

General Terms and Conditions

These General Terms and Conditions including Schedule 1 shall govern the supply of the Products and Services (as defined below) by TeleWare PLC registered in England at TeleWare House, York Road, Thirsk, North Yorkshire YO7 3BX (hereinafter known as the "Company") and the Customer (as defined below)

1. STRUCTURE OF AGREEMENT

- 1.1 The Customer acknowledges and agrees that it enters into this Agreement for the Products and Services in the course of business and intends to use said Products and Services for business use only.
- 1.2 These GTCs incorporating the Relevant Supplementary Terms shall govern the supply by the Company of the Products and Services.

2. TERM

- 2.1 Subject to the parties rights of termination set out in the Agreement, this Agreement shall continue from the Effective Date until the expiry or termination of all Orders for the Products and Services under the Agreement.

3. GRANT

- 3.1 The Company hereby grants to Customer a non-exclusive revocable right to use Products and Services in accordance with this Agreement.
- 3.2 All rights not specifically and expressly granted to the Customer under this Agreement are reserved for the Company.

4. ORDERS

- 4.1 During the term of this Agreement the Customer may place individual written Orders with the Company for the supply of Products and Services, the availability of such Products and Services being confirmed by inclusion in the Price List. All Orders shall be on the Company's standard order form or in some other form agreed by the Company.
- 4.2 Every Order shall be subject to acceptance in writing by the Company. For the avoidance of doubt, nothing shall oblige the Company to accept any Order.
- 4.3 On acceptance of the Order by the Company, each Order shall form a separate contract for the relevant selected Product or Service and shall be subject to the terms of the GTCs, the Relevant Supplementary Terms, and Order. For the avoidance of doubt, an Order containing Products and Services provided pursuant to different Supplementary Terms shall be deemed separate Orders (and thereby separate contracts) for the purposes of the Agreement.
- 4.4 All Orders are subject to the terms of this Agreement and any terms proffered by the Customer shall have no effect.

5. PRICES AND PAYMENT

- 5.1 All Prices are exclusive of VAT. Customer shall bear the cost and shall be responsible for the timely payment of all relevant taxes, duties and assessments imposed upon Customer in connection with the payments due to the Company under this Agreement, including all VAT and any other sales taxes, withholding tax and other taxes.
- 5.2 Unless otherwise expressly provided in the Relevant Supplementary Terms or Order, the Price is due and shall be paid without setoff or deduction within 14 days of the date of the invoice or prior to shipment for any Products to be delivered outside the mainland United Kingdom.
- 5.3 Unless otherwise expressly provided in the Relevant Supplementary Terms or Order, all payments from Customer to the Company hereunder will be in pounds sterling by direct debit into the bank account nominated by the Company.
- 5.4 The Company reserves the right to charge interest at the rate of 3% over the base rate of HSBC Bank Plc on a daily basis on all monies outstanding after the due date until the actual date of payment (both before and after judgement).
- 5.5 The Company reserves the right at its sole discretion to reject Orders and / or delay shipment of Products or provision of Services where the aged debt of the Customer rises to a level unacceptable to the Company and where 5 days prior written warning of such action has been given by the Company to the Customer.
- 5.6 The Company or its authorised representative may on giving reasonable notice, at the Company's own expense, audit the records of the Customer relating to this Agreement to ensure the Customer is complying with the terms of this Agreement. Any such audit shall be conducted during regular business hours either remotely or at the Customer's premises. If an audit reveals that the Customer has underpaid the Price, the Company shall be entitled to require the Customer to make good the underpayment.

6. CONFIDENTIALITY

- 6.1 During the term of this Agreement and following termination hereof both parties undertake to keep confidential the Confidential Information received from the other party (the "disclosing party") and undertake not to use the same other than to enable it to perform its obligations under this Agreement. Accordingly, the parties shall not in any manner, directly or indirectly transmit, reveal, disclose, cause to be disclosed, publish, distribute, copy or make available any such Confidential Information to any party except those of the receiving party's employees who need access to the Confidential Information to enable it to carry out its obligations in accordance with the terms of this Agreement. In the event of such disclosure the Customer will obtain from such employees duly binding agreements to maintain in confidence the information to be disclosed to the same extent at least as the Customer is so bound hereunder.
- 6.2 The foregoing obligations will not apply if and to the extent that:
 - (a) the receiving party clearly establishes that the Confidential Information was already known to it at the time of receipt from the disclosing party; or
 - (b) the Confidential Information subsequently comes lawfully into the possession of the receiving party in good faith from a third party; or
 - (c) the Confidential Information is in the public domain other than through breach of this Agreement; or
 - (d) the Confidential Information is required to be disclosed by governmental, statutory, regulatory or judicial body and even then any such disclosure shall be subject to the confidentiality obligations prescribed by the relevant form.
- 6.3 Without limitation to clauses 6.1 or 6.2 Customer agrees to notify the Company in writing of any suspected or known breach of the obligations under this clause as soon as it becomes aware of such breach and shall implement such security procedures it uses for its own Confidential Information which it protects against unauthorised disclosure, appropriation or use.
- 6.4 For the purposes of this Agreement, Confidential Information means all information of a confidential nature or which is commercially sensitive or of a secret nature including information contained in or embodied in any software (such as the structure, sequence organisation and screen presentation), this Agreement, the specifications, and user manuals and all information relating to any and all aspects of the financial and business and operations of the disclosing party whether such information is marked as confidential or not. Such information may be expressed in any form including but not limited to orally.

7. PROPRIETARY RIGHTS

- 7.1 The Customer acknowledges that all Intellectual Property Rights in the Products and Services including all modifications and enhancements and related documentation (including all versions of any specification and user manual) are and shall remain the property of the Company or its third party suppliers.
- 7.2 Customer acknowledges that the Company's Confidential Information, software and Know-How and all related documentation may contain substantial trade secrets of the Company.
- 7.3 Customer shall not remove or alter any copyright, Mark or other proprietary notice on the Products or Service, or any part of it or on any other material whatsoever provided by the Company.

8. LIMITATION OF LIABILITY

CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.

- 8.1 The following provisions of this clause 8 set out the total liability of each party in respect of any breach of its obligations arising under or in connection with this Agreement whether in contract, tort (including negligence) and breach of statutory duty or otherwise howsoever arising and shall for the avoidance of doubt apply to any indemnity given by the Company under this Agreement. Subject to clause 8.2 and to the fullest extent permissible by law in no circumstances will either party be liable in contract tort or otherwise for any costs, claims, damages, losses or liabilities or expenses in respect of:
- (a) any direct loss of profit, excluding any element of the Price;
 - (b) any direct loss of anticipated savings; or
 - (c) any indirect loss or damage howsoever caused including without limitation:
 - (i) any loss of profit;
 - (ii) loss of use of money;
 - (iii) loss of anticipated savings;
 - (iv) loss of business;
 - (v) loss of opportunity;
 - (vi) loss of reputation;
 - (vii) loss of data;
 - (viii) any wasted expenditure; and/or
 - (d) any other consequential loss including pure economic loss.

For the avoidance of doubt, the sub-clauses of this clause 8.1 are intended by the parties to be severable.

8.2 Nothing in this Agreement shall limit or exclude:

- (a) either party's liability for fraud (including without limitation fraudulent misrepresentation) or for death or personal injury resulting from negligence;
- (b) either party's liability for any breach of clause 6;
- (c) the Customer's liability for any infringement of the Company's Intellectual Property Rights;

8.3 Without prejudice to clause 8.2, the Company's maximum aggregate liability for all claims made in relation to this Agreement:

- (a) in respect of loss of or damage to tangible property (which for the avoidance of doubt does not include data) whether belonging to Customer or any third party, shall not in any circumstances exceed £1,000,000 in respect of each event or series of connected events in any one Year; and
 - (b) in respect of any other loss or damage arising from the Products or Professional Services, the lesser of 115% of the Price paid by the Customer to the Company under the Order for the specific Products or Professional Services that are the subject of the Customer's claim or £1,000,000;
 - (c) in respect of any other loss or damage arising from the Services (other than the Professional Services), the lesser of 115% of the Price paid by the Customer to the Company under the Order for the specific Services that are the subject of the Customers claim under this Agreement in the Year in which the loss or damage occurred or £1,000,000.
- 8.4 The Prices of the Company have been set on the basis of the exclusions and restrictions of liability in this clause 8, and would be higher without those provisions. In the circumstances, Customer agrees that those provisions are reasonable and will accept risk and insure accordingly.
- 8.5 The provisions of this clause 8 shall continue to apply notwithstanding the termination of this Agreement (howsoever arising).
- 8.6 For the purposes of this clause 8, a "Year" shall mean a 365 day period (or a 366 day period if that period encompasses 29th February) commencing on 1st January.
- 8.7 Save as expressly provided for in this Agreement, no warranty, condition, undertaking or term, whether statutory, express or implied as to condition, satisfactory quality, performance, durability, fitness for purpose or otherwise is given or assumed with regards to the Products or Services and all such terms and warranties are hereby excluded to the fullest extent permitted by law.

9. TERMINATION

- 9.1 Subject to the provisions of Clause 10, without prejudice to a party's other remedies and accrued rights, and in addition to any rights provided in the Relevant Supplementary Terms either party shall have the right to terminate this Agreement or Order (including any Products or Services provided under such Order) immediately if: -
- (a) the other party commits a material breach of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 30 days of receipt of the request in writing from the other party to do so and a breach shall be considered capable of remedy if the party in default can comply with the provision in question in all respects other than as to the time of performance;
 - (b) the other party being a company suffers any distress or execution or a resolution or order to wind up the company is passed or made (otherwise than for bona fide solvent reconstruction or amalgamation) or goes into liquidation or becomes insolvent or has a receiver, administrative receiver or administrator appointed over all or any part of its assets or undertakings or an administration order is made in respect of the company or enters into an arrangement or composition with its creditors or ceases to carry on business.
- 9.2 Without prejudice to the Company's other remedies and accrued rights, and in addition to any rights provided in the Relevant Supplementary Terms, the Company may terminate this Agreement or Order (including any Products or Services provided under such Order) if following 10 days written notice any amount remains unpaid after the due date for payment.

10. CONSEQUENCES OF TERMINATION

- 10.1 Without prejudice to any other provisions in this Agreement expressed to have effect upon termination and save as provided in the Relevant Supplementary Terms, on termination of the Agreement or Order (in which case the following provisions shall apply to said Order):
- (a) all rights granted to Customer shall terminate;
 - (b) the Customer shall pay the Company within ten (10) days after such termination, all amounts that are owed to the Company under this Agreement.
- 10.2 In the event of termination of the Agreement or Order under Clause 9.1(a), such termination shall not affect the rights and obligations of either Party in respect of Orders accepted prior such termination, except in respect of the Order which is the subject of the relevant breach.
- 10.3 Termination of this Agreement shall not operate so as to affect such of the provisions of this Agreement as are expressed or implied to operate or have effect after termination of this Agreement.

11. DISPUTE RESOLUTION

- 11.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law save that the Company shall have the right to sue for breach of its Intellectual Property Rights and Know-How (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property Rights and Know-How might be taking place.
- 11.2 The Customer acknowledges and agrees the Company's business relies upon the protection of its Intellectual Property Rights, Confidential Information and Know-How and that in the event of a breach or threatened breach of Intellectual Property Rights, Confidential Information or Know-How, the Company will be caused irreparable damage and may therefore be entitled to injunctive or other equitable relief in order to prevent such a breach or threatened breach.
- 11.3 Subject to the above, the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.
- 11.4 Nothing in this clause shall however prevent either party from exercising any rights available pursuant to any other provisions of this Agreement.

12. FORCE MAJEURE

- 12.1 Neither party shall be liable for failure or delay in performing any of its obligations under this Agreement if such failure or delay is due to any circumstances beyond the reasonable control of the defaulting party ("Force Majeure"). This includes but is not limited to Acts of God, war, acts of terrorism, fire, explosion, earthquake, flood, strikes and labour disputes, the inability to obtain the materials, supplies, PSTN, power or equipment necessary to enable such party to perform its obligations under this Agreement and any act or order of any governmental or European Union authority or other regulatory body.
- 12.2 Each party shall promptly notify the other in writing of any such event of Force Majeure, the expected duration of it and its anticipated effect on its ability to perform its obligations under this Agreement and make reasonable efforts to promptly overcome the delay occasioned by any such event.
- 12.3 If the Force Majeure in question continues for more than 90 days either party may give notice in writing to the other to terminate this Agreement with immediate effect without liability.

13. NOTICES

- 13.1 All notices relating to this Agreement shall be given by hand or by prepaid first class post or by facsimile or other form of electronic transmission to the addressee at the address stated above, or such other address (including email address) as the addressee shall have for the time being notified to the party. Such notice shall be deemed to have been delivered if by letter at the expiration of 48 hours after posting and if by facsimile or other form of electronic transmission at the time it was transmitted.

14. DEFINITIONS AND INTERPRETATION

- 14.1 In this Agreement the expressions shall have the meaning given to them in Schedule 1 except where otherwise provided.
- 14.2 The headings to this Agreement are for convenience only and shall not affect its interpretation.
- 14.3 References in this Agreement to a statute or any provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 14.4 References to numbered clauses are references to the relevant clauses in these GTCs unless otherwise specified;
- 14.5 Reference in any Supplementary Terms to appendices, numbered paragraphs or clauses relate to the appendices, numbered paragraphs or clauses of those Supplementary Terms unless otherwise specified;
- 14.6 Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- 14.7 For the avoidance of doubt and notwithstanding any language in the Agreement capable of being construed to the contrary (including but not limited to "sale", "sell", "resell", "reseller") all software supplied under the Agreement shall be licensed or sublicensed and not sold.
- 14.8 In the event of a conflict between the GTCs, Supplementary Terms, and Orders the following order of priority shall prevail (1) the GTCs (2) the Supplementary Terms, and (3) the Order.

15. GENERAL

- 15.1 Except as otherwise expressly provided in the Agreement, this Agreement may not be modified or amended nor may any right under this Agreement be waived except by written communication signed by an authorised officer of the party against whom the same is sought to be enforced.
- 15.2 No failure or delay on the part of either party in exercising any right, power or remedy will act as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.
- 15.3 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall to the extent required be severed from this Agreement and shall be ineffective without as far as is possible modifying any other clause or part of this Agreement and this shall not affect any other provisions of this Agreement which shall remain in full force and effect.
- 15.4 The Company shall be entitled to assign, transfer, or sub-contract its rights and obligations arising under the Agreement. Except as expressly provided in the Agreement, Customer shall not assign, transfer, or sub-contract any of its rights or obligations under this Agreement without the prior consent in writing of the Company.
- 15.5 Except as expressly provided in the Agreement, nothing in this Agreement shall be construed as constituting or evidencing any partnership, agency or contracts of employment between the parties and neither party shall have any authority to bind and shall not make any representations binding upon the other party.
- 15.6 This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes all previous agreements and representations, written or oral, with respect to its subject matter. For the avoidance of doubt any terms and conditions (other than as expressly set out in this Agreement) proffered by Customer shall be null and void and have no effect. Neither party to this Agreement has been induced to enter into this Agreement by a statement, promise or representation which is not expressly set out in this Agreement save that this clause shall not exclude any liability which one party would otherwise have to the other in respect of any statements made fraudulently by that party.
- 15.7 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

SCHEDULE 1 - DEFINITIONS

The expressions in this Agreement shall have the following meanings except as otherwise provided in the Supplementary Terms:

"Agreement" means these GTCs, the Relevant Supplementary Terms, and all contracts pursuant to the Orders;

"Company Website" means the Company website.

"Confidential Information" has the meaning given to it in clause 6.4;

"Customer" means the customer of the Company so named in the Order;

"Effective Date" means the date of first Order under this Agreement;

"General Conditions" means the general conditions of entitlement as set out in the notification issued by the Director General For Telecommunications on 22nd July 2003, in accordance with section 48(1) of the Communications Act 2003 pursuant to section 45 of said act as may be amended from time to time;

"GTCs" means these General Terms and Conditions including this Schedule 1;

"Intellectual Property Rights" means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, Know-How, trade secrets, inventions, get-up, database rights (whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created

"Know-How" means all industrial, marketing and commercial information and techniques including (without prejudice to the generality of the foregoing) the knowledge and expertise of the Company regarding the functions and facilities of Products and Services;

"Laws" means any applicable law (including General Conditions), statute, bye-law, regulation, order, regulatory policy, guidance, standard or industry code, rule of court or directives or requirements of any government or regulatory body, delegated or subordinate legislation or notice of any government or regulatory body and the common law and the law of equity as applicable to the Parties from time to time;

"Maintenance Services" means the maintenance services as specified in the Relevant Supplementary Terms provided in accordance with an accepted Order;

"Marks" means any trade marks, service marks or trade names of the Company or its suppliers and which are associated with the Products and/ or Services (whether registered or unregistered);

"Order" means an order for the Products and/or Services provided in accordance with the provisions of the clause 4 of these GTCs and the provisions of the Relevant Supplementary Terms;

"Parties" means the parties to this Agreement and "Party" shall be construed accordingly;

“Price” means the charges (as further described in the Relevant Supplementary Terms) for the Company’s products and services;

“Price List” means the document containing the Prices provided and updated by the Company from time to time;

“Products” means the CPE Systems and/or Equipment (as defined in the Relevant Supplementary Terms) but excluding any Services supplied to the Customer by the Company, as specified in an accepted Order;

“Professional Services” means the services (if any) supplied by the Company pursuant to the Relevant Supplementary Terms including (where appropriate) consultancy, installation, commissioning, usage support, site audits, training services and any other services (but excluding any Maintenance Services and Specific Services) as specified in an accepted Order;

“Relevant Supplementary Terms” means the relevant Supplementary Terms which apply to the supply by the Company of the specific products and services;

“Services” means the services supplied by the Company pursuant to the Relevant Supplementary Terms including (as appropriate) Professional Services, Maintenance Services and Specific Services as specified in an accepted Order;

“Specific Services” means the services supplied by the Company pursuant to the Supplementary Terms but excluding the Professional Services and Maintenance Services;

“Specifications” means the relevant specification for the Products and Services as detailed on the Company Website;

“Supplementary Terms” means the terms and conditions in respect of the supply and use of the products and services supplied by the Company;

“Territory” means the United Kingdom;

“T&M Rates” means the Company’s time and materials rates for additional Professional Services as set out in the Price List or otherwise provided by the Company, such rate being exclusive of travel, accommodation and sustenance expenses incurred by the Company which shall be charge in addition at cost;

“VAT” means value added tax;

“Working Days” means Monday to Friday inclusive but excluding any United Kingdom bank, public or statutory holidays; and

“Working Hours” means 8:00 -17:00 (UK time) on any Working Day.

Re:Call Supplementary Terms

These Supplementary Terms shall govern the supply by the Company of the Re:Call Services (as defined below) and shall be incorporated into the Company General Terms and Conditions (the “GTCs”)

1. DEFINITIONS

1.1 The terms and expressions in these Supplementary Terms shall have the meaning given in the GTCs except as otherwise provided below:

“Call Detail Record” means the record created at the start of a call and terminated at the close of a call;

“Carrier” means any supplier or provider of telecommunications services to Company for the Services;

“Data Protection Legislation” means the EU General Data Protection Regulation 2016/679; together with all other applicable legislation relating to privacy or data protection and including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms “personal data”, “data subject”, “controller” and “process” (and its derivatives) shall have the meanings given to them in Data Protection Legislation

“Equipment” means any equipment provided by Company at the Premises pursuant to the Relevant Supplementary Terms;

“Re:Call Service” means the Hosted Application Products supplied by the Company pursuant to these Supplementary Terms as specified in an accepted Order;

“Company Technical Specification” means the Company technical specification for the Mobile Network and Other Equipment as provided by the Company from time to time;

“Mobile Network” means the mobile voice, SMS and data network over which the Re:Call Services shall be delivered;

“Hosted Application Product(s)” means the Company hosted applications and where applicable user machine resident applications software (in object code only) conforming to the Specifications;

“Identity” means an individual natural person within the Customer, registered and licensed to use the Products under a User Licence, in accordance with the provisions of the Agreement;

“Initial Period” means the minimum initial period in respect of each User Licence as specified in the Order, but which in any case shall be no less than 12 months unless otherwise expressly provided in the Order

“Minutes” means the facility for Customer using the Hosted Application Products to make and receive external telephone (and where applicable fax) calls via PSTN where such calls are charged to the Customer in accordance with the Charges as set out in the Price List.

“Number” means any telephone number allocated for the purpose of obtaining the PSTN;

“Other Equipment” means any apparatus, not being Equipment, and used by the Customers in order to obtain the Re:Call Services, including but not limited to mobile devices;

“Premises” means the premises of the Customer;

“PSTN” means public switch telephony network;

“Services Commencement Date” means the date Company advises the Customer that the Re:Call Services are available or the date the Re:Call Services are first used, whichever is the earlier;

“Services” means the services provided pursuant to these Supplementary Terms;

“Software” means any software supplied by the Company forming part of the Re:Call Services;

“User Licence” means the licence granted per Identity or per instance (as specified in the Price List) for use of the Hosted Application Products;

2. COMMENCEMENT

2.1 The Re:Call Services shall come into effect on the Services Commencement Date and shall continue for the Initial Period and thereafter until terminated on 90 days’ notice (save where another notice period is expressly provided in the Order), commencing on the first day of the month following receipt of the notice of termination.

2.2 In the event that Company agrees to provide additional Re:Call Services or change the Re:Call Services (including without limitation upgrades or downgrades to the Re:Call Services or moving the Re:Call Services to other Premises) a new Initial Period shall apply in respect of each additional or changed Re:Call Services.

3. SERVICES

3.1 Subject to the terms of this Agreement and pursuant to an accepted Order, the Company agrees:

- (a) to supply the Re:Call Services;
- (b) to supply the Professional Services;
- (c) to provide Maintenance Services in accordance with Appendix 1 of these Supplementary Terms;

3.2 Customer shall;

- (a) only use the Re:Call Services in accordance with the terms of this Agreement for its own internal purposes;
 - (b) ensure that all Confidential Information of the Company which it is necessary for the Customer to obtain remains at all times confidential and shall be protected as if it was the Confidential Information of the Customer in terms of the standards of protection afforded to it
 - (c) not transfer, assign, or sub-licence the Customer's right to use the Re:Call Services under this Agreement
- 3.3 Except as specifically permitted by this Agreement or by mandatory laws, Customer will not directly or indirectly;
- (a) use any Confidential Information of the Company to create any computer software program or user documentation which is substantially similar to the Re:Call Services;
 - (b) reverse engineer, translate, disassemble, decompile, alter or otherwise attempt to derive the source code from any Software;
 - (c) copy, manufacture, adapt, create, derivative works of, localise, port or otherwise modify any Software or other Confidential Information of the Company or grant any party a licence to engage in similar conduct.
- 3.4 The Customer shall;
- (a) ensure that any Mobile Network or Other Equipment used in connection with the Re:Call Services conforms to the Company requirements;
- 3.5 The Customer shall:
- (a) not use the Re:Call Services, and shall not permit or allow others to use the Re:Call Services;
 - (i) in a manner that is contrary to any Laws;
 - (ii) for any fraudulent, improper, immoral or unlawful purpose (including, but not limited to, to transmit, knowingly receive, store, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing or which infringes any Intellectual Property Rights of any third party; or
 - (iii) in a manner which may damage the reputation of the Company or Re:Call Services, or bring the Company or Re:Call Services into disrepute;
 - (b) provide to the Company such information reasonably required by Company to fulfil its compliance obligations under any Laws.
- 3.6 The Company may change these Supplementary Terms at any time provided that such changes shall not unreasonably affect the Re:Call Services, and in the event that the Re:Call Services are unreasonably affected the Customer shall have the right to terminate such Re:Call Services within 5 days of the date of such change on one month's written notice to the Company with no liability for either party.
- 3.7 Company shall be entitled to improve, modify, change (providing any such modifications or changes do not materially alter the Re:Call Services to the Customer's detriment, and in the event that modifications or changes do materially alter the Re:Call Services to the Customer's detriment the Customer shall be able to terminate any Re:Call Services within 5 days of the date of such change on one months notice to Company without liability), test, maintain or repair the Re:Call Services provided to the Customer and any other Re:Call Services offered by it in relation thereto, and to interrupt the Re:Call Services for such purposes without incurring any liability or obligation to the Customers. Company will give to the Customer as much notification of any interruption to the Re:Call Services as practicable in the circumstances and will use all reasonable endeavours to disrupt the Re:Call Services as little as practicable.
- 3.8 Notwithstanding Clauses 3.6 and 3.7 Company shall be entitled to interrupt the Re:Call Services at any time without notice in cases of emergency.
- 3.9 The Customer shall allow the Company to use the Customer as a named case study in respect of the relevant products (ie those products supplied under this Agreement) and gives the Company its irrevocable consent to use the case study in the Company's marketing and promotional material.

4. WARRANTY

- 4.1 The Company does not warrant that the Services will be error-free or that use of the Services will be uninterrupted, nor does it warrant that the Services will meet the requirements of the Customer.
- 4.2 The Company warrants that the Re:Call Services will correspond in all material respects with the Specification.
- 4.3 Except as expressly set out in these Supplementary Terms Company provides no warranties, conditions, terms or undertakings as to the description or quality of the Re:Call Services, including without limitation non-infringement of third party rights, satisfactory quality, or fitness for any particular purpose, and all warranties, conditions, terms or undertakings implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

5. CONNECTION TO AND USE OF THE RE:CALL SERVICES

- 5.1 The Customer agrees that any equipment it connects to or uses with the Services will be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment.
- 5.2 The Other Equipment must be technically compatible with the Services and approved for that purpose under any relevant legislation or telecommunications industry standards. Company reserves the right to disconnect any Other Equipment if the Customer does not fulfil its obligations under this clause or if, in the opinion of Company such Other Equipment may cause the death or personal injury to any person or damage to property or materially impairs the quality of any telecommunications service provided by the Company. In the event that Company requests the disconnection, the Customer shall immediately comply with such request.
- 5.3 The Customer shall be responsible for the repair and maintenance of any Other Equipment used in order to obtain or use the Re:Call Services.

6. DATA PROTECTION

- 6.1 Each party shall comply with its obligations under Data Protection Legislation in respect of personal data processed by it in connection with the Agreement and the Services ("Personal Data").
- 6.2 The Company shall act as a processor of the Customer in respect of the Personal. Schedule 2 sets out the scope of the processing carried out by the Company under this agreement except as otherwise provided in the Order. Nothing in this Clause (Data Protection) relieves the Company of its own obligations as processor under the Data Protection Legislation.
- 6.3 Where the Customer is the controller in respect of the personal data processed under the Agreement the Customer instructs the Company to process said personal data in accordance with the provisions of the Agreement. Where the Customer is not the controller in respect of the personal data processed under the Agreement, the Customer shall ensure it has obtained the instructions of the controller to requiring the Company to process said personal data in accordance with the Agreement.
- 6.4 In processing the Personal Data, the Company shall:
 - (a) only process Personal Data: (a) to the extent necessary to provide the Services; (b) in accordance with the specific instructions of the Customer (save to the extent such instructions infringe the Data Protection Legislation, in which case Company shall notify the Customer); or (c) as required by any regulator or applicable law;
 - (b) not disclose any Personal Data to any third party (including affiliates), including for back-up and storage purposes, without the Customer's prior written consent in each instance (provided that such consent may be given subject to conditions and including that which may be given pursuant to clause 6.4), other than to the extent required by any competent authority or applicable law in which case the Company shall inform the Customer of such required disclosure prior to processing such disclosure unless prevented from doing so pursuant to applicable law;
 - (c) implement appropriate technical and organisational measures to maintain the security of such Personal Data and prevent unauthorised or unlawful access to, or processing of, or any accidental loss, destruction or damage to that Personal Data;
 - (d) keep, and procure that all of its employees and agents keep, the Personal Data confidential in accordance with the Company's confidentiality obligations under clause 6 of the GTCs (Confidentiality);
 - (e) maintain a record of its processing activities and provide all cooperation and information to the Customer as is reasonably necessary for the Customer to demonstrate compliance with its obligations pursuant to Data Protection Legislation, including permitting audits conducted by or on behalf of the Customer or its regulators on reasonable notice from time to time;

- (f) notify the Customer in writing without undue delay and in any event within 24 hours of discovery of, and provide full cooperation in the event of, any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data in the Company's possession or control;
 - (g) provide assistance to the Customer in relation to any request by a data subject to have access to Personal Data held about them or in relation to any other request, allegation or complaint by a competent authority or data subject, including notifying the Customer in writing without undue delay and in any event within 48 hours of receipt of any such notice or request;
 - (h) at the choice of the Customer, delete or return all Personal Data to the Customer on termination or expiry of this agreement, and delete all copies of the Personal Data (save to the extent that retention of copies is required by applicable law) providing written confirmation of such deletion to the Customer;
- 6.5 not process Personal Data outside the European Economic Area ("EEA") or a country not deemed to provide an adequate level of protection for personal data by any competent authority without the prior written consent of the Customer. It shall be a condition of any consent given by the Customer to the Company to transfer Personal Data outside the EEA or a country not deemed to provide an adequate level of protection for personal data that the Company shall:
- (i) enter into a data transfer agreement in a form prescribed by applicable Data Protection Legislation, to the extent that the formalisation of such a document represents a valid means of transferring Personal Data outside of the EEA or relevant jurisdiction; or
 - (j) otherwise ensure that the transfer is subject to terms which satisfy the Data Protection Legislation including the conditions of any applicable adequacy finding or decision.
- 6.6 The Company shall not engage any third party or other sub-processor to process personal data on behalf of the Customer without the express prior written consent of the Customer. Where a sub-processor is duly engaged to carry out specific processing activities on behalf of the Customer, the Company shall ensure that it enters into a written contract with such sub-processor containing data protection obligations no less onerous than those set out in this Clause (Data Protection) which shall apply to the sub-processor. The Company shall remain liable for the acts and omission of any such sub-processor. For the avoidance of doubt, the Customer gives express prior written consent to the Company to engage sub-processors for the purpose of providing the services under this Agreement.

7. PRICES AND PAYMENT

- 7.1 The Price for the Services are described below and further detailed in the Price List:
- (a) "Subscription Fees"
 - (i) Subscription Fees are payable monthly in advance per User Licence.
 - (ii) The first period for a new User Licence is charged pro rata from the date of first availability of the Re:Call Services to the end of the first calendar month and monthly in advance thereafter. All fees after the first month are charged in whole months including any part month on termination.
 - (iii) Additional Hosted Application Products are charged in whole months including any part period on termination of a User Licence.
 - (iv) All new User Licences and any additional Hosted Application Products are for the Initial Period and are subject to a notice period of 90 days commencing on the first of the month following receipt of the notice of termination, not expiring prior to the end of the Initial Period.
 - (b) "Set-up Charges"
 - (i) Set-up Charges apply to new User Licences as specified in the Price List and are payable with the initial Subscription Fee pursuant to clause 7.1(a)(ii).
 - (ii) The User Licence can be transferred between Identities (where the User Licence is charged per Identity) within the Customer without additional Set-up Charges subject always to the Initial Period for the User Licence and Hosted Application Products.
 - (c) "Usage Charges"
 - (i) Usage Charges are payable monthly in arrears.
 - (d) "Additional Service Charges"
 - (i) The Company charges for additional services, including Professional Services, are either by quotation or at a daily rate plus expenses for travelling and subsistence. Any materials used will be charged appropriately. Additional Services Charges shall be invoiced upon completion of the particular services or monthly at the discretion of the Company.
- 7.2 The Company may invoice, at any time, any Prices omitted from a previous invoice.
- 7.3 All payments shall be made within 30 days of the date of the invoice by direct debit.
- 7.4 The Company may decrease its Prices immediately on notice, increase Minutes Charges on 7 days notice and its other Prices on 1 months' notice to the Customer.
- 7.5 The Customer acknowledges that the use the Re:Call Services shall incur charges from the Customer's mobile carrier.

8. USE OF NUMBERS

- 8.1 For those Services where the Customer is issued with Numbers to use the Services:
- (a) all rights in the issued Numbers remain vested in Company and the Customer does not acquire any rights in such Numbers by virtue of this Agreement;
 - (b) subject to any legal obligation to provide number portability, the Customer cannot sell the Numbers or agree to transfer them to anyone else;
 - (c) the Numbers may be changed or decommissioned from time to time by Company for operational or technical reasons or because Company is required to do so by a Carrier or in order to comply with any regulatory requirements. Company will use reasonable endeavours to give the Customer as much notice of any such change or decommission as is reasonably practicable. The Customer acknowledges that changes to Numbers required to be made to comply with the requirements of a Carrier or regulatory body are outside Company's control;
 - (d) the Numbers are unique for use within the United Kingdom only and international call charge rates will apply to any use of the Services by the Customer outside of the United Kingdom. Company does not warrant, and accepts no liability in relation to, the availability of any Numbers from overseas countries.
- 8.2 The right of the Customer to use any Numbers issued under this Agreement will end with termination of this Agreement (except where otherwise required by any applicable law or regulations). The Customer acknowledges and accepts that Company may then reissue such Numbers to other Company customers.
- 8.3 For the avoidance of doubt, any reference to Numbers in this Agreement shall include short codes.

9. LIABILITY

- 9.1 Company shall not be liable for failure to meet any Services Commencement Date(s) or any provisioning lead times provided that Company has made reasonable endeavours to meet such timescales.

10. TERMINATION AND SUSPENSION

- 10.1 Without prejudice to the right to terminate the Services or Agreement contained elsewhere in the Agreement, Company shall be entitled to terminate the Services provided under any Order:
- (a) by serving written notice on the Customer with immediate effect, or after any period that Company specifies, without any liability on the part of the Customer to pay termination charges, if such action is required in response to or in compliance with any law, statute, legislation, order, regulation or guidance issued by government, a court of law, an emergency service or any other regulatory authority; or
 - (b) by serving written notice on the Customer with immediate effect, or after any period that Company specifies, if Company has reason to believe that the Services are being used or are likely to be used for the sending, storage or reproduction of any defamatory, offensive, abusive, obscene or menacing material or in such a way as to threaten Company's ability to provide Services to third parties.

10.2 Without prejudice to its other rights, the Company may at its sole discretion elect to suspend provision of the Services forthwith until further notice if (a) it is entitled to terminate or (b) the Customer is otherwise in breach of the terms of this Agreement or (c) the Company is obliged to comply with any relevant order or instruction of Government or other regulatory authority or (d) the suspension of the Services is required for operational reasons such as maintenance or upgrades or because of an emergency.

11. CONSEQUENCES OF TERMINATION

11.1 Without prejudice to its other rights and remedies if at any time this Agreement or Order (in which case the following provisions shall apply to said Order) is terminated for any reason other than the fault or negligence of the Company the Customer shall pay the Company within ten (10) days after such termination, all arrears of the Price and the greater of the Subscription Fees in full for any unexpired Initial Period or any unexpired notice period, or such other cancellation fee as may be specified in the Price List or Order.

11.2

Appendix 1 - Maintenance Services

In the case of defects or faults in the Re:Call Services ("Service Faults") the Company will use reasonable endeavours to provide a Response and Fix within the target timescales specified below. All timescales referring to hours are hours during the Cover Period and are measured from notification (in accordance with the Company's instructions) of the purported Service Fault to the Company. All timescales referring to Working Days shall be measured from Working Day following notification (in accordance with the Company's instructions) of purported Service Fault to the Company.

"Response" means a response regarding the Service Fault by telephone, email or other method from the Company's support centre personnel to operatives of Customer.

"Fix" means using reasonable endeavours to correct the Service Fault.

Severity Level	Fault Classification	Cover Period	Response Target	Fix Target
1	Complete loss of all Re:Call Services to all Identities.	24 X 7	2 hour	4 hours
2	Loss of all Re:Call Services to a group of Identities	24 X 7	4 hour	8 hours
3	Minor Service Faults not included in the above	Working Hours	8 hours	20 Working Days

The Response Target and Fix Targets and the target times for the performance of the Maintenance Services or the delivery of any components or parts or for the execution of any work by the Company under this Agreement and shall not be of the essence

The Maintenance Services do not include the diagnosis and correction of any defect in the Re:Call Services resulting from:

- any fault in the Other Equipment, Equipment or Mobile Network ;
- any failure of the Other Equipment or Mobile Network to conform to the Company Technical Specification;
- operator or Customer error;
- the Customer's failure to follow and comply with any training or instructions given by the Company regarding the Service;
- the use of the Service for a purpose for which it was not designed.

Appendix 2- Data Protection

THE SUBJECT MATTER AND DURATION OF THE PROCESSING

The Company may be required to process personal data for the provision of communications services to end users including the recording of such services and the storage of said recordings, and billing of the services.

The duration of the processing will be for the contracted duration of the above services and 6 years after the event for call detail records (in case of any legal disputes).

THE NATURE AND PURPOSE OF THE PROCESSING

The nature and purpose of the processing is as necessary for the performance of provision of the contracted services including the provision of communications services, recording and storage of communication services and billing of the services.

THE TYPE OF PERSONAL DATA AND CATEGORIES OF DATA SUBJECT

The type of personal data may include names, telephone numbers, place of employment, any personal data contained in any communications of the employees, and personal data included in call detail records.

The categories of data subject may include employees of companies that have contracted for the services referred to above.