosting Services to the Customer, conditions 7.3-7.12 (inclusive) shall apply to the Contract.

### 7.3 DURATION OF HOSTING SERVICES

7.3.1 The condition referred to in condition 2.1.3.5 is that the Company provides confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Hosting Services do not contain any errors or omissions.

7.3.2 Subject to earlier termination in accordance with its terms, the Contract for Hosting Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract in relation to the Hosting Services will renew automatically for a further period of twelve months (a "**Rollover Period**").

7.3.3 The Customer may terminate the Contract in relation to the Hosting Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or upon each anniversary of such date thereafter (as applicable). If the Customer does not elect to give notice to terminate the Contract during the Rollover Period, the Contract will continue to automatically renew for subsequent Rollover Periods on each anniversary of the date of the expiry of the Minimum Term.

### 7.4 PROVISION OF HOSTING SERVICES

7.4.1 In consideration of (and subject to) the payment of the Annual Hosting Charge by the Customer, the Company shall use reasonable endeavours to provide the Hosting Services from the Commencement Date subject to these Conditions. The Hosting Services may not be fault free and may not be uninterrupted.

7.4.2 The Company will use reasonable endeavours to rectify any fault in the Hosting Services as soon as practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Hosting Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by a Carrier or other service provider, or any known or unknown viruses which cause interruption or interference.

7.4.3 The Customer shall:

7.4.3.1 not use the Hosting Services to make, provide, communicate, deliver, knowingly receive, upload, download, publish, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Hosting Services;

7.4.3.2 not use the Hosting Services in a manner which constitutes a violation or infringement of the rights of any other person;

7.4.3.3 implement adequate control and security over the use of the Hosting Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access to the Hosting Services by hackers;

7.4.3.4 not use the Hosting Services in a way that breaches any Relevant Laws, any guidelines, regulations or instructions of any regulator or any licence applicable to the Customer or that is in any way unlawful or fraudulent;

7.4.3.5 not conduct any unauthorised monitoring of, or access to, or use of data, networks or systems, including any attempt to probe, scan or test the vulnerability of a network and/or system or to breach security or authentication measures without proper authorisation;

7.4.3.6 not interfere with, disrupt or disable any service to any user, host or network via means including but not limited to overloading, flooding, mail-bombing, denial of service attacks or crashing;

7.4.3.7 not use manual or electronic means to avoid any use limitations placed on a system, such as access or storage restrictions; and

7.4.3.8 not attempt to circumvent or alter any method of measuring or billing for the Hosting Services.

7.5 The Hosting Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Hosting Services (or any part of them) to any third party.

7.6 The Customer shall not be liable to the Customer for any interruption or other failure in the Hosting Services to the extent that such interruption or failure arises directly or indirectly from:

7.6.1 the IT Equipment, the Customer's network or system or any part thereof;

7.6.2 any act or omission of the Customer, its agents, representatives or users;

7.6.3 the Customer's breach of the Contract;

7.6.4 the Customer's failure or delay in complying with the Company's reasonable instructions and/or failure or delay in providing any information requested by the Company;

7.6.5 anything beyond the reasonable control of the Company as defined more particularly in condition 13.4;

7.6.6 planned outages, server relocation, or maintenance advised to the Customer by the Company;

7.6.7 server maintenance or application maintenance carried out by the Customer or by the Company on the Customer's instructions; and/or

7.6.8 suspension of the Hosting Services in accordance with the Contract.

7.7 The Company may at any time change the location of the Facility in which Hosting Services are performed upon notice to the Customer.

7.8 In the event of termination or expiry of a Contract for Hosting Services, the Company shall (at the Company's option) return or delete all data which is held by the Company in connection with the Hosting Services, except data which the Company is entitled to retain in accordance with a Contract. Save in the event of expiry, or termination by the Company without cause, the Customer shall be liable for all costs which the Company incurs in returning or deleting the Hosted Data.

7.9 Unless the Customer purchases back-up services from the Company, the Company shall not be obliged to perform a back-up or otherwise replicate any of the content which the Customer provides to the Company as part of the Hosting Services.

7.10 Notwithstanding any other provision of this Contract, the Customer's sole and exclusive remedy for any breach of this condition 7 by the Company and/or for any negligence, default or breach of duty by the Company which leads to loss or corruption of Hosted Data shall be for the Company to use its reasonable endeavours to restore the Hosted Data to the most recent unimpaired and uncorrupted generation of Hosted Data (where available) created prior to such breach, negligence or default.

7.11 Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Hosting Services (or any part thereof) which do not have a materially detrimental effect on the Hosting Services and shall where the Company deems it practical to do so give the Customer written notification of the same.

7.12 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as or in its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Customer's uniform resource locator ("**URL**").

7.13 If the Company undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse the Company for any registration fees paid by the Company to the relevant internet registration authorities. The Company does not guarantee that any Domain Names or URL requested by the Customer will be available. The Customer acknowledges and agrees that the registration of the requested domain name and its ongoing use by the Customer shall be subject to the relevant naming authority's terms and conditions of use (e.g. Nominet UK set out at <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration>, Network Solutions set out at <ftp://ftp.networksolutions.com/partners/Agreements/NetworkSolutionServiceAgreement.pdf>, CentralNic set out at <https://www.centralnic.com/support/terms/domains> and JANET set out at <https://community.ja.net/library/janet-services-documentation/>) and the Customer hereby undertakes and warrants to comply with such terms and conditions. The Company shall not be responsible for investigating whether or not the requested Domain Name and/or URL will infringe any third party Intellectual Property Rights and the Company accepts no responsibility whatsoever in respect of the use of the Customer's requested domain name by the Customer or any other person. Any dispute between the Customer and any third party (including without limitation any naming authority) regarding a domain name must be resolved between such parties and the Customer shall indemnify the Company against any such action. The Company will take no part in any such dispute unless required to do so by law. On becoming aware of such a dispute concerning a domain name the Company hereby reserves the right at its sole discretion without notice to suspend or cancel the relevant Services associated with the domain name dispute.

7.14 The Company may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if the Company reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or infringe the rights of a third party.

## 8. WIFI SERVICES

8.1 Unless otherwise set out on the Order Form, the WIFI Service shall not include the Supply of Equipment or Installation Services; Fixed Network Services; Maintenance Services; Consultancy Services or Hosting Services. In the event that the section relating to WIFI Services is completed on the relevant Order Form or in the event that the Company otherwise does provide any WIFI Services to the Customer, conditions 8.1 to 8.6 (inclusive) shall apply to the relevant Contract.

8.2 The Company shall provide the WIFI Service and the WIFI Software in accordance with this condition 8.

8.3 The WIFI Service and the WIFI Software shall only be deployed on a server platform provided or approved by the Company.

8.4 The Company shall, subject to the terms of this condition 8, supply Customer with the Software which shall only be licensed to the Customer for use with no more than the number of access points set out in the Order Form which are installed at the Site.

### 8.5 WIFI SERVICES - ASSUMPTIONS, EXCLUSIONS AND DEPENDENCIES

8.5.1 The Customer acknowledges and agrees that the WIFI Services shall have certain exclusions set out below:

8.5.1 the Company shall not provide any network capacity or connectivity to the Site from the public or carrier network;

8.5.3 the Company shall not operate the Customer's WIFI network;

8.5.3 the Company shall not provide the hosting of the WIFI Services, Software, Software documentation or related database;

8.5.4 the Company shall not prepare analysis of the data provided by the WIFI Services or the Software nor shall the Company run reports of the data;

8.5.5 the Company shall not remotely monitor the WIFI Services, Software or WIFI network;

8.5.6 the Company shall not provide advice in respect of End User terms for use of the WIFI network or capture and use of the data from End Users; and

8.5.7 the Company shall not be obliged to perform a back-up or otherwise replicate any of the content created by the Customer or any End User using the WIFI Services or Software.

### 8.6 Software Licence Terms

8.6.1 The Company grants to the Customer a non-exclusive, non-transferable, revocable licence for the Customer and the End Users to use the Software and the Software documentation at the Site for the Customer's internal business purposes only. Such use is limited to the number of access points set out on the Order Form and the Customer agrees that any attempt to use the Software or the Software documentation by more than the specified number of uses shall constitute a material breach of this Contract.

8.6.2 Save as set out in condition 8.6.1, the licence is personal to the Customer and the Customer is only licensed to use the Software and Software documentation for the benefit of the Customer in accordance with the express terms of this Contract and not further or otherwise.

8.6.3 The licence shall terminate automatically upon the termination or expiry of this Contract.

8.6.4 The Customer shall not translate, adapt, disassemble, decompile, reverse engineer, or modify the Software (or any part of it) or Software documentation (or any part of the same) without the express consent of the Company. Further, the Customer shall not translate, modify, create derivative works from, duplicate the functionality of, adapt, enhance or extend the Software or any of the Software documentation. This section 8.6.4 shall survive termination of the licence or this Contract.

8.6.5 The Customer shall not combine, merge or otherwise permit the Software (or any part of it) to become incorporated in any other program, nor arrange or create derivative works based on the Software.

8.6.6 The Customer shall not, distribute, license, sell or otherwise deal in or encumber the Software or Software documentation.

8.6.7 The Customer shall not, copy the Software and Software documentation (or any part of it), except for such one back-up, provided that the Customer keeps accurate and up-to-date records of such copying containing such information as the Company reasonably requests.

8.6.8 The Customer shall not, use the Software and/or Software documentation on behalf of or make it available to any third party (save for the Customer) or allow or permit a third party to do so.

8.6.9 If required by the Company, the Customer shall sign such end user licence agreement as may be required by the Company or any

other third party owner of the copyright in the Software to protect the owner's interest in the Software and for the Customer to be able to use the Software.

8.6.10 The Customer shall, and shall procure that any End Users shall, comply with all Software licence terms and conditions which are embedded in the Software in a click through form or otherwise.

8.6.11 The Software and the Software documentation and any Intellectual Property Rights of whatever nature therein shall remain the property of the Company or its licensors. The Customer shall notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Software or Software documentation.

8.6.12 The Customer shall effect and maintains adequate security measures to safeguard the Software and Software documentation from theft or unauthorised use. This section shall survive termination of the licence or this Contract.

8.6.13 The Customer shall not use the Software contrary to any restriction set out in this Contract or otherwise in a way that is not expressly permitted by this Contract. The Customer's right to use the Software and any Software documentation shall not include the rights of any third party to use or have access to the Software and any Software documentation and in any event, the Customer shall ensure that all such use does not exceed the Customer's permitted use.

## **9. FINANCE AND CREDIT**

9.1 The Customer shall procure that its owners, directors, officers and assigns are made aware of the Company carrying out searches with credit reference agencies relating to the creditworthiness of the Customer and/or its owners, directors, officers and assigns and the Customer shall, upon the Company's request, promptly supply or procure the supply of all information requested for a credit search with a credit reference agency.

9.2 It is agreed that where the Company approaches a finance provider or lease provider to arrange finance for the purchase or leasing of Equipment then the Company acts as an agent for the Customer and not for the finance provider or lease provider.

9.3 The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, which will be seen by other organisations that make searches.

9.4 In the event that the Company is unable to obtain relevant finance on the terms originally proposed then the Company will return the deposit received from the Customer for the relevant Equipment and shall have no further liability to the Customer.

9.5 If indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Customer and shall entitle the Company to terminate this Contract and retain any deposit paid by the Customer.

9.6 After Delivery and Installation (where applicable) of the Equipment is completed, any failure by the Customer to complete any relevant finance agreement documentation shall render the Customer liable to pay to the Company the whole of the Price as defined in condition 10.1.1 within seven days of the date of the Company's invoice.

## **10. PRICE AND CHARGES**

### **10.1 EQUIPMENT**

10.1.1 Save where, and to the extent that, any Promotional Terms apply, the Price is as stated in an Order Form. Any invoices issued by the Company in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.1.2 Unless otherwise specified the Price is based on the assumption that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one visit to the Site and accordingly the Company may at its discretion at any time increase the Price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

### **10.2 FIXED NETWORK SERVICES**

10.2.1 Save where, and to the extent that, any Promotional Terms apply, the Charges will be as detailed in the Tariff or unless stated otherwise in an Order Form.

10.2.2 The Company shall have the right to alter the Charges for the Fixed Network Services from time to time by publishing changes to the Tariff at [www.thorntonscomms.com](http://www.thorntonscomms.com) (or at such other URL as is notified to the Customer by the Company from time to time) as well as in invoices provided to the Customer stating that the Charges have been altered and providing a link to the new Charges:

(a) at least one month prior to the change taking effect in the event of changes which may be of material detriment to the Customer; and  
(b) as soon as is reasonably practical in the circumstances prior to the change taking effect, for all other changes,

and if the Customer wishes to object to any proposed change which is of material detriment to the Customer, then the Customer must notify the Company in writing (addressed to Customer Services, Thorntons Communications Limited, 3 Park Lane, Cheam Village, Sutton, SM3 8BN) within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the publishing by the Company of any change in accordance with condition 10.2.2(a) shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer. The Customer may terminate the directly affected part of the Fixed Network Services by providing thirty (30) days written notice to the Company where the proposed change to the Charges causes the Customer material detriment which cannot be addressed by the Company to the Customer's reasonable satisfaction subject to such written notice being received by the Company within thirty (30) days of the publication of the proposed change to the Charges.

10.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Any invoices issued by the Company in respect of the Charges for Fixed Network Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.2.4 Line rental is payable from the Connection Date.

10.2.5 If the Customer has agreed to a Monthly Minimum Call Spend and at the end of any month, the Customer has not incurred the Monthly Minimum Call Spend, or if the Customer terminates the Contract in any way other than pursuant to condition 15, the Customer will be liable to pay to the Company, the difference between the Charges incurred during that month for actual calls made and the Monthly Minimum Call Spend.

10.2.6 The Company reserves the right to apply a monthly minimum threshold on call spend of at least £10.00 per Customer account (or such other sum as notified to the Customer by the Company in writing from time to time), to keep the account operating at a viable level. This charge shall only apply to the telephone services element of Fixed Network Services.

### **10.2.7 Call Commissions**

(a) Subject to paragraphs (d) and (e) below, the Company will pay Call Commissions to the Customer in respect of calls to each applicable Premium Rate Service and/or other End User Service and/or Non Geographic Service delivered to and received by a Number at the rate and in the amount set out on the Order Form or in the Tariff.

(b) Following the end of each calendar month, the Company will submit a statement to the Customer setting out the number and duration of all such calls delivered and received by the Customer in respect of Premium Rate Services and/or other End User Services and/or Non Geographic Services. Following receipt of the statement the Customer shall submit an invoice to the Company in the amount shown as owing on the statement, or if stated on the Order Form, the Company will implement a self-invoicing process on behalf of the Customer. The Company may set-off the Call Commission against any Charges or other amounts due to the Company. Where it is agreed the Company shall self-invoice, the Customer confirms that it shall not issue VAT invoices in respect of Call Commissions due to the fact the Company will be self-invoicing. For the avoidance of doubt, the Company shall not self-bill upon the cessation of the Customer's right to receive Call Commissions. The Customer undertakes to inform the Company promptly in writing in the event of any change, reissue or cancellation of its VAT number or a transfer of any part of the Customer's business as a going concern.

(c) The Company shall not pay Call Commissions in respect of any call which it reasonably believes may have originated outside the United Kingdom.

(d) Call Commission shall not be payable on invoice balances of £10 or less (or such other sum as notified to the Customer by the Company in writing from time to time). Invoice balances shall not roll over from one month to the next.

(e) The Customer's Call Commission is a function of the number and duration of inbound calls to the relevant telephone number which will vary from day to day. Any predicted amount of Call Commission by the Company shall be an estimate only and the Customer acknowledges it has placed no reliance upon such estimate.

10.2.8 Except as stated otherwise in the Tariff or in an Order Form, for the purpose of calculating call charges:

(a) all call charges will be rounded up to the next whole penny;  
(b) all call durations will be rounded up to the next whole minute;

(c) all calls will be charged based on the time band within which the call commences (irrespective of whether the call ends in a different time band), such that calls commenced from and including:

- (i) 6:00am but before 6:00pm (Monday to Friday) will be charged at "Peak" call rates (as identified in the Tariff);
- (ii) 6:00pm but before 6:00am (Monday to Friday) will be charged at "Off-Peak" call rates (as identified in the Tariff);
- (iii) 6:00pm on a Friday but before 0:00am on a Saturday, will be charged at "Off-Peak" call rates (as identified in the Tariff);
- (iv) 0:00am on a Monday but before 6:00am on a Monday, will be charged at "Off-Peak" call rates (as identified in the Tariff); and
- (v) 0:00am on a Saturday but before 0:00am on a Monday will be charged at "Weekend" call rates (as identified in the Tariff).

10.2.9 Without prejudice to condition 10.2.2, the Company shall increase the Charges for the Fixed Network Services in the April immediately following the Effective Date by the increase (if any) in the Rate of RPI.

### 10.3 MAINTENANCE SERVICES

10.3.1 Any invoices issued by the Company in respect of the Charges for Maintenance Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.3.2 The Company shall have the right to alter the Annual Support Charge from time to time by giving the Customer not less than fourteen days' notice.

10.3.3 Without prejudice to condition 10.3.2, the Company may increase the Annual Support Charge in the April immediately following the Commencement Date by the increase (if any) in the Rate of RPI.

### 10.4 CONSULTANCY SERVICES

10.4.1 Save where, and to the extent that, any Promotional Terms apply, the Charges for Consultancy Services will be as stated on the Order Form and are exclusive of VAT or any other tax or duty payable.

10.4.2 The Customer shall pay to the Company the Charges for Consultancy Services in accordance with condition 11.4. Any invoices issued by the Company in respect of the Charges for Consultancy Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.4.3 The Company shall have the right to alter the Charges for Consultancy Services from time to time by giving the Customer not less than fourteen days' notice.

10.4.4 Without prejudice to condition 10.4.3, the Company may increase the Charges for Consultancy Services in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### 10.5 VALUE ADDED TAX

All sums referred to under these Conditions, the Order Form, any Promotional Terms and any Service Specific Conditions are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable by the party paying the relevant sum at the rates in force at the date of the relevant invoice.

### 10.6 TEMPORARY SERVICES

If the Customer orders a temporary Service, the Company may charge the Customer for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

### 10.7 DDSP SERVICES

10.7.1 One-time Charges for the DDSP Services are applied for initial Service set-up and also for Customer requests such as, but not limited to, service reconfiguration.

10.7.2 The monthly Charges for DDSP Services shall be imposed based on the number of lines and the bandwidth of those lines which the Customer is connected with. The bandwidth of the lines the Customer is connected with shall determine the amount of active protection included in DDSP Services over the Minimum Term.

10.7.3 If the Customer increases the capacity of the Fixed Network Services, either increasing an existing connection or adding a new connection within the estate the capacity of the DDSP Services shall increase in line and at additional cost. Additional Charges may be imposed for any period where the DDSP Services are provided over and above the Customer's bandwidth.

10.7.4 As noted above, and unless expressly stated otherwise in an Order Form, the DDSP Services shall immediately terminate, without liability for the Company, if for any reason the Company ceases to provide the connectivity element of Fixed Network Services to the Customer. Where the DDSP Services to any Sites are terminated in this way, the Customer shall pay to the Company an early termination charge which shall be calculated by multiplying the total number of months remaining in the Minimum Term for the DDSP Services for the affected Sites by the monthly Charges payable in respect of the DDSP Services for the affected Sites.

10.7.5 The Company shall have the right to alter the Charges for DDSP Services from time to time by giving the Customer not less than fourteen days' notice.

10.7.6 Without prejudice to condition 10.7.5, the Company may increase the Charges for DDSP Services in April of each year by the increase (if any) in the Rate of RPI.

### 10.8 HOSTING SERVICES

10.8.1 The Customer shall pay to the Company the Charges for the Hosting Services in accordance with condition 11.5. Any invoices issued by the Company in respect of the Charges shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.8.2 The Company shall have the right to alter the Charges for the Hosting Services from time to time by giving the Customer not less than fourteen days' notice.

10.8.3 Without prejudice to condition 10.8.2, the Company may increase the Charges for the Hosting Services in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### 10.9 FRAUD GUARDIAN

10.9.1 The monthly Charges for the Fraud Guardian service shall be calculated based on the number and type of lines which the Customer is connected with by the Company.

10.9.2 As noted above, unless expressly stated otherwise in an Order Form (or otherwise agreed in writing by the Company), the provision of the Fraud Guardian service is dependent on the Company providing both the lines and calls in relation to which the service is to be delivered as part of the Fixed Network Services provided to the Customer pursuant to a Contract. If for any reason the Company ceases to provide both such lines and calls to the Customer, the Fraud Guardian service shall terminate with immediate effect in relation to those lines and calls without liability for the Company.

Where the Fraud Guardian service over any lines and calls is terminated in this way, the Customer shall not be entitled to any refund of any monthly Charges paid in respect of such service.

10.9.3 The Company shall have the right to alter the Charges for the Fraud Guardian service from time to time by giving the Customer not less than fourteen days' notice.

10.9.4 Without prejudice to condition 10.9.3, the Company may increase the Charges for the Fraud Guardian service in April of each year by the increase (if any) in the Rate of RPI.

10.10.1 Save where, and to the extent that, any Promotional Terms apply, the Charges for the WIFI Services will be as stated on the Order Form and are exclusive of VAT or any other tax or duty payable.

10.10.2 The Customer shall pay to the Company the Charges for WIFI Services in accordance with condition 11.4. Any invoices issued by the Company in respect of the Charges for the WIFI Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.10.3 The Company shall have the right to alter the Charges for the WIFI Services from time to time by giving the Customer not less than fourteen days' notice.

10.10.4 Without prejudice to condition 10.10.3, the Company may increase the Charges in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

## 11. INVOICING AND PAYMENT

### 11.1 EQUIPMENT

11.1.1 Unless otherwise stated on the applicable Order Form, a deposit equal to at least one half of the Price is payable by the Customer on the date of signature of the relevant Contract and the balance of the Price as defined in condition 10.1.1 is payable immediately upon Delivery (subject to condition 4.1.6). Any delay by the Company in invoicing the Price shall not relieve the Customer of its liability to pay for the same.

### 11.2 FIXED NETWORK SERVICES

11.2.1 Subject to condition 11.2.2, the Customer shall be invoiced monthly in arrears by the Company and shall pay the Charges by direct debit within ten days of the date of the invoice (unless otherwise expressly agreed with the Company and set out in an Order Form).

11.2.2 Line rental is payable quarterly in advance, unless expressly agreed in writing by the Company and set out on the Order Form.

11.2.3 Where the Company is notified by Phone-paid Services Authority that:

- (a) any sums payable by the Customer to Phone-paid Services Authority or to any compensation fund or bond established by Phone-paid Services Authority have not been paid; and/or
- (b) the Customer or any Information Provider is in breach of the Code;

the Company may withhold all sums due to the Customer until the Company has been notified by Phone-paid Services Authority that all such sums, fines, administrative charges or other sums payable to Phone-paid Services Authority under the Code have been paid in full or any breach has been remedied, and if requested by Phone-paid Services Authority the Company may pay such sums to Phone-paid Services Authority in settlement of amounts owed to Phone-paid Services Authority. In the event that amounts are paid by the Company to Phone-paid Services Authority to settle amounts owed by the Customer then such amounts shall be deducted from any amounts owed by the Company to the Customer.

11.2.4 Where the Customer is a Small Business Customer, then unless otherwise stated on the Order Form, in the event of any omission or delay by the Company in invoicing the Charges for Fixed Network Services (excluding DDSP Services and/or the Fraud Guardian service) in accordance with the relevant Contract ("**Delayed Charges**") the Company shall not be prohibited from invoicing the Customer (and the Customer shall continue to be liable to pay the Company) for Delayed Charges, provided that such Delayed Charges are invoiced no later than:

(a) the fourth monthly invoice after the month in which the Delayed Charges were incurred by the Customer (where the Customer is invoiced monthly for the applicable Charges); or  
(b) the next invoice after the invoice on which the Customer should have been invoiced for the Delayed Charges in accordance with the Contract (where the Customer is invoiced quarterly or less frequently than quarterly for the applicable Charges).

11.2.5 Unless the Customer is a Small Business Customer (in which case condition 11.2.4 shall apply), any omission or delay by the Company in invoicing the Charges for Fixed Network Services shall not prohibit the Company from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay the same.

#### 11.3 MAINTENANCE SERVICES

11.3.1 Unless otherwise stated in an Order Form, the Customer will pay the Annual Support Charge to the Company by direct debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form and shall pay any Additional Charges in accordance with condition 6.3.4.

11.3.2 Where the Company has agreed to raise an annual invoice for the Annual Support Charge, the Customer will pay such charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Annual Support Charge and/or Additional Charges shall not relieve the Customer of liability to pay for the same.

#### 11.4 CONSULTANCY SERVICES

11.4.1 Unless otherwise stated in an Order Form, the Customer will pay the Charges for Consultancy Services to the Company by direct debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

11.4.2 Where the Company has agreed to raise Charges for Consultancy Services annually, the Customer will pay the charge in advance of the Effective Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Charges for Consultancy Services shall not prohibit the Company from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.

#### 11.5 HOSTING SERVICES

11.5.1 Unless otherwise stated in an Order Form, the Customer will pay the Charges to the Company by Direct Debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

11.5.2 Where the Company has agreed to raise the Charges annually, the Customer will pay the charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Charges and/or Additional Charges shall not relieve the Customer of its liability to pay for the same.

#### 11.6 WIFI SERVICES

11.6.1 Unless otherwise stated on the Order Form, the Customer will pay the Charges for WIFI Services to the Company by direct debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

11.6.2 Where the Company has agreed to raise Charges for WIFI Services annually, the Customer will pay the charge in advance of the Effective Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Charges for WIFI Services shall not prohibit the Company from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.

11.7 If payment of any sum payable to the Company is not made on or before the due date, the Company shall be entitled to charge

interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as the Company would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.

11.8 Unless e-billing is not expressly excluded in an Order Form, invoices will be made available for download by the Customer and the Customer will be notified at the e-mail address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly excluded in an Order Form, the invoice may be sent to the registered address of the Customer (or the address of the Customer) at an additional cost to the Customer as set out in the Tariff.

11.9 If the Company is unable, for whatever reason, to recover any sum due under the Customer's account within four days following the due date for payment, the Company reserves the right to forthwith suspend all or any of the Services.

11.10 If the Customer's account remains unpaid (in any part) the Company may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before the Company will reinstate the Service.

11.11 If the Customer's account remains unpaid (in any part) for a period of thirty days after the original due date for payment, the Services may then be terminated by the Company.

11.12 Without prejudice to the Company's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then:

10.11.1 the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. The Company may also charge the Customer a fee where it suspends a Service for non-payment; and

11.12.2 the Company reserves the right to refer the outstanding account to a debt collection agency. If the Company instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay the Company's costs payable to the agency, who will add the sum to the Customer's outstanding debt.

11.13 The Customer will ensure that the name of the account holder is the same as the name on the payment details provided.

11.14 If the Customer cancels an active direct debit instruction following the Effective Date, an additional administration fee of £4.95 (or such other amount as may be notified to the Customer by the Company from time to time) will be added to the monthly invoice until the direct debit instruction is reinstated. The Company also reserves the right to charge the Customer a direct debit cancellation fee at the Company's then applicable rate.

11.15 The Company may, without notice, withhold any payments due to the Customer under a Contract or any other agreement between the Company or any other member of its Group and the Customer if:

11.15.1 the Company has reason to believe the Customer is in breach of the relevant Contract; and/or

11.15.2 the Customer is (or the Company reasonably believes that the Customer is) conducting its business or using a Service illegally or unlawfully (including without limitation in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or

11.15.3 the Company has received notice from another network operator that payment will be withheld in respect of calls and the Company has satisfied itself on reasonable grounds that such event has occurred. The Customer will not be entitled to any payment of Call Commission in respect of such calls; and/or

11.15.4 the relevant Contract is terminated for any other reason; and/or

11.15.5 the Company has reason to believe the Customer is insolvent or is likely to become insolvent

11.16 If any sum owed by the Customer to the Company under a Contract or any other contract with the Company is not paid by the due date, the Company may deduct this sum from any payment or credit due to the Customer under the relevant Contract or any other contract with the Company.

11.17 Payment of all sums due to the Company shall be made without any set-off whatsoever.

11.18 If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within fourteen days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

11.18.1 less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

11.18.2 more than five per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

## **12. SITES**

12.1 To enable the Company to fulfil its obligations under a Contract:

12.1.1 the Customer shall permit or procure permission for the Company, its agents, employees, representatives, sub-contractors and any other person(s) authorised by the Company to have reasonable access to the Site, Equipment, Supported Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as the Company requests. If the Company is refused access or prevented from accessing the Site, for whatever reason, it will be relieved from all of its directly related performance obligations under a Contract and shall have no liability to the Customer and the Customer shall hold the Company harmless in this regard. Further, the Customer shall be charged an abortive visit charge.

12.1.2 The Company will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, it shall be liable to the Company for any costs and expenses which the Company incurs as a result of such cancellation, rescheduling and/or missed appointment.

12.2 At the Customer's request, the Company may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay the Company's reasonable charges for complying with such a request.

12.3 The Customer warrants, represents and undertakes that there are adequate health and safety provisions in place at the Site, there is a suitable and safe working environment, and that the Customer holds third party public liability insurance with a level of cover of at least the minimum required by Law.

12.4 The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment, the Supported Equipment and/or Services at the Sites (save to the extent the Company has agreed in writing to do it). The Customer shall provide copies of such consents, licences and permissions to the Company upon request.

12.5 In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days from the Effective Date the Company will be able to terminate the relevant Contract forthwith by giving the Customer written notice without any liability. If the Customer has not managed to procure the necessary consents and the Company has commenced work the Customer shall, on request by the Company, refund to the Company the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.

12.6 The Customer shall provide the Company with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide the Company with full details of all other services in the vicinity of the proposed works.

12.7 The Customer is responsible for making the Site good after any work undertaken by the Company at a Site, including without limitation replacing and re-siting items and for re-decorating.

12.8 If the Customer is moving a Site, the Company must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Equipment. Unless otherwise requested, the Company, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Customer moves to a different exchange) to retain the Customer's relevant existing telephone number(s). If the Company can transfer the Customer's existing number to the new Site the relevant existing Contract will continue under the same terms and conditions. If the Company cannot transfer the Customer's existing relevant number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Contract.

12.9 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Customer will be responsible for the costs incurred by the Company for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by the Company to complete the transfer of the Services and Equipment.

12.10 If the Customer moves Sites and leaves the Equipment and/or the Supported Equipment for the new owner/tenant, the Customer is required to inform them that the relevant Service will be discontinued if the Company is not contacted by the new owner/tenant within seventy-two hours for the purpose of entering into a new contract

with the Company for such services and subject in any event to the agreement of such a contract.

12.11 If the Customer receives services from an alternative supplier at a new Site the Customer remains responsible for any contractual agreement the Customer has with such alternative supplier and for any liabilities the Customer may incur for terminating such agreement.

12.12 The Customer must identify asbestos contaminated areas at the Site prior to implementation and commencement of the works. In the event that the Company discovers asbestos contaminated areas at the Site then it will cease work until the asbestos is removed or the area is made safe for the works to resume. The Company shall have no liability for any delay which is as a result of asbestos contamination and the Customer shall hold the Company harmless in this regard. The Customer shall be responsible for the removal of all asbestos at the Site including the co-ordination of and all costs incurred in connection with the engagement by the Customer of a company which specialises in the installation of cables in asbestos contaminated areas.

## **13. LIMITATION OF LIABILITY**

13.1 Save as expressly set out in these Conditions or a Contract, the Company makes no warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into a Contract by law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.

13.2 Subject to condition 13.3 and 13.5, in no circumstances shall the Company's liability to the Customer arising under or in connection with a Contract (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise), including any liability arising from a breach of, or a failure to perform or defect or delay in performance of any of the Company's obligations under a Contract in any Contract Year exceed 110% of the Price and/or Charges paid in in respect of such Contract in the 12 months preceding that Contract Year and in respect of liabilities arising in the first Contract Year, the Company's liability shall be limited to £10,000.

13.3 Subject to condition 13.5, under no circumstances shall the Company be liable in any event under or in connection with a Contract and whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise for any:

13.3.1 loss of revenue (whether direct, indirect or consequential);

13.3.2 loss of business (whether direct, indirect or consequential);

13.3.3 loss of contracts (whether direct, indirect or consequential);

13.3.4 loss of, damage to, or corruption of data or software (whether direct, indirect or consequential);

13.3.5 loss of anticipated savings (whether direct, indirect or consequential);

13.3.6 loss of profits (whether direct, indirect or consequential);

13.3.7 liability of the Customer to third parties (whether direct, indirect or consequential); or

13.3.8 indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.

13.4 Neither party shall be liable to the other party for any breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise caused by any reason outside the reasonable control or responsibility of that party including, without limitation, in respect of Fixed Network Services supplied by the Company, the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to the Company on which it was reliant for the purposes of a Contract, any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

13.5 Nothing in these Conditions excludes or restricts either party's liability for:

13.5.1 death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);

13.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;

13.5.3 any indemnity under these Conditions; and/or

13.5.4 anything for which the parties cannot at law limit or exclude their liability.

13.6 Subject to condition 13.5, the Customer agrees that any cause of action that it may have against the Company and/or any of its Group members (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2)



years after the cause of action arose, otherwise, the Customer's cause of action is permanently barred.

#### **14. CUSTOMER'S INDEMNITY**

14.1 Without prejudice to any other rights of the Company, the Customer shall indemnify, keep indemnified and hold harmless the Company against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:

- a) breach by the Customer of any warranties, undertakings and/or representations given under these Conditions and/or any failure to comply with any obligations, responsibilities and/or liabilities of the Customer as set out in a Contract; and/or
- b) injury and/or damage suffered or incurred by or to any of the Company's (or any of the Company's contractor's) employees and/or equipment whilst on the Site; and/or
- c) infringement by the Customer (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

#### **15. SUSPENSION, TERMINATION AND CONSEQUENCES**

##### **15.1 SUSPENSION OF SERVICES**

15.1.1 Without prejudice to any other right of the Company to suspend or terminate any or all of the Services under these Conditions, the Company may at its sole discretion elect to suspend forthwith provision of any Services until further notice without liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

(a) the Customer is in breach of a material term of these Conditions and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company on the due date or to comply with the Broadband Acceptable Use Policy;

(b) an Emergency occurs and/or the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM or Phone-paid Services Authority);

(c) the Company has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party;

(d) any licence under which the Customer has the right to run its telecommunications system and/or connect to the Services or use any of the Services is revoked, amended or otherwise ceases to be valid;

(e) the Company or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Customer; or

(f) any maintenance or repair is necessary (for the purposes of new provision, updating facilities, general maintenance or otherwise) or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, the Company shall not be required to give any advance notice).

15.1.2 The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 15.1.1, and the recommencement of the provision of the Services as appropriate, save in the case of a suspension pursuant to condition 15.1.1(b).

15.1.3 The Customer shall not have access to any data stored through the Hosting Services during a suspension. The Customer shall have the opportunity to create a snapshot backup of the data stored through the Hosting Services, and the Customer shall pay the Company the applicable charges for undertaking such a backup, in accordance with the Company's then current charges.

15.1.4 Without prejudice to any other right of termination or suspension of the DDSP Services or the Fraud Guardian service, the Company may suspend and/or terminate such Services until further notice, without liability to the Customer, in the event that the Company is entitled to suspend and/or terminate the provision of the Fixed Network Services under the terms of a Contract.

15.1.5 Without prejudice to any other right of termination under these Conditions, the Company may terminate (in whole or in part) a Contract forthwith in the event that its right, or the right of the relevant Carrier, to provide any of the Services is withdrawn by any supplier to it or OFCOM pursuant to the General Conditions or otherwise.

##### **15.2 TERMINATION OF SERVICES**

15.2.1 Subject to conditions 15.2.4, 15.2.5, 15.2.6 and 15.2.7 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an Order Form has been accepted by the Company pursuant to condition 2.1) to change or cancel an Order Form.

15.2.2 Subject to condition 15.2.6 and 15.2.7, in the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding line rental charges, any Monthly Minimum Call Spend, Annual Support Charges, Additional Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Fixed Network Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment and (if applicable) the Services which are the subject of the Contract) and an export charge of £15.00 per CLI/DDI Number (including, but not limited to the porting away or account migration of numbers) and expenses incurred by the Company as a result of such termination.

15.2.3 Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever without any liability to the Customer to terminate a Contract on the giving of not less than thirty days' written notice to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 15.2.3, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term or extended rollover period in respect of that Contract.

15.2.4 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under a Contract (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party, such notice shall contain details of what the breach is and requesting that the breach is remedied.

15.2.5 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).

15.2.6 Where the Customer is a Small Business Customer, the Customer may cancel the element of the Fixed Network Services (excluding any DDoS Services) governed by OFCOM at any time prior to the commencement of the provision of those Fixed Network Services, without any form of charge or compensation being required to be paid to the Company.

15.2.7 The Customer may cancel the affected part of the Fixed Network Services (excluding any DDoS Services) governed by the General Conditions and OFCOM, where the Company makes changes to the Conditions, Thorntons as a Supplier Data Processing Addendum and/or any Service Specific Conditions (including the Broadband Acceptable Use Policy) which are of material detriment to the Customer and relate to the provision of the Fixed Network Services upon providing thirty (30) days written notice to the Company. Any such cancellation must be made within thirty (30) days of the changes to the Conditions being notified to the Customer.

15.2.8 The Company shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 5.7.7 or condition 20.2.1.

15.2.9 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of these Conditions which expressly or by implication is intended to survive, shall survive the termination or expiry of a Contract.

15.2.10 Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

15.2.11 For the avoidance of doubt, in the event of termination of a Contract for any reason, the Customer shall not be entitled to a refund of any pre-paid sums (including, without limit, subscription, rental and/or maintenance charges) whether such sums are attributable to the period before, including or after the date the relevant Contract terminates.

15.2.12 On termination of a Contract for any reason the Customer shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Number from the Fixed Network Services.

## **16. SOFTWARE**

16.1 Where the Company provides software to the Customer to enable the Customer to use the Services under an Order Form ("Software"), the Company will grant the Customer a non-exclusive, non-transferable, royalty free, revocable licence to use the Software solely for the term and purposes of the relevant Contract. If required by the Company, the Customer shall sign such end user licence agreement as may be reasonably required by the licensor of the Software for the Customer to be able to use the Software.

16.2 Except as permitted by applicable law or as expressly permitted under a Contract the Customer shall not de-compile, reverse-engineer, or modify the Software, or copy the relevant manuals or documentation.

16.3 The Customer shall, and shall procure that all End Users shall, comply with all Software licence terms and conditions which are embedded in the Software in a click through form or otherwise.

16.4 If the Services involve End Users accessing software and/or the Fixed Network Services then all End Users shall provide the Customer with such necessary registration details as are to be agreed between the Company and the Customer and which will be a minimum of the End User's full name and email address and all End Users shall be obliged to agree to the Customer's acceptable use terms and conditions as published by the Customer from time to time. The Customer acknowledges and accepts that if the End User does not provide this information and does not agree to the acceptable use terms and conditions then the End User may not be able to connect to the Software and/or the Services.

16.5 The Customer acknowledges and accepts that the Company shall have no liability to the Customer in the event that the End User is unable to access the Software and/or the Services due to failure to provide the necessary information set out in condition 16.4 or the Customer's failure to agree to the acceptable use terms and conditions.

## **17. CALL MONITORING**

The Company may monitor and record calls made to or by the Company by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by the Company under this condition in accordance with the Data Protection Laws.

## **18. CONFIDENTIALITY AND DATA PROTECTION**

18.1 The Company and the Customer will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with a Contract except to the extent any disclosure is required by law. The Customer and the Company will not, without the consent of the other, disclose such information to any person other than:

18.1.1 their employees, contractors or professional advisers who shall require the information in order for the Customer or the Company to fulfil its obligations under the relevant Contract; or

18.1.2 in the case of the Customer, its users to the extent that they are required to use or access the Service.

18.2 Information shall not be treated as confidential if it is:

18.2.1 lawfully in the public domain; or

18.2.2 lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or

18.2.3 obtained from a third person who is entitled to disclose it; or

18.2.4 replicated independently by someone without access or knowledge of the information.

18.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by the Company in connection with the Contract the Customer will notify the Company immediately of the request and give the Company at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).

18.4 Both the Company and the Customer agree to comply with the Thorntons as a Supplier Data Processing Addendum and that such agreement is incorporated into this Contract. For the purposes of

interpreting the Thorntons as a Supplier Data Processing Addendum, "Thorntons" shall mean the Company and the "Principal Agreement" shall mean this Contract.

18.5 Subject to condition 18.6, where a party who has disclosed confidential information so requests and following termination of the relevant Contract for whatever reason, each party who has received any confidential information of the other party shall without delay:

18.5.1 return to the other party, in a form capable of delivery, anything containing or recording the confidential information, whether in the form of documents, computer records, audio tapes, video tapes, CD Roms or any other media; and

18.5.2 certify in writing that any such confidential information not returned has been destroyed or made permanently unusable;

18.6 The Company shall not be required to return confidential information pursuant to condition 18.5 where continuing use or disclosure of such confidential information is necessary in order for the Company or any member of the Company's Group to exercise its rights or perform Services under the Contract or where the Company is required to maintain such confidential information pursuant to any Relevant Laws or for any other purpose specified in this Contract.

18.7 The Customer acknowledges that whilst data belonging to Customer and to its customers, whose data is stored on the Company's servers or system as a result of using any recording or storage function of the Services, the Customer shall at all times remain the Data Controller for such data and the Company shall at all times be a Data Processor only.

## **19. CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT**

19.1 The Company may change these Conditions and/or Service Specific Conditions at any time and will publish any change in line with condition 19.2.

19.2 The Company will publish any changes to the Conditions, Service Specific Conditions and/or Thorntons as a Supplier Data Processing Addendum online at [www.thorntonscomms.com](http://www.thorntonscomms.com) (or at such other URL as is notified to the Customer by the Company from time to time) as well as in invoices provided to the Customer stating that the Conditions, any Service Specific Conditions and/or Thorntons as a Supplier Data Processing Addendum have changed and providing a link to the new Conditions, any Service Specific Conditions and/or Thorntons as a Supplier Data Processing Addendum:

19.2.1 at least one month before the change is to take effect for changes that may be of material detriment to the Customer; and

19.2.2 as soon as is reasonably practical in the circumstances prior to the changes taking effect, for all other changes.

19.3 To the extent the changes referred to in this condition 19 relate directly to Fixed Network Services (excluding DDSP Services or Fraud Guardian), the provisions of condition 10.2.2 and condition 15.2.7 shall apply.

19.4 Without liability to the Customer, in order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on capped price call tariffs (if any) the Company may at its sole discretion on not less than seven days' notice:

19.4.1 limit call price caps to the first four hours of calls per day; and/or

19.4.2 remove the relevant call price caps from the Customer's pricing and tariff should the Customer's call profile deviate significantly from the Company's standard call profiles and notify the Customer of the new pricing to apply in respect of the relevant Fixed Network Services.

19.5 In order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on bundled minute call packages (if any) the Company may at its sole discretion on not less than seven days' notice remove the relevant bundled minute call package from the Customer's pricing and tariff should the Customer's call profile deviate significantly from the Company's standard call profile and over seventy five per cent of the Customer's bundled minutes be used in any month.

19.6 The Company may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified by the Company from time to time.

19.7 No variation of the terms of a Contract however notified (save with regard to the manuscript details on the Order Form including, where initialised by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of the Company) will be accepted by the Company unless authorised by notice in writing by a Director of the Company.

## **20. FRAUD AND SECURITY**

20.1 The Customer shall ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept secure and confidential at all times and are only used by authorised users. The Customer shall inform the Company

immediately if the Customer knows or suspects that a user name or password has been disclosed to an unauthorised user, or is being used in an unauthorised way, or if there is any illegal, fraudulent or unauthorised use of the Services or Equipment. The Customer will not change or attempt to change a user name without the Company's written consent.

20.2 The Company reserves the right (at the Company's sole discretion):

20.2.1 to suspend access to the Services by one or more user names if at any time the Company thinks that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under this condition 20) or any illegal, fraudulent or unauthorised usage of the Services and/or Equipment; and

20.2.2 to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer uses in connection with the Services.

20.3 The Customer will inform the Company immediately of any subsequent changes to the information the Customer supplies to the Company in connection with the Contract.

20.4 The Customer accepts and acknowledges that the Services and Equipment are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services or Equipment.

20.5 The Customer acknowledges that (unless otherwise agreed in writing by the Company) the Company has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled.

20.6 Save as provided in the remainder of this condition 20.6 and subject to condition 5.10.4 (if applicable), the Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services or any use of the Equipment and/or Services by any unauthorised third parties (who are not employees of the Company), and the Customer shall be responsible for all use of the Services in association with the Customer's accounts whether or not authorised by the Customer. The Customer agrees to immediately notify the Company of any unauthorised use of the Customer's account of which the Customer becomes aware and (subject to condition 5.10.4 (if applicable)) the Customer agrees to pay all additional charges related to fraudulent and/or unauthorised usage. The Customer is therefore urged to verify with their equipment provider and maintainer that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

20.7 Any assistance given by the Company in relation to fraudulent and/or unauthorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and (subject to condition 5.10.4 (if applicable)) no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond the Company's reasonable control (save for any fraud and/or unauthorised use by an employee of the Company acting in that capacity).

20.8 The Customer shall, at all times, be responsible for:-

20.8.1 preventing unauthorised use of the Equipment and/or Services;

20.8.2 maintaining the security of all systems, Services, network elements and Equipment within its (or its employees', agents' or contractors') control; and

20.8.3 maintaining (and ensuring that each of its authorised users maintains) at all times, the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or Equipment.

20.9 Without limitation, the Customer shall put in place and comply at all times with the following security measures:-

20.9.1 the Customer shall ensure that the password used in connection with the Equipment and/or Services is strong and is made up of not less than eight characters which shall include at least one number, one letter and one alphanumerical symbol;

20.9.2 the Customer shall regularly and at least every 6 (six) weeks change the password set out at condition 20.9.1 above;

20.9.3 the Customer shall restrict access to passwords to key individuals;

20.9.4 the Customer shall ensure that it has up to date anti-virus protections and that it has firewalls in place which are maintained by the Customer in accordance with best industry practices; and

20.9.5 the Customer shall, without delay, follow any security directions given to it by the Company from time to time.

20.10 The Customer acknowledges and agrees that it is responsible for all security measures directly relating to the CPE and Supported Equipment (if applicable).

20.11 The Customer shall ensure that when accessing any of its Hosted Data, it shall not access or attempt to access any other data held by the Company. If the Customer gains access to data other than the Hosted Data, it shall notify the Company immediately.

## **21. ANTI-BRIBERY**

21.1 The Customer shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;

21.1.1 comply with all applicable Anti-Bribery Laws;

21.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;

21.1.3 comply with the Company's Ethics and Anti-bribery Policy (available at [www.thorntonscomms.com](http://www.thorntonscomms.com) or at such other URL as is notified to the Customer by the Company from time to time) as the Company may update them from time to time ("**Relevant Policies**");

21.1.4 have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;

21.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;

21.1.6 not do or omit to do any act or thing which causes or may cause the Company and/or its Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;

21.1.7 without prejudice to condition 21.1.6, not do or omit to do any act or thing which causes or may cause the Company or any member of the Company's Group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if the Company was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and

21.1.8 provide the Company and any member of the Company's Group (at the Customer's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

## **22. INTELLECTUAL PROPERTY RIGHTS**

22.1 Any Intellectual Property Rights supplied by the Company or any member of the Company's Group to the Customer, or specifically produced by the Company for the Customer, in connection with a Contract, shall be the exclusive property of the Company and/or the relevant member of the Company's Group and/or relevant licensor and to the extent that any such rights vest in the Customer shall be deemed to be and shall be assigned to the Company or the relevant member of the Company's Group by the Customer. The Customer shall not disclose to any third party or use any such Intellectual Property Rights except to the extent that it is or becomes public knowledge through no fault of the Customer, or as required for the performance of the Customer's obligations under a Contract. Any Intellectual Property Rights belonging to, licensed to or supplied by the Company or any member of the Company's Group to the Customer shall be used by the Customer as expressly permitted under the terms of the relevant Contract and in accordance with the instructions of the Company or any member of the Company's Group.

22.2 Any licence provided by the Company to the Customer in relation to the Intellectual Property Rights shall be personal to the Customer, non-exclusive, revocable and limited to the United Kingdom and in the absence of earlier revocation shall terminate upon termination of the relevant Contract.

22.3 By using the Services (in particular, but without limitation, the Hosting Services) the Customer shall provide the Company with information and data, title to which shall remain vested in the Customer (or its licensors). The Customer warrants, represents and undertakes that it has all necessary rights and licences to use and transmit over the internet to the Customer all information and data which will be subject to the Hosting Services and hereby grants the Company a non-exclusive licence to use such information and data for the purposes of performing the Services.

## **23. GENERAL**

23.1 Subject to any deemed acceptance by the Customer under condition 10.2.2 and/or condition 19.3, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.

23.2 A Contract (and any non-contractual matters arising out of or in connection with it) shall be governed by and construed in all respects in accordance with English law and the Customer hereby

submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

23.3 A Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

23.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the postal address or email address, given in an Order Form (or such other postal address, email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of email, at the time of sending, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 23.4 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was sent by email, to an email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

23.5 Any director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Customer to the obligations in a Contract in all respects.

23.6 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract.

23.7 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract without the consent of the Customer. However, the Customer shall, if the Company requires, execute such deeds and/or documents as may be necessary or required by the Company to give effect to any such dealing in such rights and/or obligations.

23.8 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

23.9 The Customer shall not, without the prior written consent of the Company, at any time from the date of a Contract to the expiry of six months after the termination or expiry of the relevant Contract, actively solicit or entice away from the Company, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services to the Customer. Any consent given by the Company in accordance with this condition 23.9 shall be subject to the Customer paying to the Company a sum equivalent to twenty per cent of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

23.10 The Company and the Customer agree that the Employment Regulations will not apply to transfer the employment or engagement of any Employee to the Company in connection with the Contract or the termination or expiry of all or part of any contract between the Customer and a Contractor or any other provision of the Services and/or Equipment.

23.11 The Customer agrees to indemnify and keep indemnified the Company against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by the Company or any of its suppliers arising out of or connected with:

23.11.1 the transfer or alleged transfer of the employment or engagement of any Employee to the Company or any of its suppliers pursuant to the Employment Regulations or otherwise; and

23.11.2 the employment or engagement or termination of employment or engagement by the Customer or a Contractor and/ or any Subcontractor of any Employee.

23.12 If any provision (or part of a provision) of a Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

23.13 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, that provision will apply with whatever minimum modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.

23.14 Save where the context otherwise requires, in these Conditions a reference to a "person" shall include a company, body corporate, unincorporated association, state, governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate).

23.15 Except with the prior written consent of the other party, neither party shall:

23.15.1 make any public statement about the Equipment and/or Services or otherwise publicise a Contract or any information relating to it; or

23.15.2 use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.

23.16 Nothing in a Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except, and to the extent, that a Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.

23.17 Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the relevant Contract.

23.18 A Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Save in the event of fraud or fraudulent misrepresentation, neither party has entered into a Contract in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract.

23.19 A Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.