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**GENERAL CONDITIONS OF SALE**

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**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following terms and expressions shall have the following meanings unless the context otherwise requires:

TERM / EXPRESSION	MEANING
“Affiliate”	means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with Customer. For these purposes, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of Customer, whether through the ownership or voting securities, by contract, or otherwise;
“Agreement”	means this agreement between the Customer and Company comprising the documents described in clause 28 of these General Conditions;
“Charges”	means the monies payable by the Customer to Company under this Agreement, as set out in the Commercial Schedule or Sales Order;
“Commencement Date”	means the date upon which this Agreement has been signed by the Customer;
“Commercial Schedule” or “Sales Order”	means the document or documents entitled Commercial Schedule and/or Sales Order, which set out the Charges associated with a particular Service, all of which shall form part of this Agreement;
“Company”	means Fourteen IP Inc. or such other Company Affiliate as set out in front of this Agreement in the section entitled “Your Agreement”;
“Company Employee”	means any employee or other staff of the Company or a Company Affiliate or any employee or other staff of any direct or indirect sub-contractor or supplier of the Company or a Company Affiliate who provides the Services on behalf of Company;
“Company Representative”	means a representative of Company and which includes a representative of Company’s suppliers;
“Company Website”	means <a href="http://www.fourteenip.com">www.fourteenip.com</a> ;
“CPI Rate”	means the Consumer Price Index for All Urban Consumers, U.S. City Average, for all items, published by the United States Department of Labor on its website at <a href="http://www.bls.gov/cpi">http://www.bls.gov/cpi</a> . for the prior 12-month period;
“Customer”	means the entity purchasing Equipment and Services from the Company pursuant to this Agreement;
“Data Protection Laws”	means all applicable laws and regulations relating to the processing of personal data and privacy including the EU GDPR, the UK Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (“GDPR”) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms “Controller”, “Processor”, “Data Subjects”, “Personal Data”, “processing” (and its variants) shall have the meaning given to them in the Data Protection Laws;
“End User Licensed Software”	means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a “click wrap” or “shrink wrap” licence agreement;

TERM / EXPRESSION	MEANING
"Equipment"	means equipment purchased by the Customer from the Company or its approved suppliers under this Agreement which may be used in the provision of the Services, as detailed in the Commercial Schedule or Sales Order, quotation, order form or other document agreed between the parties from time to time;
"EU GDPR"	means the European General Data Protection Regulation (EU 2016/679);
"General Conditions"	means this document entitled "General Terms and Conditions of Sale Customers";
"Incident"	means any reported event which is not part of the standard operation of a Service and which causes disruption to or a reduction in the quality of such Service;
"Internet"	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
"Minimum Term"	means the initial period of this Agreement as specified in the Commercial Schedule or other Transaction Document and if not specified there shall be no Minimum Term;
"Network"	means the Company network and the network of any Third Party used by Company to supply the Services, as applicable;
"Replacement Services"	means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than Company following the termination of this Agreement (or the relevant part of this Agreement) or the termination of any or all of the Services;
"Service(s)"	means the service(s) identified in the Commercial Schedule(s) and/or Sales Order and/or Transaction Document and provided by Company as such service(s) are described in the Terms, Service Schedules and/or Commercial Schedule as applicable and any other services agreed by the parties from time to time;
"Service Commencement Date"	Means in respect of a Service or a particular instance of a Service means the date on which that particular Service or particular instance of a Service is first provided to the Customer, or as otherwise explicitly set out in this Agreement;
"Services Provider"	means a provider of telecommunications services or other services similar to the Services, including Company or a Company Affiliate or any direct or indirect supplier of Company or a Company Affiliate;
"Service Schedule"	means the document entitled "Service Schedule" containing additional terms relating to a particular Service and such schedule shall form part of this Agreement;
"Service Transfer"	means the transfer of a Service (or any part of a Service) that had been provided pursuant to this Agreement (as a result of termination of this Agreement or otherwise);
"Site"	means (where applicable) a physical location at which any Equipment shall be located and/or at or to which a Service shall be provided;
"Software"	means any software, excluding End User Licensed Software, supplied to the Customer by Company under this Agreement and includes all other software identified in this Agreement as "Software";
"Statement of Work" or "SOW"	means any document entitled "Statement of Work" or "SOW" containing additional terms relating to a particular Service, each of which shall form part of this Agreement;
"Successor Supplier"	means any entity (including the Customer where relevant) which provides the Replacement Services;
"Survey"	means a survey by the Company of the Customer Site;
"Target Delivery Date"	means in respect of a Service the date for the commencement of the provision of the relevant Service as specified by Company;

TERM / EXPRESSION	MEANING
“Termination Fee”	means in respect of a Service, the early termination fee set out in Sales Order and/or other Transaction Document;
“Term”	means the term of this Agreement as set out in clause 2 of these General Conditions;
“Terms”	means documents entitled “Terms” containing additional terms relating to particular Services or Equipment, each of which shall form part of this Agreement;
“Third Party”	means a person, company or entity other than Company or the Customer;
“Transaction Document”	means a document into which the parties enter to procure the Services under the terms of the Agreement, including a Commercial Schedule, Statement of Work, Service Schedule or Service Order (and any variation thereto), all of which shall form part of this Agreement;
“User”	means Customer Employees, subcontractors, agents, customers or anyone else who is permitted by the Customer to use the Service; and
“Working Day”	means Monday to Friday (excluding public holidays).

- 1.2 The headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation.
- 1.3 References in this Agreement to any statute or statutory instrument shall include any re-enactment, modifications or amendments thereto for the time being in force.
- 1.4 References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement, and paragraphs to the Service Schedules.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to “procure” or “ensure”) assumed by a party to this Agreement takes effect as a material obligation.
- 1.7 References in this Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a landline Service shall include both all landline Services provided to the Customer and/or each individual landline, as the context requires).
- 1.8 Where a term or acronym appears in capital letters and is not specifically defined in this Agreement it shall have its industry standard meaning as would be reasonably understood by a customer or supplier of telecommunications or information technology services.
- 1.9 These terms and conditions of sale (these “Terms”) are the only terms which govern the sale of the Equipment and Services by Company to the Customer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Equipment and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 1.10 The accompanying Transaction Documents and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These General Conditions of sale prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these General Conditions of Sale.
- 1.11 Notwithstanding anything to the contrary contained in this Agreement, Company may, from time to time change the Services without the consent of Customer, provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Agreement.

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## **2 COMMENCEMENT AND TERM**

This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter until the last remaining Service is terminated in accordance with this Agreement.

## **3 SUPPLY OF SERVICES AND/OR EQUIPMENT**

- 3.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in this Agreement, the Company shall supply the Services and/or Equipment as applicable in accordance with the terms of the Agreement.
- 3.2 The Company shall commence supplying a Service on the relevant Service Commencement Date and shall supply those Services for the relevant Minimum Period and thereafter until terminated by either party in accordance with the provisions of this Agreement.

## **4 COMPANY OBLIGATIONS**

- 4.1 The Company will supply the Services with the reasonable skill and care of a competent telecommunications service provider in accordance with prevailing industry standards.
- 4.2 The Company does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time, provided that any specific availability or service levels agreed between the Parties in writing or as set out in a Service Schedule will take precedence.
- 4.3 The Company will use commercially reasonable efforts to provide the Services, subject to technical and commercial feasibility, and usually subject to a survey and quotation.
- 4.4 The Company shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not materially impact the ability of the Company to provide the Service to the Customer.
- 4.5 The Company shall use commercially reasonable efforts to provide the Services and/or Equipment within any time periods and/or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and except where explicitly stated the Company shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated. For the avoidance of doubt, time is not of the essence in this Agreement.
- 4.6 Unless expressly stated in writing by the Company all prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, Company's income, revenues, gross receipts, personal or real property, or other assets, quoted exclude state, federal and local sales and other taxes, customs and excise duties.

## **5 THE CHARGES**

- 5.1 The Charges for Services and/or Equipment detailed in the Commercial Schedule and/or Sales Order are available subject to the Customer fulfilling all of its commitments as set out in this Agreement, including but not limited to:
  - a) paying the Charges in accordance with this Agreement; and
  - b) performing any acts, duties and other obligations set out or required in a Transaction Document.
- 5.2 The Customer shall pay the Charges for:
  - a) each Service provided by the Company (whether or not the Service is used by the Customer);
  - b) where applicable, the Equipment; and
  - c) any other products or services agreed between the parties from time to time,

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in accordance with this clause 5.

- 5.3 Most Charges are set out in the Commercial Schedule and/or Sales Order. Where a Charge is not set out in the Commercial Schedule, the Charge shall be:
- a) as set out on the Company Website at the time the Equipment, Service or other agreed product or service was supplied; or
  - b) as notified to the Customer by Company (including in a Service Schedule or quotation).
- 5.4 Usage based Charges shall be based upon data recorded by or on behalf of Company. The Customer accepts that the call tariffs set out in the Company price lists and tariffs are set by the Company by reference to the telecommunications tariffs of third parties which the Company pays to provide the Services to the Customer (insofar as the applicable Services are being provided to the Customer by the Company). Those third-party tariffs are not controlled by the Company and are subject to increase or decrease at any time. Due to the nature of these circumstances the Company may increase or decrease its call tariff changes as set out on the price list and the Customer shall pay such increased or decreased rate in the charges.
- 5.5 The Charges are exclusive of sales, use or other tax or levy, which will be charged at the applicable rate.
- 5.6 On 1<sup>st</sup> January each year the Company may increase or decrease Charges by the CPI Rate (a “**CPI Change**”). Company will notify the Customer or publish the relevant CPI Rate on the Company Website as soon as it becomes available.
- 5.7 The Charges will include a number of visits being made and/or amount of support being provided to the Customer Site where specified in a Transaction Document. Where either additional visits and/or support over and above this stated number or where remote visits or support longer than 30 minutes are required, the Company shall be entitled to make a reasonable charge for such additional visits, which amounts shall be invoiced to and paid by Customer.
- 5.8 All prices are subject to a Site survey and final quotation. The Customer accepts that following a survey the Company may in its sole discretion amend the price within 30 days of the survey to reflect the actual requirements of the Site without any formal variation process and the new price shall apply to this Agreement. In the event of an increase of more than 10% to the price the agreed variation procedure whereby both parties’ authorised representatives sign the variation agreement shall be used. Where no variation can be agreed the Company reserves the right but not the obligation to cancel the Agreement within 10 days of the new price being issued and no reply or a refusal to vary being made by the Customer.
- 5.9 Notwithstanding clause 5.8, the Company reserves the right, by giving notice to the Customer at any time before delivery, to make reasonable increases to the price of the Services and Equipment to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services and Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

## 6 INVOICING AND PAYMENT

- 6.1 Unless otherwise agreed with the Customer in writing, the Company may issue to the Customer on a monthly basis in relation to Services and on delivery in relation to Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement.
- 6.2 Unless otherwise stated in the Commercial Schedule or Transaction Document, the Customer shall pay all invoices in accordance with the terms set out in the Sales Order.
- 6.3 The Customer shall pay each invoice issued by the Company under this Agreement (including any invoice relating to Termination Fees) within 14 days of the date of invoice. The invoice shall be

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deemed paid once the Company receives such payment as cleared funds in its nominated bank account.

- 6.4 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.
- 6.5 The Company may, in its sole discretion and option, without prejudice to any other rights it may have, set off any liability of the Customer to Company against any liability of Company to the Customer.
- 6.6 Where the Equipment is to be collected by the Customer or the Customer fails to take delivery of the Equipment in accordance with this Agreement, the Company shall be entitled to invoice the Customer for the price at any time after the Company has tendered delivery of the Equipment.
- 6.7 Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy or otherwise.

### **Late payment**

- 6.8 Without prejudice to any other rights of the Company, in the event of the Customer failing to pay any sums to the Company when due, the Company shall be entitled to:
  - a) charge interest (both pre-and post-judgement interest) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made, at the rate of the lesser of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Company post-judgement for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Company does not waive by the exercise of any rights hereunder), Company shall be entitled to suspend the delivery of any Equipment or performance of any Services if Customer fails to pay any amounts when due hereunder and such failure continues for 14 days following written notice thereof;
  - b) upon 7 days prior written notice to Customer, suspend the provision of the relevant Service(s), until such time as all payments due including all interest accrued has been paid and satisfied in full; and
  - c) terminate this Agreement in accordance with Paragraph 13.7.
- 6.9 The Company and the Customer agree in writing that, as only an accommodation to Customer, the Company will issue individual invoices for certain Services to all or some of the Customer's Users. Notwithstanding any such agreement, the Customer shall remain jointly, severally and primarily liable for all such invoices and thereby warrants that each invoice to any such User shall be paid to Company in full and in accordance with this Agreement either by the respective User or the Customer within 30 days of the invoice date.
- 6.10 In accordance with Paragraph 6.8, the Customer remains liable to the Company for all Charges whether or not invoiced to Users in accordance with clause 6.9. Therefore, if Users do not pay their individual invoices within 30 days of the earlier of the specified date or invoice date, or if the Customer exceeds their credit terms, the Customer must pay such User invoices within 7 days thereafter, without notice from Company.
- 6.11 The Company reserves the right to set a credit limit on the Charges that can be accrued by Customer under this Agreement. The Company may review any such credit limit at any time, in its sole discretion. If the Customer exceeds its credit terms the Company may by 7 days' written notice require Customer to pay the relevant invoice.
- 6.12 The Company may require Customer to pay to Company a deposit as security for payment of Charges. The Customer may request the return of any paid deposit at the expiry of each 12-month period after the deposit was taken. However, the decision to return any deposit to Customer prior to termination of the Agreement will be at the sole and exclusive discretion of the Company.

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## 7 NEW SERVICES

### **New services on the terms of the Company Website**

- 7.1 The Customer may request new services on the terms set out on the Company Website by placing a new service order under this Agreement. Company shall be entitled to accept or reject a new service order. Once a new service order is accepted by the Company:
- a) the new Service shall be deemed added to the Agreement (including for the avoidance of doubt, the terms of the Company Website applicable to the Service as well as any applicable Service Schedule(s)); and
  - b) The Company shall supply to the Customer the Services requested in that new service order strictly on the terms and conditions of this Agreement. Any alternative terms, not in accordance with Paragraph 7.2 of this Agreement, appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing orders shall be void, ineffective and unenforceable.

### **New services on bespoke terms**

- 7.2 The Customer may request a new service at any time on terms other than those set out on the Company Website. In the event that the Company and the Customer agree the terms that would apply to such new services, those terms will be added to this Agreement by execution of a formal, written variation which must be signed by a representative of the Company.

## 8 CUSTOMER OBLIGATIONS

- 8.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:
- a) comply with any reasonable instructions from the Company and with any health and safety, security, use of Network and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services and/or Equipment;
  - b) not use the Services and/or Equipment in a manner which damages the reputation of Company or Company's suppliers, is inconsistent with a reasonable customer's good faith use of the Services and/or Equipment and/or adversely affects the provision of the Services and/or Equipment to other customers;
  - c) not use the Services and/or Equipment fraudulently or in connection with a criminal offence;
  - d) not use the Services and/or Equipment in a way that contravenes any Third Party's rights or any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;
  - e) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or Equipment;
  - f) notify the Company of any methods of doing business which may affect the Customer's use of the Services and/or Equipment or the Customer's ability to comply with the terms of this Agreement; and
  - g) comply with all applicable laws and regulatory provisions.
- 8.2 Subject to clause 10 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services without the prior written consent of the Company.
- 8.3 The Customer shall (i) cooperate with Company in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Company, for the purposes of performing the Services; (ii) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Company may reasonably request and Customer considers reasonably necessary to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

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The Company shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide the Company with the required information and/or assistance and/or perform its obligations. The Customer shall reimburse Company for any administrative charges and costs that it incurs as a result of information that it receives in accordance with this clause 8.3 that is incomplete or inaccurate or where those costs result from the Customer's delay or failure to perform its obligations hereunder.

- 8.4 The Customer shall notify Company immediately (and thereafter confirm in writing within 2 business days) on becoming aware that any person is making improper or illegal use of the Services.
- 8.5 The Customer agrees and acknowledges that the Company and/or a supplier of the Company may monitor and record calls or other communications including in relation to the Company's customer services.
- 8.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. The Company has no responsibility for or loss or damages to Customer caused by any information, software, services, Equipment or other materials obtained by the Customer using the Internet.
- 8.7 The Customer warrants to Company that it will take all reasonable steps (including testing with up-to-date commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by the Company under this Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.
- 8.8 There is a risk that other users may attempt to access the Services and Equipment through hacking or similar fraudulent use. The Customer acknowledges this risk as inherent to the nature of the Services and agrees to take full responsibility for maintaining adequate security precautions to restrict access to the Services, or through the Services, to the Customer's facilities, equipment, hardware, software, systems, computers, servers, IP addresses, and telephone numbers, to prevent hacking, theft, tampering and/or unauthorised access and prevent the fraudulent, unauthorised, illegal or improper use of the Services, equipment and systems and of the services, equipment and systems of third-parties.
- 8.9 The Customer agrees to maintain and use secure passwords and secure locations and agrees to safeguard any passwords and change them regularly and in addition, the Customer is responsible for establishing and maintaining such security measures to protect against PBX hacking and other similar fraud or all other methods of hacking by external third parties except in relation to any obligations expressly accepted by the Company and stated in writing in the Agreement documentation.
- 8.10 The Customer agrees to pay any cost (and any applicable taxes and governmental surcharges) incurred from the use of the Services (including usage charges) even if these result from the fraudulent, unauthorised, illegal or improper use of the Services by third parties except where this hacking is solely due to the negligence of the Company. The Customer agrees to pay any claims, costs, damages, liabilities and expenses incurred by the Company as a result of its failure to establish and maintain adequate security measures to protect against the fraudulent, unauthorised, illegal or improper use of the Services except where exclusively due to the negligence of the Company.
- 8.11 The Customer agrees to notify the Company immediately if it becomes aware at any time that Services are being stolen or fraudulently used, giving a detailed description of the circumstances of the theft or unauthorised use, including documentation (e.g., a copy of a police report). The Customer will be responsible for all charges and liabilities incurred in relation to this use (including usage charges).
- 8.12 Notwithstanding the above the Company will use reasonable efforts to notify the Customer of fraudulent activity using the most expedient means available, however Company provides no guarantee and has no contractual obligation in relation to the detection of fraud.



- 8.13 Save where the Customer collects the Equipment from the Company's premises (in which case delivery shall take place at the Company's premises) delivery shall take place at the Customer's premises or such other location stated on the Sales Order or other Transaction Document.
- 8.14 The Company shall use its reasonable efforts to complete any delivery by dates stipulated, but such dates are approximate only and the Company shall not be liable to the Customer for any loss, damage, injury, penalty, claim or any other matter of whatsoever nature arising from or related to any delay in delivery; and time for delivery shall not be of the essence of the Contract.
- 8.15 The Company reserves the right to withhold delivery of Services and Equipment to the Customer at any time when the Customer is exceeding, or upon delivery would exceed, any credit limit with the Company, either in relation to such Services and Equipment or otherwise.
- 8.16 A written note evidencing delivery, collection, acceptance or satisfaction (or other analogous document) signed by the Customer, the Company, or other third party as the duly authorised agent of the Customer, is deemed to be absolute evidence of delivery or collection of the Equipment specified in the note.
- 8.17 In the event that the Customer postpones or in any way delays a fault visit, delivery and/or installation date and the Company has to re-schedule such fault visit, delivery and/or installation, the Company reserves the right to charge the Customer for any additional expenses thereby incurred.
- 8.18 Insurance. During the term of this Agreement and for a period of 2 years thereafter, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2m with financially sound and reputable insurers. Upon Company's request, Customer shall provide Company with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms.

## **9 LIMITED WARRANTY**

- 9.1 The Customer acknowledge that all components of the Equipment are being manufactured for the Company by suppliers, third-parties or entities other than the Company. Company extends to Customer the warranties as to such components provided by such other entities to Company to the extent permitted by such manufacturers and for the length of time that such warranty remains valid for Company. Notwithstanding any other provision in this Agreement, Company shall not be held responsible for any damage which may result from a defective part except for the replacement of such part as set forth in the warranties provided by its suppliers.
- 9.2 Company warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- 9.3 EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 9.1 AND 9.2, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- 9.4 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Equipment. Third Party Products are not covered by the warranty in Section 9.1. For the avoidance of doubt, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

- 9.5 The Company shall not be liable for a breach of the warranties set forth in Sections 9.1 and 9.2 unless: (i) Customer gives written notice of the defective Equipment or Services, as the case may be, reasonably described, to Company within 30 days of the time when Customer discovers or ought to have discovered the defect; (ii) if applicable, Company is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 9.1 to examine such Equipment and Customer (if requested to do so by Company) returns such Equipment to Company's place of business at Company's cost for the examination to take place there; and (iii) Company reasonably verifies Customer's claim that the Equipment or Services are defective.
- 9.6 The Company shall not be liable for a breach of the warranty set forth in Sections 9.1 or 9.2 if: (i) Customer makes any further use of such Equipment after giving such notice; (ii) the defect arises because Customer failed to follow Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment; or (iii) Customer alters or repairs such Equipment without the prior written consent of Company.
- 9.7 Subject to Sections 9.5 and 9.6 above, with respect to any such Equipment during the Warranty Period, Company shall, in its sole discretion, either: (i) repair or replace such Equipment (or the defective part) or (ii) credit or refund the price of such Equipment at the pro rata contract rate provided that, if Company so requests, Customer shall, at Company's expense, return such Equipment to Company.
- 9.8 Subject to Section 9.5 and 9.6 above, with respect to any Services subject to a claim under the warranty set forth in Section 9.2, Company shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.
- 9.9 THE REMEDIES SET FORTH IN SECTION 9.7 and 9.8 SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 9.1 and 9.2, RESPECTIVELY.

## 10 CUSTOMER AFFILIATES

- 10.1 The Customer may, with the Company's prior written consent, permit a Customer Affiliate to use the Services and Equipment supplied by Company to the Customer under this Agreement. The Customer shall warrant that its Affiliates and all Users are aware of and shall comply with the terms of this Agreement. The Customer shall be liable to Company for any and all:
- a) claims, losses and expenses suffered or incurred by the Company arising from or related to a breach of a term of this Agreement resulting from a User's use of the Services and/or Equipment; and
  - b) losses, costs and expenses resulting from any claims against the Company made by any of the Customer's Affiliates or Users (or any other Third Party whom the Customer has permitted to use a Service and/or Equipment), regardless of any financial caps or other limitations on liability as set out in this Agreement.
- 10.2 The foregoing liabilities of Paragraph 10.1 shall survive termination of this Agreement.

## 11 VARIATIONS TO THE AGREEMENT

- 11.1 The Company reserves the right from time to time to vary this Agreement in any manner not specifically prohibited by this Agreement, including as follows:
- a) Subject to clause 0 a) of these General Conditions, the Company shall be entitled to vary the Company Website. For variations to the Charges set out on the Company Website, such variations shall be published at <http://www.fourteenip.com> at least 28 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable: and
  - b) The Company shall be entitled to vary the provisions of this Agreement (including for the avoidance of doubt, the Charges subject to clause 13.3 of these General Conditions). Company will provide to the Customer 28 days' notice in writing of any such variation or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable.

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## 12 SUSPENSION

### Planned Outages

- 12.1 The Company may, from time to time, upon reasonable notice where practicable, suspend the Services during any modification or maintenance of the Network and, unless specifically agreed with the Customer in a writing signed by a Company representative, shall have no liability in relation to such suspension.

### Unplanned Outages

- 12.2 The Company may, from time to time and without notice or liability to the Customer, suspend the Services during any technical failure of the Network because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.
- 12.3 The Company shall use reasonable efforts to restore the Services suspended in accordance with clause 12.1 or 12.2 of these General Conditions as soon as reasonably practicable.
- 12.4 The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension arising from the circumstances described in clause 12.1 or 12.2 of these General Conditions.

### Actions of the Customer

- 12.5 The Company may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:
- a) If the Customer fails to comply with the terms of this Agreement within 3 (three) days following Company's written notice to Customer of its failure (including but not limited to failure to pay any Charges due hereunder); or
  - b) if the Customer allows anything to be done which in the Company's reasonable opinion breaches this Agreement by acting or omitting to act in such a manner which may have the effect of jeopardising the operation of the Services or Network if applicable, or if the Services are being used in a manner prejudicial to the interests of the Company and/or a supplier of the Company. In such case, Company shall notify Customer of the reasons for such immediate suspension or disconnection and advise Customer on what actions Company can take, if any, to cure such circumstances.
- 12.6 If the Company has suspended the Services in accordance with clause 12.5 of these General Conditions, the Company shall restore the Services when the circumstance described in clause 12.5 of these General Conditions is remedied.
- 12.7 The Customer shall remain liable for:
- a) all Charges levied in accordance with this Agreement during any period of suspension; and
  - b) all reasonable costs and expenses incurred by the Company in the implementation of such suspension or disconnection, where such suspension or disconnection arises from the circumstances described in clause 12.5 of these General Conditions.

### Actions of the Company's suppliers

- 12.8 The Company may, without prejudice to its other rights hereunder, suspend or terminate a Service if a Company supplier suspends, terminates or lets expire the provision of services to the Company which the Company requires to provide such Service and for which the Company is unable to find a replacement supplier, having used its reasonable endeavours. The Company will provide as much notice to Customer of such circumstance as is reasonably practicable.

### Actions by regulators

- 12.9 The Company may, where requested by or on behalf of a state, federal, local or other governmental or regulatory body (including because of fraud or misuse) or required to do so by law, suspend any Services provided under this Agreement.

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**13 TERMINATION****Termination for convenience**

13.1 The Customer may terminate this Agreement (in whole or in relation to a particular Service) by:

- a) providing to the Company 90 days' notice in writing; and
- b) paying the Company the applicable Termination Fees in respect of the Service or Services being terminated.

For the avoidance of doubt, Termination Fees may be payable in accordance with the Service Schedule or Commercial Schedule or Sales Order if the Customer terminates an order for Services prior to the Service Commencement Date, prior to the expiry of any Minimum Term.

13.2 Unless specified otherwise in a Service Schedule or the Commercial Schedule or Sales Order and without prejudice to any other the Company's rights to terminate this Agreement, the Company may terminate this Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

**Termination resulting from changes to the Agreement**

13.3 Subject to clause 13.4 and provided Customer complies with Subsection 13.3.c of these General Conditions, the Customer shall be entitled to terminate any individual Service by providing 30 days' notice in writing if:

- a) the Company increases the prices set out on the Company Website and/or the Charges in respect of that specific Service pursuant to clause 11 of these General Conditions and that increase is to the material disadvantage of the Customer; or
- b) the Company substantially varies the terms of this Agreement that relate to that specific Service pursuant to clause 11 of these General Conditions and that variation is to the Customer's material disadvantage,
- c) provided that:
  - i) such notice is provided to Company within 30 days of the date that the change is notified by Company to the Customer; and
  - ii) further provided that any price or Charges increases that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the Consumer Price Index (CPI) annual inflation rate at the date the Company notifies the Customer of the applicable price increase; and,
  - (iii) 10% shall not constitute a material disadvantage to the Customer under this clause 13.3.

13.4 The right to terminate a Service in clause 13.3 above shall not apply where the increases in prices or Charges or the variation of the terms of the Agreement have been agreed by the Customer (including an CPI Change) and/or arise as a consequence of a change in prices, terms or otherwise made by Third Party manufacturers, Third Party suppliers or a regulatory body.

13.5 Termination of a Service in accordance with clause 13.3 of these General Conditions will not affect or diminish the Customer's duty to pay the Charges relating to that Service incurred prior to the date of termination, but, in this event, the Customer shall not be liable for any Termination Fees.

**Termination for cause**

13.6 The Customer may terminate this Agreement by providing to Company 30 days' notice in writing in the event that the Company:

- a) has committed a material breach of this Agreement that is incapable of remedy; or
- b) has committed a material breach of this Agreement that is capable of remedy and the Company has failed to remedy that breach within 30 days of the Customer supplying written notice specifying the breach and requiring its remedy.

- 13.7 The Company may terminate this Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:
- a) in the event that the Customer has committed a material breach of this Agreement that is incapable of remedy;
  - b) in the event that the Customer has committed a material breach of this Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of the Company supplying written notice specifying the breach and requiring its remedy;
  - c) if any of the events described in clauses 8.1c), 8.1d), 8.1g) and/or 12.5b) of these General Conditions occurs; or
  - d) if there is a change of control of the Customer (within the meaning of the UK's section 1124 of the Corporation Tax Act 2010).

**Insolvency**

- 13.8 A party to this Agreement may terminate this Agreement by providing 30 days' notice in writing in the event that bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

**Consequences of termination**

- 13.9 If this Agreement is terminated and the Customer wishes to transfer to another service provider, the Company will provide reasonable assistance to the Customer, at the Customer's cost, in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.
- 13.10 Termination or expiry of this Agreement for whatever reason shall not affect:
- a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
  - b) any provisions of this Agreement which are of a continuing nature or intended by their operation to survive termination or expiration of this Agreement and any other provisions of this Agreement necessary for their interpretation or enforcement.
- 13.11 On termination or expiry of this Agreement (in whole or in relation to a particular Service):
- a) any sums properly due from one party to the other will become immediately due and payable (including Charges for the Service(s) up to the date of termination, Termination Fees relating to the Service(s) and/or Charges for any costs incurred by the Company in relation to Equipment or Services ordered by the Customer but yet to be supplied by the Company);
  - b) the Customer shall cease using the Service(s); and
  - c) each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other relating to the Service(s) which is in its custody, possession or control or will destroy such Confidential Information and certify in writing such destruction to the other party.

**14 EQUIPMENT AND STORAGE**

- 14.1 The Customer shall comply with any instructions provided by the Company or a Company Representative from time to time in respect of the Equipment.
- 14.2 Certain elements of Services are dependent on the Customer using the correct Equipment. If the Customer does not use the correct Equipment, then:
- a) the Services may not function correctly;
  - b) the Company shall have the right, in its sole discretion to not provide the Customer with the relevant Services; and
  - c) the Company shall have no liability for the Customer's inability to receive those Services; and,
  - d) the Customer shall remain liable for the relevant Charges.
- 14.3 No work or materials other than as set out in the Agreement will be supplied or fitted. Unless agreed explicitly as part of the Agreement the Company shall not determine whether the Site or any part of

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the existing structure are suitable for the installation and/or supply of Equipment. Where the Site is not immediately suitable for the installation or supply of Equipment, the Company shall not be liable for any delay relating to this unsuitability and the Customer agrees to pay any reasonable Company expenses, including labour, which are necessary to make the Site available for the supply.

- 14.4 The Company shall clear away any Company equipment and easily removable waste using the Customer's waste facilities and apart from this obligation, the Company is not responsible for returning the Site to its previous condition after any work undertaken by the Company at the Site, including without limitation replacing and re-fitting fixtures or other items or for re-painting, wallpapering or door and/or window moulding, woodwork or other decoration.
- 14.5 Customer must cause the area where the Services and Equipment are to be installed and/or supplied to be made safe and ready for the installation and/or supply on the due date, to the satisfaction of the Company. Where the Customer fails to clear the area and it is necessary for the Company to provide labour to do this, the Customer shall pay the Company's charges or the work which, in the absence of manifest impropriety or excessiveness, shall be deemed reasonable.
- 14.6 The Company does not undertake to widen any existing brick apertures of windows or doors or carry out any structural alteration or building work.
- 14.7 The Company shall not be responsible for and will not undertake any wiring, electrical, plumbing or heating, ventilation or air conditioning work except to the extent that any such work is necessary for the proper installation and/or supply of Services and Equipment.
- 14.8 The safety of all materials left on Site and part-completed installation and/or supply shall be the responsibility of the Customer, who shall be liable to the Company for any loss of, damage to theft of, or accidental, malicious or negligent damage to such materials. Customer shall procure and maintain adequate levels of insurance of all materials and Equipment related to this Agreement against any and all loss related thereto with a reputable insurer and shall provide a copy to Company of the relevant certificate of insurance with rider/amendment evidencing the coverage within 7 (seven) days of on Company's request.
- 14.9 Unless and except to the extent expressly agreed otherwise by the Company in writing, the Company will not undertake any decorating work and will not be responsible for any damage caused to walls, floors, ceilings, plastering, tiling, wallpaper, art decorations or otherwise in consequence of reasonable installation works.
- 14.10 The Customer will give access to the Site to the Company and subcontractors at all reasonable times and in a reasonable manner so as to permit that the Company to complete the installation and/or supply in accordance with the Agreement.
- 14.11 The Customer agrees to allow the free use of any utilities and other services supplied to the Site for the purposes of, or incidental to, carrying out the installation and/or supply.

## **15 DELIVERY, TITLE AND RISK OF LOSS**

- 15.1 Unless otherwise agreed in writing by the parties, or as specified in a Sales Order, Company shall, following notice to Customer of shipping, deliver the Equipment FOB Company's premises (the "Delivery Point") using Company's standard methods for packaging and shipping. Customer shall take delivery of the Equipment upon arrival at Customer's premises. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Equipment at the Delivery Point.
- 15.2 Company may, in its sole discretion, without liability or penalty, make partial shipments of Equipment to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the Equipment shipped whether such shipment is in whole or partial fulfillment of Customer's Equipment allocation.
- 15.3 If for any reason Customer fails to accept delivery of any of the Equipment on the date fixed pursuant to Company's notice that the Equipment have been delivered at the Delivery Point, or if Company is unable to deliver the Equipment at the Delivery Point on such date because Customer has not

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provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Equipment shall pass to Customer; (ii) the Equipment shall be deemed to have been delivered; and (iii) Company, at its option, may store the Equipment until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

- 15.4 The quantity of any instalment of Equipment as recorded by Company on dispatch from Company's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary.
- 15.5 Company shall not be liable for any non-delivery of Equipment (even if caused by Company's negligence) unless Customer gives written notice to Company of the non-delivery within 7 days of the date when the Equipment would in the ordinary course of events have been received.
- 15.6 Any liability of Company for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or adjusting the invoice respecting such Equipment to reflect the actual quantity delivered.
- 15.7 Customer acknowledges and agrees that the remedies set forth in Section 9 are Customer's exclusive remedies for the delivery of nonconforming Equipment. Except as provided under Section 9, all sales of Equipment to Customer are made on a one-way basis and Customer has no right to return Equipment purchased under this Agreement to Company.
- 15.8 Title and risk of loss passes to Customer upon delivery of the Equipment at the Delivery Point. As collateral security for the payment of the purchase price of the Equipment, Customer hereby grants to Company a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Equipment, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the State of Customer's premises.
- 15.9 Customer shall, upon delivery, insure the Equipment in compliance with this Agreement. In the event of any loss or damage to the Equipment prior to the Company receiving payment in full for the Equipment or in respect of any sums owed by the Customer to the Company, the Customer shall hold the proceeds of any such insurance on behalf of and as trustee for the Company, provided that in the event that payment is still outstanding from the Customer as at the date of receipt of any such proceeds, such proceeds shall be applied by Customer to payment of the Equipment.

## **16 INTELLECTUAL PROPERTY**

- 16.1 All intellectual property rights in the Software, Equipment associated documents and all parts thereof are and shall remain vested in and be the absolute property of the owner of the copyright in the Software, Equipment or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, Equipment or associated documents and all parts thereof, directly against the Customer.
- 16.2 Unless otherwise specified in this Agreement, all intellectual property developed in the provision of any Service will vest in the Company or its licensors. The Company may use know-how acquired, principles learned or developed or experience gained during the performance of any Service, to perform work for other customers.
- 16.3 All information or materials exchanged between the Company and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of the Company, the Company's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.
- 16.4 The Company grants to the Customer a revocable, non-exclusive, non-transferable licence to use, in object code form, any Software and the Equipment provided by the Company or its suppliers solely in the United States and Canada (and any other territories agreed in a writing by the parties) in connection with the proper use of the Services. The Customer represents, covenants and warrants

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that it shall not copy, alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), unless expressly permitted to do so by the Company or by relevant law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).

- 16.5 The Company grants to the Customer a revocable, non-exclusive, non-transferable royalty free licence for the term of this Agreement (in whole or in relation to a particular Service(s)) to use any information or materials provided by the Company to the Customer under this Agreement to the extent necessary for the Customer to receive the benefit of the Service(s). The Customer shall not copy, reproduce, distribute, alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by the Company in writing or relevant law.
- 16.6 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment, Software, information or materials provided by the Company then the Company will indemnify the Customer in relation to sums awarded or paid in settlement for such claim provided that the Customer promptly notifies the Company in writing of such claim, makes no admission in respect of such claim, the Customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows the Company or its licensor to conduct all negotiations and proceedings (providing the Company or its licensor with all reasonable assistance) and allows the Company at the Company's own discretion and expense to modify or replace the Equipment, Software, information or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment, Software, information or materials in conjunction with other equipment and software or Services not supplied by the Company pursuant to this Agreement in which event the Customer shall indemnify the Company in respect of any claims, proceedings and expenses arising from or related to any such infringement by the Customer.
- 16.7 The Customer will not be entitled to and agrees not to:
- a) use in the course of trade or otherwise in relation to any Equipment or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of the Company (or any of its suppliers) or any part thereof in any manner such that any person might reasonably import a connection between those Equipment or services and the Company (or any of its suppliers) or any part thereof;
  - b) register or attempt to register as a trademark anything referred to in clause 16.7a) of these General Conditions; and/or
  - c) authorise any Third Party to do anything referred to in clause 16.7a) of these General Conditions.

The Customer further agrees not to infringe any copyright or registered or unregistered trademark rights belonging to any Third Party in respect of any Equipment.

#### **End User Licensed Software**

- 16.8 The Customer recognises that the Services may be dependent upon End-User Licensed Software (e.g., click-through licences) and if the Customer does not accept the licence terms relating to any End-User Licensed Software, the Company shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End-User Licensed Software.
- 16.9 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.
- 16.10 The Customer shall accept and comply with all licence terms required from time to time by any Third-Party provider of any Software or materials as agreed between the relevant Third Party and the Company.



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**17 CONFIDENTIALITY**

- 17.1 Either party receiving Confidential Information (the "Recipient") from the other (the "Disclosing Party") shall not, without the Disclosing Party's prior written consent, use that Confidential Information for any purpose other than for the purposes of fulfilling such party's obligations under this Agreement, or disclose such Confidential Information to any person other than authorised personnel who have a need to know that information.
- 17.2 Clause 17.1 shall not prohibit use or disclosure of Confidential Information by either party to the extent:
- a) the Confidential Information is published by or on behalf of the Disclosing Party or becomes generally known to the public otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality;
  - b) such Confidential Information was lawfully known to the Recipient prior to the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality;
  - c) the Confidential Information was lawfully disclosed to the Recipient by a third party that was not itself under any obligations of confidentiality;
  - d) the Confidential Information is replicated or developed independently by or on behalf of the Recipient without access to or knowledge of the Confidential Information;
  - e) the disclosure is made to the professional advisers of a party provided that such professional advisers are made expressly aware of the confidential nature of the Confidential Information;
  - f) the disclosure of Confidential Information is required for the purposes of any judicial proceedings arising out of a breach of this Agreement or any other agreement entered into under or pursuant to this Agreement; or
  - g) the Confidential Information is required to be disclosed by any applicable law or regulation, by any governmental or regulatory body, or by or in connection with the rules of any stock exchange on which the shares of either party or its holding company are listed (including where disclosure is required as part of any actual or potential offering, placing and/or sale of securities of either party or its holding company),

provided however that prior to the disclosure or use of any Confidential Information in the circumstances described in clauses 17.2 (f) or (g), the party concerned shall, where not prevented by applicable law or regulations, consult with the other party about the nature and extent of the required use or disclosure insofar as is reasonably practicable.

- 17.3 Upon termination of the Agreement, for whatever cause, the Recipient will:
- a) cease to use the Confidential Information given to them by the Disclosing Party for any purpose;
  - b) return to the Disclosing Party or destroy all documents and all other materials containing or reflecting any Confidential Information, together with any copies, which are in the Recipient's possession or control or in the possession or control of any of the Recipient's authorised personnel and which are in a form capable of delivery and destruction; and
  - c) expunge all Confidential Information from any computer, word processor or similar device into which it was programmed by the Recipient or any of the Recipient's authorised personnel,
- provided, however, that the Recipient will be permitted to retain any computer records and files containing any Confidential Information which have been created pursuant to its automatic archiving and back-up procedures ("Information Archives").

- 17.4 The Recipient acknowledges that neither the return nor the destruction of any Confidential Information in accordance with clause 17.3(b) nor the expunging of any Confidential Information in accordance with clause 17.3(c) will release the Recipient from its obligations under this Agreement. Any Confidential Information retained on a Recipient's Information Archives shall be kept strictly confidential and shall not be used for any purpose, other than as required by applicable laws and regulations.

**18 LIMITATION OF LIABILITY**

- 18.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION

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IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

18.2 IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AGREEMENT VALUE, AS DEFINED BELOW OR \$50,000.00 (FIFTY THOUSAND DOLLARS), WHICHEVER IS LESS.

i) "Annual Agreement Value" means the total Charges paid or payable by the Customer in the Year prior to the Relevant Year (or where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the claim arose and subject always to the Company's aggregate liability for claims in the first Year being no greater than the total Charges paid or payable by the Customer in the first Year); and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.

18.3 The limitation of liability set forth in Section 18 shall not apply to (i) liability resulting from a party's gross negligence or willful misconduct and (ii) death or bodily injury resulting from a party's negligent acts or omissions.

18.4 Nothing in this clause 18 shall apply to the payment of the Charges.

18.5 The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the Agreement between the Company and the Customer. The Company would not be able to provide the Services and/or Equipment on an economic basis without such limitations.

#### **Liability for third parties**

18.6 The Company shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by the Company as subcontractors or assignees in respect of the performance of the Company's obligations under this Agreement.

### **19 ASSIGNMENT**

19.1 The Customer shall not assign or transfer this Agreement to any Third Party, provided that the Customer may assign or transfer this agreement to a Customer Affiliate with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed.

19.2 The Company may assign or transfer this Agreement to any Affiliate and may subcontract the performance of all or part of the same, provided that the Company shall remain liable for the acts and omissions of its subcontractors.

### **20 ENTIRE AGREEMENT**

20.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

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**21 INVALIDITY**

If any of the provisions of this Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree, or the court may provide, the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

**22 WAIVER**

- 22.1 No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.
- 22.2 None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:
- a. any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or
  - b. any act, omission or course of dealing between the Parties.

**23 DATA PROTECTION**

Each party shall comply with the Data Protection Laws when processing any personal data under this Agreement and the parties hereby agree to the EU standard contractual clauses published by the European Commission which shall cover any transfers of personal data where either party acts as the “data exporter” to the other party acting as the “data importer” under this Agreement. Each party shall be acting as a controller in their own right of any personal data transferred to the other party under this Agreement.

**24 EXPORT CONTROL**

- 24.1 In the event that the Customer proposes to export any hardware or Equipment supplied by the Company pursuant to this Agreement, the Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.
- 24.2 In the event that the Customer procures Equipment, the Customer agrees that in entering into this Agreement the Customer accepts the terms of the following end-user certification: The Customer certifies that it is or will be the end-user of the Equipment and further certifies that it shall use the Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice services in order to perform their everyday contractual duties; that the Equipment will not be used for any purpose connected with explosives, chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the Equipment, or any replica of it, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity.

**25 RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties and nothing in this Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

**26 NOTICES**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the sales confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid, provided

that both sender and recipient are within the United States), or facsimile or email (with electronically-generated confirmation of transmission) except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

## 27 NO THIRD-PARTY RIGHTS

THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE PARTIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND IS MADE SOLELY AND SPECIFICALLY FOR THEIR BENEFIT. NO OTHER PERSON SHALL HAVE ANY RIGHTS, INTEREST OR CLAIMS HEREUNDER OR BE ENTITLED TO ANY BENEFITS UNDER OR ON ACCOUNT OF THIS AGREEMENT AS A THIRD-PARTY BENEFICIARY OR OTHERWISE. PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT

## 28 ORDER OF PRIORITY

This Agreement is comprised of the following documents:

- a) these General Conditions;
- b) the Commercial Schedule and/or Sales Order;
- c) the applicable Terms;
- d) the applicable Service Schedule(s) or SOW;
- e) any other document incorporated by reference in Terms or Service Schedules; and
- f) the Company Website.

In the event of any conflict between provisions of the documents making up this Agreement, the order of precedence in interpretation and construction shall be as set out in clause 28 of these General Conditions (in order of decreasing priority) unless explicitly stated otherwise.

## 29 CREDIT CHECKS AND FRAUD PREVENTION

- 29.1 The Company's acceptance of Customer's application for Services, may be subject to the Company checking the following records about the Customer and the Customer's Affiliates or business partners:
  - a) the Company's own records;
  - b) business records at credit reference agencies ("CRAs") including both public and fraud prevention information. When CRAs receive a search from the Company they will place a search footprint on the Customer's business credit file that may be seen by other lenders;
  - c) records held by fraud prevention agencies ("FPAs"); and
- 29.2 The Company may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. The Company may also make periodic searches at CRAs and FPAs to manage the Customer's account.
- 29.3 The Company will send information on the Customer's applications, the Company account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.
- 29.4 If the Customer does not pay the Charges when they become due and payable, CRAs will record the outstanding debt which shall remain on file for six years after they are closed (whether by settlement or default). Such records may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace the Customer's whereabouts and recover debts owed by the Customer.
- 29.5 If the Customer gives the Company false or inaccurate information or the Company suspect or identify fraud or criminal activity the Company will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.

- 29.6 The Company and other organisations may access and use from other countries the information recorded by fraud prevention agencies.
- 29.7 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the Data Protection Laws.

### 30 **MULTI-TIERED DISPUTE RESOLUTION AND GOVERNING LAW**

- 30.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause:
- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the relevant manager of the Customer and relevant manager of the Company shall attempt in good faith to resolve the Dispute;
  - b) if the relevant Manager of the Customer and relevant Manager of the Company are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the President of the Customer and President of the Company who shall attempt in good faith to resolve it; and
  - c) if the President of the Customer and President of the Company are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Mediation Procedures of the American Arbitration Association ("AAA"). Unless otherwise agreed between the parties, the mediator shall be nominated by AAA. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to AAA. The mediation will start not later than 60 days after the date of the ADR notice.
- 30.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.
- 30.3 If the Dispute is not resolved within 120 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 120 days, or the mediation terminates before the expiration of the said period of 120 days, the Dispute shall be finally resolved in accordance with this Agreement.
- 30.4 **Choice of Law.** This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Florida, United States of America (including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Florida
- 30.5 **Choice of Forum.** Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Middle District of Florida or the courts of the State of Florida sitting in Orange County, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Middle District of Florida or the courts of the State of Florida sitting in Orange County. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 30.6 **Waiver of Jury Trial/Attorney's Fees.**

- a) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY ARISING UNDER OR RELATED TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND , THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- b) The parties hereto agree that, regardless of the enforceability or non-enforceability of subsection (a) of this Section, the non-prevailing party in any dispute, claim, action or proceeding between the parties hereto arising out of or relating to the terms and conditions of this Agreement or any provision thereof (a "Dispute"), shall reimburse the prevailing party for reasonable attorney's fees and expenses incurred by the prevailing party in connection with such Dispute.

### 30.7 Force majeure.

Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, pandemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

The Customer agrees that the Company shall have no liability for improper, incorrect or unauthorised use of the Services or Equipment by the Customer or any Third Party.

## 31 MISCELLANEOUS

- 31.1 Each party will cooperate with the other in fulfilling its obligations under this Agreement and will provide such information and documentation as is reasonably requested by the other in carrying out this Agreement. Each party will provide such further assurances concerning the performance of its obligations hereunder and execute all documents for or in connection with the Agreement as, with respect to such assurances or documents, the other shall deem necessary or appropriate.
- 31.2 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in any other jurisdiction. On a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to affect the Parties' original intent as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. Failing such good faith negotiation, the court may, upon the request of either party, modify this Agreement to affect the Parties' original intent as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 31.3 Subject to the limitations and other provisions of this Agreement: (a) the parties' representations and warranties contained herein and related exceptions, limitations or qualifiers survive the expiration or earlier termination of this Agreement for a period of 12 months after the expiration or termination; and (b) as well as any other provision that, to give proper effect to its intent, should survive expiration or termination, survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of 12 months after expiration or termination. Notwithstanding any right under any applicable statute of limitations to bring a claim, no lawsuit or other action based on or arising in any way out of this Agreement may be brought by either party after the applicable survival period's expiration; provided, however, that the foregoing limitation does not apply to the collection of any amounts due to Company under the Agreement; and provide, further, that any claims asserted in good faith with reasonable specificity and in writing by notice before the applicable survival period's expiration is not thereafter barred by the relevant period's expiration, and these claims survive until finally resolved.

- 31.4 No amendment to or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each party.
- 31.5 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending the facsimile, e-mail or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic e-mail reply).