

## MASTER SERVICES AGREEMENT

1. This Master Services Agreement (the “**Agreement**”) sets out a framework pursuant to which Digital Origin can provide certain Services, Equipment and/or Leased Equipment (as the case may be) to the Client.
2. The Agreement comprises of the following documents and any reference to this Agreement shall include each of these documents:
  - a) Schedule 1 General Terms and Conditions
  - b) Services Schedule(s) specific terms that relate to services taken
  - c) Appendix 1 Acceptable Use Policy
  - d) Appendix 2 Privacy & Data Policy
3. In the event of an inconsistency in the documents that comprise the Agreement, the documents shall be given the order of precedence set out above.

**Schedule 1**

**General Terms and  
Conditions**

**1 INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions ("**Conditions**").

<b>Acceptable Use Policy</b>	means Digital Origin's acceptable use policy concerning use of the Services set at Appendix 1 to this Agreement as may be updated from time to time in accordance with condition 18.1;
<b>Act</b>	means the Communications Act 2003 (as amended);
<b>Agreement</b>	means the execution page, these Conditions, any Service Schedules, the Acceptable Use Policy and Digital Origin's privacy and data policy set out at Appendix 2 to this Agreement taken together;
<b>Additional Charges</b>	means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 7.3.3;
<b>Airtime</b>	means wireless airtime and network capacity procured from the Carrier in relation to the Mobile Services;
<b>Annual Support Charge</b>	means the support charge for the Managed Services Support Services as set out on the Order Form;
<b>Anti-Bribery Laws</b>	means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to the anti-bribery and/or anti-corruption, including the Bribery Act;
<b>Associated Company</b>	means any holding company or subsidiary company, each of shall have the meanings given to them as in section 1162 of the Companies Act 2006;
<b>Bribery Act</b>	means the Bribery Act 2010;
<b>Business Day</b>	means any day which is not a Saturday or Sunday or a bank or public holiday in England;
<b>Carrier</b>	means the relevant third party public telecommunications operator or third party network service provider including but not limited to any network operator who operates the wireless network or networks to which SIM cards are connected and from whom Airtime is procured for the Client;
<b>Charges</b>	means the charges payable by the Client for use, installation and/or delivery of Services and any Equipment and/or Leased Equipment as specified in the Service Schedule, the Order Form and/or as otherwise agreed in writing from time to time;
<b>Client</b>	means the person, firm or company identified in the Order Form;
<b>Client Information</b>	means the information that the Client should provide to Digital Origin in relation to the Services (including all relevant details which relate to the Client's requirement for the provision of the Services and information more particularly described in the Service Schedule);
<b>Client Review Meeting</b>	means a meeting attended by a representative of the Client and a representative of Digital Origin where Digital Origin reviews the services supplied to the Client and makes an offer to extend the term of the Contract;
<b>Code</b>	means any code of practice published by PSA (or equivalent) from time to time;
<b>Commission Clawback</b>	means any request for repayment of funds by the Carrier associated with this Agreement;
<b>Conditions</b>	means these general terms and conditions set out in this Schedule 1 (as amended from time to time);
<b>Confidential Information</b>	means all confidential information or data (whether oral, visual, recorded in writing, in any other medium or by any other method) disclosed to or obtained by one party from the other or from a third

	party, including any information relating to a party's operations, processes, plans, intentions, price lists, pricing structures, know-how, design rights, trade secrets, software, market opportunities, clients and business affairs;
<b>Connection Date</b>	means the date when the Carrier having received the relevant information from Digital Origin is in a position to and has agreed to commence provision of the Network Services to the Client;
<b>Contract</b>	means the agreement between the Client and Digital Origin for the provision of the Equipment, Leased Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form, any other Service Specific Conditions, the Acceptable Use Policy and Digital Origin's privacy and data policy set out at Appendix 2 to this Agreement;
<b>Contract Spend</b>	means the amount spent by the Client in a Year;
<b>Contractor</b>	means any person who, on or prior to the commencement of the Contract (and/or the transfer of such services to Digital Origin), supplied services to the Client which were the same as or similar to those provided or to be provided by Digital Origin to the Client under the Contract;
<b>Default Charging Date</b>	means thirty (30) days following the date the Client signed the Order Form;
<b>Delivery</b>	means the point that the Equipment and/or Leased Equipment arrives at the Client's Sites before (where applicable) the unloading of Equipment and/or Leased Equipment from the delivery vehicle and "Delivered" shall be construed accordingly;
<b>Digital Origin</b>	means Digital Origin Solutions Limited (incorporated in England and Wales under company number 04121501);
<b>Digital Origin Network</b>	means the system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of (i) speech, music and other sounds, (ii) visual images signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images or (iii) signals serving for the actuation or control of machinery or apparatus which Digital Origin operates in connection with the provision of the Services;
<b>Digital Origin Service Address</b>	means The Granary, Pury Hill Business Park, Alderton Road, Towcester, NN12 7LS;
<b>Early Termination Charges</b>	means the charges that shall apply where a Client seeks to terminate a Contract before the end of the Minimum Term; such charges to cover the remainder of the Minimum Term and shall be based on an average of the monthly payments plus a fifty pound (£50) disconnection fee per line/seat;
<b>Emergency Call</b>	means a call to the numbers "112" or "999";
<b>Employee</b>	means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Client or any Contractor or Subcontractor;
<b>Employment Regulations</b>	means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;
<b>End User Service</b>	means such entertainment, live or recorded information or other service (including Premium Rate Services) made available by the Client from time to time for itself or any Information Provider;

<b>Equipment</b>	means any equipment and/or software related products which is not Leased Equipment;
<b>Future Contract Spend</b>	means the amount set out on the Order Form which the Client agrees relates to future Services that it wishes Digital Origin to provide;
<b>General Conditions</b>	means the general conditions of entitlement set out in the notification issued by the Director General For Telecommunications, in accordance with section 48(1) of the Act, pursuant to section 45 of said Act, as may be amended, modified or replaced from time to time;
<b>Go-Live Date</b>	means the date when Digital Origin notifies the Client that the Service is ready for use by the Client, or if earlier and at Digital Origin's election the date when the Client or User starts to use the Service or the Default Charging Date;
<b>Group</b>	means Digital Origin, any subsidiary or holding company from time to time of Digital Origin, and any subsidiary from time to time of a holding company of Digital Origin;
<b>holding company</b>	has the meaning given in condition 1.11;
<b>Information Provider</b>	means any organisation or person providing information or with whom the Client contracts in respect of the provision of Premium Rate Services;
<b>Initial Consultancy Fee</b>	means the fee payable by the Client to Digital Origin for the Initial Proposal of £500 or 15% of the amount specified in the Initial Proposal as the amount that the Client would save over the Minimum Term if the Client had followed Digital Origin's recommendations in that report, whichever is the greater;
<b>Initial Proposal</b>	means the document setting out what Digital Origin recommends including the appropriate services and/or equipment for the Client;
<b>Installation</b>	means the physical installation of Equipment and/or Lease Equipment at the Client's Sites;
<b>Installation Services</b>	means services relating to the supply and Installation (where applicable);
<b>Intellectual Property Rights</b>	means all intellectual property belonging to or licensed by Digital Origin and includes without limitation, trade marks, 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 confidential information (including know-how and trade secrets) in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
<b>Leased Equipment</b>	means any equipment and/or software related products to be supplied under the Contract as set out in the Order Form (and also has extended meanings under condition 6.4.2 and condition 7 in the case of and for the purposes of those conditions only) including, but not limited to, any equipment provided "free on connection" and any Switching Equipment which shall be leased to the Client;
<b>Loss or Losses</b>	means any and all losses, damages, costs, expenses (including court or legal expenses) or other liabilities of whatever nature (whether foreseeable or not);
<b>Managed Services Support Services</b>	means the Managed Services Support Services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by Digital Origin to the Client;
<b>Minimum Contract Spend</b>	means the minimum sum of money (if applicable) as set out on the Order Form that will be spent by the Client on Charges commencing on the Connection Date (or, if earlier and at Digital Origin's election, the Default Charging Date) or, where no minimum sum of money is set out in the Order Form, the total sum

	of money set out in the Order Form, together with the Future Contract Spend;
<b>Minimum Term</b>	means the initial minimum contract period applying to each of the Services as specified in the Order Form (which shall be a minimum of twenty-four (24) months and which, in the absence of a period being specified in the Order Form, shall be twenty-four (24) months) which shall, unless otherwise stated by Digital Origin, start on the Go-Live Date;
<b>Mobile Services</b>	means the mobile services to be provided by Digital Origin in accordance with the terms and conditions set out in the Services Schedule;
<b>Network Services</b>	means any use to which any telecommunications or data services could be put more particularly detailed on the Order Form (as modified or substituted by Digital Origin from time to time) to be provided by Digital Origin to the Client subject to these Conditions, including but not limited to Carrier pre-selection (CPS), analogue lines, ISDN 2, ISDN 30, SIP, Voice over Internet Protocol (VOIP), hosted switches, Wide Area Network (WAN), Local Area Network (LAN) and Microsoft 365;
<b>Normal Working Hours</b>	means 9am to 5pm on any Business Day;
<b>Number</b>	means either (i) such telephone number from within a national number group range (used by the Client in connection with an End User Service) as may be allocated by Digital Origin to the Client from time to time (" <b>Company Number</b> ") or (ii) such telephone number not being a Company Number from within a national number group range (used by the Client in connection with an End User Service) and as may be programmed by Digital Origin for the purposes of making available a Network Service in respect of such telephone number;
<b>Order Form</b>	means the order form which is expressed to be subject to these Conditions which sets out the details of the order, including (without limitation) the Client's details and the Equipment, Leased Equipment and/or Services (as the case may be) to be supplied under the Contract, and constitutes the Client's order;
<b>Phone-paid Services Authority or PSA</b>	means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of PSA by any competent authority;
<b>Premium Rate Service</b>	means any service comprising live or recorded telephone information and/or entertainment and similar services which would be defined as such in the Code;
<b>Price</b>	means the price for the Equipment, Leased Equipment and Installation Services (where applicable);
<b>Professional Services</b>	means any additional services including, but not limited, to IT support which are provided and managed by Digital Origin to the Client at their request and which are subject to the terms and conditions set out in the Order Form and/or Services Schedule;
<b>Recommended Retail Price or RRP</b>	means the price which the manufacturer recommends that the retailer sells the product;
<b>Relevant Laws</b>	means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;
<b>Services</b>	means any of the services supplied by Digital Origin including but without limitation the Installation Services, the Mobile Services, the Network Services, the Professional Services and the Managed

	Services Support Services (as applicable) as specified in the Order Form and/or Service Schedule;
<b>Services Agreement</b>	means an agreement between Digital Origin and the Client for specific products or services that incorporates these Conditions in whole or in part and any Service Specific Conditions;
<b>Service Credit</b>	means any credit offered by Digital Origin for any failure by Digital Origin to perform the Services in accordance with any Service Levels as more particularly described in the Service Schedule;
<b>Service Levels</b>	means the service levels (if applicable) in respect of certain Services and specified in the Service Schedule;
<b>Service Provider</b>	means any person providing underlying or network facilities in connection with the Services;
<b>Service Specific Conditions</b>	means any additional terms and conditions set out in the Service Schedules which are to apply to certain Services as specified in the Order Form which shall be subject to the terms of this Agreement in respect of specific Services;
<b>Service(s) Schedules</b>	means the Service Specific Conditions as agreed between the parties stated as being subject to the terms of this Agreement;
<b>Site</b>	means a place of business at which the Services and/or Equipment and/or Leased Equipment are to be provided as specified in the Order Form;
<b>Subsequent Term</b>	means subsequent periods of twelve (12) months following expiry of the Minimum Term;
<b>Subcontractor</b>	means any subcontractor of a Contractor;
<b>subsidiary</b>	has the meaning given in condition 1.11;
<b>Switching Equipment</b>	means a switch or other fixed telephony equipment that is financed as confirmed on the Order Form;
<b>Tariff</b>	means Digital Origin's tariff for each of the Services as is notified to the Client by Digital Origin from time to time;
<b>Trade Names</b>	means Digital Origin together with such other trade names and/or logos as Digital Origin may adopt in connection with the operation of its business from time to time;
<b>User</b>	means any user of the Services, Equipment and/or Leased Equipment;
<b>VAT</b>	means value added tax chargeable under English law for the time being and any similar additional tax; and
<b>Year</b>	means the period of twelve (12) months from the date of the Agreement and each consecutive period of twelve (12) months thereafter.

- 1.2 The clause headings in these Conditions are for convenience and shall not affect the interpretation of this Agreement.
- 1.3 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a party includes its successors or permitted assigns.
- 1.6 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.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 Unless specifically provided to the contrary all notices under this Agreement shall be in writing. A reference to writing or written includes faxes but not e-mail unless specifically provided to the contrary under this Agreement.
- 1.9 Any obligation in these Conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to conditions are to the conditions of the Contract.
- 1.11 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee.

## 2 CONTRACT FORMATION

- 2.1 The Client shall submit a request to Digital Origin for each Service required by the Client via the Order Form. The Order Form constitutes the Client's offer to Digital Origin to purchase the relevant Equipment, Leased Equipment and/or Services (as the case may be) on and subject to the terms of the Order Form, these Conditions, and any other Service Specific Conditions referred to as being applicable.
- 2.2 If Digital Origin is prepared to provide those Services to the Client under this Agreement and such offer is accepted by an authorised representative of Digital Origin signing the Order Form, a Contract shall come into effect and the Client shall not be permitted to cancel the Order Form. In such circumstances, Digital Origin shall become the exclusive provider of those Services to the Client for the Minimum Term and the Client shall purchase those Services only from Digital Origin. The details recorded on the Order Form, together with these Conditions and any other Service Specific Conditions referred to as being applicable to the relevant Contract, shall be the exclusive terms and conditions of the Contract between the parties (to the fullest extent permitted by law) and any such Contract shall be conditional upon the credit status of the Client being to the satisfaction of Digital Origin (in its sole and absolute discretion) and, in respect of a Contract which provides for the supply of:
  - 2.2.1 each individual Service is subject to its own Minimum Term and notice period but, in the absence of a specified notice period for a Service, the default notice period shall be twelve (12) months, such notice not to expire until the end of the Minimum Term or the relevant Subsequent Term. Failure to provide such notice before the end of the Minimum Term or any Subsequent Term shall result in the individual Service automatically renewing for a Subsequent Term or a further Subsequent Term (as the case may be) following expiry of the Minimum Term or the then current Subsequent Term (as the case may be); and/or
  - 2.2.2 Equipment and/or Leased Equipment and/or Installation Services, (without limitation) is subject to the condition in condition 5.1.1 being met; and/or
  - 2.2.3 Network Services, (without limitation) is subject to the conditions in condition 6.2.1 being met; and/or
  - 2.2.4 Managed Services Support Services, (without limitation) is subject to the condition in condition 7.1.1 being met.
- 2.3 All quotations, estimates and tenders are given and contracts are made by Digital Origin subject to and only upon these Conditions which cannot be varied unless agreed in writing by Digital Origin and these Conditions supersede and override all other terms and conditions appearing elsewhere including (without limitation) any terms and conditions of the Client referred to on any website or which the Client may purport to apply under any purchase order or acknowledgement of delivery or similar document; and/or established between Digital Origin and the Client by course of dealing.
- 2.4 Any quotations, estimates or tenders are given by Digital Origin on the basis that no Contract shall come into existence except in accordance with condition 2.1. Any quotation is valid for a period of 30 days from its date, provided that Digital Origin has not previously withdrawn it and provided that the Carrier does not change its terms and conditions or any other offer available to Digital Origin.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any illustrations, samples or descriptive material provided by Digital Origin shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of Digital Origin and must not be copied or loaned or transferred. The Client acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.
- 2.7 No variation of the terms of the Contract however notified will be accepted by Digital Origin unless authorised by notice in writing by a director of Digital Origin.
- 2.8 Each order for Equipment and/or Leased Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment and/or Leased Equipment) shall (for the purposes of this condition 2.8) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Leased Equipment and/or Services shall not entitle the Client (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Leased Equipment and/or Services or any other contract entered into under these Conditions.
- 2.9 Any undertaking by the Client not to do any act or thing shall be deemed to include an undertaking that the Client shall procure that any User to include (without limitation) any employee, agent or contractor, shall not do such act or thing.
- 2.10 The Client warrants and undertakes to Digital Origin that it is entering into the Contract for the purposes of its trade, business and/or profession.



### **3 COMMENCEMENT AND DURATION**

The Services, Equipment and/or Leased Equipment supplied under the Contract shall be provided by Digital Origin to the Client for the Minimum Term and, after that, shall continue to be supplied unless the Contract is terminated in accordance with these Conditions.

### **4 CLIENT'S ORDER AND SPECIFICATIONS**

- 4.1 The Client shall be responsible for providing Digital Origin with all information relevant to the supply of the Equipment and/or Leased Equipment and the provision of Services (as the case may be) within sufficient time to enable Digital Origin to perform its obligations.
- 4.2 Without limitation to the generality of condition 4.1, the Client shall be responsible for ensuring that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Client or any agent or representative of the Client in connection with the supply of any Equipment and/or Leased Equipment and/or the supply of any Services (as the case may be) by Digital Origin are accurate and fully describe the Client's requirements and the Client shall be liable in respect of any liability, Loss, injury, damage, demand, claim, cost, charge or expense which may be incurred or sustained by Digital Origin by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto, or where the compliances with any such drawings, sketches, specifications, descriptions or other instructions by Digital Origin constitutes the infringement of the intellectual property or other rights of another person.

### **5 SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that the section related to Equipment and/or Leased Equipment is completed on the relevant Order form, this condition 5 shall apply to the Contract.

#### **5.1 DELIVERY**

- 5.1.1 Any Contract including the provision of Equipment and/or Leased Equipment and/or Installation Services based on an order which is accepted by Digital Origin pursuant to condition 2.1 is, until the delivery of the Equipment and/or Leased Equipment, conditional upon the availability of the relevant Equipment and/or Leased Equipment and Digital Origin providing confirmation by email to the Client that the terms stated on the Order Form of the applicable Contract for Equipment, Leased Equipment and/or Installation Services do not contain any errors or omissions.
- 5.1.2 In consideration of payment of the Price pursuant to condition 10.1 Digital Origin shall (subject to condition 5.3.9) supply the Equipment and/or Leased Equipment, and shall take reasonable steps to deliver the Equipment and/or Leased Equipment and where applicable supply the Installation Services within an estimated period for delivery and such period shall (unless otherwise specified) commence from the date of receipt by Digital Origin of all instructions and information for the execution of the Contract, but such time is not guaranteed nor deemed to be of the essence of the Contract.
- 5.1.3 Without prejudice to the generality of condition 4, the Client shall be responsible for providing Digital Origin with any necessary instructions for delivery of the Equipment and/or Leased Equipment within a reasonable period prior to the estimated delivery date advised by Digital Origin to the Client.
- 5.1.4 If the Client fails to take delivery of the Equipment and/or Leased Equipment or through instructions or lack of instructions from the Client the delivery of any Equipment and/or Leased Equipment in accordance with the Contract is delayed for more than fourteen days after Digital Origin has given notice in writing to the Client that the Equipment and/or Leased Equipment is ready for delivery the Equipment and/or Leased Equipment shall be deemed to have been Delivered in accordance with the Contract and thereafter the Equipment and/or Leased Equipment shall be deemed to be at the risk of the Client. The Client shall pay to Digital Origin the reasonable costs of storing, protecting and preserving such Equipment and/or Leased Equipment after the expiry of such period of fourteen days.
- 5.1.5 If by reason of refusal or delay of delivery or installation the Equipment and/or Leased Equipment shall be deemed to have been Delivered in accordance with condition 5.1.4 above then payment shall be made by the Client to Digital Origin of the balance of the Price within seven days of such deemed delivery date.

#### **5.2 CONNECTION**

- 5.2.1 The Client is responsible for the cost of connection to the public switch network and/or the provision of additional lines to the public telephone system.
- 5.2.2 The Client shall (if appropriate for the Services) ensure that a suitable earthed mains electricity supply of 240 volts ac to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment and/or Leased Equipment within 3 metres of such pieces of Equipment and/or Leased Equipment.



- 5.2.3 The Client shall prepare the Site(s) in accordance with Digital Origin's instructions so that any necessary Equipment and/or Leased Equipment can be installed. The Client will meet the costs of preparing the Site(s).
- 5.2.4 In the event that the Client is not able to procure the necessary consent to provide the Services or fails to proceed within 3 months from the Connection Date Digital Origin will be able to terminate the Contract forthwith by giving the Client written notice without any liability. If Digital Origin has commenced work, without prejudice to any other remedies Digital Origin has against the Client, the Client shall refund to Digital Origin the cost of all such work (including, without limitation, staff costs and equipment costs) to an amount no less than £500.00 as Early Termination Charges.

**5.3 PROPERTY AND RISK**

- 5.3.1 Unless otherwise agreed in writing, the Equipment and/or Leased Equipment shall at all times remain the property of Digital Origin or, if provided by a Service Provider, that Service Provider.
- 5.3.2 The Equipment and/or Leased Equipment shall be at the Client's risk from the moment of Delivery or deemed Delivery (as described in condition 5.1.4) whether or not property in the Equipment and/or Leased Equipment has passed or payment or part payment made, and thereafter the Client shall be responsible for insuring the Equipment and/or Leased Equipment for its full replacement value.
- 5.3.3 Notwithstanding Delivery and the passing of risk, the property and the legal and beneficial title in the Leased Equipment supplied under the Contract shall not pass to the Client until the end of the Minimum Term, at which point Digital Origin shall have the discretion whether to transfer full title to the Leased Equipment to the Client or not. Until Digital Origin has received in cash or cleared funds payment in full for the Leased Equipment and Installation Services (where applicable) and all other equipment and/or services agreed to be sold by Digital Origin to the Client for which payment is then due, title shall not transfer to the Client. For the avoidance of doubt, the property and the legal and beneficial title in the Switching Equipment shall not pass to the Client in any circumstances.
- 5.3.4 Until such time as the property in the Equipment and/or Leased Equipment has passed to the Client, the Client shall hold such Equipment and/or Leased Equipment as Digital Origin's fiduciary agent and bailee, and keep such Equipment and/or Leased Equipment properly stored, protected and insured and identified as being Digital Origin's property until title passes. Until such time as the property in the Equipment and/or Leased Equipment passes to the Client, Digital Origin shall be entitled at any time to require the Client (at the Client's cost) to deliver up the Equipment and/or Leased Equipment to Digital Origin to its nominated location and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the Equipment and/or Leased Equipment is stored and repossess such Equipment and/or Leased Equipment.
- 5.3.5 Title to the Equipment will pass to the Client once Digital Origin has received in cash or cleared funds payment in full for the Equipment and Installation Services (where applicable).
- 5.3.6 The Client shall not, without the written consent of Digital Origin, be entitled to pledge or in any way charge by way of security for indebtedness, or alter or modify, any Equipment and/or Leased Equipment which remains the property of Digital Origin or any Equipment and/or Leased Equipment supplied by Digital Origin which remains the property of any other organisation, but if the Client does so all monies owing by the Client to Digital Origin shall (without prejudice to any right or remedy of Digital Origin) forthwith become due and payable. The Client shall ensure that any Equipment and/or Leased Equipment provided by Digital Origin which remains the property of Digital Origin or any Equipment and/or Leased Equipment provided by Digital Origin which remains the property of any other organisation shall remain identifiable and shall be kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value.
- 5.3.7 The Client grants Digital Origin, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment and/or Leased Equipment is or may be stored in order to inspect it, or, where the Client's right to possession has terminated, to recover it. Digital Origin will ensure that any such employee, agent or other person in possession of Equipment and/or Leased Equipment will return the same to Digital Origin.
- 5.3.8 Promptly after expiry or earlier termination of any Contract or this Agreement, the Client will use its reasonable endeavours to provide Digital Origin and Service Providers with access to the Equipment and/or Leased Equipment and all reasonable assistance in the removal of the same.
- 5.3.9 The Client shall:
  - 5.3.9.1 ensure that the Equipment and/or Leased Equipment is used only for the purposes of the Services;
  - 5.3.9.2 not connect any other equipment to the Equipment and/or Leased Equipment except as expressly authorised in writing by Digital Origin;
  - 5.3.9.3 not tamper with or remove any label on any Equipment and/or Leased Equipment;
  - 5.3.9.4 not (and procure that the Users do not) open, disconnect, repair, maintain, modify or remove the Equipment and/or Leased Equipment; and

- 5.3.9.5 permit Digital Origin and/or any Service Provider to modify, change, add or replace the Equipment and/or Leased Equipment or any part of the Equipment and/or Leased Equipment.
- 5.3.10 The Client is responsible for, and will, subject to condition 12, indemnify Digital Origin in respect of all Losses that Digital Origin incurs as a result of any loss of or damage to the Equipment and/or Leased Equipment caused by the Client other than where the damage or loss has been caused as a result of the Client acting in accordance with instructions issued by Digital Origin.

#### 5.4 **LIABILITY FOR REPLACEMENT OR REPAIR**

- 5.4.1 Subject to the following sub-clauses of this condition 5.4 Digital Origin shall, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the earlier, at its option and without cost to the Client either arrange repair or replace any defective Equipment and/or Leased Equipment to make good any defect which shall be proved to the satisfaction of Digital Origin to be the result of faulty design, materials or manufacture or Installation (only where Digital Origin supplies Installation Services under the Contract) provided that Digital Origin shall have no liability for any such defects unless the Client notifies Digital Origin, within three Business Days from Delivery or Installation (where applicable) whichever is the earlier, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 5.4.2) within twenty four hours of any latent defect arising within such twelve (12) month period.
- 5.4.2 Where the Client enters into an agreement for maintenance of the Equipment and/or Leased Equipment with a third party, Digital Origin's liability for repair, replacement, renewal shall be transferred to the relevant third party maintenance provider on Delivery. Where Digital Origin is to supply Managed Services Support Services in respect of the relevant Equipment and/or Leased Equipment under the Contract, condition 7 shall apply and in the event of any conflict between this condition 5.4 and condition 7, the provisions in condition 7 shall prevail.
- 5.4.3 The liability of Digital Origin shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to Digital Origin by the Client prior to entering into the Contract, and in particular shall not apply to defects which arise from the neglect, misuse or faulty maintenance of the Client or any of its other contractors or from alterations carried out without the prior written consent of Digital Origin or from repairs carried out improperly by the Client or its servants or agents or arising from normal wear and tear.
- 5.4.4 Any Equipment (or part) and/or Leased Equipment (or part) which has been returned to Digital Origin and replaced by Digital Origin shall become the property of Digital Origin.
- 5.4.5 Digital Origin reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs where the damage has resulted from misuse or unauthorised repair or alteration of the Equipment and/or Leased Equipment by the Client, or from normal wear and tear.
- 5.4.6 Neither acknowledgement of receipt nor investigation by Digital Origin of any claim hereunder or consent given hereunder shall constitute or imply admission by Digital Origin of any liability in respect of such claim.
- 5.4.7 Save where the Client has purchased Managed Services Support Services in respect of the relevant Equipment and/or Leased Equipment (in which case condition 7 shall apply) the Client acknowledges and agrees that, subject to condition 12.5, the rights and remedies provided to the Client (in connection with any defect in the Equipment and/or Leased Equipment resulting from faulty design, materials or manufacture or installation) under this condition 5.4 shall be the Client's sole and exclusive remedies in respect of any defect in the Equipment and/or Leased Equipment resulting from faulty design, materials or manufacture or installation.

#### 5.5 **INTELLECTUAL PROPERTY, TRADE NAMES AND BRANDING**

- 5.5.1 All Intellectual Property Rights in the Services shall be owned by Digital Origin or any Associated Company and Service Providers save to the extent that any of the same contain Intellectual Property Rights owned by third parties.
- 5.5.2 Digital Origin grants to the Client a non-exclusive, royalty free licence to use Digital Origin's Intellectual Property Rights in the Services, strictly for the purpose of receiving the Service(s) in accordance with the provisions of the Service Schedule.
- 5.5.3 The Client hereby acknowledges that it has no right, title or interest in the Trade Names and it is only a licensee of the Trade Names in accordance with the terms of the Agreement.
- 5.5.4 Digital Origin shall be entitled to fix Trade Names to any Equipment and/or Leased Equipment.
- 5.5.5 The Client shall ensure that no Trade Names affixed to the Equipment and/or Leased Equipment are removed or defaced at any time.
- 5.5.6 Except with the prior written consent of the other party, neither party shall use any trade marks or identifying logos owned or licensed to any member of the other party in any manner.

## 6 NETWORK SERVICES

In the event that the section(s) relating to Network Services is completed on the relevant Order Form this condition 6 shall apply to the Contract.

### 6.1 DURATION. Subject to earlier termination under condition 14 or as otherwise stated in this condition 6:

- 6.1.1 The Network Services will commence on the Connection Date and continue for the Minimum Term.
- 6.1.2 Subject to condition 6.1.3, upon the expiry of the Minimum Term or the relevant Subsequent Term, the Contract will renew automatically for a Subsequent Term or a further Subsequent Term (as the case may be) in line with condition 2.2.1 following expiry of the Minimum Term or the then current Subsequent Term (as the case may be).
- 6.1.3 In line with condition 2.2.1, the Client may terminate the Contract by giving twelve (12) months' notice in writing to Digital Origin, such notice to become effective no earlier than the day after the last day of the Minimum Term or the relevant Subsequent Term (as the case may be).

### 6.2 SUPPLY OF NETWORK SERVICES

- 6.2.1 Any Contract for Network Services based on an order which is accepted by Digital Origin pursuant to condition 2.1 is (prior to the Connection Date) conditional on the following:
  - (a) Digital Origin carrying out a survey which reveals to Digital Origin's satisfaction that it is possible for Digital Origin to supply the Network Services and that any details or information used by Digital Origin to determine the Charges applicable or any other terms of the Contract, whether supplied by the Client or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey; and
  - (b) that the Network Services can be provided, and Digital Origin makes no warranty that the Network Services can be provided until lines have been installed and are operational.
- 6.2.2 Digital Origin shall use its reasonable endeavours to meet any performance dates specified on the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Network Services or supply of Equipment and/or Leased Equipment.
- 6.2.3 Digital Origin undertakes to use reasonable endeavours to supply the Network Services to the Client and to provide the Network Services with due skill and care as from the Connection Date subject to these Conditions. The Client acknowledges that the Network Services cannot be provided fault free and Digital Origin does not warrant error free or uninterrupted use of the Network Services. Notwithstanding any other provision of these Conditions, Digital Origin shall not be liable to the Client in contract, tort, or otherwise for any acts or omissions of Carriers which affect or otherwise impact the Network Services.
- 6.2.4 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Network Services Digital Origin will use reasonable endeavours to rectify the fault as soon as practicable.
- 6.2.5 In providing the Network Services, the Client agrees that Digital Origin may use any Carrier. Digital Origin may from time to time and in providing the Network Services change Carrier provided:
  - (a) the Client is given reasonable notice of such change; and
  - (b) there is no material decline in the then current level of Network Services or functionality.
- 6.2.6 Except where stated on an Order Form, the broadband element (if any) of any Network Services does not include any modems or other equipment that Digital Origin may supply to the Client under a separate contract.
- 6.2.7 The Client acknowledges that the speed of any broadband element (if any) of the Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line test. Digital Origin gives no warranty or guarantee that the Client's line(s) will produce top speeds of up to the maximum speed advertised (as the final speed is governed by factors that are beyond Digital Origin's reasonable control).
- 6.2.8 The Client warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Client wishes to use as its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Client's uniform resource locator ("**URL**").
- 6.2.9 If Digital Origin undertakes Domain Names and/or URL registration on behalf of the Client, the Client will reimburse Digital Origin for any registration fees paid by Digital Origin to the internet registration authorities. Digital Origin does not guarantee that any Domain Names or URL requested by the Client will be available.
- 6.2.10 Digital Origin may require the Client to select replacement Domain Names or URL and may either refuse to provide or may suspend the Network Services if Digital Origin reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory, obscene, or an infringement of the rights of a third party.

### 6.3 TELEPHONE NUMBERS

- 6.3.1 The Client hereby acknowledges and accepts that under the General Conditions the Director General for Telecommunications has the power to withdraw an allocation of telephone numbers and the Carrier may withdraw an allocation of telephone numbers to Digital Origin and therefore any new telephone numbers provided to the Client under the Contract, prior to their connection, cannot be guaranteed as available and therefore Digital Origin shall not be liable for any costs or loss or damage incurred by the Client in the use of any such telephone number (including, without limitation, in the advertising of the telephone number) which is withdrawn by the Director General for

Telecommunications and/or the relevant Carrier prior to connection (save where and to the extent that such withdrawal is the fault of Digital Origin).

- 6.3.2 Without prejudice to any rights the Client may have to port a number allocated to it, the Client acknowledges it does not own or have any right to sell any number provided to it by Digital Origin. Where the Client has a number from a national numbering plan, the charges for porting such number shall be as set out in the Tariff.

#### 6.4 USE OF THE NETWORK SERVICES

- 6.4.1 The Client shall be responsible for the safe custody and safe use by it of the Network Services and without prejudice to the generality of the foregoing the Client agrees and undertakes:

- (a) to use the Network Services in accordance with such additional and/or replacement Conditions as may be notified to it in accordance with condition 18 from time to time;
- (b) not to cause any apparatus, other than that which meets the essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) and any other requirements under the General Conditions and all other Relevant Laws, to be connected to the Network Services and Digital Origin shall not be under any obligation to connect or keep connected any Client apparatus if it does not so conform or if in the reasonable opinion of Digital Origin it is liable to cause death, personal injury or damage or to impair the quality of the Network Services;
- (c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission cause Digital Origin to contravene, any Relevant Laws or General Conditions;
- (d) not to use the Network Service as a means of communication for a purpose other than that for which the Network Service is provided and as may be set out in any relevant literature supplied by Digital Origin from time to time;
- (e) not to use the Network Service to make, provide, communicate, deliver, knowingly post, receive, distribute, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character or other unlawful material or information, or which does, or is intended to, cause annoyance, nuisance, inconvenience or worry to any person or which in Digital Origin's opinion brings Digital Origin's name into disrepute or which in any way causes or is reasonably likely to damage or disruption to the Network Services;
- (f) not to engage in illegal or unlawful activities through the Digital Origin Network;
- (g) not to knowingly make available or upload files that contain a virus or corrupt data;
- (h) not to use the Network Services in a manner which constitutes a violation or infringement of the rights of any other person;
- (i) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws as from time to time applicable;
- (j) to provide Digital Origin with all such information it reasonably requests relating to the Client's telecommunications apparatus;
- (k) to implement adequate control and security over the Network Services provided to the Client including but not limited to the prevention of viruses, worms, Trojan horses and/or any calls generated by rogue diallers or hackers;
- (l) not to use the Network Services in a way that breaches any terms of any contract the Client has entered into with a Carrier;
- (m) not to "spam" or otherwise deliberately abuse any part of Digital Origin's Network;
- (n) not to act in a manner which restricts or inhibits any other user from using or enjoying Digital Origin's or a Service Provider's products or services;
- (o) not to obtain access, through whatever means, to notified restricted areas of Digital Origin Network;
- (p) not to use the Network Services in a way that breaches any Relevant Laws (including without limitation the Code or any guidelines, regulations or instructions of PSA) or any licence applicable to the Client or that is in any way unlawful or fraudulent; and
- (q) not to send or procure the sending of any unsolicited advertising or promotional material.

- 6.4.2 Any Leased Equipment installed or provided by or on behalf of Digital Origin for the purposes of providing the Network Services (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Client) shall at all times remain the property of Digital Origin or a Service Provider (as the case may be) and shall be returned to Digital Origin or the Service Provider forthwith in good condition complete with any accessories and original packaging upon request.

- 6.4.3 If the Client takes a line rental from Digital Origin, the Client is also committed to using Digital Origin for the supply of Network Services over that line. Should the Client (during the applicable Minimum Term) use an alternative carrier for Network Services once the Contract for the provision of the Network Services has commenced, or prevent Digital Origin from carrying calls or data services in any monthly period so that the call or data charges are significantly reduced in comparison to the Client's previous average invoicing profile, the Client agrees that Digital Origin may charge the Client the differential between the average monthly spend on calls or data services prior to such commencement or prevention and the subsequent monthly spend on calls or data services (if any).

- 6.4.4 The Client acknowledges that if it uses a different Carrier to the Carrier specified on the Order Form, before the expiry of the Minimum Term, Digital Origin will be subject to Commission Clawbacks. The Client shall immediately pay to Digital Origin an amount representing the Commission Clawbacks which are attributable to the Client's use of a different Carrier. The Client irrevocably agrees that the amount to be reclaimed by way of Commission Clawbacks are reasonable in the circumstances and represent a genuine pre-estimate of Digital Origin's loss. For the avoidance, of doubt, no amount shall be payable pursuant to this condition 6.4.4 where the Contract is terminated before the end of the Minimum Term due to any breach of contract by Digital Origin.
- 6.4.5 Without prejudice to condition 6.4.4, Digital Origin may at any time require the Client to pay to Digital Origin Commission Clawbacks if the Carrier imposes any such requirements on Digital Origin.
- 6.4.6 The Network Services are provided solely for the Client's use and the Client cannot resell or attempt to resell the Network Services (or any part of them) to any third party. In addition, if the Client has a mail server, the Client must not allow relay emails from outside its domain from the Client's mail server.
- 6.4.7 Digital Origin does not warrant or guarantee the accuracy or completeness of any of the information, sound, software and/or any other materials (in whatever form) which may be accessible by the Client from any other person once it has the Network Services (the "**Content**") or any further information or results which may be derived from it. The Client acknowledges that the Content is outside the control of Digital Origin and the Client will not rely on any Content in making any business or other decision and that the Client's use of the Content is at its sole risk.
- 6.4.8 The Client acknowledges that the Content may be protected by copyright, trademark and other intellectual property rights, as applicable. The Client will not and will not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Client's own purposes.
- 6.4.9 The Client is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. Digital Origin will not be a party to or in any way be held responsible to the Client for any transaction between the Client and third parties.
- 6.4.10 The Client warrants, represents and undertakes that any information the Client makes available on their website, both the Client's ("**Client Information**") or that of a third party ("**Third Party Content**"), is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.
- 6.4.11 The Client also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Client's website (both Client Information and Third Party Content) including those notified by Digital Origin to the Client.
- 6.4.12 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to HMRC, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Network Services and the Client consents to Digital Origin co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse related to or connected with the Network Services and agrees, without prejudice to the generality of the foregoing, that Digital Origin will be entitled to divulge the name and address and account information relating to the Client to such third parties.
- 6.4.13 The Client acknowledges that the broadband element (if any) of the Network Services is provided to other users and Digital Origin owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in Digital Origin's reasonable opinion, Digital Origin believes that the Client's use of the Services has or may adversely affect such network integrity or may cause network degradation, Digital Origin may change the Client's chosen access rate or manage the Client's Services as Digital Origin sees fit in the circumstances.
- 6.4.14 To prevent spam from entering and affecting the operation of Digital Origin's systems and the Network Services, Digital Origin may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and/or part of a bulk e-mail transmission. Digital Origin may also use virus screening technology that may result in the deletion or alteration of e-mail and/or e-mail attachments. Digital Origin gives no warranties whatsoever that such technology will be effective in any way, including against unsolicited emails or against any viruses, worms, Trojan horses or other programs or devices that are apparently intended to access and modify, delete or damage data file(s) or computer program(s).
- 6.4.15 To enable clients (including the Client) to have a better understanding of what is and is not acceptable when using broadband products, and to help them get the best out of the internet, Digital Origin has developed a broadband acceptable use policy relating to the broadband element of the Network Services. The Client shall comply with the broadband acceptable use policy. Digital Origin may change the broadband acceptable use policy at any time by publishing the changes on its website [www.digital-origin.co.uk](http://www.digital-origin.co.uk) or such other URL as is notified to the Client by Digital Origin from time to time) 30 days before the change is to take effect.
- 6.4.16 The Client acknowledges that, in order to use the broadband element (if any) of the Network Services, the Client needs an existing telephone line (if not provided under the Contract) and a personal computer ("**PC**") of a minimum specification suitable for the application. The Client must also ensure that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.



- 6.4.17 In circumstances where the Client receives the broadband element of the Network Services, the Client remains responsible for all rental charges made by the Client's line rental provider relating to the Client's telephone line (together with any repair and maintenance charges (unless the relevant damage was caused by Digital Origin's negligence)) and all call charges from the Client's fixed line telephony service provider.
- 6.4.18 The Client agrees that PSA may monitor any End User Service at any time.
- 6.4.19 In respect of each End User Service which requires the approval of PSA pursuant to any regulation or code of practice, the Client shall, before such End User Service (or any change thereto) is made available to callers, submit to Digital Origin written evidence of such approval.
- 6.4.20 The Client will not misuse the Network Services in any way and will use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Client's capability to answer such calls or cause congestion (the existence of congestion to be reasonably determined by Digital Origin taking into account normal levels of traffic on the network). Where Digital Origin notifies the Client of the occurrence of any such congestion or misuse, then the Client shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Client's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

#### 6.5 **TRANSFER FROM THIRD PARTY SUPPLIERS**

- 6.5.1 Where the transfer of lines and services from third party suppliers is selected by the Client then the provision of any and all existing services supplied to the Client by such third party supplier will be automatically transferred to Digital Origin and charged for in Digital Origin's invoices in accordance with the Tariff.
- 6.5.2 Where Digital Origin needs to liaise with any third party supplier to provide the Services to the Client, the Client irrevocably authorises Digital Origin to deal and manage such third party supplier for and on behalf of the Client.
- 6.5.3 The Client acknowledges and accepts that it is the Client and not Digital Origin who is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form, at the time of Digital Origin formally accepting such Order Form, that Digital Origin will pay for specified charges.
- 6.5.4 If Digital Origin has agreed to pay for specified charges in accordance with condition 6.5.3, any such payment is limited only to the termination fee and is subject to the Client providing evidence of the charges by way of a termination bill and/or final bill. Digital Origin will in no circumstances agree to pay more than the termination fee and will not pay for the Client's use of the third party supplier's services prior to termination.
- 6.5.5 If the Client is migrating to the broadband element of the Network Services from a third party provider of an alternative broadband service, the Client will need to obtain a Migration Authorisation Code ("**MAC**") from that service provider. This MAC will be valid for thirty days from the date of issue and can only be used once. It is the Client's responsibility to obtain this code and to ensure that the Client provides it to Digital Origin in sufficient time to process the Client's migration. Digital Origin will not be responsible for any delay, costs, expenses, loss or damage arising or incurred by the Client through failure to connect the Client to the broadband element of the Network Services as a result of the Client's failure to provide the MAC as required by this condition.

#### 6.6 **SUSPENSION AND/OR TERMINATION OF NETWORK SERVICES**

- 6.6.1 Without prejudice to any other right of Digital Origin to suspend or terminate the Services under these Conditions, Digital Origin may at its sole discretion elect to suspend or block forthwith provision of the Network Services until further notice without further liability to the Client having given the Client reasonable notice either orally (confirming such notification in writing) or in writing in the event that:
  - (a) the Client is in breach of a material term of these Conditions including but not limited to the Client's failure to pay the Price and/or the Charges (or any of them) to Digital Origin on the due date (which shall include, without limitation, where cancellation of a direct debit instruction results in payment not being made on the due date) or to comply with Digital Origin's broadband acceptable use policy;
  - (b) if the Client exceeds any credit limit agreed with Digital Origin and does not remedy the situation within fourteen (14) days of receiving a written notice to do so;
  - (c) if the Client fails to comply with any of its obligations set out in this Agreement and/or any Contract which directly prevents Digital Origin from delivering the Services;
  - (d) Digital Origin is obliged to comply with any law, regulation, court order or request order, instruction, direction, determination or consent by or of a governmental or regulatory authority or body or an emergency services organisation;
  - (e) Digital Origin has reasonable grounds to believe that the Network Services are being used fraudulently or unlawfully;
  - (f) any licence under which the Client has the right to run its telecommunications system and connect to the Network Services is revoked, amended or otherwise ceases to be valid;
  - (g) where a Service is no longer provided by the applicable Service Provider and the same has been notified by Digital Origin to the Client at least thirty (30) days prior to the date of suspension and notwithstanding such notice, the Client

has not contracted with Digital Origin for an alternative service or served fourteen (14) days' notice to terminate the Service the subject of the suspension;

- (h) Digital Origin is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Client;
  - (i) if Digital Origin or any third party providing equipment or services to Digital Origin in connection with the provision of the Services requires to carry out any emergency maintenance or repair, which will include any necessary action to prevent interference with, damage to or degradation of the Digital Origin Network (in which case Digital Origin will give the Client, where practicable, a minimum of forty-eight (48) hours advance notice of such emergency maintenance or repair);
  - (j) to carry out planned maintenance or upgrade of the Digital Origin Network or the Services in which Digital Origin will provide not less than forty-eight (48) hours prior notice of the suspension and, where practicable, will agree with the Client when the Services will be suspended and for how long;
  - (k) the Client's access to the Switching Equipment is withdrawn by the organisation financing such equipment; or
  - (l) the Client purchases similar equipment to the Equipment and/or Leased Equipment from a supplier other than Digital Origin which interferes with the Contract either by disruption or a reduction in the use of the Services or which has any other material effect on the performance of the Contract.
- 6.6.2 The Client shall reimburse to Digital Origin all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 6.6.1 and/or the recommencement of the provision of the Network Services as appropriate, save in the case of a suspension pursuant to condition 6.6.1(j).
- 6.6.3 Digital Origin will restore suspended Services as soon as reasonably practicable after the cause of the suspension has been rectified and/or has ceased to exist. In the event of any suspension pursuant to conditions 6.6.1(i) and 6.6.1(j) (and where the issue giving rise to the suspension has not been caused by and/or arisen from an act or omission of the Client) Digital Origin will use all reasonable endeavours to limit the amount of time for which the Services are suspended.
- 6.6.4 Digital Origin shall not be liable to the Client for any charges incurred by the Client for the use of other telecommunications services whether provided by Digital Origin or any other person during any period of unavailability resulting from suspension of the Network Services by Digital Origin in accordance with this condition 6.
- 6.6.5 Without prejudice to any other right of termination under these Conditions, Digital Origin may terminate the Contract for Network Services forthwith in the event that its right or the right of the relevant Carrier to provide the Network Services is withdrawn by the Director General for Telecommunications pursuant to the General Conditions or otherwise.
- 6.6.6 On termination of the Contract for any reason the Client shall permit the disconnection of any Number from the Network Services.

#### 6.7 VOICE OVER INTERNET PROTOCOL (VOIP) NETWORK SERVICES

- 6.7.1 Any order for VOIP services which is accepted by Digital Origin is conditional on the Client accepting and acknowledging that:
- (a) the VOIP service may not offer all the features or resilience the Client may expect from a conventional phone line;
  - (b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond Digital Origin's control e.g. power disruptions, failures or the quality of any connection;
  - (c) wherever possible, alternative arrangements should be made by the Client and a primary telephone line maintained;
  - (d) if the Client uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated;
  - (e) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;
  - (f) the ability for the Client to make Emergency Calls cannot be guaranteed;
  - (g) it will not be possible to make Emergency Calls if Digital Origin has suspended or interrupted the VOIP service for any reason;
  - (h) the Client shall be required to provide/confirm its location when making a VOIP originated Emergency Call to enable the correct emergency organisation to respond; and
  - (i) a VOIP originated Emergency Call will not receive the same network priority at all points over non-emergency calls as an Emergency Call made on a mobile network or on a circuit-switched fixed line.

#### 6.8 DISPUTE RESOLUTION

- 6.8.1 Digital Origin will attempt to resolve any dispute that the Client may have with Digital Origin. If the dispute cannot be resolved within eight (8) weeks of the Client raising the dispute with Digital Origin, then the Client may refer the matter to:
- (a) the Ombudsman Services Communication, via the website ([www.ombudsman-services.org](http://www.ombudsman-services.org)) or by telephone on 0330 440 1614 or 01925 430 049; or



- (b) OFCOM, the communications regulator, via the website [www.ofcom.org.uk](http://www.ofcom.org.uk) or by telephone on 020 7981 3040 or 0300 123 333.
- 6.8.2 Any dispute must be submitted in writing to Digital Origin at the Digital Origin Service Address.
- 6.8.3 Nothing in this condition 6.8 shall prevent the Client or Digital Origin from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

#### 6.9 KIT FUND

- 6.9.1 The Client may from time to time be allocated a credit limit by Digital Origin (the “**Kit Fund**”) which is set out in the Order Form.
- 6.9.2 Subject to the written approval of a director of Digital Origin, Digital Origin may at its sole discretion allocate an amount equivalent to the value in the Kit Fund for the Client to purchase Equipment through Digital Origin from a network distributor or to offset Charges.
- 6.9.3 Digital Origin reserves the right to refuse a Client’s request to purchase Equipment.
- 6.9.4 Digital Origin will not agree to purchase Equipment for the Client’s use following the 12<sup>th</sup> month after the Go-Live Date unless a Client Review Meeting has taken place between the Client and Digital Origin.
- 6.9.5 The Kit Fund remains the property of Digital Origin at all times.
- 6.9.6 Digital Origin reserves the right to reduce and/or apply a charge to the Kit Fund in any of the following circumstances:
  - (a) the Client is in breach of a material term of these Conditions including but not limited to the Client’s failure to pay the Price and/or the Charges (or any of them) to Digital Origin on the due date (which shall include, without limitation, where cancellation of a direct debit instruction results in payment not being made on the due date);
  - (b) Digital Origin has reasonable grounds to believe that the Network Services are being used fraudulently or unlawfully;
  - (c) any licence under which the Client has the right to run its telecommunications system and connect to the Network Services is revoked;
  - (d) Digital Origin is entitled to suspend provision of any other telecommunications service under the terms of any other agreement with the Client;
  - (e) Digital Origin reasonably suspects that the Client is in breach of its obligations under the Contract;
  - (f) Digital Origin reasonably suspects that the Client is intending to terminate the Contract in breach of its obligations; or
  - (g) the Carrier charges Digital Origin as a result of the Client’s conduct, including if the Client pays a Carrier’s bill late or does not use the Network Services.
- 6.9.7 Any Kit Fund remaining at the expiry of the Minimum Term or the termination of the Contract will not be paid to the Client but will be retained by Digital Origin.

### 7 MANAGED SERVICES SUPPORT SERVICES

In the event that the section relating to Managed Services Support Services is completed on the relevant Order Form, this condition 7 shall apply to the Contract.

#### 7.1 DURATION OF MANAGED SERVICES SUPPORT SERVICES

- 7.1.1 Any Contract including the provision of Managed Services Support Services based on an order which is accepted by Digital Origin pursuant to condition 2.1 is, until the Go-Live Date, conditional on Digital Origin providing confirmation by email to the Client that the terms stated on the Order Form of the applicable Contract for Managed Services Support Services do not contain any errors or omissions. Subject to this condition 7.1.1 and in consideration of (and subject to) the payment of the Annual Support Charge each year by the Client, Digital Origin shall supply to the Client the Managed Services Support Services in accordance with the Contract.
- 7.1.2 Subject to earlier termination in accordance with its terms, the Contract for Managed Services Support Services shall run for the Minimum Term. Subject to condition 7.1.3, upon the expiry of the Minimum Term or the relevant Subsequent Term, the Contract in relation to the Managed Services Support Services will renew automatically for a Subsequent Term or a further Subsequent Term (as the case may be) in line with condition 2.2.1 following expiry of the Minimum Term or the then current Subsequent Term (as the case may be).
- 7.1.3 In line with condition 2.2.1, the Client may terminate the Contract by giving twelve (12) months’ notice in writing to Digital Origin, such notice to become effective no earlier than the day after the last day of the Minimum Term or the relevant Subsequent Term (as the case may be).

#### 7.2 PROVISION OF MANAGED SERVICES SUPPORT SERVICES

- 7.2.1 The Managed Services Support Services shall apply only in respect of Equipment as set out in the Order Form and any other equipment which it is agreed between the parties in writing shall be included under the Contract for Managed Services Support Services, which for the purposes of this condition 7 shall be deemed Equipment.
- 7.2.2 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, Digital Origin will use its reasonable endeavours to, within two Business Days of receipt of

notification from the Client of a request for the provision of Managed Services Support Services and the Equipment being made available, commence during Normal Working Hours all adjustments, repairs and replacements of defective components resulting from fair wear and tear and/or faulty workmanship of Digital Origin and/or materials which in the opinion of Digital Origin are necessary for the proper functioning of the Equipment. Any time period stated in respect of Digital Origin's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

- 7.2.3 Where Digital Origin replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.
- 7.2.4 Digital Origin does not warrant that the provision of Managed Services Support Services (or any additional services supplied pursuant to conditions 7.3.1 and 7.3.2) will ensure that the Equipment and/or Leased Equipment operates without interruption or error.
- 7.2.5 Subject to spare part availability, Digital Origin shall provide all necessary spare parts (in the reasonable opinion of Digital Origin) required to keep the Equipment and/or Leased Equipment in satisfactory operation. All replaced parts shall become the property of Digital Origin.
- 7.2.6 Subject to condition 7.3.1, Managed Services Support Services shall not include the following (the "**Excepted Services**"):
  - (a) the repair of damage to the Equipment and/or Leased Equipment resulting from accident, neglect or causes other than ordinary use (including failure to observe any instructions supplied by Digital Origin regarding the operation of the Equipment and/or Leased Equipment);
  - (b) repair, labour or materials required as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection of unapproved accessories, attachments or other devices or as a result of breach by the Client of any of the terms of condition 7.5.;
  - (c) the alteration, modification or maintenance of the Equipment and/or Leased Equipment by any person other than Digital Origin without Digital Origin's prior written consent;
  - (d) the transportation or relocation of the Equipment and/or Leased Equipment save where the same has been performed at the request of Digital Origin;
  - (e) the maintenance or repair of any extension wiring (after the initial twelve month warranty period under condition 5.4.1 has passed), any Equipment and/or Leased Equipment not at the Site or of anything other than the Equipment and/or Leased Equipment;
  - (f) any defect or error in any software used upon or in association with the Equipment and/or Leased Equipment;
  - (g) the supply of replacement cassettes, aerials, aerial systems and batteries;
  - (h) the reprogramming of the Equipment and/or Leased Equipment to provide improved or modified service or facilities;
  - (i) Equipment and/or Leased Equipment faults caused by telephone area code changes or changes in Carriers;
  - (j) ancillary items including but not limited to answer phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;
  - (k) maintenance arising from loss of Equipment and/or Leased Equipment as the Managed Services Support Services are limited to repair or replacement of faulty Equipment and/or Leased Equipment on a like-for-like exchange basis; and
  - (l) a dedicated helpdesk.

### 7.3 **ADDITIONAL CHARGES**

- 7.3.1 Digital Origin may, in its discretion, upon request by the Client provide all or any of the Excepted Services (as referred to in condition 7.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 7.3.3 below.
- 7.3.2 Without prejudice to condition 7.3.1 above Digital Origin shall be entitled to levy (and receive from the Client) Additional Charges in the manner described in condition 7.3.3 below if:
  - (a) Managed Services Support Services are provided in circumstances where any reasonably skilled and competent person would have judged the Client's request to have been unnecessary; and/or
  - (b) the Client reports an apparent fault of the Equipment and/or Leased Equipment to Digital Origin and upon investigation by Digital Origin the Equipment and/or Leased Equipment and/or its Installation is found not to be defective (in respect of a charge for the investigation and/or for any call-out including Equipment and/or Leased Equipment changed in a postal exchange where Digital Origin reserves the right to make a charge up to the replacement value of the item in question); and/or
  - (c) where a fault that has been reported to Digital Origin has been a non-Equipment and/or non-Leased Equipment fault but instead one of the Carrier (in respect of a charge for the call-out in accordance with Digital Origin's then current Tariff); and/or

- (d) time and/or resources are required to be deployed by Digital Origin in circumstances where, in Digital Origin's reasonable opinion, the level of support required by the Client is either unreasonable or unnecessary.
- 7.3.3 Additional Charges shall be levied by Digital Origin as follows:
  - (a) following completion of the work in respect of additional services supplied under condition 7.3.1 and 7.3.2(a);
  - (b) following completion of the investigation and/or call out in respect of condition 7.3.2(b) and 7.3.2(c); and
  - (c) such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Client within ten days of the date of an invoice.
- 7.3.4 In respect of a fault which is a failure by the Carrier as referred to in condition 7.3.2(c) Digital Origin will provide to the Client a Carrier fault reference number that may be used by the Client to recharge the cost Digital Origin has charged on to the Carrier, however this does not constitute any acceptance of liability for such costs by Digital Origin and, for the avoidance of doubt, Digital Origin is not liable to the Client where the Carrier refuses to cover such costs (or any of them).
- 7.4 **DISCONTINUED SERVICES**
- 7.4.1 Without prejudice to condition 14 or any other right of suspension or termination of Services under these Conditions, Digital Origin shall have the right to discontinue the Managed Services Support Services in respect of specified Equipment and/or Leased Equipment (without further liability to the Client) in the event that Digital Origin's supplier and/or the manufacturer has ceased to supply such Equipment and/or Leased Equipment PROVIDED THAT Digital Origin shall notify the Client as soon as reasonably possible after it is aware of any cessation in supply of the Equipment and/or Leased Equipment and shall arrange with the Client to either terminate the Contract or replace or upgrade the affected Equipment and/or Leased Equipment at the Client's expense.
- 7.4.2 Without prejudice to condition 14 or any other right to terminate or suspend any Services under these Conditions, Digital Origin shall have the right to terminate forthwith the supply of the Managed Services Support Services (without further liability to the Client) in the event that any necessary approvals required by Digital Origin to maintain any of the Equipment and/or Leased Equipment are disallowed or revoked by any government or regulatory agencies or any third party.
- 7.5 The Client undertakes that:
  - 7.5.1 it shall ensure that the Equipment and/or Leased Equipment is used in a normal and proper manner;
  - 7.5.2 it will carry out such routine day-to-day preventive maintenance measures as may be recommended in the operating instructions and manufacturer's written recommendations supplied with the Equipment and/or Leased Equipment ("User Instructions");
  - 7.5.3 it will carry out minor maintenance adjustments suggested by Digital Origin which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
  - 7.5.4 it will not permit alteration to call routing apparatus or extension wiring except by Digital Origin, or by Digital Origin's authorised agents, save that in relation to the connection of other apparatus to the Equipment and/or Leased Equipment, such connection may be performed by another person at the Client's expense if either:
    - (a) Digital Origin so agrees in writing; or
    - (b) Digital Origin fails to carry out the connection itself within twenty-eight days after receiving written notice from the Client stating that the Client wishes specified apparatus to be so connected and naming that other person by whom the Client wishes the connection to be performed;
  - 7.5.5 it will appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Client will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Managed Services Support Services matters with Digital Origin;
  - 7.5.6 it will not employ a third party to make any alterations to the programming or physical structure of the Equipment and/or Leased Equipment;
  - 7.5.7 it will ensure that the environmental conditions for the Equipment are maintained in accordance with the User Instructions; and
  - 7.5.8 if the Equipment and/or Leased Equipment is not (immediately prior to the Go-Live Date) either already maintained by Digital Origin or within the scope of an express warranty given by Digital Origin thereof, then Digital Origin may at its discretion inspect the Equipment and/or Leased Equipment and undertake such repair work as may be necessary to put the Equipment and/or Leased Equipment in good working order. The Client shall pay for such inspection and repair at Digital Origin's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.
- 7.6 **CHANGE OF LOCATION**
- 7.6.1 The Client will not move any of the Equipment and/or Leased Equipment, nor remove the Equipment and/or Leased Equipment from its location as at the Go-Live Date without the prior written consent of Digital Origin (such consent not to be unreasonably withheld). Where Digital Origin consents to such relocation, Digital Origin shall provide a relocation and installation service, the cost of which shall be paid by the Client in accordance with Digital Origin's then current Charges applying at that time, and such payment shall be in addition to the Annual Support Charge.

## **8 FINANCE AND CREDIT**

- 8.1 The Client hereby consents to and shall procure that its owners, directors, officers and assigns consent to, Digital Origin carrying out searches with credit reference agencies relating to the credit worthiness of the Client and/or its owners, directors, officers and assigns and the Client undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Client's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.
- 8.2 The Client undertakes to supply all information requested by any finance provider(s) who will register searches with one or more credit agencies, who will add to the person's records details of the searches and these will be seen by other organisations that make searches.
- 8.3 Where third party indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Client and shall entitle Digital Origin to retain any deposit paid by the Client.
- 8.4 After Delivery and Installation (where applicable) is completed any failure by the Client to complete any relevant finance agreement documentation shall render the Client liable to pay to Digital Origin the whole of the Price as defined in condition 9.1 within seven days of presentation of an invoice.

## **9 PRICE AND CHARGES**

### **9.1 EQUIPMENT AND/OR LEASED EQUIPMENT**

- 9.1.1 The Price is as stated on the Order Form and is exclusive of VAT or any other tax or duty payable. The amount of such taxes or duties shall be added to the Price and shall be payable by the Client in the same manner as the Price. Any invoices issued by Digital Origin in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Client.
- 9.1.2 Unless otherwise specified the Price is based on the assumption that the Equipment and/or Leased Equipment and (where applicable) Installation Services will be completed in one continuous visit to the site agreed with the Client and accordingly Digital Origin may at its discretion at any time increase the Price to take account of any additional costs to Digital Origin (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

### **9.2 NETWORK SERVICES**

- 9.2.1 The Charges will be as detailed in the Tariff unless, and as, stated on the Order Form.
- 9.2.2 Digital Origin shall have the right to alter the Charges from time to time by publishing changes to the Tariff at [www.digital-origin.co.uk](http://www.digital-origin.co.uk) (or at such other URL as is notified to the Client by Digital Origin from time to time) or notifying the Client in writing (which may be by email) and such changes shall take effect:
  - (a) no earlier than thirty days after such publication in the event of changes which may be of material detriment to the Client; and
  - (b) no earlier than one day after such publication for all other changes,
 and if the Client wishes to object to any proposed change which is of material detriment to the Client, then the Client must notify Digital Origin in writing (addressed to Client Services, Digital Origin Group, at the address set out in the Notices clause) within thirty days of publication of the proposed change, otherwise the Client will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by Digital Origin of any notice in accordance with condition 9.2.2(a) shall not constitute either acceptance of or an admission by Digital Origin that any proposed change is of material detriment to the Client, nor shall the service of notice by the Client under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Client. For the purposes of this condition 9.2.2, any proposed change shall not be considered as being of material detriment to the Client where it is in line with any increase in the Retail Prices Index over the previous 12 months.
- 9.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by Digital Origin and not by reference to any data recorded or logged by the Client. Any invoices issued by Digital Origin shall, save in the case of manifest error, be final, conclusive and binding on the Client.
- 9.2.4 Line rental is payable from the Connection Date.
- 9.2.5 If the Client has agreed to a Minimum Contract Spend and at the end of the Minimum Term, the Client has not incurred the Minimum Contract Spend, or if the Client terminates the Contract in any way other than pursuant to condition 14, the Client will be liable to pay to Digital Origin (i) the difference between the Charges incurred during the period of the Contract and the Minimum Contract Spend plus (ii) in relation to Future Contract Spend the full RRP of the Services that Digital Origin would have charged for over the Minimum Term together with applying any discount that Digital Origin allowed the Client over the Minimum Term on the proviso of the Client fulfilling the Future Contract Spend.
- 9.2.6 Digital Origin reserves the right to apply a monthly minimum threshold of at least £10.00 per Client account (or such other sum as notified to the Client by Digital Origin in writing from time to time) to keep the account operating at a viable level.

**9.3 MANAGED SERVICES SUPPORT SERVICES**

9.3.1 The Client shall pay to Digital Origin the Annual Support Charge in accordance with condition 10.3. Any invoices issued by Digital Origin in respect of the Charges for Managed Services Support Services shall, save in the case of manifest error, be final, conclusive and binding on the Client.

9.3.2 Digital Origin shall have the right to alter the Annual Support Charge from time to time by giving the Client not less than 14 days notice.

**9.4 Value added tax**

All sums referred to under these Conditions, the Order Form and any Service Specific Conditions are (unless otherwise stated) exclusive of VAT and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of invoice.

**9.5 Temporary Services**

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

**9.6 Increase to Charges**

Without prejudice to its other rights to increase Charges under these Conditions, Digital Origin may increase the Charges once in any 12 month period to reflect any percentage increase in the Retail Prices Index in the preceding 12-month period based on the latest available figure for the percentage increase in the Retail Prices Index and/or any actual increase in the direct cost to Digital Origin for supplying the Services (offset by any efficiencies, improvements or investments that Digital Origin may implement in relation to the Services) provided that Digital Origin provides at least 14 days' notice of the increase to the Client (which may be by email) and, subject to the remainder of this clause 9.6, the increase in any Charges does not exceed 10% of the value of these Charges in effect immediately prior to the increase. Where Digital Origin is able to provide evidence as to it suffering any actual increase in the direct cost to it for supplying the Services in excess of 10%, it may increase the Charges by more than 10% to account for this.

**10 PAYMENT**

10.1 **EQUIPMENT** A deposit equal to the amount set out on the Order Form is required at the time of the placing of the relevant order. The balance of the Price as defined in condition 9.1.1 is payable immediately upon completion of Delivery (subject to condition 5.1.5).

**10.2 NETWORK SERVICES**

10.2.1 Subject to condition 10.2.2, the Client shall be invoiced monthly in arrears by Digital Origin and shall pay the Charges by direct debit within ten days of the date of the invoice (unless otherwise expressly agreed with Digital Origin and set out on the Order Form).

10.2.2 Line rental is payable monthly or quarterly in advance as specified on the Order Form, unless expressly agreed in writing by Digital Origin.

10.2.3 Where Digital Origin is notified by PSA that:

(a) any sums payable by the Client to PSA or to any compensation fund or bond established by PSA have not been paid; and/or

(b) the Client or any Information Provider is in breach of the Code,

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

**10.3 MANAGED SERVICES SUPPORT SERVICES**

10.3.1 Unless otherwise agreed, the Client will pay the Annual Support Charge to Digital Origin by direct debit in advance of the relevant period as set out in the Order Form.

10.3.2 Where Digital Origin has agreed to raise an Annual Support Charge annually the Client will pay the charge in advance of the Go-Live Date and annually thereafter upon each anniversary of that date.

**10.4 ALL SERVICES**

10.4.1 If payment of any sum payable to Digital Origin is not made on or before the due date Digital Origin shall be entitled to charge interest thereafter on such sum at either the rate of 4% per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as Digital Origin would be entitled to claim under the Late Payment of Commercial Debts (Amendment) Regulations 2018 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgement.



- 10.4.2 Unless e-billing is expressly not required on the Order Form, invoices may be made available for download by Client. If invoices are made available for download by the Client, the Client will be notified at the email address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly not required on the Order Form or if Digital Origin elects to do so, the invoice may be sent to the registered address of the Client (or the address of the Client).
- 10.4.3 A Service Credit shall not be payable unless the Client requests it within sixty (60) days from the date of the service affecting event.
- 10.4.4 Digital Origin may at any time or times, with prior written notice to the Client, set off any liability against amounts due by Digital Origin to the Client. Any exercise by Digital Origin of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.
- 10.4.5 If Digital Origin is unable, for whatever reason, to recover the sums due under the Client's account within 4 days following the due date for payment, Digital Origin reserves the right to suspend all or any of the Services.
- 10.4.6 If the Client's account remains unpaid (in any part) Digital Origin may require a security deposit of three times the average monthly invoice or payment in full for the next 12 months before Digital Origin will reinstate the Services.
- 10.4.7 If the Client's account remains unpaid (in any part) for a period of 30 days after the original due date for payment, the Services may then be terminated by Digital Origin.
- 10.4.8 Without prejudice to the Supplier's other remedies, if the Client's account remains outstanding for any reason after the original due date for payment, then:
- (a) the Client will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. Digital Origin may also charge the Client a fee where it suspends a Network Service for non-payment; and
  - (b) Digital Origin reserves the right to refer the outstanding account to a debt collection agency or firm of solicitors. If Digital Origin is required to instruct a debt collection agency or firm of solicitors to collect payment (including interest and late payment charges) on its behalf the Client must pay Digital Origin's costs payable to the agency or firm of solicitors, who will add the sum to the Client's outstanding debt.
- 10.4.9 The Client will ensure that the name of the account holder is the same as the name on the payment details provided.
- 10.4.10 If the Client cancels an active direct debit instruction once a Contract has commenced or elects not to pay by way of an active direct debit instruction, an additional administration fee will be added to the monthly invoice of £3.50 (or such other amount as may be notified to the Client by Digital Origin from time to time) until the direct debit is reinstated or commenced (as the case may be). Digital Origin also reserves the right to charge the Client a direct debit cancellation fee at its then applicable rate.
- 10.4.11 Digital Origin may, without notice, withhold any payments due to the Client under the Contract or any other agreement between Digital Origin and the Client if:
- (a) Digital Origin has reason to believe the Client is in breach of the Contract;
  - (b) the Client is (or Digital Origin reasonably believes that the Client is) conducting its business or using a Service illegally (including in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or
  - (c) Digital Origin has received notice from another Carrier that payment will be withheld in respect of calls and Digital Origin has satisfied itself on reasonable grounds that such event has occurred.
- 10.4.12 If any sum owed by the Client to Digital Origin under the Contract or any Contract with Digital Origin is not paid by the due date, Digital Origin may deduct this sum from any payment or credit due to the Client under the Contract or any other contract with Digital Origin.
- 10.4.13 Payment of all sums due to Digital Origin shall be made without any set-off or deduction whatsoever.
- 10.4.14 If the Client intends to dispute any charge on an invoice the Client must do so in writing to Digital Origin within 14 days of the date of the invoice and provide Digital Origin with all relevant information in support of the disputed charge, otherwise an invoice is deemed to be accepted by the Client. Where the disputed charge(s) amount to:
- (a) less than 5% of the total charges listed on the invoice, the Client will pay the full amount of the invoice; or
  - (b) more than 5% of the total charges listed on the invoice, the Client must pay the remaining amount of the invoice that is not in dispute.
- 10.4.15 Where Digital Origin is unable to complete installation or "make live" any part of the Services contemplated by the Order Form as a consequence of any act or inaction of the Client (including, without limitation, the Customer not providing any Customer Information reasonably required by Digital Origin and/or being unable to make itself, its premises or any other access rights reasonably required by Digital Origin available), Digital Origin shall be entitled to invoice the Price and/or Charges in respect of those Services and associated Equipment and/or Leased Equipment from the Default Charging Date.
- 10.4.16 The Client acknowledges and accepts that it shall be liable for any charges incurred by Digital Origin with third party suppliers in respect of the supply of the Services, Equipment and/or Leased Equipment not set out in the Order Form.

- 10.4.17 The Client acknowledges and accepts that any change in the then current volume of a type of Service which is provided by Digital Origin (excluding termination of the Service) actioned by Digital Origin at the request of the Client during the term of the Agreement will be covered by the terms of the Agreement and will be subject to the applicable Minimum Term or Subsequent Term (as the case may be) for the Service.

## **11 SITES**

- 11.1 To enable Digital Origin to fulfill its obligations under any Contract:
- 11.1.1 the Client shall permit or procure permission for Digital Origin and any other person(s) authorised by Digital Origin to have reasonable access to the Client's Sites, Equipment and/or Leased Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as Digital Origin requests.
- 11.1.2 Digital Origin will normally carry out work by appointment and during Normal Working Hours but may request the Client to (and the Client shall) provide access at other times. In the event that the Client cancels, reschedules or misses any pre-arranged appointment, it shall be liable to Digital Origin for any costs and expenses which Digital Origin incurs as a result of such cancellation, rescheduling and/or missed appointment.
- 11.2 At the Client's request, Digital Origin may agree (at its sole discretion) to work outside Normal Working Hours and the Client shall pay Digital Origin's reasonable charges for complying with such a request.
- 11.3 The Client warrants, represents and undertakes that it has adequate health and safety provisions in place at its Sites.
- 11.4 The Client shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and/or Leased Equipment and for the provision, use and operation of the Equipment and/or Leased Equipment and/or Services at the Sites (save to the extent Digital Origin has agreed in writing to do it).
- 11.5 In the event that the Client is not able to procure the necessary consent to provide the Services within ninety days of the Connection Date Digital Origin will be able to terminate the Contract forthwith by giving the Client written notice without any liability. If the Client has not managed to procure the necessary consents and Digital Origin has commenced work the Client shall, on request by Digital Origin, refund to Digital Origin the cost of all such work (including, without limitation, staff costs and equipment costs) of an amount no less than £500 as Early Termination Charges.
- 11.6 The Client shall provide Digital Origin with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide Digital Origin with full details of all other services in the vicinity of the proposed works.
- 11.7 The Client is responsible for making the Site good after any work undertaken by Digital Origin at a Site, including without limitation replacing and re-siting items and for re-decorating.
- 11.8 If the Client is moving a Site, Digital Origin must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Client's Services and Equipment and/or Leased Equipment. Unless otherwise requested, Digital Origin, in addition to moving the Service and Equipment and/or Leased Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Client moves to a different exchange) to retain the Client's relevant existing telephone number(s). If Digital Origin can transfer the Client's existing number(s) to the new Site the existing Contract will continue under the same terms and conditions. If Digital Origin cannot transfer the Client's existing number(s) to the new Site, installation of a new line will be required at the new Site, or if the Client requires any additional new lines, this will attract new line connection charges and a new Contract.
- 11.9 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation the Client will be responsible for the costs incurred by Digital Origin for the appointment together with an administration fee in respect of any additional works required to be undertaken by Digital Origin to complete the transfer of the Services and Equipment and/or Leased Equipment.
- 11.10 If the Client moves Sites and leaves the Equipment and/or Leased Equipment for the new owner/tenant the Client is required to inform them that the Service will be discontinued if Digital Origin is not contacted by the new owner/tenant within 72 hours for the purpose of entering into a new contract with Digital Origin for such services and subject in any event to the agreement of such a contract.
- 11.11 If at the new Site the Client receives services from an alternative supplier the Client is responsible for any contractual agreement the Client has with them and any liabilities the Client may incur for terminating such agreement.

## **12 WARRANTIES AND LIMITATION OF LIABILITY**

- 12.1 Unless otherwise stated in these Conditions (or any relevant Service Specific Conditions) Digital Origin makes no warranty in respect of the supply of Equipment and/or Leased Equipment and/or Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a Contract for the supply of Equipment and/or Services are hereby excluded to the fullest extent possible, save for, and to the extent of, those warranties which cannot be lawfully excluded.
- 12.2 Subject to conditions 5.4.7, 12.3 and 12.5:
- 12.2.1 in no circumstances shall Digital Origin's liability, arising under or in connection with the Contract and whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise, to the Client in



respect of one incident or series of connected incidents in any Year shall be limited to the lesser of the Contract Spend in a Year or £100,000 (one hundred thousand pounds); and

- 12.2.2 the Service Credits shall be the Client's sole and exclusive financial remedy for any failure by Digital Origin to comply with any applicable Service Levels.
- 12.3 Subject to condition 12.5, under no circumstances shall Digital Origin be liable in any event under or in connection with the Contract and whether in contract, tort (including negligence) or otherwise for any of the following losses whether or not they are incurred directly or indirectly:
- 12.3.1 loss of revenue;
  - 12.3.2 loss of business;
  - 12.3.3 loss of contracts;
  - 12.3.4 loss of, damage to or corruption of data;
  - 12.3.5 loss of anticipated savings;
  - 12.3.6 loss of profits; or
  - 12.3.7 any indirect, consequential or special losses; whether or not Digital Origin knew or ought to have known that such losses or damages might be incurred.
- 12.4 Neither party shall be liable to the other party for any breach of any provision of the Contract caused by any reason outside the control or responsibility of that party including, without limitation, in respect of Network Services supplied by Digital Origin, the failure of any Carrier to provide network capacity (or any element thereof) to Digital Origin on which it was reliant for the purposes of the Contract, any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, epidemic or pandemic, highways authorities, or other competent authorities.
- 12.5 Nothing in these Conditions excludes or restricts either party's liability for:
- 12.5.1 death or personal injury resulting from that party's negligence or its employee's, agent's or subcontractor's negligence (while acting in the course of their employment);
  - 12.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;
  - 12.5.3 any indemnity given under the Contract; and/or
  - 12.5.4 for anything for which the parties cannot at law limit or exclude their liability.
- 12.6 The Client agrees that any cause of action that it may have against Digital Origin (including its affiliates, directors, officers, agents, consultants and employees) must commence within one (1) year after the cause of action arose, otherwise, the Client's cause of action is permanently barred.
- 13 CLIENT'S INDEMNITY**
- 13.1 Without prejudice to any other rights of Digital Origin, the Client shall indemnify and hold harmless Digital Origin against all Losses arising from or in connection with:
- (a) any use or misuse of the Services by the Client in breach of condition 6.6; and/or
  - (b) any breach by the Client of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any responsibilities and/or liabilities of the Client set out in the Contract; and/or
  - (c) any injury and/or damage suffered or incurred by or to any of Digital Origin's (or any of its contractor's) employees and/or equipment whilst on the Site.
- 14 TERMINATION AND CONSEQUENCES OF TERMINATION**
- 14.1 On termination of any Service Schedule for whatever reason the Client will cease to have the Services provided thereunder.
- 14.2 Subject to conditions 14.3, 14.4 and 14.6 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Client shall not be entitled (once an order has been accepted by Digital Origin) to change or cancel an order:
- 14.2.1 at all in respect of Equipment and/or Leased Equipment; or
  - 14.2.2 except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Services and in particular conditions 6.1.3 and 7.1.3 (which shall take effect in accordance with the applicable conditions), unless otherwise agreed in writing with Digital Origin.
- 14.3 **Termination (General):** Subject to condition 14.6, in the event of any termination by the Client of the Contract (in whole or in part) or any Service Schedule (in whole or in part), the Client shall indemnify Digital Origin in full against all Losses including, but not limited to, all Losses incurred by Digital Origin as a result of the Client terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant Subsequent Term, which will include a minimum payment to Digital Origin of the amount of the outstanding line rental charges, the Initial Consultancy Fee, any Minimum Contract Spend, Annual Support Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Client had the Contract

continued for the Minimum Term and/or the relevant Subsequent Term (as the case may be), costs, damages, charges (including, but not limited to, any liability for Network Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment and/or Leased Equipment which is the subject of a Contract) and expenses incurred by Digital Origin as a result of such changes or cancellation.

- 14.4 **Early Termination:** Without prejudice to the generality of condition 14.3, in the event of any termination by the Client of the Contract before the end of the Minimum Term, the Client shall immediately pay to Digital Origin an amount representing the Commission Clawbacks which are attributable to the Network Services being terminated and the Initial Consultancy Fee and the Early Termination Charges set out in these Conditions. The Client irrevocably agrees that the amount to be reclaimed by way of Commission Clawbacks and the Initial Consultancy Fee and the Early Termination Charges are reasonable in the circumstances and represent a genuine pre-estimate of Digital Origin's loss arising from the Client's early termination of the Contract. For the avoidance of doubt, no amount shall be payable pursuant to this condition 14.4 where the Contract is terminated before the end of the Minimum Term due to any breach of contract by Digital Origin.
- 14.5 Without prejudice to any other rights of Digital Origin under these Conditions or otherwise, Digital Origin shall be entitled at any time and for any reason whatsoever to terminate any and/or all Contracts for Services on the giving of not less than thirty days' written notice to the Client, without further liability to the Client. For the avoidance of doubt, in the event that Digital Origin terminates a Contract under this condition 14.5, the Client's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Client shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.
- 14.6 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under these Conditions (including non-payment of charges due) or any Service Specific Conditions and in the case of breaches which are capable of remedy such party fails to remedy such breach within 30 days of written notice by the other party of what the breach is and requesting that the breach is remedied. Without prejudice to the generality of the foregoing, Digital Origin shall be permitted to terminate the Contract forthwith on notice to the Client in the event that the Client is in material breach of any other contract under these Conditions (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by Digital Origin of what the breach is and requesting that the breach is remedied.
- 14.7 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of a solvent amalgamation or reconstruction), trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).
- 14.8 Digital Origin shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 6.6 and, in the event of such termination, save if such termination is pursuant to condition 6.6.1(j), the Client shall indemnify Digital Origin in full against all Losses as set out in condition 14.3, including, but not limited to, all Losses incurred by Digital Origin as a result of terminating the Contract before the end of the Minimum term or where the Contract has continued beyond the Minimum Term before the end of the relevant Subsequent Term.
- 14.9 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this Agreement which expressly or by implication is intended to survive, shall survive the termination or expiry of the Contract.
- 14.10 Any implied right to terminate for convenience that the Client may have under applicable law is hereby expressly excluded.

## 15 SOFTWARE

- 15.1 Where Digital Origin provides software to the Client to enable the Client to use the Services ("**Software**"), Digital Origin will grant the Client a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Contract (and to the extent necessary to use the relevant Services). If required by Digital Origin, the Client shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Client to be able to use the Software. Such licence shall terminate immediately on the cessation of the provision of the applicable Services by Digital Origin.
- 15.2 Digital Origin shall, as soon as is reasonably practicable (after becoming aware) notify the Client in the event that any use of the Services by the Client causes Digital Origin to be in breach of any software licence which Digital Origin has in place with any third party licensor in order to provide the Services (or any part thereof). The Client shall, as soon as is reasonably practical after such notification cease to use the Services in such manner.
- 15.3 Except as permitted by applicable law or as expressly permitted under the Contract the Client shall not de-compile, reverse-engineer or modify the Software, or copy the relevant manuals or documentation.

## 16 CALL MONITORING

- 16.1 The Client agrees that Digital Origin may monitor and record calls made to or by Digital Origin by or to the Client (and/or any of their employees or personnel), for training purposes, to improve the quality of its client services and to assist with complaint handling. The Client undertakes to make its employees and personnel aware of the rights reserved by Digital Origin under this condition.

## 17 CONFIDENTIAL INFORMATION AND DATA PROTECTION

- 17.1 Digital Origin and the Client may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement.
- 17.2 Each party will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other Confidential Information, whether written or oral, concerning the other party's business or its products or its services which the other party may obtain, except to the extent any disclosure is required by law. This condition 17 shall survive termination of the Agreement. The Client and Digital Origin will not, without the consent of the other, disclose such information to any person other than:
- 17.2.1 their employees, contractors or professional advisers who shall require the information in order for the Client or Digital Origin to fulfill its obligations under the Agreement; or
  - 17.2.2 in the case of the Client, its Users to the extent that they are required to use or access the Services.
- 17.3 Information shall not be treated as confidential if it is:
- 17.3.1 lawfully in the public domain;
  - 17.3.2 lawfully in the possession of the Client or Digital Origin before disclosure from the other has taken place;
  - 17.3.3 obtained from a third person who is entitled to disclose it; or
  - 17.3.4 replicated independently by someone without access or knowledge of the information.
- 17.4 If the Client receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Client by Digital Origin in connection with the Contract the Client will notify Digital Origin immediately of the request and give Digital Origin at least ten Business Days to make representations before releasing the requested information (save to the extent otherwise required by law).

### Data Protection

The following terms shall mean:

<b>Data Controller</b>	shall take the meaning as defined in the Data Protection Legislation;
<b>Data Processor</b>	shall take the meaning as defined in the Data Protection Legislation ("Process" or "Processing" shall be construed accordingly);
<b>Data Protection Legislation</b>	means the UK Data Protection Legislation and any other European Union Legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
<b>Data Subject</b>	shall take the meaning as defined in the Data Protection Legislation;
<b>GDPR</b>	means EU Regulation 2016/679 General Data Protection Regulation;
<b>Personal Data Breach</b>	means unauthorised or unlawful Processing of Personal Data or accidental loss or destruction of, or damage to, Personal Data; and
<b>UK Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- 17.5 This clause only applies to the extent that Digital Origin is Processing Personal Data on behalf of the Client.
- 17.6 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 17.7 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and Digital Origin is the Data Processor.
- 17.8 The Privacy & Data Policy sets out the scope, nature and purpose of Processing by Digital Origin, the duration of the Processing, the types of Personal Data and the categories of Data Subject.
- 17.9 Without prejudice to the generality of condition 17.6:
- 17.9.1 The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Digital Origin for the purposes of this Agreement; and
  - 17.9.2 Digital Origin will:

- 17.9.2.1 Process Personal Data only on the written instructions of the Client, including regarding transfers of Personal Data outside of the European Economic Area, unless Digital Origin is required to do so by a legal obligation and, if so, Digital Origin will notify Client of this before such Processing, unless a legal obligation prohibits this;
- 17.9.2.2 ensure that all personnel authorised by Digital Origin to Process Personal Data are obliged to keep the Personal Data confidential;
- 17.9.2.3 ensure that it has in place appropriate technical and organisational measures designed to protect against a Personal Data Breach, appropriate to the harm that might result from such Personal Data Breach and the nature of the Personal Data to be protected where Digital Origin shall have regard to the state of technological development and the cost of implementing any measures, including, where appropriate:
  - (A) pseudonymising and encrypting Personal Data;
  - (B) ensuring confidentiality, integrity, availability and resilience of its systems and services;
  - (C) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
  - (D) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
- 17.9.2.4 notify the Client without undue delay if it becomes aware of a Personal Data Breach;
- 17.9.2.5 assist the Client in responding to any requests from Data Subjects and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, save that if this is not within the reasonable remit of the Services, this will be at Client's cost;
- 17.9.2.6 at Client's written direction, delete (or put Beyond Use) or return Personal Data to Client once provision of the Services has ceased, unless required by a legal obligation to store the Personal Data; and
- 17.9.2.7 maintain records and information to demonstrate it compliance with this condition 10 and, where this is not sufficient, allow for audits by Client or Client's auditor solely to demonstrate compliance, at Client's cost, provided that the Client:
  - (A) will not exercise its audit rights more than once in any three (3) year period, save where Client reasonably believes that a further audit is required due to Personal Data Breach;
  - (B) gives at least thirty (30) days' written notice of its intention to audit, including specific details on the scope of the audit and any required evidence;
  - (C) conducts its audit during normal business hours and limits its audit to a maximum of 2 Business Days; and
  - (D) takes all reasonable measures to prevent material business interruption to Digital Origin.

## **18 CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT**

- 18.1 Digital Origin may change the Conditions and/or Service Specific Conditions and/or policies at any time and will publish any change in line with condition 18.2.
- 18.2 Digital Origin will publish any changes to the Conditions and/or Service Specific Conditions (including any of Digital Origin's policies) online at [www.digital-origin.co.uk](http://www.digital-origin.co.uk) (or at such other URL as is notified to the Client by Digital Origin from time to time) or notify the Client in writing (which may be by email):
  - 18.2.1 at least 30 days before the change is to take effect for changes that may be of material detriment to the Client; and
  - 18.2.2 at least one day before the change is to take effect for all other changes.
  - 18.2.3 If the Client wishes to object to any proposed change which is of material detriment to the Client, the Client must notify Digital Origin in writing (addressed to the Digital Origin Service Address) within 14

days of publication of the proposed change, otherwise the Client will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by Digital Origin of any notice in accordance with condition 18.2.1 shall not constitute either acceptance of or an admission by Digital Origin that any proposed change is of material detriment to the Client, nor shall the service of notice by the Client under this condition 18.2.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Client.

- 18.3 Without liability to the Client, in order to reduce the risk of fraud or for any commercial purpose, the Client acknowledges that on capped price call tariffs (if any) Digital Origin may at its sole discretion on not less than 7 days' notice:
- 18.3.1 limit call price caps to the first four hours of calls per day; and/or
  - 18.3.2 remove the relevant call price caps from the Client's pricing and Tariff should call profile deviate significantly from Digital Origin's standard call profiles and notify the Client of the new pricing to apply in respect of the relevant Network Services.
- 18.4 In order to reduce the risk of fraud or for any commercial purpose, the Client acknowledges that on bundled minute call packages (if any) Digital Origin may at its sole discretion on not less than 7 days' notice remove the relevant bundled minute call package from the Client's pricing and Tariff should the Client's call profile deviate significantly from Digital Origin's standard call profile and over seventy five per cent of the Client's bundled minutes be used in any month.
- 18.5 Digital Origin may, if requested by the Client, provide additional services to be included within the Services under such additional terms and conditions as may be notified from time to time.

## 19 SECURITY

- 19.1 The Client must ensure that user names and passwords used by it and/or its personnel and/or Users in connection with the Services are kept confidential and are only used by authorised Users. The Client will inform Digital Origin immediately if the Client knows or suspects (or ought reasonably to know or suspect) that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. The Client must not change or attempt to change a user name without Digital Origin's written consent.
- 19.2 Digital Origin reserves the right (at Digital Origin's sole discretion):
- 19.2.1 to suspend user names and password access to the Services if at any time Digital Origin thinks that there has been or is likely to be a breach of security; and
  - 19.2.2 to ask the Client to (in which case, the Client shall) change any or all of the passwords the Client uses in connection with the Services.
- 19.3 The Client will inform Digital Origin immediately of any subsequent changes to the information the Client supplies to Digital Origin in connection with the Contract.
- 19.4 The Client accepts and acknowledges that the Services are not guaranteed to be secure and Digital Origin does not guarantee the prevention or detection of any unauthorised attempts to access the Services.
- 19.5 The Client acknowledges that Digital Origin has no control of a Client's PABX/switch configuration, voice mail security or other feature services enabled, except where Digital Origin agrees to be contractually responsible under management services.
- 19.6 Digital Origin shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Leased Equipment or Services by the Client or any third parties (who are not employees of Digital Origin) and the Client agrees to pay all additional charges related to such fraudulent and/or unauthorised use. Clients are therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.
- 19.7 Any assistance given by Digital Origin in relation to fraudulent and/or authorised use by the Client or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by Digital Origin for any loss sustained by the Client via fraudulent and/or unauthorised means that are beyond Digital Origin's reasonable control (save for any fraud and/or unauthorised use by an employee of Digital Origin acting in that capacity).

## 20 ANTI-BRIBERY

- 20.1 The Client shall, and shall procure that its officers, employees, agents and any other persons who perform the Services for and on behalf of it in connection with a Contract shall:
- 20.1.1 comply with all applicable Anti-Bribery Laws;
  - 20.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;
  - 20.1.3 comply with Digital Origin's Ethics and Anti-bribery Policy (available at [www.digital-origin.co.uk](http://www.digital-origin.co.uk) or at such other URL as is notified to the Client by Digital Origin from time to time) as Digital Origin may update from time to time ("**Relevant Policies**");

- 20.1.4 have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;
  - 20.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;
  - 20.1.6 not do or omit to do any act or thing which causes or may cause Digital Origin and/or any member of the Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;
  - 20.1.7 without prejudice to condition 20.1.6, not do or omit to do any act or thing which causes or may cause Digital Origin or any member of the Group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if Digital Origin was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and
  - 20.1.8 provide Digital Origin and any member of the Group (at the Client's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.
- 20.2 The Client shall:
- 20.2.1 promptly report to Digital Origin and any member of the Group any request or demand for any financial or other advantage of any kind received in connection with the performance of the Contract by it or by its officers, employees, agents or any other person who performs the services for or on behalf of it in connection with the Contract; and
  - 20.2.2 upon request, certify in writing signed by a director of the Client that the Client has complied with all of its obligations under this condition 20. The Client shall provide such supporting evidence of compliance as Digital Origin or any member of the Group may reasonably request.
- 20.3 The Client warrants to Digital Origin and all members of the Group that it has not, and its officers, employees, agents and any other persons who perform the services for or on behalf of it in connection with the Contract have not breached any applicable Anti-Bribery Laws; been convicted of any offence involving bribery, corruption, fraud or dishonesty; offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act; done or omitted to do any act or thing which constitutes or may constitute an offence under the Anti-Bribery Laws; done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or commit an offence under any Anti-Bribery Law; done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 Bribery Act; or given any financial or other advantage, inducement or reward to any person in connection with the awarding or continuation in force of the Agreement.
- 20.4 Digital Origin and/or any member of the Group may terminate the Contract immediately if the Client is in breach of any of its obligations under this condition 20 or if Digital Origin or any member of the Group has reasonable cause to believe that such a breach has occurred or may occur. If Digital Origin or any member of the Group terminates the Contract in accordance with this condition 20.4, the Client shall not be entitled to claim any compensation or any further remuneration from Digital Origin or any member of the Group.
- 21 GENERAL**
- 21.1 Subject to any deemed acceptance by the Client under condition 9.2.2 and/or condition 18.2, no forbearance or indulgence shown or granted by Digital Origin to the Client whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of Digital Origin against the Client or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.
- 21.2 **Force Majeure:** Neither Party will be liable for any breach of the Agreement and/or any Contract due to any cause beyond that party's reasonable control including, but not limited to Act of God; insurrection or civil disorder; war or military operations; national or local emergency; epidemic or pandemic; act or omission of Government, fire, explosion, flood or the act or omission of any party for whom the party affected is not responsible and which is beyond the affected party's reasonable control (including other telecommunications service providers). The affected party will use all reasonable endeavours to bring the event to an end or find a solution by which the Agreement and any affected Services Agreement may be performed despite the event. If the affected party is prevented from performing its obligations for a continuous period in excess of fourteen (14) days either Party may terminate the Agreement and any affected Services Agreement immediately by serving written notice on the other Party in which case neither party has any liability to the other except as regards rights and liabilities which have already accrued which will continue to subsist or are expressed to continue beyond the termination of the Agreement and/or any Services Agreement (as applicable).
- 21.3 **Governing Law and Jurisdiction:** The Agreement, any Contract (including in relation to non-contractual disputes or claims) and any disputes or claims arising out of or in connection with it or the subject matter or formation shall be governed by and construed in all respects in accordance with English law. The parties irrevocably submit to the



- exclusive jurisdiction of the English courts to settle any dispute or claim (including in relation to non-contractual disputes or claims).
- 21.4 **Third Party Rights:** Subject to condition 21.5, this Agreement and any Contract are made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 21.5 **Assignment:** Digital Origin shall be entitled to assign the benefit of the Agreement and/or any Contract and/or any Services Agreement to any Associated Company without the Client's consent.
- 21.6 **Subcontracting:** Digital Origin may sub-contract all or any part of the Services to a third party without the consent of the Client, providing that Digital Origin remains liable (subject always to the limitations and exclusions of liability contained in this Agreement) for the acts and omissions of its sub-contractors.
- 21.7 **Notices:** Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address or fax number given on the Order Form (or such other address as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first class post or recorded delivery.
- 21.8 A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 21.8 is not within Normal Working Hours, at 9.00am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 21.9 Any director or representative of the Client who signs on behalf of the Client will be deemed an authorised signatory and thereby Digital Origin shall be entitled to rely on such signatory as binding the Client to the obligations set out in these Conditions and any relevant Service Specific Conditions in all respects.
- 21.10 **Cumulative Rights:** Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 21.11 **Non-Solicitation:** The Client shall not, without the prior written consent of Digital Origin, at any time from the date of the Contract to the expiry of six months after the termination of the Contract (or in the case of multiple Contracts the last Contract to be terminated or expire), actively solicit or entice away from Digital Origin or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Client for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of Digital Origin in the provision of the Services to the Client. Any consent given by Digital Origin in accordance with this condition 21.11 shall be subject to the Client paying to Digital Origin a sum equivalent to 20% of the then current annual remuneration of Digital Origin's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee or sub-contractor.
- 21.12 **TUPE Indemnity:** The Client agrees to indemnify and keep indemnified Digital Origin against all liabilities, Losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by Digital Origin arising out of or connected with:
- 21.12.1 the transfer or alleged transfer of the employment or engagement of any Employee to Digital Origin pursuant to the Employment Regulations or otherwise; and
  - 21.12.2 the employment or engagement or termination of employment or engagement by the Client or a Contractor and/or any Subcontractor of any Employee.
- 21.13 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of Digital Origin in connection with the Services.
- 21.14 **Invalidity:** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 21.15 **Severance:** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or amended, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.
- 21.16 **Variation:** Subject to conditions 9.2.2, 18.1 and 18.2, no variation of this Agreement and/or any Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 21.17 **No publicity:** Except with the prior written consent of the other party, neither party shall make any public statement about the Equipment, the Leased Equipment and/or Services or otherwise publicise the Contract or any information relating to it.
- 21.18 **No partnership or agency:** Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except where, and to the extent that, the Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.



- 21.19 **Further assurance:** Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the Contract.
- 21.20 **Entire Agreement:** This Agreement and any Services Schedules (and documents referred to herein and therein (the "**Documents**") constitutes the entire complete and only agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings or statements of any nature made by the parties, whether oral or written, with respect to such subject matter.
- 21.20.1 Each party acknowledges that it has not relied on any statements, warranties or representations, understandings or agreements (whether written or oral) given or made by or on behalf of any other party under or in connection with this Agreement and/or any Services Schedule other than those expressly set out or referred to in the Agreement. Each party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under this Agreement and any Service Schedule.
- 21.20.2 The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation, arrangement, understanding or agreement not contained in the Agreement or for any breach of any representation not contained in the Agreement (unless such misrepresentation or representation was made fraudulently).
- 21.21 **Counterparts:** This Master Services Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument. Transmission of an executed counterpart of the signature page of this Master Services Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Master Services Agreement. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## PART 1: MOBILE SERVICES

### 1. DEFINITIONS

Capitalised terms used in these terms and conditions for Mobile Services shall have the following meanings:

**"Actual Spend"** means the Client's expenditure with Digital Origin during the Minimum Agreement Term on the Services excluding purchases of Handsets or Equipment and excluding VAT;

**"Connection"** means connection by Digital Origin of a Handset to the Network under the Services Agreement via a SIM Card, and "Connect" shall be construed accordingly;

**"GSM Gateway"** means any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile to mobile call;

**"Handset"** means any mobile device, telephone handset, tablet or other mobile telecommunications device excluding the SIM Card;

**"IMEI Number"** means the unique identifying number allocated to a Handset;

**"Industry Price Change"** means a variation in charges that occurs during the Minimum Agreement Term as a result of a determination by the regulator or from variations in wholesale passed on to Digital Origin by wholesale mobile providers;

**"Migration"** means a transfer of a telephone number to Digital Origin from the same Network to which the number is to be connected under the Services Agreement;

**"Minimum Agreement Term"** means the minimum term that the Client agrees to receive the Services over;

**"Minimum Spend"** means the minimum expenditure that the Client agrees to spend with Digital Origin on the Services excluding purchases of Handsets or Equipment and excluding VAT within the Minimum Agreement Term;

**"Minimum Holding" or "Minimum Number of Connections"** means the minimum aggregate number of Connections as specified in the Services Agreement that the Client agrees to connect to the Services within 90 days of the commencement of the Agreement, and to maintain for the balance of the term of the Agreement;

**"Minimum Term per Connection"** means the minimum period as set out in the Services Agreement for each Connection;

**"MSA"** means the version of Digital Origin Master Services Agreement referenced on the Order Form, or otherwise the applicable master services agreement agreed between the parties;

**"PAC"** means porting authorisation code;

**"Port"** means a transfer of a telephone number to Digital Origin from a network which is different from the Network to which the number is to be connected under the Services Agreement;

**"Services Agreement"** means an agreement between Digital Origin and the Client on these terms and conditions and the terms and conditions of the MSA incorporated by clause 2.1, **including the Pricing Schedule, the Order Form, any addenda and any Additional Orders accepted by Digital Origin**;

**"Services"** means the provision and maintenance of a Connection enabling the Client to conduct data, SMS and voice communications or any other service provided by means of the Network or in relation to the Equipment, all as specified in the Services Agreement; and

**"SIM Card"** means the subscriber identity module (a card containing identifying information) which enables a Handset to access the Network.

### 2. SERVICES AGREEMENT

2.1 The Services Agreement shall be deemed to incorporate the terms and conditions of the MSA. In the event of any conflict, the terms and conditions of the Services Agreement prior to such incorporation shall prevail.

### 3. OWNERSHIP OF THE EQUIPMENT

3.1 Title to the Equipment shall only pass to the Client when Digital Origin has received full payment for the Equipment, provided that no other sums are then overdue to Digital Origin from the Client on any account. Digital Origin shall retain title to all Equipment subject to a Credit. Title to Handsets provided using a Hardware Account or on a free of charge basis shall pass to the Client once the aggregate Minimum Spend or the Minimum Holding for the entire Minimum Agreement Term has been met and all charges incurred during the Minimum Agreement Term have been paid.

### 4. PAYMENT - IMPORTANT

4.1 The Monthly Charge shall be invoiced in advance, and all other charges for the Services one (1) month in arrears, in accordance with the Pricing Schedule or otherwise as varied from time to time in accordance with the MSA and/or Services Agreement. If the Services Agreement does not specify a Pricing Schedule for a Connection, the Pricing Schedule specified for the other Connections in the order to be connected to the same Network and service shall apply.

4.2 The Client will pay Digital Origin's Fee in relation to access to foreign telecommunications networks (roaming charges) and use of services provided by the foreign network provider, and a Fee in relation to any missed appointment for the installation of Equipment by Digital Origin.

4.3 Digital Origin's charges for call destinations and Services not stated on the Pricing Schedule, and roaming charges, are available on request and may change from time to time without notice to reflect changes made by the Network.

4.4 Calls to public emergency services via the Services will be free of charge.

4.5 The Client can request a monthly spend limit on the Services provided that it gives written notice to Digital Origin of any such request at least thirty (30) days prior to when the Client requires any such spend limit to be applied ("**Spend Limit**"). The Client acknowledges that if it uses the Services outside of the UK, any roaming charges or other charges arising from such use may exceed any Spend Limit put in place due to the delay in such charges being applied by the relevant network providers for non-UK based calls, but agrees that it shall remain liable to pay for any such charges, even if the Spend Limit is exceeded.

### 5. DURATION

5.1 The Services Agreement shall commence on the Agreement Date and shall continue in respect of each Connection unless and until terminated:

5.1.1 by Digital Origin in accordance with clause 8.6 or the General Terms and Conditions of the MSA; or  
 5.1.2 by either party giving to the other not less than the notice period set out in condition 2.2.1 of the General Terms and Conditions of the MSA in respect of any individual Connection, subject to any Minimum Usage commitments relating in this Agreement.

## 6. LIABILITY - IMPORTANT

6.1 The Client acknowledges that, owing to the nature of telecommunications equipment and computer software, the Services will not be fault-free and without interruption and that the quality and coverage of the Services may from time to time be adversely affected by local geography, topography and physical features (such as by signal deflection by buildings), atmospheric conditions, the availability and capacity of the Network and/or other networks (which are both shared with other users) or the Client's (or the users of the Services') equipment.

6.2 Subject to clause 12.5 of the MSA, Digital Origin shall have no Liability for any loss or damage sustained by the Client relating to:

6.2.1 the security of the Client's (or the users of the Services') equipment, the internet, 'WAP' sites, web content servers, applications and/or public networks;

6.2.2 any loss, or lack or failure of security, of data transmitted or received using the Services;

6.2.3 any use of software in relation to the Services which is not approved for use with the Services by Digital Origin;

6.2.4 any incompatibility of the Client's (or the Services users') equipment with the Services, and the Client shall indemnify Digital Origin against any such incompatibility; and/or

6.2.5 any matter referred to in clause 6.1.

## 7. USE OF HANDSETS AND SIM CARDS

7.1 The Client shall:

7.1.1 notify Digital Origin as soon as practicable if it is aware that any Handset or SIM Card is lost or stolen;

7.1.2 use the Handsets supplied under a Hardware Account in the Services Agreement only in respect of the Network;

7.1.3 use any Handset and SIM Card provided by Digital Origin for use together only in conjunction with each other and not with any other SIM Card or Handset; and

7.1.4 not connect, or continue connection, to the Network of any GSM Gateway without Digital Origin's prior written consent (at Digital Origin's absolute discretion and subject to such terms and conditions as Digital Origin may in its absolute discretion specify. Digital Origin reserves the right to amend any such terms and conditions from time to time on fourteen (14) days' notice to the Client.)

7.2 The Client accepts that if any allocated telephone number remains unconnected or is disconnected from the Network for any reason for a continuous period of two (2) consecutive months Digital Origin may withdraw and re-allocate the telephone number without liability, upon notice to the Client, where requested to do so by the Network.

## 8. MINIMUM USAGE - IMPORTANT

8.1 In consideration of Digital Origin providing the Services in accordance with the Pricing Schedule, the Client agrees to:

8.1.1 **meet or exceed the Minimum Number of Connections;**

8.1.2 **use the Services until expiry of the Minimum Agreement Term;** and

8.1.3 **meet or exceed the Minimum Spend (if applicable) during the Minimum Agreement Term.** For the avoidance of doubt any expenditure after expiry of the Minimum Agreement Term shall not contribute to the Minimum Spend unless agreed in writing otherwise.

8.2 **If upon expiry of the Minimum Agreement Term the Actual Spend is less than the Minimum Spend, Digital Origin shall be entitled to charge the Client the difference between the Minimum Spend and Actual Spend on completion of the Minimum Agreement Term.**

8.3 **If the Client fails to maintain the Minimum Number of Connections in any month of the Agreement, Digital Origin shall be entitled to charge the Client a shortfall charge of £7.50 per month for each connection below the Minimum Number of Connections in each month. For example, if the Minimum Number of Connections in a billing month is 100 and the Client has 90 connections then the shortfall charge shall be 10 \* £7.50 = £75.00.**

8.4 For the avoidance of doubt, clause 9.1 (if applicable) may be enforced by Digital Origin concurrently with, and as a separate remedy to, this clause 8.

8.5 The Minimum Spend shall be unaffected by any variation in the charges under the Services Agreement, including by an Industry Price Change. Following an Industry Price Change, if requested by the Client, Digital Origin shall:

8.5.1 undertake call analysis of the Client's usage of the Services by minutes and by cost;

8.5.2 discuss with the Client its telecommunications requirements and usage generally; and

8.5.3 provide to the Client alternative terms for its continued use of the Services, including charges, Credits, Minimum Spend and Minimum Agreement Term.

8.6 If no chargeable traffic is carried by a Connection for a period of sixty (60) consecutive days Digital Origin may, without prejudice to its other rights and remedies, cancel the Connection and the Client shall pay to Digital Origin the termination charges specified in clause 9.1 in relation to that Connection.

## 9. CONSEQUENCES OF TERMINATION - IMPORTANT

9.1 If any Connection is disconnected prior to the Minimum Term per Connection, the Client shall pay to Digital Origin a termination charge equal to the Monthly Charge that would otherwise be due for the remainder of the Minimum Term per Connection rounded up to the nearest whole month.

9.2 If the Services Agreement is terminated prior to expiry of the Minimum Agreement Term, the Client shall pay to Digital Origin a termination charge equal to the difference between the Minimum Spend and Actual Spend.

9.3 Upon whole or partial termination of the Services Agreement, the Client's right to possession of any Handset or Equipment related to such termination which is not paid for, or which is subject to a Credit, shall cease.

## APPENDIX 1

### Our Acceptable Use Policy

#### 1. What is an Acceptable Use Policy (AUP) and when is it used?

This Acceptable Use Policy sets out the rules which apply to use of our broadband internet connection services, what your responsibilities are and what activities are permitted and prohibited under this AUP of those services. In general, customers should make sure that they don't use our Internet Services for unlawful or illegal purposes, or to inconvenience other internet users.

Compliance with this AUP ensures you may continue to enjoy and allow others to enjoy optimum use of our Internet Services.

We'll only use our AUP in severe cases of misuse where, for example, a customer's connection is being used for purposes that are illegal, unlawful or inconveniencing other Internet users.

#### 2. What are my responsibilities?

You are responsible for your actions on our network and systems you access through your Internet Service. If you act recklessly or irresponsibly in using your Internet Service or your actions endanger any person or the integrity or security of our Network, systems or equipment, your access may be restricted, suspended or terminated, without prior notice. In particular, you agree that you will not use, attempt to use or allow your Internet Service to be used to:

- ☐ store, send or distribute any content or material which is restricted, prohibited or otherwise unlawful under any applicable law or which is likely to be offensive or obscene to a reasonable person;
- ☐ store, send or distribute confidential information, copyright material or other content which is subject to third party intellectual property rights, unless you have a lawful right to do so;
- ☐ do anything, including store, send or distribute material which defames, harasses, threatens, abuses, menaces, offends, violates the privacy of, or incites violence or hatred against, any person or class of persons, or which could give rise to civil or criminal proceedings;
- ☐ do any other act or thing which is illegal, fraudulent or otherwise prohibited under any applicable law or which is in breach of any code, standard or content requirement of any other competent authority;
- ☐ do anything, including store, send or distribute material, which interferes with other users or restricts or hinders any person from accessing, using or enjoying the Internet, our Services, Network or systems;
- ☐ forge header information, email source address or other user information;
- ☐ access, monitor or use any data, systems or networks, including another person's private information, without authority or attempt to probe, scan or test the vulnerability of any data, system or network;
- ☐ compromise the security or integrity of any network or system including our Network;
- ☐ deliberately access, download, store, send or distribute any viruses or other harmful programs or material;
- ☐ send or distribute unsolicited advertising, bulk electronic messages or otherwise breach your spam obligations set out in this AUP, or overload any network or system including our Network and systems;
- ☐ use another person's name, username or password or otherwise attempt to gain access to the account of any other user;
- ☐ tamper with, hinder the operation of or make unauthorised modifications to any network or system; or
- ☐ authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the above acts.

#### 3. What is SPAM and how does it apply to this AUP?

Also known as junk mail or Unsolicited Commercial Email (UCE), the term "spam" refers to submitting a commercial email to a large number of recipients who have not requested or opted to receive it and have no reasonable expectation to receiving email from the sender.

Email sent by a company or an organisation with whom the recipient has established a relationship or which was requested or accepted (opt-in requirement) by the recipient is not considered spam. Spamming is not only harmful because of its negative impact on consumer attitudes toward Digital Origin, but also because it can overload Digital Origin's network and disrupt service to Digital Origin subscribers.

As a user of a Digital Origin email service platforms you must:

- ☒ Include a conspicuous notice identifying the message as an advertisement or a commercial solicitation; ☐
- ☒ Provide a valid physical postal address in each email you send;
- ☒ Include a valid email address or an unsubscribe link allowing the recipient to opt-out, either by replying to a valid return address, or by using an Internet-based unsubscribe mechanism;
- ☒ Process opt-out requests for at least 30 days after the sending of the commercial email and stop sending email to the requestor within 10 business days upon request;
- ☒ Set up and provide Digital Origin with a valid "abuse" email address in order to process any SPAM positive complaint; and
- ☒ Comply with any law and/or regulation in force that covers direct marketing regulations.

You may not:

- ☒ Include false, deceptive or misleading header information, including a false domain name or address;
- ☒ Send emails with a false, deceptive or misleading subject line;
- ☒ Include sexually explicit content in your email;
- ☒ Add an address into your list without the subscriber's permission;
- ☒ Maintain an email address in your list for which an opt-out request has been received;
- ☒ Use lists older than 6 months without obtaining a confirmation of the subscriber's permission;
- ☒ Harvest email addresses from websites or web services;
- ☒ Generate email address by using a dictionary attack combining letters and numbers into multiple permutations;
- ☒ Use scripts or automated ways to register for multiple email or user accounts to send commercial emails;

- ❑ Relay emails through a computer or network without permission;
- ❑ Use your subscription form to subscribe users for an unrelated list or to send them content differing from the one they have agreed to;
- ❑ Send emails with added words/characters in an attempt to bypass Bayesian filters;
- ❑ Send, or attempt to send, Spam of any kind from third-party networks using a return email address that is hosted on the Digital Origin Network, or referencing an email address hosted on the Digital Origin Network;
- ❑ Send email messages which result in complaints from the recipient or from the recipient's email provider, or which result in blacklisting of the sender's email address or mail server;
- ❑ Send email messages which are excessive and/or intended to harass or annoy others;
- ❑ Continue to send email to a recipient that has indicated that he/she does not wish to receive it;
- ❑ Take any actions intended to cloak the user's identity or contact information, including but not limited to intentionally omitting, deleting, forging or misrepresenting message headers or return addresses; or
- ❑ Take any other action that results in blacklisting of the sender's email address or mail server, or negatively impacts other users who use the email service.

In the absence of positive, verifiable proof to the contrary by a user, Digital Origin will consider complaints by recipients of emails to be conclusive that the recipient did not subscribe or otherwise request the email(s) about which a complaint was generated.

#### **4. Bulk Email Rules**

The use of our Network to send bulk email whether opt-in or otherwise, and the use of bulk email to promote a site on our Network is strictly forbidden. Only users with a valid email account are permitted to send "opt-in" bulk email. If such email is reported to us as being spam, we will take appropriate action as described above.

Our bulk mail rules also apply to mailing lists or mailing services you may contract with. The policy is stated as follows:

An acceptable mailing list will be focused at a targeted audience that has voluntarily signed up for your e-mail information or that has made their e-mail address available for distribution of information from you. The list must also allow for automatic removal by all end users with non-distribution in the future.

#### **5. What happens if I excessively use the Internet Service?**

You must use your Internet Service in accordance with any download or capacity limits stated in the specific plan that you subscribe to for the use of that Service.

We may limit, suspend or terminate your Internet Service if you unreasonably exceed such limits or excessively use the capacity or resources of our Network in a manner which may hinder or prevent us from providing services to other customers or which may pose a threat to the integrity of our Network or systems.

If Digital Origin determines that excessive bandwidth, disk space utilisation or high CPU loads are adversely affecting Digital Origin's ability to provide service to other users, Digital Origin may take immediate action. Digital Origin will attempt to notify the account owner as soon as possible.

#### **6. What happens if I breach the AUP?**

If we find that our Internet Service is being misused, we'll get in touch with you to let you know we're aware of what's going on. If we need to, we'll work with you to resolve the issues without taking any further action as much as possible, but we reserve the right to do so, if necessary.

#### **7. Does the AUP ever change and if so, how will I know?**

Yes, so we recommend that you visit our website regularly to check for any updates or amendments to the Acceptable Use Policy. We'll make sure that any updates or amendments are clearly signalled at the top of the page.

## APPENDIX 2

### Our Privacy & Data Policy

#### Protecting your information

At Digital Origin, the safeguarding of your information is paramount and is something that we take very seriously. One of the ways we do this is by adhering to the requirements of Data Protection legislation in the UK which has changed as part of the General Data Protection Regulation (GDPR for short) in force from 25 May 2018.

Before we get started, here are a few things to keep in mind. When we talk about 'you' or 'your' we mean the person who is the account holder and has a contract with Digital Origin Solutions Limited.

Where we talk about Digital Origin we mean Digital Origin Solutions Limited that provides your products and services including broadband, landline and mobile services and/or products.

Digital Origin will be the Controller of the information that we collect about you when you use our online services [www.digital-origin.co.uk](http://www.digital-origin.co.uk). We will also collect information when we provide you with, or answer questions about, our products and services, including broadband, landline, mobile. Our contact details are set out below.

This Privacy & Data Policy gives you detailed information on when and why we collect your information, how we use it, and how we keep it secure. Please take a moment to read it so you know what choices and rights you have about the information we may ask you for or collect about you. This policy may change from time to time so it's a good idea to come back and read through it every now and then. If there's a significant change to the policy, we'll let you know straight away.

Now for the legal stuff....

#### What kind of information do you collect, when and how?

There are a few ways we collect your information. This could be when you:

- Order our products or services (whether via this website, over the phone, in one of our stores or with our field agents)
- Create and log in to your My Digital Origin account on our website
- Use our products or services e.g. mobile
- Contact us by telephone, email, electronic messaging (such as SMS, MMS or live chat tools) or post
- Visit this website
- When someone refers you for our products and services
- We also collect information about you from third parties. An example of this could be from members of your household, from content providers and/or delivery service providers

We'll never keep more information from you than we need to. The types of information we collect will depend upon: (i) whether we collect the information from you or from someone else; and (ii) how / when we collect that information.

#### When will you collect information from me?

- When you apply for and/or purchase our products or services, create an online account, or contact us with queries we'll ask you to give us, where necessary, your generic details (i.e. name, surname, date of birth), your contact details (i.e. address, email, phone number), your financial details (i.e. bank account, payment method, credit card number)
- When you talk to us on the phone, email, communicate via electronic messaging (such as SMS, MMS or live chat tools) or write to us
- In customer surveys from time to time, to help us provide you with improved products and services, we might ask you to fill in a questionnaire, just so you can let us know how we're doing. When sending you a questionnaire we'll ask you to provide us with the following information: name, account number, email address, telephone number

#### What information will you collect from me?

- When you visit this website, we'll use cookies (which are stored on your device(s) – your laptop, mobile phone, tablet etc.) to collect information about your use of our online services (See our Cookies Policy for more details)
- When you use Digital Origin services (such as our Broadband, home phone lines, mobile phone lines) we collect information about your use of those services including the following:
  - Call data (i.e. your telephone number, inbound / outbound caller number, time and duration of the call, your device details)
  - Usage data (i.e. frequency, time, location and duration of service usage, data traffic (internet / minutes / SMS) used per month)
  - Billing data (your financial details, bills and its components), which may be used to validate your state of residence is the UK, for the purposes of providing you with access to UK-only online content while you are temporarily visiting another EU member state
  - Payment and transaction data
  - Interactive data (apps usage data, websites usage / visits data)
  - Device Data (IP address, device make and manufacturer, browser information and other similar identifying information required from your devices to communicate with websites and applications on the internet)

We may also monitor, record, store and use the communications we have directly with you to improve the quality of our customer service and/or for training, operational and compliance purposes



### Information we collect from third parties:

We may supplement the information that we collect from you and about your use of the services as described above, with information that we receive from third parties.

This may include:

- Data we collect from other members of your household
- Data we receive when someone refers you for our products and services
- Data from other organisations who have obtained your permission to share information about you with us
- Information we get from reporting agencies, such as credit reference agencies. They give us information about your financial history so we can assess creditworthiness and product suitability, check your identity, manage your account, trace and recover debts and prevent criminal activity. We'll continue to exchange information about you with credit reference agencies on an ongoing basis, including about your settled accounts and any debts not fully repaid on time. Credit reference agencies will share your information with other organisations. Your data will also be linked to the data of your spouse, any joint applicants or other financial associates. The identities of the Credit Reference Agencies and the way they operate are explained in more detail via <https://www.equifax.co.uk/crain>

Here are a few places third party data comes from:

- Companies or individuals that introduce you to us
- Credit Reference Agencies
- Fraud Prevention Agencies
- Market Researchers
- Public Information sources such as the electoral roll

### Why do you collect my information?

There are valid reasons why we need information about you and how we hold it:

#### (a) Where it's necessary to perform our contract with you

- To determine your eligibility for our products and services / whether they're available in your area
- To process your orders for our products and services and to bill you for the same
- To provide you with the products and services you have ordered from us
- To provide access to privileged areas of our online services (MyVM account)
- To respond to any questions or complaints you may have regarding our products and services

#### (b) Where you've given us your consent

- To send you details of products, services, special offers and rewards that we think will be of interest to you. However, we hate junk mail as much as you do so it's up to you to decide whether or not you want to receive this information. We'll cover more of that further down
- To occasionally carry out market research
- To administer contests and competitions

Where we process your information on the basis of your consent, you've got the right to withdraw your consent at any time. You can do this by:

- Accessing Marketing Preferences page, or contacting us via the Contact Us page on the website
- This won't affect the lawfulness of anything we've done with your information on the basis of consent prior to that point

#### (c) Where we've got a legitimate interest – which is where we've got a good reason to process your data; e.g. situations where Digital Origin needs to process information to operate its business. However we always do this by considering the safeguards and impact to you.

Processing activities based on a legitimate interest are:

- To provide you with service information and updates in relation to the products and services you've ordered from us
- To enable us to gain customer insights and to review, develop and improve our products, services and special offers to ensure we are giving customers what they want
- Defining types of customers for new products or services and personalise service offers to you
- To check your credit information with credit rating agencies to guarantee payment of our services
- Complying with laws and regulations that apply to us
- To provide you with access to additional services, such as Virgin Red
- To analyse your telephony and mobile internet data to prevent fraud and warn you about nuisance calls
- To personalise your experience of our services e.g. your interaction with our call centres, digital platforms based on your usage and viewing profile so that we can



recommend shows you might enjoy, or tailor advertising contained within our services so that it corresponds with your likely interests

- To provide you with tailored advertising, features and content. We use the information we hold about you to tailor the adverts, content and features you receive to make them more relevant

**(d) Where we've got a legal obligation to process personal information:**

Digital Origin is required to capture, retain and share some personal data for legal reasons such as:

- Where there's a need to block unauthorised or illegitimate content
- Responding to courts and enforcement authorities
- To help authorities with any security, crime or anti-terrorism enquiries
- To demonstrate compliance with anti-money laundering rules
- To monitor any other regulatory requirements linked with treating customers fairly and processing records properly
- Administering call caps

**Who do you share my information with?**

Sometimes we'll need to share the information we hold about you with others. We provide information about you:

- To our employees and field agents so they can administer, and deal with any questions or complaints you've got about your account with us and/or the products and services provided to you by Digital Origin now or in the future
- To search the files of a credit reference agency, which will keep a record of that search, when you apply for our products or services. This is so that we can confirm your eligibility for our products and services and guarantee a regular payment for those
- Additionally, details of how you conduct your account with us may also be disclosed to the credit reference agency. This information may be used by other organisations in assessing applications from you and members of your household
- For the purposes of fraud prevention and screening preventing nuisance calls
- We may use aggregate information and statistics for the purposes of monitoring usage of our services in order to help us develop our services, and may provide such aggregate information to third parties, for example, content partners and advertisers. These statistics do not include information that can be used to identify any individual
- To the marketing agencies we work with when creating marketing campaigns, special offers and promotions targeted for you. We may share your information with our partner companies who provide you with customer service on our behalf or help deliver/provide the product or service you have chosen
- Our service providers in order for us to provide our services to you
- We may share your information to comply with legal and regulatory obligations to protect or enforce our rights or that of a third party such as analysing activity on our network to help block unauthorised or illegal content access or publication; for the purpose of protecting vital interests, national security, statutory obligations or responding to requests from courts and enforcement authorities
- If you use Direct Debits we'll share your data with the Direct Debit scheme
- If you apply for mobile phone insurance through us we'll pass your personal details onto the insurer

Where we share your personal data with another company we make sure that they respect your data protection rights too. We do not share your personal data with some companies that are based outside the European Economic Area.

We only share your data with other controllers if this is directly requested by you, for example for your number porting to a different service provider.

We won't pass on your personal information to third parties except in accordance with this policy and our General Terms and Conditions or where we are required to disclose that information in order to comply with any legal or regulatory requirements.

**How do you protect my information?**

The security of your information is really important to us. Any information sent to us is protected using robust security methods. The methods we use are industry-standard ensuring data is safeguarded whilst being sent over unprotected communications paths such as the internet. When it reaches us, we store it securely and only provide access to it by those authorised. Although we safeguard your personal information once received, Digital Origin cannot guarantee the safety of any personal information you transmit to us using online methods.

Our security measures include:

- Encryption of data where appropriate
- Regular penetration testing of systems

- Security controls which protect the entire Digital Origin Information Technology infrastructure from external attack and unauthorised access
- Regular cyber security assessments of all service providers who may handle your personal data
- Regular scenario planning and crisis management exercises to ensure we are ready to respond to cyber security attacks and data security incidents
- Internal policies setting out our data security approach
- Training for employees on security and privacy

We'll never ask you for your Digital Origin identification, on-line passwords or PIN numbers directly associated with your Digital Origin account in any unsolicited phone calls or unsolicited emails. In accordance with our General Terms and Conditions, you're responsible for keeping your password and PIN secure and we very strongly recommend you do not disclose them to anyone (unless you wish to authorise them to access your account and potentially incur charges on your account).

#### How do you keep my information?

We collect and store your data safely and only for the time strictly necessary to operate services provided to you by Digital Origin and/or based on the reasons that we process your personal data. Afterwards it'll either be destroyed or anonymised.

When determining the relevant time we store information periods, we take into account factors such as:

- Legal obligation(s) requiring data to be kept for certain periods of time
- (Potential) disputes
- Guidelines issued by the UK's data protection authority

A few examples for how long we'll keep your data:

- Unless you ask us not to, we store your generic details (i.e. name, surname, contact details) for up to two years after you stop being our customer, to contact you just in case you change your mind
- We keep your billing data for 7 years, for tax purposes

#### What rights do I have about accessing my information?

Here we'll explain the rights you have regarding your information:

Rights	What does this mean?
1. The right to be informed	You have the right to be provided with clear, transparent and easily understandable information about how we use your information and your rights. This is why we're providing you with the information in this Privacy & Data Policy.
2. The right of access	<p>You're welcome to ask us what information we have about you, any time you like.</p> <p>You have the right to obtain access to your information (if we're processing it), and certain other information (similar to that provided in this Privacy &amp; Data Policy).</p> <p>This is so you're aware and can check that we're using your information in accordance with data protection law.</p> <p>We won't charge for this and we'll do our best to get details back within 30 days.</p> <p>Check out the Contact Us section if you want to find out how to get access to your information.</p>
3. The right to rectification	You're entitled to have your information corrected if it's inaccurate or incomplete. Just let us know where to make the changes!
4. The right to erasure	This is also known as 'the right to be forgotten' and, in simple terms, enables you to request the deletion or removal of your information where there's no compelling reason for us to keep using it. This is not a general right to erasure; there are exceptions.
5. The right to restrict processing	You have rights to 'block' or suppress further use of your information. When processing is restricted, we can still store your information, but may not use it further. We keep lists of people who have asked for further use of their information to be 'blocked' to make sure the restriction is respected in future.
6. The right to data portability	You have rights to obtain and reuse your personal data for your own purposes across different services. e.g. if you decide to switch to a new provider, this enables

	you to move, copy or transfer your relevant information easily between our IT systems and theirs safely and securely, without affecting its usability, such as your name and address.
7. The right to object	You have the right to object to certain types of processing, including processing for direct marketing (which we do only with your consent).
8. Rights in relation to automated decision making and profiling	<p>We sometimes make automated decisions based on personal information you've supplied or we've collected from others about you. This helps us to make sure the decisions we make are quick, fair and correct based on what we know about you. These automated decisions can affect the products and services that we may offer you. We'll ensure that human intervention is possible where there are any concerns about the decision. We want to ensure that decisions about automated decisions such as credit approval are fair and transparent. We use technology to make decisions automatically or to build profiles about you. This technology uses logic that analyses your preferences and how you use our products and services, which helps us to improve your customer experience, making it more relevant for you and allowing you to get the most out of our products and services. What this means for you is that you will regularly receive from us personalised content (offers, promotions, etc.).</p> <p>We also use technology to make decisions automatically based on your credit score analysis, which allows us to guarantee your regular payments for our products and services. What this means for you is that we'll decide your eligibility for our products and services based on your credit history.</p>

To exercise any of these rights at any time, check out the Contact Us section.

#### How do you market your Products and Services?

- We'll automatically contact you with regard to your services, for example, with updates to your services, service disruption messages or bill payments.
- We may also, subject to your consent, use your personal information to contact you with information about special offers and rewards. But don't worry, your details won't be shared with other companies for marketing purposes without your consent.
- If you've given consent for us to contact you, then from time to time, we may contact you by mail, telephone, email, other electronic messaging services (such as text, voice, sound or image messages including using automated calling systems) with information about our products and services (including discounts and special offers).

#### Managing your Marketing Preferences

If you'd like to change your marketing preferences at any time you can do this in the following ways:

- By clicking on the Unsubscribe link in any marketing email from us
- By replying STOP in reply to a Marketing SMS sent by us
- By calling us. Call our team on 0333 3583 161
- By writing to us at the Digital Origin Service Address or sending us a message via the Contact Us page on the website.

Please remember that if you say you do not wish to receive any promotional material from us, this will preclude you from receiving any of our special offers or promotions which may be of interest