

claranet



Claranet Master Services Agreement

1. DEFINITIONS

1.1 The following words and phrases shall, unless the context otherwise requires have the following meanings:

- (a) "**Acceptable Use Policy**" or "**AUP**" means Claranet's acceptable use policy the current version of which is available at www.claranet.co.uk/legal as amended from time to time;
- (b) "**Affiliates**" means, with respect to any entity, any other entity Controlled directly or indirectly, by the entity, any entity that Controls, directly or indirectly, the entity or any entity directly or indirectly under common Control with the entity;
- (c) "**Agreement**" has the meaning set out in Clause 2.1;
- (d) "**Claranet**" means Claranet Limited (Company No. 03152737) of 21 Southampton Row, London WC1B 5HA, United Kingdom or any Claranet Affiliate;
- (e) "**Claranet Equipment**" means any hardware, cabling, peripherals, software or any other equipment that Claranet shall provide to the Customer as part of the Services, whether owned by Claranet or a third party supplier, but specifically excludes any such equipment that has been sold to the Customer;
- (f) "**Claranet Online**" means the portal operated by Claranet for use by Customers;
- (g) "**Claranet Website**" means the website www.claranet.co.uk/legal;
- (h) "**Commencement Date**" means the date on which this Master Services Agreement is signed by the parties or when Claranet first commences performance of its obligations under the Agreement, whichever is the earlier;
- (i) "**Confidential Information**" means all confidential information disclosed by a party or its employees, officers, representatives, sub-contractors, suppliers, agents or advisers (together its "**Representatives**") to the other party or its Representatives including any information relating to the business, affairs, customers, clients and suppliers of the disclosing party (or of any Affiliate of the disclosing party) and any information relating to any services, products, know-how, designs, pricing, technology including technical specifications and configurations, trade secrets or software of the disclosing party;
- (j) "**Contract Year**" means each successive period of 12 calendar months which forms part of the Term commencing on the Commencement Date or any Renewal Date;
- (k) "**Control**" means the beneficial ownership of more than fifty per cent (50%) of the issued share capital or the legal power to direct or cause the direction of the general management or affairs of the company, partnership or other entity in question and "**Controls**", "**Controlled**" and "**Controlling**" shall be construed accordingly;
- (l) "**Credits**" means any sums that may be credited to the Customer by Claranet under the terms of the Agreement, including the Service Credits;
- (m) "**Customer**" means the legal entity, which receives the Services from Claranet under the terms of the Agreement, or the legal entity which is listed in an Order, SOW or Letter of Engagement (as applicable);
- (n) "**Customer Data**" means any data provided to Claranet by the Customer or on the Customer's behalf;
- (o) "**Customer Equipment**" means any hardware, cabling, peripherals, software or any other equipment other than the Claranet Equipment;
- (p) "**Customer Laws**" means all applicable laws, rules, regulations, mandatory guidelines and codes which, in the case of the Customer and its Affiliates, impose legal or regulatory requirements on a recipient of the Services or any extension, amendment or re-enactment of such

an act that may come about from time to time; for the avoidance of doubt including Modern Slavery Act 2015 (where applicable);

- (q) **"Customer Materials"** means the Customer Data, documents and any other tangible materials provided to Claranet by the Customer or on the Customer's behalf under the Agreement;
- (r) **"Customer Personal Data"** shall mean personal data supplied to Claranet by or on behalf of the Customer and which is processed by Claranet in connection with Services;
- (s) **"Data Controller"** shall have the same meaning as defined in Data Privacy Laws;
- (t) **"Data Privacy Laws"** shall mean the following as amended, extended or re-enacted from time to time:
 - (i). EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
 - (ii). EC Directive 2002/58/EC on Privacy and Electronic Communications;
 - (iii). EC Regulation 2016/679 (the "GDPR") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force);
 - (iv). All local laws or regulations implementing or supplementing the EU legislation mentioned in (i)-(iii) above;
- (u) **"Data Processor"** shall have the same meaning as defined in Data Privacy Laws;
- (v) **"Data Subject"** shall have the same meaning as defined in Data Privacy Laws;
- (w) **"End of Life"** occurs after End of Support and means where the manufacturer or provider of a product or service to Claranet, or Claranet, at its discretion, decides that a product or service is at the end of its useful life and the manufacturer or provider may cease all rework sustaining the product or service and removes all references to the product or service from their product portfolio;
- (x) **"End of Sale"** means where the manufacturer or provider of a product or service to Claranet ceases any further sale of the relevant product or service;
- (y) **"End of Support"** occurs after End of Sale and means where the manufacturer or provider of a product or service to Claranet ceases to offer support in fixing any bugs, issues, problems or concerns in relation to a product or services ("**End of Support Issues**");
- (z) **"Fees"** means the fees and charges payable by the Customer for the Services as described in an Order, SOW or Letter of Engagement (as applicable);
- (aa) **"Force Majeure Event"** means any circumstances beyond the reasonable control of either party to the Agreement including strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any contractors of the party seeking to rely on the Force Majeure Event); civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; reduction or interruption of any utilities howsoever caused; reduction or interruption of the use of telecommunications, networks, the internet, railways, shipping, aircraft, motor transport or other means of public or private transport; virus and/or hacking attacks or other malicious acts of a third party not under the control of a party; and compliance with any law or governmental order, rule, regulation or direction;
- (bb) **"Initial Term"** means in relation to a Service, the 12 month period beginning on the Service(s) Commencement Date, or such other period as set out in an Order or Letter of Engagement;
- (cc) **"Laws"** means the Supplier Laws and the Customer Laws;
- (dd) **"Letter of Engagement"** means a signed letter of agreement setting out, amongst other things, a description of the Services that Claranet has agreed to supply to the Customer, or Claranet's offer to vary the Services requested by the Customer under Clause 6.2;
- (ee) **"Master Services Agreement"** or **"MSA"** means these terms and conditions;
- (ff) **"Minimum Written Notice"** means, unless otherwise specified in an Order or Letter of Engagement, the period of 90 days;
- (gg) **"Order"** means an order submitted by the Customer which lists the Services requested by the Customer and the Fees for such Services and which has been accepted by Claranet in accordance with Clause 3.1(c) of the Agreement;
- (hh) **"Parties"** means Claranet and the Customer and "party" shall mean either of them;
- (ii) **"Personal Data"** shall have the same meaning as defined in Data Privacy Laws;
- (jj) **"Premises"** means the premises owned and/or operated by the Customer where the Services shall be performed or where any Claranet Equipment shall be installed;
- (kk) **"Processing"** shall have the same meaning as defined in Data Privacy Laws;
- (ll) **"Processing Records"** shall have the meaning set out in clause 13.5(c);
- (mm) **"Professional Services"** means any services described in an SOW or a Letter of Engagement;
- (nn) **"Renewal Term"** means the period of 12 months commencing on the expiry of the Initial Term and each successive period of 12 months thereafter (or such other period as is set out in an Order) in the event that Claranet has not received Minimum Notice;
- (oo) **"Services"** means the services to be provided by Claranet as described in the Service Descriptions, Order, SOWs and/or Letters of Engagement, including any Professional Services, in each case, the provision of associated Service Deliverables;
- (pp) **"Service Commencement Date"** means the date in respect of each Service on which that Service is made available for use to the Customer in accordance with the provisions of the Agreement;
- (qq) **"Service Credits"** means where applicable the credit pre-agreed by the parties to be applicable and redeemable by the Customer against the Fees where the parties agree Claranet is in default of the Service Levels in accordance with the terms of the Agreement;
- (rr) **"Service Deliverables"** means any materials, equipment, software, deliverables or other items of any type developed, created or supplied (whether alone or jointly) by Claranet or any Claranet Affiliate in the course of the provision of the Services, including any adaptation or modification of the Customer Materials;
- (ss) **"Service Description"** means the document(s) setting out a description of the Services referred to in an Order;
- (tt) **"Service Levels"** means the service levels for each Service (where applicable);
- (uu) **"Service Provider"** shall have the meaning defined in Clause 10.4(c);
- (vv) **"Service Term"** means, in relation to a Service, the period from the Service Commencement Date to the termination (for any reason) of such Service(s) pursuant to the Agreement;
- (ww) **"SOW"** means the Statement of Work provided by Claranet, if applicable, to the Customer for the supply of Services;

- (xx) "**Supplier Laws**" means all applicable laws, rules and regulations codes that impose legal or regulatory requirements on Claranet and its Affiliates;
- (yy) "**Target Date**" means the date agreed between the parties for the installation or completion of a Service(s);
- (zz) "**Term**" means the duration of the Agreement;
- (aaa) "**Trial Service**" means the short-term test period of a Service by the Customer;
- (bbb) "**VAT**" means value added tax, as defined by the Value Added Tax Act 1994, or any other tax imposed in substitution for it, and any equivalent or similar tax imposed outside the United Kingdom;
- (ccc) "**Working Day**" means 09.00 to 17.30, Monday to Friday in England and Wales excluding UK Public and Bank Holidays.

1.2 In the Agreement, unless the context otherwise requires:

- (a) clause, schedule and paragraph headings shall not affect the interpretation of the Agreement;
- (b) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) words in the singular shall include the plural and vice versa;
- (d) a reference to one gender shall include a reference to the other gender;
- (e) a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
- (f) a reference to "writing" or "written" includes mail, faxes and e-mail;
- (g) any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction; and
- (h) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. THE AGREEMENT

- 2.1 The Agreement consists of the terms of this Master Services Agreement which is available for review by the Customer on the Claranet Website, the Order, the applicable Service Description(s), the SOW and Letter of Engagement (as applicable).
- 2.2 The Agreement shall take effect on the Commencement Date and shall continue unless and until terminated in accordance with the provisions of the Agreement.
- 2.3 Any conflict or inconsistency between any provisions of the documents referred to in Clause 2.1 shall be resolved in accordance with the following order of precedence:
 - (a) Order;
 - (b) Letter of Engagement;
 - (c) Master Services Agreement
 - (d) Statement of Work (SOW); and
 - (e) Service Description

3. ORDERING AND PROVISION OF SERVICES

- 3.1 The Customer may order services from Claranet in accordance with one of the following procedures:
 - (a) the Customer shall complete and submit an Order or Letter of Engagement for Services;
 - (b) where the Customer submits an order for Professional Services Claranet shall prepare an SOW and/or Letter of Engagement setting out Claranet's offer to supply Professional Services and shall submit the SOW or Letter of Engagement for the Customer's review and acceptance. Such offer shall remain open to acceptance by the Customer for a period of 7 calendar days from the date that the SOW or Letter of Engagement is submitted to the Customer. Customer's acceptance of an SOW or Engagement Letter shall form a binding contract between the parties to such SOW or Engagement Letter;
 - (c) where the Customer submits an Order or Letter of Engagement for Services, such Order or Letter of Engagement shall constitute a written offer by the Customer to enter into a legally binding contract with Claranet for the provision of the Services specified and such offer shall remain open to acceptance by Claranet for a period of 14 calendar days from the date that the order is submitted to Claranet and
 - (d) if Claranet declines to accept an Order or Letter of Engagement for Services submitted by the Customer, it shall notify the Customer of its decision after receiving the order as soon as is reasonably practicable thereafter.
- 3.2 Where Orders or Letters of Engagement submitted under a procedure set out at clause 3.1 are accepted by Claranet, the Customer agrees that any Claranet Affiliate may provide the Services set out therein and invoice Customer for the Fees.
- 3.3 Time for the delivery, provision or completion of the Services is not of the essence and shall not be made so by the service of any notice.
- 3.4 If Claranet notifies the Customer that a Service is ready for installation or implementation and the Customer is not ready to accept such installation or implementation for any reason whatsoever, Claranet will invoice the Customer for the Fees for those affected Service(s), such Fees shall be payable by the Customer in accordance with the payment terms set out in the Agreement. In the event that the Customer or the Customer Affiliates do not fulfil an obligation under the Agreement, without prejudice to Claranet's other rights and remedies, Claranet will be relieved of its obligations under the Agreement and Claranet shall not be liable for any costs, charges, expenses, damages, liabilities or losses howsoever sustained by the Customer arising directly or indirectly. Further, Claranet shall be entitled to recover any costs directly or indirectly incurred by it arising from the Customer and/or the Customer Affiliates not fulfilling an obligation.
- 3.5 If the Customer agrees to enter into a Trial Service, notwithstanding any other term or provision of the Agreement, the Customer agrees that such Services shall be provided "as is" without warranty of any kind during the period of the Trial Service. Claranet reserves the right to cancel all Trial Services upon immediate notice to the Customer without liability to the Customer. Upon termination of the Trial Service, all Claranet's obligations and liabilities in relation to the Trial Service will cease.
- 3.6 Claranet or its agents may enter the Premises at such times and dates as agreed between the parties to inspect any Claranet Equipment that the Customer may have connected to the Service. This permission remains in force until Claranet or its agents have removed all Claranet Equipment from the Premises or the Customer has returned the Claranet Equipment notwithstanding termination of the Agreement.

4. CANCELLATION AND SUSPENSION OF THE SERVICES

- 4.1 In the event that the Customer terminates a Service(s) for convenience before its Target Date, the Customer shall be obligated to immediately on demand pay all costs directly and indirectly (including third party costs) incurred by Claranet with respect to the cancelled Service. For the avoidance of doubt, this shall include all reasonable out of pocket expenses incurred by Claranet and Affiliates both before and after cancellation.
- 4.2 From time to time, Claranet may deem it necessary to discontinue a Service or part of a Service for reasons including but not limited to product enhancement, upgrade or End of Sale, End of Life, End of Support ("Discontinued Service"). In the event of a Discontinued Service where possible and where applicable depending on notifications received from Claranet's vendors Claranet will use reasonable endeavours to notify the Customer, in advance of the discontinuance, of important milestones during the discontinuance period including, where applicable; the last order date for the Service, any relevant End of Sale, End of Life, End of Support milestone dates, as well as other key information pertaining to the Discontinued Service.
- 4.3 Where in the event of a Discontinued Service, the parties do not agree on an alternative product or service, or in the opinion of Claranet no other product or service will be agreed by the parties, Claranet may terminate a Discontinued Service at any time and shall endeavour to, but shall not be obligated to, give not less than one (1) month prior written notice to the Customer.
- 4.4 Where a Service reaches End of Support or End of Life, Customer may request that Claranet continues to provide the Service on a limited basis "End of Support Service". Claranet may object to this and exercise its termination rights under 4.3 above, or Claranet may agree to continue to provide the End of Support Service subject to the following:
- (a) the Customer acknowledges that Claranet cannot and will not support the End of Support Services in a full, complete or comprehensive way;
 - (b) the Customer agrees and acknowledges that third parties' support to Claranet's efforts to resolve an End of Support Concern shall be limited or nil;
 - (c) the Customer agrees and acknowledges that Claranet's ability to resolve an End of Support Concern shall be limited or nil;
 - (d) the Customer agrees and acknowledges that Claranet has recommended to Customer that the End of Support Services should cease or where applicable move to a different platform;
 - (e) the Customer agrees and acknowledges that where an End of Support Concern arises with respect to the End of Support Services which impacts the benefit of the End of Support Services to the Customer, where in the ordinary course the Customer would have expected resolution by Claranet, the Customer agrees and acknowledges that Claranet shall make attempts to resolve the End of Support Concern that Claranet deems commercially reasonable and that these attempts may not resolve the End of Support Concern;
 - (f) the Customer agrees and acknowledges that where Claranet does not resolve an End of Support Concern, notwithstanding the extent of a resulting impact or subsequent loss of End of Support Services to Customer, Claranet shall have no liability to Customer whatsoever, whether, in contract, tort, breach of statutory duty or otherwise, from any loss, claim, damage, expense, liability, whether direct, indirect or consequential and howsoever arising or in connection to the impact upon Customer and
 - (g) the Customer agrees and acknowledges Claranet may increase or otherwise amend the Fees in relation to the provision of the service.

- 4.5 Without prejudice to its other rights and remedies under the Agreement, Claranet may suspend its provision of the Services in the following circumstances:
- (a) if, in the reasonable opinion of Claranet, the Customer is in breach of the Agreement;
 - (b) Claranet is required to do so by operation of law or a governmental authority so requires; or
 - (c) to protect the Claranet Equipment or the services that Claranet provides to its other customers.
- 4.6 Claranet shall provide the Customer with not less than 48 hours advance notice of its intention to suspend the Services under Clause 4.5, unless Claranet has reasonable grounds not to do so.

5. CUSTOMER OBLIGATIONS

- 5.1 It is a condition of the Agreement that the Customer shall at all times use the Services in accordance with the Acceptable Use Policy available at www.claranet.co.uk/legal as may be updated from time to time. The Customer acknowledges and agrees that Claranet reserves the right, in accordance with law, to monitor and audit the Customer's use of the Services to ascertain the Customer's compliance with the Acceptable Use Policy and the Agreement. The Customer agrees and confirms that it has read and become familiar with the terms of the Acceptable Use Policy and that it shall keep up to date with any changes Claranet makes to that policy, as set out on the Claranet Website.
- 5.2 The Customer shall:
- (a) use appropriate security precautions in connection with its use of the Services;
 - (b) comply with the Customer Laws;
 - (c) provide such Customer Materials, information, resources and assistance in a timely manner as Claranet shall reasonably require to perform the Services at no charge to Claranet and
 - (d) provide Claranet with reasonable assistance in investigating the cause of Service outages, security problems and any suspected breach of the Agreement by the Customer or its Affiliates at no charge to Claranet.
- 5.3 If required by Claranet, the Customer shall prepare the Premises in accordance with Claranet's reasonable instructions.
- 5.4 Where it is reasonably necessary for Claranet, its Affiliates or a Service Provider to attend the Premises in order to perform the Services the Customer shall, at no cost to the aforementioned parties:
- (a) provide them with reasonable access to the Premises at times to be agreed, such access not to be unreasonably delayed or withheld;
 - (b) inform them of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises;
 - (c) ensure that any Customer Equipment made available to them is in good working order, suitable to the purpose for which it is used, and conforms to all relevant standards;
 - (d) ensure that the Premises are safe; and
 - (e) if required by Claranet, prepare the Premises in accordance with Claranet's reasonable instructions.
- 5.5 In the event that Claranet has ordered third party equipment and/or assistance on behalf of the Customer as a result of the Services ordered by the Customer, then the Customer will be responsible for the reasonable costs arising from the Customer's failure to provide access to the Premises on the dates and at the times agreed by the parties.

5.6 Claranet may give directions about the use of the Services to the Customer which Claranet thinks are reasonably necessary in the interests of safety, or the quality of service to Claranet's other customers. The Customer shall comply with all such reasonable directions.

5.7 Subject to the provision of reasonable prior written notice to Customer, the Customer agrees that Claranet shall be free to move Claranet Equipment and/or Customer Equipment to another location and Claranet shall use reasonable endeavours to minimise any adverse impact on the Services to the Customer associated with relocation. There shall be no additional monetary cost or Fees charged to Customer arising from such relocation.

6. CHANGE PROCESS

6.1 Claranet may make any changes to the Agreement (including to this MSA, Acceptable Use Policy or Service Description but excluding executed Orders and Letters of Engagement) as it deems necessary from time to time to take into account operational, legal, technical or commercial matters (including the terms on which its third party providers provide Claranet with services). Claranet's rights under this Clause shall not extend to changes to the Fees which shall be governed by the remaining terms of the Agreement.

6.2 If the Customer wishes to change any Services, the parties shall observe the following process:

(a) In response to a request by the Customer for a change to the Services where that proposed change is acceptable to Claranet, Claranet shall prepare a Letter of Engagement, Order or SOW and submit to the Customer. The Letter of Engagement, Order or SOW shall constitute Claranet's offer to vary the Services, and shall remain open for acceptance for a period of 30 calendar days from the date of the Letter of Engagement.

(b) If the Customer wishes to accept Claranet's offer, it shall sign the Letter of Engagement, Order or SOW and submit it to Claranet and the Services affected shall be amended in accordance with the terms of the Letter of Engagement, Order or SOW and the Agreement.

6.3 Where Claranet elects to make a change to the Services under Clause 6.1, Claranet will ensure that any change(s) applied to the affected Services provide functionality and/or features equivalent to or exceeding the functionality and/or features for that Service(s) prior to the change(s).

6.4 Changes made pursuant to Clause 6.1 shall be notified to the Customer by posting the changes to the Claranet Website and shall be deemed to be incorporated into this Agreement and be legally binding on the parties with effect from the date such posting is made. Claranet will endeavour to give 30 days' notice of any such changes but any failure to give such notice shall not act to prevent such changes having full contractual effect.

6.5 Notwithstanding any other provision of the Agreement, in the event that Service(s) is/are changed due to:

- (a) the Customer's or Claranet's decision to terminate a Service(s) in accordance with the Agreement;
- (b) Claranet's suspension of a Service(s) under Clause 4.5;
- (c) an event where Claranet is required to amend a Service(s) due to the act or omission of the Customer; or
- (d) any regrade, replacement order, renewal or any material change to the commercial and/or operational nature of the Service whatsoever,

Claranet shall no longer have any liability to the Customer in respect of any Credits that may have accrued to the Customer in respect of the affected Service(s).

7. FEES FOR THE SERVICES

7.1 Claranet shall provide a valid VAT invoice to the Customer for the Fees. Unless otherwise stated in an Order, SOW or Letter of Engagement, the Customer shall pay to Claranet the Fees for the Services within 14 days of the date of sending of Claranet's invoice. Where more than one Service is included in any Order or Letter of Engagement, Claranet may invoice the Fees for each of the Services separately. All Fees are stated exclusive of VAT which shall be paid by the Customer at the rate prevailing from time to time.

7.2 The provision of the Services may be subject to the completion of an installation site survey by Claranet at the cost of the Customer ("Installation Charges"). The Installation Charges shall be mutually agreed by the parties. Claranet shall not be obliged to conduct a site survey until the Installation Charges have been agreed by the parties.

7.3 Claranet may alter the amount of, or the payment terms relating to the Fees at any time during the Term for the following reasons:

- (a) to take account of any increase in the costs incurred by Claranet in the implementation or delivery of the Services (including any increase in the costs or charges of any third party supplier or licensor to Claranet); or
- (b) to pass on any increase in data centre and/or power charges imposed by any third party supplier to Claranet; or
- (c) to pass on any increase in charges imposed by any telecommunications supplier to Claranet.

Claranet shall notify the Customer in writing of any such increase by providing not less than 30 days' prior written notice.

7.4 Without limiting Clause 7.3 Fees may also be increased by Claranet once at any time in each Contract Year linked to the rate of increase in the Retail Prices Index during the preceding 12 month period, or 3% whichever is the higher.

7.5 The Fees paid by the Customer are non-refundable except where expressly stated otherwise in the Agreement. If the Customer terminates the Services, Claranet will not refund Fees paid in advance by the Customer save where the Agreement or a Service is terminated by the Customer pursuant to Clause 10.5 or Clause 10.6.

7.6 The Customer shall, promptly on request, provide Claranet with such information as Claranet may reasonably require for the purpose of complying with its obligations arising out of or in connection with the Agreement under the Customer Laws, including the Customer's VAT registration number.

7.7 If a Customer reports a Service issue which results in either Claranet or a Claranet third party engineer attending the Premises, where (a) the Customer has not followed the Claranet support team's procedure for trouble-shooting a Service issue as set out in the Agreement or otherwise notified to the Customer by Claranet in advance in writing, and

- (b) it is determined by Claranet acting reasonably, that the issue is due to an act or omission of the Customer or a third party acting on the Customer's behalf,

Claranet may increase the Fees by an amount equal to the charge for the engineer's time ("**Engineer Fees**"). Engineer Fees will be calculated on a time and materials basis at Claranet's standard rates in place from time to time for each site visit, provided that Claranet has notified the Customer of such rates in advance.

7.8 If payment of the Fees is not made in full by the Customer by the due date for payment under clause 7.1 and the terms of the Agreement, Claranet may at its discretion and without prejudice to its other rights and remedies:

- (a) suspend the provision of the Services to the Customer until such time as all overdue amounts (including any interest due which shall be charged on any overdue amounts at the rate of 2% per annum above NatWest Bank plc base rate for the time being, calculated from the date of the invoice to the date actual

payment is received, whether before or after judgment) are paid in full; and/or

(b) set-off such sums against any sums due to the Customer.

- 7.9 Claranet may charge the Customer a reasonable administration fee in respect of any cheques and direct debits returned unpaid by the Customer's bank and any credit card payments returned unpaid.
- 7.10 In the event of the replacement, upgrading, reconnection or other amendment of the Services, Claranet reserves the right to issue parallel billing to facilitate the transition between the existing Services and the new Services.
- 7.11 The Customer shall pay the Fees due under the Agreement in full without any deduction or withholding of, or in respect of, any tax unless required by law.
- 7.12 If the Customer is required by law to make any withholding or deduction, the Customer shall, when making the payment to which the withholding or deduction relates, pay to Claranet such additional amount as will ensure that Claranet receives the same total amount that it would have received if no such withholding or deduction had been required.
- 7.13 Customer may raise to Claranet concerns or queries in relation to any overcharging or inaccurate Fees within twelve months of the last day of the Order to which the query relates. Upon expiry of twelve months, the Customer is deemed to accept those charges and fees and waive any right to claim for such amounts.

8. CONFIDENTIALITY

- 8.1 During the Term and for a period of three (3) years thereafter each party (the "receiving party") shall hold and keep confidential all Confidential Information of the other party (the "disclosing party") and shall not directly or indirectly disclose any such Confidential Information to any third party without the express written permission of the disclosing party.
- 8.2 Nothing in this Clause 8 shall prevent the receiving party from disclosing:
- (a) any Confidential Information of the disclosing party to any Affiliate, consultant, subcontractor or other person provided that such disclosure is reasonably necessary for the purposes of the Agreement and that the receiving party has ensured that the recipients are made aware of and agree to provisions no less onerous than this Clause 8 in relation to such Confidential Information;
- (b) any Confidential Information which is or becomes public knowledge, other than by a breach of this Clause 8 and
- (c) any Confidential Information which must be disclosed (as required by law, regulation or order of a competent authority) to any governmental or regulatory body or for any legal or judicial proceedings provided always that the receiving party shall notify the disclosing party of such disclosure in advance (where permitted by law) and shall follow such reasonable instructions of the disclosing party where permissible by law.
- 8.3 Each party acknowledges that any Confidential Information obtained from or relating to the other party or any of its Affiliates in the course of negotiating or in the performance of the Agreement is and shall remain the property of the other party or the relevant Affiliate as applicable.
- 8.4 Notwithstanding the provisions of this Clause 8, Claranet may refer to the Customer by company or trading name and to the existence of the Agreement in any marketing or promotional materials of Claranet or any Claranet Affiliate (including the Claranet Website).

9. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 All right, title and interest to and all Intellectual Property Rights in the Service Deliverables shall remain vested in Claranet, the Claranet Affiliates, Service Providers and/or licensors as applicable.
- 9.2 Without prejudice to Clause 9.1, where in the course of the provision of the Services, Claranet provides any Service Deliverables which are owned or licensed by any third party (which shall include any Claranet Affiliate) or in which any Intellectual Property Rights are vested in a third party, the Customer shall comply in full with all licence or other agreements applicable to the use of such third party Service Deliverables (as may be amended from time to time) and as notified to Customer.
- 9.3 Subject to Clause 9.2, Claranet licenses the Customer to use any open source software and associated documentation files comprising the Service Deliverables provided that the following notices shall be included in all copies or substantial portions of such software.

"Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE".

- 9.4 Claranet acknowledges and agrees that all property and other Intellectual Property Rights wherever in the world enforceable, including all rights, title and interest in and to the Customer Materials and all documents, data and other materials or items relating thereto including all modifications and derivative works thereto, and any and all accrued rights of action therein shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Customer.
- 9.5 The Customer grants to Claranet a non-exclusive, world-wide, royalty-free, licence to use the Customer Materials for the duration of this Agreement for the purpose of exercising its rights and fulfilling its obligations under the Agreement.
- 9.6 The Customer acknowledges and agrees that it will not, whether during the Term or at any time after termination of the Agreement, in any way question or dispute the legal and beneficial ownership by Claranet of the Intellectual Property Rights in the Services or the Service Deliverables (or any part thereof). The Customer shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with Claranet's rights (or the rights of its Affiliates, the Service Providers and/or licensors) in the Service Deliverables.
- 9.7 In the event that new inventions, designs, processes or Intellectual Property Rights are created by Claranet during its provision of the Services, the Customer acknowledges and agrees that the same shall be the sole property of Claranet absolutely.
- 9.8 Each party (at its own expense) shall, and shall use all reasonable endeavours to procure that any other necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Agreement.
- 9.9 Notwithstanding the above, the Customer hereby agrees to Claranet's use and reference to, the Customer and to the Services provided under a Letter of Engagement, Order, SOW and any ancillary services to the Customer in any and all Claranet case studies (whether written, video or otherwise), press releases and through general references including but not limited to the inclusion of the Customer's logo on our website.

10. TERM AND TERMINATION

10.1 Subject to this Clause 10, each of the Services will commence on the applicable Service Commencement Date and shall continue for the Initial Term. At the end of the Initial Term, each Service shall automatically renew for the Renewal Term and thereafter for consecutive Renewal Terms unless or until such Services are terminated pursuant to the Agreement. Upon any Services renewing for the Renewal Term, the Customer may within twelve months raise a dispute or claim, of any kind, relating to such Services in the previous Term, failure to do so Customer agrees this as being an affirmation of any breach or waiver of any rights arising from the applicable Services against Claranet or its Affiliates.

10.2 Either party may terminate the Services, in whole or in part, at the end of the Initial Term or any Renewal Term by providing not less than the Minimum Written Notice to the other party. The Minimum Written Notice must be served on the other party prior to the expiry of the Initial Term or the relevant Renewal Term (as the case may be). If Minimum Notice is not provided by the Customer to Claranet, a Renewal Term will commence on expiry of the Initial Term or previous Renewal Term.

10.3 Where Claranet is providing Professional Services to the Customer, the Professional Services shall commence on the date referred to in the applicable SOW or Letter of Engagement and shall, subject to the terms of the Agreement, continue unless terminated in accordance with the terms or period of notice specified in the SOW or Letter of Engagement.

10.4 Claranet may terminate the Agreement and/or the provision of a Service at any time immediately upon written notice to the Customer if:

- (a) the Customer is in material breach of the Agreement which is capable of remedy and has failed to remedy such breach within 30 days of a written request from Claranet to do so. Any failure by the Customer to pay any sum due under the Agreement by the due date for payment shall, without limitation, be a material breach of the Agreement which is capable of remedy for the purposes of this Clause 10.4(a);
- (b) the Customer is in material breach of the Agreement which is incapable of remedy. A breach of Clauses 5.1, 5.2, 8 or 9.6 by the Customer shall, without limitation, be a material breach of the Agreement which is incapable of remedy for the purposes of this Clause 10.4(b);
- (c) it becomes unlawful for Claranet (or any other third party used by Claranet to provide the Services ("Service Provider")) to continue to provide the Services or Claranet or a Service Provider is required to cease the Services by a competent regulatory authority; or
- (d) a Service Provider ceases to provide its services to Claranet or otherwise materially changes the terms on which it provides its services to Claranet beyond the reasonable control of Claranet or;
- (e) Claranet has a reasonable suspicion the Customer is in breach of clause 16.3.

10.5 The Customer may terminate the Agreement immediately upon written notice to Claranet where:

- (a) The breach has occurred in the previous three months; and
- (b) either
 - (i). Claranet is in material breach of the Agreement which is capable of remedy, and has failed to take steps to remedy such breach within 30 days of a written request from the Customer to do so; or
 - (ii). Claranet is in material breach of the Agreement which is incapable of remedy.

10.6 Notwithstanding the provisions of Clauses 10.4 and 10.5, either party may terminate the Agreement and/or the provision of Services immediately upon written notice to the other in the event of:

- (a) the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt; or
- (b) Clause 15.2.

10.7 Termination of a Service shall not affect other contracted Services which shall continue subject to the remaining terms of the Agreement.

10.8 Subject to earlier termination in accordance with its terms, the Agreement shall continue in force so long as the Services remain in force.

10.9 Upon termination of the Agreement or any of the Services:

- (a) the Customer shall immediately stop using the affected Services and the Customer's right to use the affected Services shall immediately cease;
- (b) any licences granted by Claranet under the Agreement in respect of the affected Services shall terminate;
- (c) the Customer shall remain liable for all outstanding Fees for Services duly performed including any termination or cancellation fees referred to in the Agreement;
- (d) the Customer shall return any and all Claranet Equipment used by the Customer in respect of the affected Services. If any item of Claranet Equipment is not returned to Claranet within 5 Working Days after the date of termination of the Agreement or the applicable Service(s), Claranet may invoice the Customer for the full market replacement value of the Claranet Equipment and the Customer shall pay on demand such charges and
- (e) upon request Claranet may choose to provide reasonable assistance to facilitate the migration of the Services to the Customer or a replacement supplier. Such assistance shall be subject to:
 - (i). payment by the Customer of Claranet's applicable prevailing charges for such assistance; and
 - (ii). full co-operation from the Customer and/or the new supplier; and
 - (iii). agreement between the parties of a fully scoped and mutually agreed written migration plan.
- (f) On Customer's request, Claranet will deliver to the Customer all Customer Data and Materials in Claranet's (or any of its subcontractors) possession, save that this shall not include any Customer Data in back up systems.

10.10 The following Clauses shall survive the termination or expiry of the Agreement: 1, 2.3, 4, 5, 7, 8, 9, 10.9, 11, 12, 13, 16 and 17.

11. WARRANTIES

11.1 Each party warrants and represents that it has full capacity and authority, all necessary licences, permits and consents to enter into and perform its obligations under the Agreement.

11.2 By entering into the Agreement, the Customer warrants and represents that it does so in the course of its business and not as a consumer.

- 11.3 Claranet warrants that:
- (a) it shall provide the Services using reasonable care and skill in accordance with the standards prevailing in the industry for similar services to the Services;
 - (b) the Services shall be provided in compliance with the Supplier Laws.
- 11.4 Claranet does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- 11.5 Save as expressly set out in the Agreement, all conditions, warranties, representations, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded to the fullest extent permissible by law.

12. LIABILITY

- 12.1 The Customer hereby agrees to indemnify, keep Claranet indemnified and hold Claranet harmless in relation to or in connection with any and all alleged or actual costs, claims, damages, losses, liabilities, proceedings and expenses (including legal fees) whether arising directly or indirectly, brought or threatened against Claranet or a Service Provider by any person, legal entity, or organisation in connection with:
- (a) Claranet's use of the Customer Materials in accordance with the terms of the Agreement; or
 - (b) the Customer's breach of Clauses 5.1, 5.2(b), 9.2, 9.3 or 9.6.
- 12.2 In relation to the indemnity under Clause 12.1 Claranet shall
- (a) notify the Customer in writing of any claim or potential claim brought by a third party falling within the scope of the indemnity (a "Claim");
 - (b) make no admission of liability or settlement in respect of the Claim without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed;
 - (c) provide the Customer with all information and assistance that the Customer may reasonably require in relation to the Claim (at the Customer's sole expense);
 - (d) allow the Customer control over the litigation and settlement of the Claim provided that the Customer keeps Claranet fully and regularly informed as to the progress of the Claim and that the Customer conducts such Claim with all due attention and skill. In the event that Claranet is not satisfied with the Customer's conduct of the Claim at any time, Claranet may take over the conduct of the Claim and may settle or defend any such Claim as it thinks fit without requiring the consent of the Customer and
 - (e) not be required to mitigate its losses, costs and expenses.
- 12.3 Nothing in the Agreement shall exclude or limit either party's liability for:
- (a) death or personal injury resulting from its negligence or that of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) wilful or deliberate default; or
 - (d) any other matter for which liability cannot be excluded or limited as a matter of law.
- 12.4 Subject to Clause 12.3 and the express terms of the Agreement, Claranet shall not have any liability in contract or tort (including negligence) arising out of or in connection with the Agreement (including any collateral contract) for any indirect, special, incidental or consequential loss or damage or for any of the following, in each case direct or indirect:
- (a) loss of profits;
 - (b) business interruption;
 - (c) loss of business opportunities;
 - (d) loss of revenue;
 - (e) loss of anticipated savings;
 - (f) wasted expenditure;
 - (g) loss of goodwill;
 - (h) loss of reputation;
 - (i) economic loss or
 - (j) any loss or corruption or destruction of data.
- 12.5 Subject to Clause 12.3, Customer's exclusive remedy for breach of the Service Levels shall be the applicable Service Credits payable by Claranet for such breach. Where there is no applicable Service Credit, Claranet limits its liability to an amount equal to the Fees paid for the affected Services for the period of the interruption or delay (as determined by Claranet).
- 12.6 Subject to Clauses 12.3, 12.4, 12.5, and 12.9 each Party's liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with the Agreement (including any collateral contract) shall, in respect of any one incident or any connected incidents, not exceed the total Fees payable by the Customer in the calendar year in which the incident (or first incident in the series of connected incidents) giving rise to the liability occurs or £500,000, whichever is the lower. Notwithstanding the previous provisions of this Clause but subject to Clauses 12.3, 12.4 and 12.5, each Party's total aggregate liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with the Agreement shall not exceed £500,000.
- 12.7 Subject to Clause 12.3, Claranet is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities including the internet not under the control of Claranet or its Service Providers. The Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.8 The Customer accepts that Claranet has no control over the information transmitted to or from the Services and that Claranet does not ordinarily examine the use to which customers put the Services or the nature of the information they are sending or receiving whilst using the Services. The Customer agrees that Claranet is a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations (2002). Claranet hereby excludes all liability of any kind arising from the transmission or reception of information of whatever nature through the Services to the fullest extent permissible by law.
- 12.9 Clause 12.6 shall not apply in relation to the Customer's liability under any indemnity given by the Customer in the Agreement.

13. CUSTOMER DATA AND PROTECTION

- 13.1 In the event that this clause 13 conflicts with any other provision of this Agreement, the provisions of this clause 13 shall prevail to the extent of such conflict.
- 13.2 The parties confirm that
- (a) where Services comprise of Claranet's processing of Customer Personal Data, Claranet shall be the Data Processor and the Customer shall be the Data Controller with respect to such processing and
 - (b) if, as a consequence of Claranet's provision of Services, a party considers that the relationship between them no longer corresponds to the intention of the parties stated in clause 13.2 (a) above then it shall notify the other party and the parties shall discuss and agree in good faith such steps that may be required to confirm the parties' intention.
- 13.3 Without prejudice to the remaining provisions of this clause 13, each party shall comply with the obligations imposed on it by applicable Data Privacy Laws with regard to Customer Personal Data processed by it in connection with Services, including, where applicable, appointing a data protection officer.
- 13.4 Each party shall ensure that where Services require the processing of Customer Personal Data, the description of Services includes the following information:
- (a) the subject matter and duration of such Services;
 - (b) the nature and purpose of the processing of the Customer Personal Data required by such Services;
 - (c) a description of the type(s) of Customer Personal Data processed in connection with such Services; and
 - (d) a description of the categories of the data subjects comprised within the Customer Personal Data referred to in this clause.
- 13.5 Claranet shall
- (a) process the Customer Personal Data strictly in accordance with the documented instructions of the Customer including transfers of Customer Personal Data outside the EEA;
 - (b) ensure that any persons authorised by it to process the Customer Personal Data are subject to an obligation of confidentiality;
 - (c) implement appropriate technical and organisational measures to ensure that the Customer Personal Data is subject to a level of security appropriate to the risks arising from its processing by Claranet, taking into account the factors stated in Article 32 of the GDPR;
 - (d) notify the Customer without undue delay of a personal data breach after becoming aware of it;
 - (e) taking into account the nature of the processing, assist the Customer by using appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising a data subject's rights under the GDPR;
 - (f) taking into account the nature of the processing and the information available to Claranet, assist the Customer with regard to the Customer's compliance with its obligations under the following Articles of the GDPR:
 - (i). Article 32 (Security of processing);
 - (ii). Articles 33 and 34 (Notification and communication of a personal data breach);
 - (iii). Article 35 (Data protection impact assessment); and
 - (iv). Article 36 (Prior consultation by the Customer with the supervisory authority)
 - (g) upon termination of Services that required the processing of Customer Personal Data (in whole or in part), at the election of the Customer, deliver up or destroy such Customer Personal Data which is in the possession of, or under the control of, Claranet;
 - (h) at the request of the Customer, provide the Customer with all information necessary to demonstrate Claranet's compliance with its obligations under this section 13, including allowing for and contributing to audits and inspections conducted by or on behalf of the Customer;
 - (i) maintain written records of its processing of the Customer Personal Data (the "Processing Records") as follows
 - (i). the name and contact details of:
 - (ii). Claranet and its sub-processors;
 - (iii). the Customer;
 - (iv). where applicable, the representatives of the Customer, Claranet and its sub-processors, and Claranet's data protection officer;
 - (v). the categories of processing of the Customer Personal Data carried out on behalf of the Customer;
 - (vi). transfers of the Customer Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, details of the suitable safeguards in place; and
 - (vii). where possible, a general description of the technical and organisational security measures taken by Claranet, its sub-processors and the Customer.
- 13.6 Claranet and its sub processors and, where applicable, their representatives, shall make the Processing Records available to a supervisory authority on request;
- 13.7 Where, by operation of clause 13.5 Claranet is obliged to provide assistance to the Customer, or to third parties at the request of the Customer (including submission to an audit or inspection and/or the provision of information), such assistance shall be provided at the sole cost and expense of the Customer, save where such assistance directly arises from Claranet's breach of its obligations under this Agreement, in which event the costs of such assistance shall be borne by Claranet;
- 13.8 Notwithstanding any other provision of this Agreement, Claranet shall be entitled to sub-contract any part of Services requiring the processing of Customer Personal Data, subject to the following conditions:
- (a) Claranet shall notify the Customer in writing of its intention to engage such sub-contractor. Such notice shall give details of the identity of such sub-contractor and the services to be supplied by it and
 - (b) the Customer shall be deemed to have approved the engagement of the sub-contractor if it has not served a notice in writing on Claranet objecting to such appointment within 7 days of the date

that the notice is deemed to be received by the Customer in accordance with clause 14.

- 13.9 The parties agree that subject to 13.10 and the provisions Article 82(3) of the GDPR:
- (a) where a party is liable for losses paid to a third party which directly arise from a party's breach of its obligations under the GDPR (the "defaulting party"), the defaulting party shall indemnify the other party for such Losses;
 - (b) where the Customer is liable for losses paid to a third party which directly arise as a consequence of Claranet acting outside or contrary to the lawful instructions of the Customer with regard to that part of the Services comprising of the processing of Customer Personal Data, Claranet shall indemnify the Customer for such losses.
- 13.10 Where, in accordance with the provisions Article 82(3) of the GDPR, both parties are responsible for the act, or omission to act, giving rise to the payment of losses under clauses 13.9(a) or 13.9(b), then a party shall only be liable to indemnify the other party for that part of such losses which are in proportion to their respective responsibility.

14. NOTICES

- 14.1 Subject to 14.2 below, any notice required to be given under or in connection with the Agreement shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post, recorded delivery or registered post, or email by the Customer to Claranet at: Legal Department, Claranet Limited, 21 Southampton Row, London WC1B 5HA, fax: +44 (0) 20 7685 8001; email legal@uk.clara.net and by Claranet to the Customer to the address, and/or email address set out on the Order (or to such other address as either party may have notified to the other party in accordance with this Clause 14.1) .
- 14.2 In the event that, a Customer wishes to cancel a Service or Services, the Customer shall email miscancellations@uk.clara.net.
- 14.3 A notice shall be deemed to have been received:
- (a) if delivered personally at the time of delivery;
 - (b) if delivered by post, 3 Working Days from the date of posting;
 - (c) if sent by email, the same Working Day of sending.

15. FORCE MAJEURE

- 15.1 Neither party to the Agreement shall be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. The Customer may not rely on a Force Majeure Event for any delay or non-performance of any obligation to pay Claranet the Fees under the Agreement.
- 15.2 Either party may, during the continuance of any Force Majeure Event, terminate the Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for a continuous period of more than 30 Working Days.

16. NON-SOLICITATION

- 16.1 Each party agrees during the term of the Agreement and for a period of 1 year following its termination not to solicit or induce any officer, employee, agent or contractor of the other party involved with the provision of the Services or the management of the Agreement or any significant part thereof to terminate their employment or engagement with the other provided that this clause shall not apply to any offer of employment made to any employee or officer of the other party as a result of or in connection with a bona fide general employment advertisement not targeted specifically at the officers or employees of the other party placed in the ordinary course of business.
- 16.2 If a party is found to be in breach of the above mentioned non-solicitation clause, then that party agrees to compensate the other with a one-off payment of whichever is the lesser of (a) £100,000 or (b) the gross annual salary of the officer, employee, agent or contractor of the other party so solicited or induced.
- 16.3 Both parties hereby affirm their compliance with the Modern Slavery Act 2015 as applicable. The Customer confirms:
- (a) it has read, is familiar with and shall not perform an act or omission which is in contravention to, the letter or spirit of Claranet's Modern Slavery Policy available at www.claranet.co.uk/legal and
 - (b) it carries out regular, meaningful and comprehensive due diligence procedures and has substantive internal policies in place to address any suspected human rights abuse in its business or Affiliates where applicable.

17. GENERAL

- 17.1 The terms of the Agreement constitute the entire agreement and understanding between the parties in respect of the matters set out in the Agreement and supersedes any previous agreement between the parties in relation to such matters.
- 17.2 The Customer acknowledges that, in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) except as expressly provided in the Agreement. The only remedy available to the Customer in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of the Agreement. Nothing in this Clause 17.2 shall operate to exclude any liability for fraud.
- 17.3 Claranet may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party. The Customer shall not, without the prior written consent of Claranet, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 17.4 A person who is not party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act (1999) to enforce any term of the Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 17.5 Except as expressly set out herein, a waiver of any right under the Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.
- 17.6 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in the Agreement, nothing in the Agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

- 17.7** Subject to Clause 6.4, no modification or variation of the Agreement (or any document entered into pursuant to or in connection with the Agreement) made by the Customer shall be valid unless it is in writing and signed by or on behalf of each of the parties to the Agreement. Unless expressly set out herein, no modification or variation of the Agreement shall: (i) be valid if made by e-mail; (ii) constitute or be construed as a general waiver of any provisions of the Agreement; and (iii) affect any rights, obligations or liabilities under the Agreement which have already accrued up to the date of such modification or waiver and are still valid and enforceable under the terms of the Agreement. The rights and obligations of the parties under the Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.
- 17.8** All disputes between the parties arising out of or relating to the Agreement or the breach, termination or validity thereof will be referred by either party in writing, first to each party's authorised representative. The authorised representatives will meet and attempt to resolve the dispute within a period of 30 Working Days of the date of the referral of the dispute to them. Where both the authorised representatives agree a solution is not possible between those individuals on behalf of the parties, the individuals shall refer their respective parties to mediation. If following mediation, the parties agree that no solution can be retrieved by mediation, the parties may commence litigation proceedings. Failure to follow the abovementioned process shall mean that the Customer is liable for any costs reasonably incurred by Claranet in this process.
- 17.9** The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 17.10** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).