



CLARANET MASTER SERVICE AGREEMENT

1. Definitions

- 1.1 The following words and phrases shall, unless the context otherwise requires have the following meanings:
- 1.1.1 **"Acceptable Use Policy"** or **"AUP"** means Claranet's acceptable use policy the current version of which is available at <https://www.claranet.co.uk/legal/acceptable-use-policy> as amended from time to time;
- 1.1.2 **"Affiliates"** means, with respect to any Party, any entity Controlled directly or indirectly, by the Party, any entity that Controls, directly or indirectly, the Party or any entity directly or indirectly under common Control with the Party;
- 1.1.3 **"Agreement"** has the meaning set out in Clause 2.1;
- 1.1.4 **"Cancellation Fee"** means the amount payable by the Customer pursuant to Clauses 4.1 and 4.2;
- 1.1.5 **"Change Form"** means the form executed by the Parties detailing the proposed changes to an existing Order Form or SOW;
- 1.1.6 **"Claranet"** means Claranet Limited (Company No. 03152737) or any Claranet Affiliate;
- 1.1.7 **"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;
- 1.1.8 **"Claranet Website"** means the website www.claranet.co.uk/legal;
- 1.1.9 **"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;
- 1.1.10 **"Confidential Information"** means all confidential information disclosed by a Party or its employees, officers, representatives, contractors, suppliers, agents or professional 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;
- 1.1.11 **"Contract Year"** means each successive period of 12 calendar months which forms part of the Term commencing on the Service Commencement Date or any Renewal Date;
- 1.1.12 **"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;
- 1.1.13 **"Customer"** means the legal entity (or entities as the case may be) that has entered into and signed any of the Order Forms, SOWs and/or MSA, or which receives the Services from Claranet under the terms of the Agreement, or the legal entity which is listed in an Order Form or SOW;
- 1.1.14 **"Customer Data"** means any data provided to Claranet by the Customer or on the Customer's behalf;
- 1.1.15 **"Customer Equipment"** means any hardware, cabling, peripherals, software or any other equipment other than the Claranet Equipment;
- 1.1.16 **"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;
- 1.1.17 **"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;
- 1.1.18 **"Fees"** means the fees and charges payable by the Customer for the Services as described in an Order Form, or the SOW, or pursuant to the MSA;
- 1.1.19 **"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, 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;
- 1.1.20 **"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 Form or SOW;



- 1.1.21 **"Intellectual Property Rights"** means all patents, rights in or to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in data or confidential information (including know-how and trade secrets), any other intellectual property rights and all similar or equivalent rights or forms of protection, and in each case (i) whether registered or unregistered, (ii) including all applications to protect or register such rights, (iii) including all renewals or extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;
- 1.1.22 **"Laws"** means the Supplier Laws and the Customer Laws;
- 1.1.23 **"Master Services Agreement"** or **"MSA"** means these terms and conditions;
- 1.1.24 **"Minimum Written Notice"** means the period of 90 days, unless otherwise specified in an Order Form or SOW;
- 1.1.25 **"Order Form"** means an order which lists the Services, any Initial Term and the Fees for such Services;
- 1.1.26 **"Parties"** means Claranet and the Customer and **"Party"** shall mean either of them;
- 1.1.27 **"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;
- 1.1.28 **"Professional Services"** means any professional or consultancy services described in an Order Form or SOW;
- 1.1.29 **"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 Form or SOW) in the event that Claranet has not received Minimum Written Notice prior to the end of the Initial Term;
- 1.1.30 **"Services"** means the services to be provided by Claranet as described in the Service Descriptions, Order Form and/or SOWs, including any Professional Services, in each case, the provision of associated Service Deliverables;
- 1.1.31 **"Service(s) 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;
- 1.1.32 **"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;
- 1.1.33 **"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;
- 1.1.34 **"Service Description"** means the document(s) setting out a description of the Services referred to in an Order Form;
- 1.1.35 **"Service Levels"** means the service levels for each Service (where applicable);
- 1.1.36 **"Service Provider"** means any third party used by Claranet to provide the Services;
- 1.1.37 **"SOW"** means the Statement of Work provided by Claranet, if applicable, to the Customer for the supply of Services;
- 1.1.38 **"Supplier Laws"** means all applicable laws, rules and regulations codes that impose legal or regulatory requirements on Claranet, its Affiliates and Service Providers;
- 1.1.39 **"Term"** means the duration of the Agreement;
- 1.1.40 **"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;
- 1.1.41 **"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 is most closely approximate 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 collectively of the terms of the Master Services Agreement which is available for review by the Customer on the Claranet Website, the Order Form, any applicable SOW and the applicable Service Description(s).
- 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 The Agreement and the documents making up the Agreement, shall be read in conjunction with one another. However, in the event of 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 Form;
 - (b) SOW (Statement of Work);
 - (c) Service Description; and
 - (d) Master Services Agreement.

3. Ordering and Provision of Services

- 3.1 The Customer may order services from Claranet by signing an Order Form and/or any applicable SOW for Services.
- 3.2 The Customer agrees that any Claranet Affiliate may provide the Services and invoice Customer for the Fees as may be applicable.
- 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, unless otherwise expressly agreed by the Parties in an Order Form or SOW.
- 3.4 Where a Service Commencement Date has been notified to the Customer and/or 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 may (at its sole discretion) invoice the Customer for the Fees for those affected Service(s) and such Fees shall be payable by the Customer in accordance with the payment terms set out in the Agreement.
- 3.5 If the Customer agrees to enter into a trial of a Service for a specified period (the "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 of any kind to the Customer. Upon termination of the Trial Service, all Claranet's obligations and liabilities of any kind in relation to the Trial Service will cease.
- 3.6 Claranet or its agents (to include any Service Providers) 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(s). 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 Services

- 4.1 In the event that the Customer cancels a Service(s) for convenience before the expiry of an Initial Term or Renewal Term, the Customer shall pay a Cancellation Fee equivalent to the maximum Fees that would otherwise be payable for the remainder of the Initial Term or Renewal Term as the case may be for that Service. The Parties agree that such Cancellation Fee is a reasonable genuine pre-estimate of liquidated damages immediately payable to Claranet to include all losses, costs and out of pocket expenses (including third party costs) incurred by Claranet and any Affiliates with respect to each cancelled Service.
- 4.2 Where Claranet is providing Professional Services to the Customer, in the event that the Customer terminates the Professional Services before or after the Services Commencement Date, the Parties agree that the Cancellation Fee payable by the Customer for such termination shall be 75% of the total Fees that would otherwise have been payable under the Order Form and/or SOW for such Professional Services. The Parties agree that such Cancellation Fee is a reasonable genuine pre-estimate of liquidated damages immediately payable to Claranet to include all losses, costs and out of pocket expenses (including third party costs) incurred by Claranet and any Affiliates with respect to such cancelled Professional Services.
- 4.3 From time to time, Claranet may deem it necessary to discontinue or terminate a Service or part of a Service for reasons including but not limited to product enhancement, upgrade or where a product or service provided by a Service Provider is being discontinued ("Discontinued Service"). In the event of a Discontinued Service, Claranet will notify the Customer in advance of the discontinuance or termination of the Service(s) in a timely manner (but not less than 30 calendar days) and shall provide any key information pertaining to the sourcing of alternative products or services to replace the Discontinued Service.
- 4.4 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 the Customer is in breach of the Agreement and/or
 - (b) Claranet is required to do so by operation of law or a governmental authority so requires.
- 4.5 Claranet shall provide the Customer with not less than five (5) Working Days advance notice of its intention to suspend the Services under Clause 4.4, unless Claranet has reasonable grounds not to do so.
- 4.6 Notwithstanding any other provision of the Agreement, in the event that an Order Form or SOW has been cancelled in accordance with the Agreement, Claranet shall no longer have any liability to the Customer in respect of any credits including Service Credits that may have accrued to the Customer in respect of the affected Service(s).



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 the Claranet Website 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 and as may be notified by Claranet from time to time to the Customer.
- 5.2 The Customer shall:
- (a) comply with the Customer Laws;
 - (b) provide such Customer Materials, information, resources and assistance in a timely manner and at no charge as Claranet shall reasonably require to perform the Services; and
 - (c) 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 the expense of the Customer.
- 5.3 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 is safe; and
 - (e) if required by Claranet, prepare the Premises in accordance with Claranet's reasonable instructions.
- 5.4 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.
- 5.5 Subject to the provision of reasonable prior written notice to Customer, the Customer agrees that Claranet may 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 the Acceptable Use Policy or Service Description) as it deems necessary from time to time to take into account operational, legal, technical or commercial matters (including the terms on which any Service 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 propose changes to any Services, where that proposed change is acceptable to Claranet, Claranet shall prepare an Order Form and/or Change Form setting out such changes to the Services and submit to the Customer for their review and approval.
- 6.3 Notwithstanding Clauses 3.1 and 6.2, where the Customer requests for any new Services or changes to Services that must be done urgently and the same are carried out by Claranet in good faith before any Order Form or Change Form is signed, the Customer agrees that it shall remunerate Claranet at the then applicable day rates or Service Fees applicable for such Services provided.
- 6.4 Where Claranet elects to make a change to a Service Description 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).
- 6.5 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 provide 30 days' written notice of any material changes directly impacting the Customer's Service but any failure to give such notice shall not act to prevent such changes having full contractual effect.



7. Fees

- 7.1 Claranet shall provide a valid VAT invoice to the Customer for the Fees. Unless otherwise stated in an Order Form or SOW, 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 Form or SOW, 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 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 10.4 or Clause 10.5.
- 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.
- 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 Price Index during the preceding 12 month period or 3%, whichever is the higher.
- 7.5 If payment of any undisputed 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 1% 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 credits or sums due to the Customer.
- 7.6 In the event of the replacement, upgrading, reconnection or other amendment of the Services, Claranet reserves the right to issue dual billing to ensure continuity of any existing Services whilst being replaced by new Services, where such new Services have already commenced.
- 7.7 The Customer shall pay the undisputed Fees due under the Agreement in full without any deduction or withholding of, or in respect of, any tax unless required by law. 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.

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 Section 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 Section 8 in relation to such Confidential Information;
 - (b) any Confidential Information which is or becomes public knowledge, other than by a breach of this Section 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 Section 8 and with the prior consent of the Customer, Claranet may refer to the Customer by company or trading name and to the existence of the Agreement and Services in any marketing or promotional materials of Claranet or of its Affiliates, in any 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 the Claranet Website.



9. Intellectual Property Rights

- 9.1** All right, title and interest to, and all Intellectual Property Rights in, the Services and Service Deliverables shall remain vested in Claranet, the Claranet Affiliates, Service Providers and/or licensors as applicable. Provided that Claranet has received payment in full of its Fees and to the extent that it is necessary to do so to enable the Customer to make use of the Service Deliverables, Claranet hereby grants to the Customer a non-exclusive, worldwide, royalty-free and non-transferable licence to use the Service Deliverables for its internal business for the purpose of exercising its rights and fulfilling its obligations under the Agreement.
- 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 requirements 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 the Customer on the Claranet Website or in any Service Description, or as may be agreed to by the Customer at the time of installation or use of such Services or Service Deliverables.
- 9.3** 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.
- 9.4** 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.
- 9.5** Each Party 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 of the Intellectual Property Rights in the Services or the Service Deliverables (or any part thereof) or Customer Materials. Each Party shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with each other's rights (or the rights of its Affiliates, the Service Providers and/or licensors) in the same.
- 9.6** In the event that new inventions, designs, processes or Intellectual Property Rights are created by Claranet during its provision of the Services and Service Deliverables, the Customer acknowledges and agrees that the same shall be the sole property of Claranet absolutely.
- 9.7** Each Party (at its own expense) shall, and shall use 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.

10. Term and Termination

- 10.1** Subject to this Section 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 validly cancelled or terminated pursuant to the Agreement.
- 10.2** Either Party may cancel 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 in accordance with the Agreement. In order to cancel the Services validly, the Minimum Written Notice must be served on the other Party to expire 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 in time, a Renewal Term will commence on expiry of the Initial Term or previous Renewal Term.
- 10.3** Claranet may terminate the Agreement and/or the provision of a Service at any time immediately upon written notice to the Customer if:
- 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 Section 10;
 - the Customer is in material breach of the Agreement which is incapable of remedy. A breach of Sections 8 or 9 by the Customer shall, without limitation, be a material breach of the Agreement which is incapable of remedy for the purposes of this Section 10;
 - it becomes unlawful for Claranet or any 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
 - Claranet has a reasonable suspicion the Customer is in breach of Clause 16.3.
- 10.4** The Customer may terminate the Agreement immediately upon written notice to Claranet where:
- 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
 - Claranet is in material breach of the Agreement which is incapable of remedy.
- 10.5** Notwithstanding the provisions of Clauses 10.3 and 10.4, either Party may terminate the Agreement and/or the provision of Services immediately upon written notice to the other in the event of:
- 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
 - Clause 15.2.



- 10.6** Save for Clause 10.4, in the event the Customer serves notice to terminate the Agreement and/or the Services, the Services shall continue until the expiry of the applicable Initial Term or Renewal Term and remain subject to the terms of the Agreement.
- 10.7** Upon termination of the Agreement or any of the Services:
- (a) the Customer shall immediately stop using the relevant Services and the Customer's right to use the relevant Services shall immediately cease;
 - (b) any licences granted by Claranet under the Agreement in respect of the relevant Services shall terminate;
 - (c) the Customer shall remain liable for all outstanding Fees for Services invoiced at the date of termination and any Cancellation Fees applicable under the Agreement that Claranet may charge;
 - (d) the Customer shall return any and all Claranet Equipment used by the Customer in respect of the relevant Services. The Customer may notify Claranet as set out at Clause 14.3 for the return of the Claranet Equipment. If any item of Claranet Equipment is not returned to Claranet or otherwise not arranged with Claranet pursuant to Clause 14.3 within 10 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;
 - (e) upon request Claranet may provide reasonable assistance to facilitate the migration of the Services to the Customer or its replacement supplier. Such assistance shall be subject to:
 - (i) payment by the Customer of Claranet's applicable prevailing charges for such assistance;
 - (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; and
 - (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.
- 10.8** The following Sections and Clauses shall survive the termination or expiry of the Agreement: 1, 2.3, 4, 5, 7, 8, 9, 10.7, 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.
- 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 Sections 8 or 9.
- 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); and
 - (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.



- 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 Clauses 12.3 and 10.4, 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 due to such breach as determined by Claranet.
- 12.6** Subject to Clauses 12.3, 12.4, 12.5, and 12.8 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** Clause 12.6 shall not apply in relation to the Customer's liability:
- (a) under any indemnity given by the Customer in the Agreement; or
 - (b) under any applicable terms of use or terms of service of any Service Providers; or
 - (c) to pay the Fees for the Services delivered by Claranet under the Agreement.

13. Customer Data and Protection

For the purposes of this clause, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"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;

"Data Controller" shall have the same meaning as defined in Data Protection Laws;

"Data Protection Laws" shall mean the following as amended, extended or re-enacted from time to time:

- (i). The Data Protection Act 2018 and UK GDPR (as defined in the Data Protection Act 2018);
- (ii). EC Directive 2002/58/EC on Privacy and Electronic Communications, the UK Privacy and Electronic Communications Regulations 2003 (or any replacement of the same);
- (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;
- (iv). All local laws or regulations implementing or supplementing the legislation mentioned in (i)-(iii) above;

"Data Processor", **"Process or Processing"** shall have the same meanings as defined in Data Protection Laws and a **"Sub-Processor"** is any third-party appointed by the Data Processor to Process the Customer Personal Data;

"Data Subject" shall have the same meaning as defined in Data Protection Laws;

"International Transfer Requirements" means the requirements of Chapter V of the GDPR (Transfers of personal data to third countries or



international organisations) and/or analogous provisions under UK Data Protection Laws (as applicable);

“**Losses**” means (i) damages or compensation paid to a Data Subject for breach of the Data Protection Laws (ii) or fines paid to a relevant supervisory authority for breach of the Data Protection Laws;

“**Standard Contractual Clauses**” or “**SCCs**” (otherwise previously known as Model Clauses) means the standard contractual clauses set out in Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council (Text with EEA relevance) C/2021/3972;

“**Personal Data**” shall have the same meaning as defined in Data Protection Laws;

“**Processing**” shall have the same meaning as defined in Data Protection Laws;

“**Restricted Country**” means a country, territory or jurisdiction which is not considered by the EU Commission (or in respect of personal data transfers caught by the requirements of UK Data Protection Laws, the UK Government or Information Commissioner) to offer an adequate level of protection in respect of the processing of personal data pursuant to Article 45(1) of the GDPR (or analogous provisions under UK Data Protection Laws);

“**Restricted Transfer**” means a transfer of personal data from an entity whose processing of personal data under this Agreement is caught by the requirements of the GDPR (and/or UK Data Protection Laws), to an entity located in a Restricted Country;

“**UK Data Protection Laws**” means all laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018.

13.1 In the event that this Section 13 conflicts with any other provision of this Agreement, the provisions of this Section 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 Section 13, each Party shall comply with the obligations imposed on it by applicable Data Protection 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 following information will be captured:

- (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 with respect to transfers of Customer Personal Data outside the UK or EEA (if any) and shall immediately inform the Customer if in its reasonable opinion, an instruction received from the Customer infringes any Data Protection Laws;
- (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, including but not limited to those set out in the Claranet security policy documentation available on request;
- (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, provide reasonable cooperation and assistance to 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, provide reasonable cooperation and assistance to 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) in particular, Claranet will notify the Customer of any data breach affecting Customer Personal Data without undue delay;
 - (iii). Article 35 (Data protection impact assessment) for example through the provision of relevant information to allow the Customer



to carry out Data Protection Impact Assessments where required by Article 35 GDPR; 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 unless applicable law requires storage of the Customer Personal Data;

(h) maintain written records of its processing of the Customer Personal Data (the “**Processing Records**”) as follows

(i) the name and contact details of:

(a) Claranet and its Sub-Processors;

(b) the Customer;

(c) where applicable, the representatives of the Customer, Claranet and its Sub-processors, and

(d) Claranet’s data protection officer;

(ii) details of the categories of processing of the Customer Personal Data carried out on behalf of the Customer;

(iii) details of any transfers of the Customer Personal Data to a Restricted Country or an international organisation, including the identification of that Restricted Country or international organisation and, where applicable, details of the suitable safeguards in place; and

(iv) 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 Claranet shall permit no more than once per year the Customer or its third-party representatives (who are not competitors of Claranet), on reasonable notice during normal business hours, access to copies of the Processing Records for the purpose of auditing Claranet’s compliance with its obligations under this clause. Claranet shall (at Customer’s cost) give all reasonable and necessary assistance to the conduct of such audit.

13.8 Where, by operation of clauses 13.5 - 13.7 Claranet is obliged to provide assistance to the Customer (or to third parties on its behalf) 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.

13.9 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-Processor. Such notice shall give details of the identity of such Sub-Processor and the services to be supplied by it;

(b) the Customer shall be deemed to have approved the engagement of the Sub-Processor 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 Section 14;

(c) the Customer consents to use of the Sub-Processors as set out in any Service Descriptions that may apply to any Service;

(d) Claranet enters into a written contract with the Sub-Processor that is on substantially the same terms as set out in this Section 13 (and in particular which provides protections or guarantees necessary to implement appropriate technical and organisational measures in compliance with the Data Protection Laws);

(e) Claranet remains liable for all acts or omissions of the Sub processors as if they were acts or omissions of Claranet (except to the extent caused or exacerbated by the Customer); and

(f) if any objection to the appointment cannot be resolved by the Parties within 5 Working Days of receipt by Claranet of the objection, Claranet may on immediate written notice terminate this Agreement without liability and will not be in breach of this Agreement to the extent Claranet cannot provide its Services or otherwise comply with its obligations as a result of the objection.

13.10 Claranet shall not transfer Customer Personal Data to Restricted Countries in cases where this would constitute a Restricted Transfer without the prior written consent of Customer. However, the Customer acknowledges and consents to the transfer of Customer Personal Data to any Claranet entities, or any approved third party Sub-Processors, subject to Claranet:

(a) carrying out appropriate due diligence on the recipient (and the relevant jurisdiction) to assess the adequacy of the third party and its jurisdiction in light of the Court of Justice of the European Union judgment in the case of C-311/18 Facebook Ireland and Schrems (“Schrems II”) and International Transfer Requirements;

(b) executing (acting on Customer’s behalf as needed), and procuring the execution of by the recipient, an appropriate set of Standard



Contractual Clauses; and

- (c) complying, and procuring that the recipient complies with, Claranet's or the recipient's respective obligations under the Standard Contractual Clauses.

13.11 The Parties agree that subject to the liability cap in Clause 12.6 above, and the provisions Article 82(3) of the GDPR:

- (a) where a Party is liable for Losses which directly arise from the other 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 the processing of Customer Personal Data, Claranet shall indemnify the Customer for that part of such Losses corresponding to Claranet's part of responsibility for the damage suffered by the third party; and
- (c) in accordance with the provisions of Article 82(3) of the GDPR, where both Parties are responsible for an act, or omission to act, giving rise to the payment of Losses under clauses 13.11(a) or 13.11(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. The obligations in clauses 13.11(a) and 13.11(b) are also subject to an obligation on the part of the Party suffering the Losses to take all reasonable steps to mitigate or reduce the Losses, including but not limited to making use of any available appeal process.

14. Notices

- 14.1** Subject to Clause 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, 6th Floor, 110 High Holborn, London WC1V 6JS; email legal@uk.clara.net and by Claranet to the Customer to the address, and/or email address set out on the Order Form (or to such other address as either Party may have notified to the other Party in accordance with this Section 14).
- 14.2** In the event that, the Customer wishes to cancel a Service or Services, the Customer shall email miscancellations@uk.clara.net.
- 14.3** Where the Customer wishes to arrange for the return of the Claranet Equipment, the Customer shall email hardwarereturns@uk.clara.net.
- 14.4** 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 and
- (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 and Compliance

- 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 recruitment or 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 non-solicitation pursuant to Clause 16.1, 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** Each Party agrees it carries out regular, meaningful and comprehensive due diligence procedures and has substantive internal policies in place to address any suspected human rights abuse where relevant or applicable. Claranet's Anti Bribery and Corruption Policy and the Modern Slavery and Human Trafficking Statement are available to view at the Claranet Website.



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 If any provision of the Agreement is held by any competent authority to be illegal, invalid or unenforceable in whole or in part, the unenforceable part shall be reformed or removed to the extent possible to make the other provisions of the Agreement enforceable and give business efficacy to the Agreement and the remainder of the provision(s) in question shall not be affected thereby and shall remain in full force and effect and will not in any way be impaired.
- 17.3 Each Party 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 shall operate to exclude any liability for fraud.
- 17.4 Subject to the consent of the other Party (and such consent not to be unreasonably withheld), either Party 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, Affiliate or any successor entity provided always that the same is of equivalent financial standing to the relevant assignor Party. For the avoidance of doubt, the Customer's consent shall not be required should Claranet elect to assign, transfer, charge or sub-contract this Agreement to an intra-group entity.
- 17.5 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.
- 17.6 Subject to Clauses 6.1, 6.3 and 6.5, no modification or variation of the Agreement (or any document entered into pursuant to or in connection with the Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to the Agreement.
- 17.7 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.
- 17.8 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.
- 17.9 The Customer agrees that 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 20 Working Days of the date of the referral of the dispute to them. In the event of a dispute raised by the Customer, where both of the authorised representatives agree a solution is not possible, the authorised representatives shall refer their respective Party to mediation. If following mediation, the Parties agree that no solution can be reached by mediation, the Parties may commence litigation proceedings. The Customer's failure to follow the abovementioned process shall mean that the Customer agrees they shall be liable for any costs reasonably incurred by Claranet in recovering or defending a claim issued at Court.
- 17.10 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 and each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle the same.

Signed for and on behalf of Customer:	Signed for and on behalf of Claranet Limited:
Customer Name:	
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: