

ClearFibre General Terms

Please read this document (the “General Terms”) carefully as it sets out the general terms and conditions on which ClearFibre will provide all of its services to you (“the Customer”). Any additional terms and conditions which are applicable to certain services are set out in the relevant Service Document.

1 Definitions & interpretation

1.1 In this Agreement, the following terms shall have the meanings assigned to them below:

Acceptable Use Policy means the Company's acceptable use policy, as appended to these General Terms in Schedule 1;

Acceptance Tests has the meaning set out in [Clause 4.2](#);

Additional Terms means any additional terms and conditions which are applicable to certain Services, as set out in the relevant Service Document;

ADSL Live shall have the meaning set out in [Clause 5.4.1](#);

ADSL Failover Solution means the back-up system utilising a dedicated BT ADSL compatible telephone line used to enable the Customer to receive the Services in the event of the failure of the primary method by which the Services are supplied to the Customer;

Agreement means the agreement between the Company and the Customer, pursuant to which the Company agrees to provide the Service to the Customer, which shall incorporate the following: (i) the Order Form; (ii) any special terms incorporated by reference on the Order Form; (iii) any commercial offer terms incorporated by reference on the Order Form; (iv) these General Terms; (v) any applicable Additional Terms; and (vi) any applicable Service Level Agreement. In the event of any conflict between the terms set out above, the hierarchy of precedence shall be as stated here (with the Order Form having the highest precedence);

Applicable Law means all laws and regulations and codes of practice, guidelines and standards issued by any governmental or regulatory authority that are applicable to the Company, the Customer, any End User or the Services;

Authorised Representative shall have the meaning given in [Clause 13.1](#);

Business Day means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;

Business Hours means the hours of 9am to 5pm UK time during a Business Day;

Charges means the charges payable by the Customer under the Agreement as set out in the Order Form (or as amended from time to time in accordance with this Agreement), which shall include any Recurring Charges and Non-Recurring Charges (as applicable) and all other fees, charges and expenses

due from the Customer to the Company from time to time pursuant to this Agreement (together with any applicable VAT or other taxes or duties thereon);

Company means ClearFibre Limited, a company registered in England and Wales (company number: 12703579), with its registered address at Hilton House Telcom, Hilton Street, Manchester, England, M1 2EH;

Confidential Information means all information designated as confidential by either party, together with all such other information which relates to the business affairs, finance, products or services, customers or suppliers of that party; data, software programs, specifications, documentation, software listings, source code, object code, developments, inventions, processes, trade secrets and know how; and all information which may reasonably be regarded as the confidential information of the disclosing party;

Connectivity Service : the services set out in the Company's Service Document for Connectivity Services, as current from time-to-time;

Consultancy Services means any advisory and consultancy services to be provided by the Company to the Customer under the Agreement, as described in more detail in the Order Form;

Customer means the person (acting as a sole-trader, but not in a consumer capacity), firm or company who purchases the Service(s) from the Company as named on the Order Form;

Customer Contact : the Customer's Authorised Representative specified as such in the Order Form, nominated to liaise and work with the Company in connection with the Service(s);

Customer Data means any data, documents, text, drawings, diagrams, or images, embodied in any medium, that are: (i) processed by the Customer or any End User using the Services; or (ii) supplied to the Company by the Customer or any End User, or which the Company is required to generate, process, store or transmit in connection with the Services or this Agreement, including such data as is supplied by the Customer in accordance with [Clause 5.1.2](#);

Customer Equipment : items of equipment owned or leased by the Customer located either at the Customer Site(s) or at ClearFibre Site (as applicable to the particular Service(s)) and used in order to provide and/or receive the Service(s));

Customer Materials shall have the meaning in [Clause 5.1.2](#);

Customer Personal Data means any personal data in relation to which the Customer or any End User is the data controller, including any such personal data as may relate to the staff, customers, or suppliers of the Customer or any End User;

Customer Site(s) : the customer locations at which the Service(s) will be provided (if applicable), as specified on the Order Form;

Data Protection Legislation means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Customers, the Company and/or the Service(s) including:

- until its repeal, the DPA;

- the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);
- any laws or regulations implementing the EC Data Protection Directive (Directive 95/46/EC) or the EC Privacy and Electronic Communications Directive (Directive 2002/58/EC);
- from 25 May 2018, the GDPR; and
- any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Regulatory Authority;

Deliverables means any output of the Services to be provided by the Company to the Customer as specified in the Order Form and any other documents, products and materials provided by the Company to the Customer in relation to the Services (including the Equipment and any Software incorporated therein);

DPA means the Data Protection Act 1998;

End User means a person (or group of people) who receives or makes use of the Services provided to the Customer, including (without limitation) any employee, sub-contractor, agent, officer, customer, client or tenant of the Customer, as agreed by the Company in advance;

Equipment means the equipment and hardware (together with any Software incorporated therein) provided by the Company, its agents or contractors to the Customer at the Site to enable the Customer to receive the Services (which, for the avoidance of doubt, shall at all times remain the property of the Company);

Force Majeure Event means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Agreement including Act of God, fire, flood, lightning, volcano, earthquake or other natural disaster; war, revolution, act of terrorism, riot or civil commotion; strikes, lock-outs or other industrial action, whether of the affected party's own employees or others; failure of or interruptions in supplies of power, fuel, transport, equipment, raw materials or other goods or services; failure of or interruptions in telephone networks or the Network; cyber-attack; non-performance of suppliers or sub-contractors; and/or compliance with any changes in Applicable Law;

GDPR means the General Data Protection Regulation (EU) 2016/679, and/or any corresponding or equivalent national laws or regulations;

General Terms means these general terms and conditions (as updated from time to time by the Company giving notice to the Customer, including by email);

Good Industry Practice means in relation to the performance of any of the Services, their performance to the standard of skill, care, prudence and foresight, in each case with appropriate management and control of quality, that a leading professional supplier of services similar to the Services would use in the performance of those services;

Initial Term means the initial contract term specified in the Order Form (if applicable), subject to earlier termination pursuant to [Clause 15](#);

Installation means the installation of the Equipment at the Site by the Company, its agents or subcontractors;

Installation Dates means the date or dates on which the Company is to install the Equipment at the Site as notified by the Company to the Customer following execution by the parties of an Order Form;

Intellectual Property Rights means patents, know-how, rights in inventions, processes and formulae, confidential information, copyright, rights in software, database rights, domain names, registered trade marks, unregistered trade marks and logos, service marks, goodwill, design right, unregistered designs and all and any other intellectual property rights subsisting anywhere in the world (whether registered or unregistered) and all applications for the same;

MAC Code means the migration access code for broadband services;

Network means the network and communications systems and infrastructure to which the Equipment connects which is used by the Company to provide the Services;

Non-Recurring Charges the one-off Charges (if applicable) for the Service(s) or Purchased Equipment, including any installation fees or purchase fees, as detailed on the Order Form (and, if applicable, as amended in accordance with this Agreement);

Order Form means an Order Form in the Company's standard form;

Parties the Customer and the Company and the term "Party" shall be construed accordingly;

Pay As You Go Services any services which are purchased by the Customer on a "pay as you go" basis, as described in the Order Form;

Professional Services the services described in the Company's Service Document for Professional Services, as current from time to time;

Purchased Equipment the equipment (if any) purchased by the Customer and sold by the Company in conjunction with the provision of a Service, as specified on the Order Form (subject to any third party terms, where notified to the Customer);

Provisioning Date means the date upon which the Equipment is confirmed by the Company as being ready for use by the Customer in accordance with [Clause 4.3](#);

Recurring Charge the on-going annual or monthly fee (as applicable) for the provision of the Service(s), as detailed on the Order Form (and, if applicable, as amended in accordance with this Agreement);

RPI means the United Kingdom retail prices index (all items) as published by the Office for National Statistics (or by any government department or other body upon which duties in connection with such index devolve) or such other index as replaces such index;

Services means the services to be provided by the Company to the Customer under the Agreement as specified in the Order Form;

Service Commencement Date

shall be the earlier of:

- where a Service is subject to Acceptance Tests the Provisioning Date of that Service; and
- where a Service is not subject to Acceptance Tests, the date that the Customer is notified by the Company in writing that the Service is ready for use; or
- the date that the Customer actually starts using the Service,

unless otherwise agreed in writing between the Parties or otherwise specified in the applicable Service Document;

Service Document means any Additional Terms and/or Service Level Agreement that are applicable to a particular Service;

Service Level means the service standard specifically identified as a 'Service Level' in the Service Level Agreement, which is applicable to the Service(s);

Service Level Agreement means the service level agreement which is applicable to the provision of the Service(s), as specified in the Order Form;

Site means the site or sites at which the Customer is to receive the Services, as detailed in the Order Form;

Software means the third party software applications comprised in the Equipment, including all configurations, customisations, modifications and updates provided by the Company to the same from time to time;

ClearFibre Equipment the equipment (if any) owned by the Company and/or its suppliers, which is located either at the Customer Site(s) or the ClearFibre Site(s) (as applicable) in order to provide the Service(s);

ClearFibre Site the location(s) where the Service(s) will be provided from (where applicable to a particular Service) including any data centres owned and operated by the Company or its suppliers;

Term shall have the meaning set out in [Clause 15.1](#);

Termination Payment shall have the meaning set out in [Clause 15.5](#);

Virus means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses, harmful or malicious code, and other similar things or devices; and

Year means a period of 12 months commencing on the Provisioning Date and on each successive anniversary of the Provisioning Date and ending on the day before each successive anniversary of the Provisioning Date.

- 1.2 The terms personal data, process, processing, processed, data controller, data processor and data subject shall have the meanings given to them in:
- 1.2.1 until its repeal, the DPA; and
 - 1.2.2 from 25 May 2018, the GDPR.
- 1.3 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of the Agreement.
- 1.4 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include a sole-trader, company, corporation, firm or partnership.
- 1.5 References to any statute or statutory provision shall include: (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 The words and phrases other, including and in particular shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.7 References to in writing include by e-mail and/or letter (but not by fax).
- 1.8 All references in the Agreement to clauses and Schedules are to the clauses of and Schedules to the Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2 Scope of Agreement

- 2.1 Each Order Form agreed and executed by the parties shall constitute an individual contract for the supply of the Services specified in that Order Form and shall be subject to these General Terms and the applicable Service Level Agreements, as specified in the Order Form.

- 2.2 The terms of this Agreement shall prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing (unless otherwise expressly agreed in writing by the parties).
- 2.3 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding on the Company unless in writing and signed by a duly Authorised Representative of the Company.
- 2.4 The Customer's Order Form (or, where applicable, the Customer signing and returning the Company's digital contract) constitutes an offer by the Customer to purchase the Service(s) specified in it on these General Terms; accordingly, the Company's acknowledgement of the Order Form (or, where applicable, acknowledgement of receipt of the signed digital contract) or the Company's commencement or execution of work pursuant to the Order Form (or digital contract, if applicable) shall establish a contract for the supply and purchase of those Services on these General Terms. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in the Order Form shall not govern the Agreement.

3 Provision of Services

- 3.1 In consideration of the payment of the Charges by the Customer and the Customer's compliance with its obligations under the Agreement, the Customer engages the Company, and the Company agrees, to provide the Services to the Customer during the Term in accordance with and subject to the terms and conditions of this Agreement.
- 3.2 The Company shall provide the Services with all reasonable skill and care and in a good workmanlike manner to Good Industry Practice in accordance with the provisions of the Agreement.
- 3.3 The Company shall use reasonable endeavors to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Site and that have been communicated to the Company in advance, provided that it shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.
- 3.4 The Company reserves the right from time to time in its sole discretion to make operational changes to the Services, including to comply with any changes in Applicable Law, provided that such changes do not materially affect the scope of the Services.
- 3.5 In performing the Services, the Company shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer.
- 3.6 Subject to [Clause 12.8](#), the Company shall be entitled to sub-contract the whole or any part of the performance of the Services to any person provided that the Company remains responsible to the Customer for the performance of the Services in accordance with the terms of the Agreement.

4 Installation and Equipment

- 4.1 The Company shall use reasonable endeavours to meet the Installation Dates, but any such dates shall be estimates only and time for performance shall not be of the essence of the Agreement.
- 4.2 Once the Company has carried out the Installation, the Company shall carry out provisioning of the Services and shall conduct testing to satisfy itself that the Equipment at each Site is able to connect to the Network and the Customer is able to receive the Services ("**Acceptance Tests**").
- 4.3 Upon the Company confirming to the Customer by telephone and/or email that the Acceptance Tests have been completed to the Company's satisfaction and Installation shall be complete as of such date (the "**Provisioning Date**").

5 The Customer's obligations

- 5.1 The Customer shall:
- 5.1.1 provide such co-operation and assistance to the Company, its agents or subcontractors, as is reasonably required by the Company, its agents or subcontracts in order to perform the Services in accordance with the Agreement;
 - 5.1.2 provide, in a timely manner, such information, documents, materials and/or data (together, the "**Customer Materials**") as the Company may request in order to provide the Services under the Agreement and shall ensure that such information is accurate in all material respects; and
 - 5.1.3 provide access for the Company, its agents or subcontractors during Business Hours, or at such other times as may be agreed by the Parties, to such premises, facilities, relevant systems and personnel (including, without limitation, the Customer Sites and Customer Equipment (as applicable)) as the Company may reasonably require from time to time to perform the Services in accordance with the Agreement;
 - 5.1.4 be responsible (at its own cost) for preparing the Customer Site(s) for the supply of the Service(s) (if the Service(s) are to be provided at such sites);
 - 5.1.5 keep and maintain the Equipment in good condition and repair and in accordance with the manufacturer's specifications and any required environmental conditions advised by the Company to the Customer; and
 - 5.1.6 obtain all authorisations, approvals and consents, including landlord and management company consents, as are required in accordance with Applicable Law, including as required in order for:

- 5.1.6.1 the Customer and any End Users to use the Services at the Site;
 - 5.1.6.2 the Company and its agents and subcontractors to provide the Services at the Site and to carry out any alterations required to the Site in order for the Company to provide the Services to the Customer;
 - 5.1.6.3 the Company and its agents and subcontractors to access the Site for the purposes of installing the Equipment and providing the Services; and
 - 5.1.6.4 the Company and its agents and subcontractors to process any Customer Personal Data in connection with the provision of the Services.
- 5.2 The Customer shall, and shall procure that any End Users shall:
- 5.2.1 use the Services in accordance with all Applicable Law, including all telecommunications laws and Data Protection Legislation; and
 - 5.2.2 use the Services in accordance with the Acceptable Use Policy.
- 5.3 Any recommendations or suggestions proposed by the Company in the performance of any Consultancy Services are given in good faith, but the Customer is solely responsible for satisfying itself of the suitability of any ideas, strategies, equipment or products recommended or suggested by the Company for its own particular purposes (notwithstanding that such purposes are known to the Company), and all such recommendations and suggestions are acted upon entirely at the Customer's own risk.
- 5.4 Where the Company agrees in the Order Form to facilitate the provision of the ADSL Failover Solution to the Customer:
- 5.4.1 the Customer acknowledges that a dedicated ADSL compatible telephone line ("**ADSL Line**") is required to enable the ADSL Failover Solution to be provided, and the Customer is responsible for:
 - 5.4.1.1 ensuring that the Company is supplied with a phone number and/or (as requested by the Company) a MAC Code for the ADSL Line so that the ADSL Failover Solution can be provided;
 - 5.4.1.2 any costs associated with the provision and maintenance of the ADSL Line; and
 - 5.4.1.3 testing the ADSL Line and the associated circuit regularly and otherwise ensuring it is operating satisfactorily and is capable of enabling the ADSL Failover Solution;
 - 5.4.2 the Company is not responsible for any additional costs incurred as a result of being supplied with a telephone line that is unsuitable for the ADSL Failover Solution;
 - 5.4.3 the Customer agrees not to use the ADSL Line for any purpose other than in connection with

the provision of the ADSL Failover Solution.

- 5.5 For the avoidance of any doubt, the Company accepts no responsibility or liability whatsoever in respect of the provision, operation or maintenance of the Customer's ADSL Failover Solution, except to the extent agreed between the Parties in advance and specified in the Order Form.
- 5.6 The Company only provides the Services for internal business use by the Customer, and the Customer agrees not to use the Services for any resale purposes (unless the Company specifically agrees otherwise with the Customer in advance in writing).

6 Fault Management

- 6.1 The Company will support the Service(s) and deal with faults as per the provisions of the applicable Service Document(s) and any applicable Service Levels .
- 6.2 The Customer shall (and, where applicable, shall procure that the End Users shall) notify the Company of any material non-conformity or fault with the Service(s) as per the Service Document.
- 6.3 Any time incurred by the Company in investigating alleged faults or non-conformities with the Service(s) notified to it by the Customer or End User, which are later found not to have existed, may be charged to the Customer in accordance with the Company's then-current standard rates (available at telcom.uk/rates) together with any third party supplier costs incurred in investigating the same. The Customer shall be entitled to see reasonable documentary evidence attesting to such third party costs.

7 Proprietary rights

7.1 In relation to the Deliverables:

- 7.1.1 the Company and its third party licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- 7.1.2 subject to [Clause 7.6](#), the Company grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term of this Agreement to use the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- 7.1.3 the Customer may sub-licence the rights granted in [Clause 7.1.2](#) to the End Users, subject to such End User's compliance with the Acceptable Use Policy.

7.2 In relation to the Customer Materials, the Customer:

- 7.2.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer

Materials; and

7.2.2 grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term of this Agreement for the purpose of providing the Services to the Customer.

7.3 The Company:

7.3.1 warrants that the receipt, use and onward supply of the Services and the Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party;

7.3.2 shall, subject to [Clause 7.3.3](#), keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

7.3.3 shall not be in breach of the warranty at [Clause 7.3.1](#) and the Customer shall have no claim under the indemnity at [Clause 7.3.2](#) to the extent the infringement arises from:

7.3.3.1 the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;

7.3.3.2 any modification of the Deliverables or Services, other than by or on behalf of the Company; and

7.3.3.3 compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Company shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

7.4 The Customer:

7.4.1 warrants that the receipt and use of the Customer Materials in the performance of this Agreement by the Company, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

7.4.2 shall keep the Company indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Company as a result of or in connection with any claim brought against the Company, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or

use in the performance of this Agreement of the Customer Materials.

- 7.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the Indemnified Party) under this [Clause 7](#), the **Indemnified Party** shall:
- 7.5.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at [Clause 7.3.2](#) or [Clause 7.4.2](#) (as applicable), (**IPRs Claim**);
 - 7.5.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - 7.5.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and
 - 7.5.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute
- 7.6 In respect of the Deliverables, the Customer shall (and shall procure that the End Users shall) not:
- 7.6.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;
 - 7.6.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of such Software;
 - 7.6.3 access all or any part of the Equipment or Software in order to build a product or service which competes with the Services;
 - 7.6.4 use the Services and/or Equipment to provide services to third parties outside the Site without the prior written consent of the Company; or
 - 7.6.5 license, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit, or otherwise make the Services and/or Equipment available to any third party outside the Site without the prior written consent of the Company.

8 Charges and payment

- 8.1 The Customer will pay to the Company the Charges in accordance with this [Clause 8](#) and as otherwise

agreed in writing from time to time by the Company.

- 8.2 Charges are payable monthly in advance (or as otherwise specified on the Order Form) and shall become payable from the date on which the Company notifies the Customer that Installation is complete pursuant to [Clause 4.3](#).
- 8.3 Unless otherwise agreed or specified by the Company, the Customer shall pay in full and cleared funds all Charges invoiced within 30 days of the date of the invoice. Time for payment shall be of the essence of the Agreement.
- 8.4 Unless otherwise expressly provided in the Agreement, all Charges payable under the Agreement are exclusive of VAT or any other applicable tax or duty payable upon such sums, which (if appropriate) the Company shall add to its invoices at the rate prevailing at the relevant time.
- 8.5 The Customer shall be responsible for any additional costs or charges imposed by the landlord or management company for the Site.
- 8.6 The Company shall be entitled to increase Charges once per annum at the rate of increase of RPI during the previous 12 month period.
- 8.7 Without prejudice to any other right or remedy of the Company, if the Customer fails to make any payment under the Agreement on the due date for payment then the Company shall be entitled to:
- 8.7.1 charge the Customer, and the Customer shall pay the Company on demand, interest on the unpaid amount at the rate of 4% per annum above the then current base rate of Barclays Bank plc from the due date for payment until payment is received in full by the Company; and/or
- 8.7.2 suspend supply and/or performance of all Services to the Customer until it has received payment in full, but without prejudice to the Customer's obligation to continue making payments in accordance with the Agreement during the period of any such suspension.
- 8.8 If any sums are due to the Customer from the Company, then the Company shall be entitled to exercise the right to set-off such sums against any payments due to the Company from the Customer under or in relation to this or any other agreement. All amounts due to the Company from the Customer shall be paid by the Customer to the Company in full without any deduction or withholding and the Customer shall not be entitled to claim set-off against the Company in relation to the payment of the whole or part of any such amount.
- 8.9 The Company shall be entitled to charge the Customer for any expenses reasonably incurred by the Company on behalf of the Customer in respect of any and all materials, goods, services and/or facilities acquired specifically for the provision of the Services and for all reasonable travelling expenses, hotel costs, subsistence and any associated expenses. Such expenses shall be agreed by the parties in advance.

9 Warranties

- 9.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Agreement.
- 9.2 If the Customer can prove to the Company's reasonable satisfaction that, due to the Company's own act or omission, the Company has failed to perform the Services or any part of the Services in accordance with the Agreement or at all, then the Company will deal with the fault/breach as per the provisions of the applicable Service Document(s) and any applicable Service Levels. Where the Service Document(s) do(es) not apply to the relevant circumstances, the Company may at its option remedy such breach:
- 9.2.1 by re-executing the relevant part of the Services free of charge up to the amount of the Charges received by the Company for the provision of such Services (exclusive of any VAT); or
- 9.2.2 by repaying or crediting to the Customer that part of the Charges paid by the Customer to the Company relating to the relevant part of the Services which have not been performed in accordance with the Agreement (exclusive of any VAT),
- and any such action shall discharge in full the Company's liability to the Customer for such failure to perform the Services or relevant part of the Services.
- 9.3 The Customer shall notify the Company in writing of any claims under [Clause 9.2](#) within 14 days of the date when the relevant Services were performed or were due to have been performed.
- 9.4 The Company gives no warranty that the use of the Services will be uninterrupted or error free or free of Virus or bugs.
- 9.5 Except as expressly and specifically provided in the Agreement:
- 9.5.1 all warranties, conditions, terms, representations, statements, undertakings and obligations implied by statute, common law, custom, usage or otherwise are, to the fullest extent permitted by Applicable Law, hereby excluded from the Agreement; and
- 9.5.2 the Equipment and Services are provided to the Customer on an 'as is' basis.

10 Limitation of Liability

- 10.1 This [Clause 10](#) sets out the entire financial liability of the Company to the Customer in respect of:
- 10.1.1 any breach of the Agreement howsoever arising;
- 10.1.2 any use made by the Customer of the Services and/or Equipment; and
- 10.1.3 any representations, misrepresentations (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

- 10.2 If any of the Services fail to conform to the Service Levels in the relevant Service Level Agreement, the Customer shall be entitled to the remedies specified in the relevant Service Level Agreement, which shall be the Customer's sole and exclusive remedy for such failure.
- 10.3 If the Company's compliance with the Service Levels or the performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, or any of its End Users, including any delay or refusal to permit the Company, its agents or contractors, access to the premises, facilities, relevant systems and personnel for the purpose of providing the Services:
- 10.3.1 the Service Levels shall not apply for the period during which the Company, its agents or contractors, are delayed or prevented from performing the Services; and
- 10.3.2 the Company shall not be liable for any costs, charges or losses sustained by the Customer that arise directly or indirectly from such prevention or delay.
- 10.4 The Company shall not in any circumstances be liable for any delays, delivery failures, interruptions in service or any other loss or damage resulting from the failure of the Company's third party network and communications service providers and/or the transfer of data over the Network, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities.
- 10.5 Subject to [Clause 10.6](#), the Company shall have no liability whatsoever for any defects, faults, non-compliance, or shortcomings in the Equipment and/or Services, or for any failure to meet any Service Level, or any other loss or damage suffered or incurred by the Customer, any End User or any other third party, to the extent that such are caused by:
- 10.5.1 any act, omission and/or default of the Customer, or any End User, including any failure of the Customer to comply with its obligations pursuant to the Agreement;
- 10.5.2 any unauthorised, improper, incomplete and/or inadequate maintenance of Equipment by the Customer, any End User and/or any third party;
- 10.5.3 the use of any software, hardware, services and/or system(s) which, in each case, are not part of the Equipment and are not compatible with the Equipment or which are defective;
- 10.5.4 any amendment to or modification and/or alteration of the Equipment which has not been undertaken by or with the prior written approval of the Company;
- 10.5.5 any unauthorised and/or improper use and/or operation of the Equipment or the Services;
- 10.5.6 failure by the Customer or any End User to meet the Equipment manufacturer's specifications or any environmental conditions advised by the Company to the Customer; or
- 10.5.7 the Company's compliance with any instruction or direction given by the Customer.
- and, to the extent that any of the above applies, the Customer shall reimburse the Company on written

demand for any costs or losses sustained or incurred by the Company arising directly or indirectly in respect of any matter listed in [sub-clauses 10.5.1 to 10.5.7](#) of this [Clause 10.5](#).

- 10.6 Nothing in the Agreement shall exclude or restrict either party's liability for: (a) death or personal injury resulting from that party's negligence; (b) fraud, or for fraudulent misrepresentation; or (c) any other liability which cannot be excluded or limited under Applicable Law.
- 10.7 Subject to [Clause 10.6](#) the Company shall not in any circumstances be liable to the Customer whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent) or otherwise, for:
- 10.7.1 loss of profits;
 - 10.7.2 loss of revenue;
 - 10.7.3 economic loss;
 - 10.7.4 loss of business or contracts;
 - 10.7.5 loss of anticipated savings or goodwill;
 - 10.7.6 losses arising from loss or corruption of data;
 - 10.7.7 any consequential, special or indirect losses; or
 - 10.7.8 any losses suffered by the Customer arising from any claim against it by a third party for any of the above types of loss.
- 10.8 The Charges have been calculated on the basis that the Company will exclude or limit its liability as set out in the Agreement and the Customer agrees that:
- 10.8.1 the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in the Agreement; and
 - 10.8.2 the Company shall have no further liability to the Customer other than set out in this Agreement and any applicable Service Level Agreement.
- 10.9 Subject to clauses [10.6](#) and [10.7](#), the Company's entire liability for direct losses whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise:
- 10.9.1 arising out of or in connection with the Consultancy Services, shall be limited to the Company's Charges for the Consultancy Services; and
 - 10.9.2 otherwise arising out of or in connection with the Agreement, shall be limited in each Year to 105% (one hundred and five percent) of the Charges payable by the Customer under the Agreement in respect of that Year, as set out in the Order Form (or as amended from time to time in accordance with the provisions of the Agreement).

11 Confidentiality and Publicity

- 11.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under the Agreement and shall not use nor disclose the same save for the purposes of the proper performance of the Agreement or with the prior written consent of the other party.
- 11.2 Confidential Information may only be disclosed on a need-to-know basis to a party's:
- 11.2.1 legal advisors in order to advise it on its rights or obligations under the Agreement;
 - 11.2.2 employees, consultants, agents, and/or subcontractors, provided that disclosure is made solely for the purpose of performing its obligations or exercising its rights under the Agreement, and
 - 11.2.3 provided in each case that such disclosure is subject to obligations equivalent to those set out in the Agreement and each party shall procure that any person to whom Confidential Information is disclosed complies with such obligations. Each party shall continue to be responsible to the other party in respect of any disclosure or use of the disclosing party's Confidential Information by a person to whom disclosure is made by the receiving party.
- 11.3 The obligations of confidentiality in this [Clause 11](#) shall not extend to any information which the receiving party can show to the reasonable satisfaction of the disclosing party:
- 11.3.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Agreement;
 - 11.3.2 was in its written records prior to the disclosure by the disclosing party;
 - 11.3.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 11.3.4 is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction, provided that such information is disclosed only to the extent actually required by law and prior to such disclosure the receiving party gives the disclosing party such prior notice that it is reasonably able to give in order to give the disclosing party the opportunity to seek a protective order for the Confidential Information.
- 11.4 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the receiving party of this [Clause 11](#). Accordingly, the disclosing party shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this [Clause 11](#).
- 11.5 Neither party shall make any announcement or otherwise publicise the existence of or disclose to any person the terms of the Agreement without the prior written consent of the other party. The Customer

agrees that the Company shall be entitled to refer in public to it being a service provider of the Customer but shall not disclose the nature of such services without the Customer's consent, such consent not to be unreasonably withheld or delayed.

11.6 The obligations under this [Clause 11](#) shall survive termination of the Agreement.

12 Customer Data and Data Protection

12.1 The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for ensuring the security, legality, reliability, integrity, accuracy and quality of the Customer Data.

12.2 Unless otherwise agreed in writing in advance, the Company shall not be responsible for undertaking back-up of any Customer Data and the Customer shall be solely responsible for undertaking back-up of the Customer Data and shall ensure that such back-up copies are recorded on media from which the Customer Data can be re-loaded by the Customer in the event of any corruption or loss thereof and kept safe.

12.3 The Customer shall be solely responsible for obtaining all necessary consents required pursuant to the Data Protection Legislation in respect of its processing of Customer Data and Customer Personal Data, including any processing undertaken by the Company or its subcontractors on behalf of the Customer and any End Users.

12.4 The Customer and the Company acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Company is the data processor in respect of any Customer Personal Data. Each party warrants to the other that it has complied with, and undertakes to continue to comply with, the Data Protection Legislation.

12.5 The Customer acknowledges and agrees that the Company may be required to process certain personal data relating to the Customer's employees, agents, officers, clients and/or customers (including the End Users) for the purpose of providing the Services and for the duration of the Agreement. The Customer has agreed to provide such personal data to the Company for the purposes of such processing, only in accordance with the terms of these General Terms.

12.6 To the extent that the Company is required to process any Customer Personal Data in relation to the Agreement, the Company shall:

12.6.1 only process that Customer Personal Data for the purposes of, and in accordance with, the Agreement and only in accordance with documented instructions from the Customer;

12.6.2 notify the Customer promptly in the event of a security incident affecting or relating to that Customer Personal Data;

12.6.3 implement reasonable technical and organisational precautions and measures against

unauthorised or unlawful processing of that Customer Personal Data and against accidental loss or destruction of, or damage to, that Customer Personal Data;

- 12.6.4 only transfer that Customer Personal Data (or allow that Customer Personal Data to be transferred) outside of the European Economic Area (EEA) where it has provided appropriate safeguards in relation to the transfer of that Customer Personal Data in accordance with the Data Protection Legislation;
- 12.6.5 ensure that access to the Customer Personal Data is limited to those employees and personnel who need access to the Customer Personal Data to meet the Company's obligations under the Agreement and such access is limited to that which is strictly necessary for performance of the relevant obligation;
- 12.6.6 ensure that all of its employees and personnel who are involved in the processing of that Customer Personal Data are subject to obligations of confidentiality;
- 12.6.7 promptly assist the Customer to respond to requests for exercising data subject rights laid down in Data Protection Legislation;
- 12.6.8 from 25th May 2018, take all the measures required pursuant to Article 32 of the GDPR;
- 12.6.9 assist the Customer in ensuring compliance with the obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.6.10 unless otherwise strictly required by law, upon termination or expiry of the Agreement for whatever reason or otherwise at the Customer's choice, delete or return to the Customer all Customer Personal Data after the end of the provision of Services relating to processing, and delete existing copies;
- 12.6.11 make available to the Customer all information necessary to demonstrate compliance with the obligations imposed on the Company under this [Clause 12.8](#);
- 12.6.12 allow for and contribute to reasonable audits, including inspections, conducted by the Customer or another auditor mandated by the Customer for the purposes of demonstrating such compliance; and
- 12.6.13 in respect of clauses [12.6.11](#) and [12.6.12](#), immediately inform the Customer if, in the Company's opinion, any instruction of the Customer infringes Data Protection Legislation.

12.7 Neither party shall, through its acts or omissions, place the other party in breach of any Data Protection Legislation.

12.8 The Customer agrees and acknowledges that the Company may authorise a third party (subcontractor) to process the Customer Personal Data in relation to the Services provided that the subcontractor's

contract:

12.8.1 is on terms which comply with the Data Protection Legislation and which, in any event, are no less onerous than those imposed under this [Clause 12](#) and

12.8.2 terminates automatically on termination of the Agreement for any reason.

12.9 The Customer warrants that where it shares any Customer Personal Data with the Company in connection with the Agreement it shall ensure that it:

12.9.1 only shares such Customer Personal Data fairly, lawfully and in a transparent manner in accordance with the Data Protection Legislation; and

12.9.2 provides a clear privacy notice to each of the data subjects at the time of collecting their personal data, which provides all of the information that is required by the Data Protection Legislation.

12.10 The Customer acknowledges that the Company is reliant on the Customer for direction as to the extent to which the Company is entitled to use and process the Customer Personal Data. Consequently, the Company will not be liable for any claim brought by a data subject arising from any action or omission by the Company, to the extent that such action or omission resulted directly from the Customer's instructions or failure of the Customer to comply with its obligations under [Clause 12.9](#).

13 Change Control

13.1 Each party will appoint a suitably experienced and qualified representative who shall be the primary representative of that party in relation to the management and administration of the Services (“**Authorised Representative**”).

13.2 If either of the parties wishes to request a change to the Services, that party's Authorised Representative will submit a change request to the other party's Authorised Representative describing the proposed change. The receiving party will provide a response to the change request within 14 days (or such other time as is agreed by the Authorised Representatives) and where the party requesting the change is the Customer, the Company will in its response to a change request from the Customer issue a new Order Form, which will include details of any variations to the charges arising from the change.

13.3 If the parties agree to proceed with the change, the Authorised Representatives shall agree and sign the new Order Form issued by the Company. In the event that the parties are unable to agree on the proposed change and unless and until a new Order Form is signed by the Authorised Representative, the party submitting the change will withdraw the change request and the Agreement shall continue without change.

13.4 If the Company requests a change to the scope of the Services in accordance with this [Clause 13](#), the Customer shall not unreasonably withhold or delay consent to it.

14 Indemnity

- 14.1 The Customer shall defend, indemnify and hold harmless the Company against all liabilities, claims, actions, proceedings, losses, damages, expenses and costs (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, loss of opportunity to deploy resources elsewhere) and any court costs and reasonable legal fees) which are suffered or incurred by the Company arising out of or in connection with:
- 14.1.1 the use of the Services and/or Equipment by the Customer or any of its End Users save to the extent caused by any negligence or wilful misconduct of the Company;
 - 14.1.2 any content or communications transmitted, sent or stored by the Customer or any of its End Users using the Services;
 - 14.1.3 any failure by the Customer to obtain the necessary authorisations, approvals and consents for the use and provision of the Services at the Site pursuant to [Clause 5.1.6](#);
 - 14.1.4 any failure by the Customer to obtain the necessary consents for the processing of Customer Personal Data in accordance with this Agreement pursuant to [Clause 12.3](#) and [Clause 12.9](#); and/or
 - 14.1.5 any action, omission, delay or breach by the Customer, or any of its End Users, of any of its obligations under this Agreement or any other of the terms of this Agreement or the Acceptable Use Policy.

15 Term and Termination

- 15.1 Subject to earlier termination of the Agreement in accordance with its terms, the Agreement shall commence on the date that it is signed by the parties and shall continue in force for the following period (the “**Term**”):
- 15.1.1 until the expiry of the Initial Term (where an Initial Terms applies) and thereafter unless or until terminated by either Party giving to the other Party not less than one (1) month’s prior written notice to expire no earlier than the end of the Initial Term or at any time thereafter; or
 - 15.1.2 in respect of any specific Services, for the period stated on the Order Form where it relates to a project or a specific number of days; or
 - 15.1.3 where the Services are purely Pay As You Go Services, for the period such Service(s) are in use by the Customer.
- 15.2 In the event that the Customer wishes to cancel a Service in accordance with this [Clause 15](#), the

Customer shall send an email to the Company's Authorised Representative specifying the Customer's name, the Site (including postcode) at which the relevant Service(s) is/are provided, what the Service(s) is/are and any applicable service reference number(s) and (where the Customer is terminating pursuant to [Clause 15.3](#)) the reason for termination. The Company shall confirm such cancellation, and any relevant Termination Payment (defined below) to the Customer within ten (10) Business Days of receipt of such request.

- 15.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:
- (a) the other party commits a material breach of any other term of this Agreement (other than a failure on the part of the Customer to make payments of sums when due) which breach is irremediable or (if such breach is remedial) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in [Clause 15.3\(c\)](#) to [Clause 15.3\(i\)](#) inclusive;
 - (k) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

- 15.4 The Company shall have the right (at the Company's option) to terminate, or suspend (in the case of

suspension, for as long as any of the circumstances described in [sub-clauses 15.4.1 to 15.4.3](#) below remain), any Service and/or the Agreement immediately upon written notice if:

- 15.4.1 instructed to do so by a court of law, regulator or other appropriate authority;
- 15.4.2 the Customer or any End User breaches any term of the Acceptable Use Policy; or
- 15.4.3 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment.

15.5 Except in the event of termination of the Agreement by the Customer pursuant to [Clause 15.3](#) above, or by the Company pursuant to [Clause 15.4](#) above, where a Service is terminated or otherwise brought to an end by the Customer, without cause, (including upon acceptance by the Company of any repudiatory breach by the Customer as terminating the Agreement) the Termination Payment shall be payable by the Customer.

For the purpose of this clause, the “**Termination Payment**” shall mean:

- 15.5.1 where termination occurs after the Service Commencement Date: (i) all arrears of Charges payable under the Agreement up to the date of termination plus (ii) all remaining Charges not yet paid which would otherwise have been payable for the greater of the remainder of the Term or the required one (1) month’s notice period;
- 15.5.2 where the Service Commencement Date has not yet occurred: (i) the Non-Recurring Charges; plus (ii) 50% of the Recurring Charges which would otherwise have been payable for the greater of the remainder of the Term or the required one (1) months’ notice period plus (iii) all charges incurred or committed to by the Company with third party suppliers; plus (iv) any charges identified in the relevant Service Document as being recoverable pursuant to this sub-clause, provided always that the Termination Payment to be paid pursuant to this sub-clause does not exceed the total Charges which would otherwise be payable by the Customer in respect of the Term;
- 15.5.3 where the Service is a Pay As You Go Service: there shall be no Termination Payment;
- 15.5.4 where the Service is a Professional Service: the Termination Payment shall be as set out in the Service Document for Professional Services; and
- 15.5.5 the Customer acknowledges and agrees that the Termination Payment is based upon the Company’s revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty.

15.6 Termination or expiry of a Service and/or the Agreement shall be without prejudice to the accrued rights and liabilities of either Party subsisting under the Agreement prior to termination or expiry.

16 Consequences of termination

- 16.1 On the expiry or termination of the Agreement and/or any Service (for whatever reason):
- 16.1.1 the Customer shall immediately cease (and shall procure that its employees, contractors, representatives and End Users immediately cease) all use of the Equipment and the Services;
 - 16.1.2 the Customer shall (and shall procure that its End Users shall) immediately surrender possession of the Equipment in good condition to the Company (fair wear and tear excepted) and the Customer shall (and shall procure that its End Users shall) provide for the Company access on reasonable notice to its premises, facilities and equipment for the purpose of removing the Equipment and de-installing the Service(s);
 - 16.1.3 the Customer shall forthwith make payment of all sums due and owing to the Company and the Company shall be entitled to submit an invoice to the Customer for Services rendered up until the date of termination, along with any Termination Payment that is due in accordance with [Clause 15.5](#), and the Customer shall make prompt payment of such invoice within 30 days of date of invoice;
 - 16.1.4 the Customer shall, within five (5) Business Days of termination of the Service/ Agreement, return to the Company by same day courier any ClearFibre Equipment (if applicable) or pay the Company for the ClearFibre Equipment at its then-current new purchase price if not so returned. Where the Customer requires the Company to remove any ClearFibre Equipment from the Customer Site(s), the Company shall be entitled to charge the Customer for such additional work at the Company's standard rates; and
 - 16.1.5 any licenses granted to the Customer by the Company under the Agreement shall immediately terminate.
- 16.2 Following termination of the Agreement and provided that the Customer's account is fully paid-up, the Company will, following the Customer's written request, provide reasonable assistance to the Customer as regards migrating to an alternative service provider, at the Company's then-current standard charges.
- 16.3 On termination or expiry of this Agreement, the following clauses shall continue in force and effect: [7](#), [8.7](#), [8.8](#), [9](#), [10](#), [11](#), [12](#), [14](#), [16](#), [18](#), [19](#), [20](#), [21](#) and [22](#).

17 Force Majeure

- 17.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Agreement (other than payment obligations) caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same.

18 Assignment

- 18.1 The Customer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 18.2 The Company shall be entitled (at its sole discretion) to assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement.

19 Entire agreement

- 19.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede all previous arrangements, understanding, promises, assurances, warranties, representations and agreement between them, whether written or oral, relating to its subject matter.
- 19.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not and whether made innocently or negligently) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

20 General

- 20.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.2 The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 20.3 No failure or delay by a party to exercise any right or remedy provided to it under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 20.4 Each of the parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other party such other instruments and documents and take such other action as is necessary to fulfil the provisions of the Agreement in accordance with its terms.
- 20.5 Subject to the specific limitations set out in the Agreement, no remedy conferred by any provision of the Agreement is intended to be exclusive of any other remedy except as expressly provided for in the Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity, by statute or otherwise.
- 20.6 Except as otherwise expressly specified in the Agreement, each party shall bear its own costs in relation to the negotiation, preparation and completion of the terms of the Agreement.
- 20.7 All variations to the Agreement shall be in writing. The parties agree that variations can be agreed between the parties by e-mail provided that the emails originate from the email address specified in [Clause 21.1](#).
- 20.8 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 20.9 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 Notices

- 21.1 A notice given under the Agreement must be in writing and may be served by personal delivery or by sending the notice by registered post or e-mail at the address given below or at such other address as the relevant party may give for the purpose of service of notices under the Agreement:
- **To the Company:**
Address: Telcom Suite, Hilton House Telcom, Hilton Street, Manchester, England, M1 2EH
Email: hi@clearfibre.uk
 - **To the Customer:**
Address: As specified on the Order Form
Email: As specified on the Order Form
- 21.2 A notice is deemed to have been received:
- 21.2.1 if delivered personally, at the time of delivery;
- 21.2.2 in the case of e-mail, at the time of sending the e-mail; or

21.2.3 in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting.

21.3 To prove service, it is sufficient to prove that the notice was transmitted in the case of e-mail that the e-mail was sent to the correct e-mail address as set out above and receipt was acknowledged by return email from the email address to which it was sent or otherwise by an Authorised Representative of the receiving party, and in the case of post, that the envelope containing the notice was properly addressed and posted.

21.4 The provisions of this [Clause 21](#) shall not apply to the service of any proceedings or other documents in any legal action.

22 Governing Law and Jurisdiction

22.1 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the Agreement, its subject matter and/or its formation (including non-contractual disputes or claims). ²

Schedule 1: Acceptable Use Policy

1 Definitions and Interpretation

1.1 Capitalised expressions shall have the meanings given in the General Terms and Conditions.

2 Acceptable Use Policy

2.1 The Customer shall not, and shall procure that its End Users do not, use the Services and/or Network to store, distribute or transmit any Viruses, or any material that:

- 2.1.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.1.2 in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purposes or effect, or which facilitates illegal activity;
- 2.1.3 depicts sexually explicit images or promotes unlawful violence;
- 2.1.4 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity;
- 2.1.5 causes damage or injury to any person or property;
- 2.1.6 is in breach of any Applicable Law; or
- 2.1.7 infringes any Intellectual Property Right or other proprietary right or right of privacy of a third party.

2.2 The Customer shall, and shall procure that its End Users shall, not use the Services to:

- 2.2.1 transmit or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); or
- 2.2.2 intercept or monitor data or messages while they are being transmitted over the Network.

2.3 The Customer shall not, and shall procure that its End Users shall not, use the Services to access any computer, system, network, or data without authorisation or in a manner which exceeds authorisation including, any attempt to:

- 2.3.1 retrieve, alter, or destroy data;
 - 2.3.2 probe, scan or test the vulnerability of a system or network; or
 - 2.3.3 breach or defeat system or network security, authentication, authorisation, confidentiality, intrusion detection, monitoring, or other security measures.
- 2.4 The Customer shall not, and shall procure that its End Users shall not, use the Services to:
- 2.4.1 impersonate any party or entity by adding, removing, or altering header information of network, email, or other messages transmitted over the Network;
 - 2.4.2 transmit over the Network messages that have been electronically signed using a fraudulently obtained public key certificate or with a forged electronic signature; or
 - 2.4.3 use the Network or any of the Services to commit any other form of impersonation or forgery.
- 2.5 The Customer shall not, and shall procure that its End Users shall not, knowingly interfere with or disrupt the business operations, service, or function of the Company, the Network, or any computer, host, network, or telecommunications device connected to or via the Network.
- 2.6 The Customer shall not, and shall procure that its End Users shall not, knowingly tamper with or attempt to gain unauthorised access to systems, network or other device of the Company.
- 2.7 The Customer shall, and procure that its End Users shall, promptly report to the Company any event, condition, or activity indicating a possible or actual:
- 2.7.1 breach of this Acceptable Use Policy;
 - 2.7.2 breach or compromise of the security of the Network and/or the Services, including any event, condition, or activity occurring within any other telecommunications or computer network or systems that could affect the security of the Network and/or the Services.
- 2.8 In the event of any breach or suspected breach of the Acceptable Use Policy by the Customer or any of its End Users, in addition to and without prejudice to its other rights and remedies at law or otherwise under the Agreement, the Company may:
- 2.8.1 monitor usage, and carry out investigations into potential misuse or abuse of the Services insofar as the same is carried out over or using the Network and the Customer shall co-operate with the Company in connection with such investigations;
 - 2.8.2 (at the Company's option) terminate, or suspend any Service (or the relevant End User's use of the Service) immediately upon written notice to the Customer; and/or
 - 2.8.3 involve and co-operate with law enforcement, regulatory and any other authorised agencies in the investigation and prosecution of crimes alleged or suspected to have been committed

using the Services insofar as the same is carried out over or using the Network.