

1. Definitions and Interpretation

1.1 Definitions

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

"Acts" means the Wireless Telegraphy Act 2006, the Communications Act 2003 and any amendments or re-enactments to the same that may be made from time to time;

"Acceptable Use Policy" means any acceptable use policy applicable to the Service(s) to be provided, as set out in the Customer Agreement;

"Acceptance Tests" means the acceptance tests, as set out in or referred to in the Customer Agreement;

"Account Credit" means a subsidy fund which, if provided by Solar, shall be as specified in the Customer Agreement, which may be allocated to and deducted from the Charges due in relation to line rental and/or the purchase of Services from Solar in accordance with the Customer Agreement;

"Business Day" means a day (other than a Saturday or Sunday) when the banks are generally open for normal business in London;

"Business Hours" means 0900 to 1730 on a Business Day;

"Charges" means the amounts due from the Customer to Solar for Equipment and/or Services provided by Solar, as set out in the Customer Agreement and as varied in accordance with these MSA Terms;

"Commencement Date" means when Solar and/or a Supplier on Solar's behalf confirms to the Customer that the relevant Equipment has been provided and/or relevant Service is live (and if any piece of Equipment and/or individual Service is provided or live on different dates (as appropriate), each piece of Equipment and/or Service shall have its own Commencement Date);

"Confidential Information" means any and all information and know-how that is disclosed by or on behalf of one Party to the other Party in connection with the Customer Agreement or which otherwise becomes known to the other Party during the term of the Customer Agreement, whether orally, in writing, digitally, in the form of machine readable code or embodied in hardware or any other physical medium, which relates to the business, (including but not limited to the business plans, data, know-how, designs, illustrations, drawings, photographs, illustrations, notes, memoranda, terms of business, financial information, financial projections, financial records, details of employees, customers, clients and/or suppliers, sales and marketing information, spreadsheets, specifications, technical information and computer software) of that Party together with all information derived from any such information and any other information clearly designated by one Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

"Configurable items to site" means the targeted maximum time between remote diagnosis of an Incident by Solar and the arrival at the Customer Site of a configurable item (where Solar determines that it is required).

"Contract Buy-out" means the fee paid or payable by the Customer to a Previous Service Provider, solely in respect of termination of the relevant contract between them, and excluding accrued call charges, line rental charges and other charges or liabilities in respect of the goods and/or services provided in the period prior to the termination of that contract (save that, for the avoidance of doubt, any early termination fee shall be included in the Contract Buy-out);

"Customer" means the company, partnership, organisation or individual procuring Equipment and/or Services from Solar, as specified in the Customer Agreement;

"Customer Agreement" means the agreement between the Customer and Solar pursuant to which, subject to clause 2.2, Solar agrees to provide the Equipment and/or Services and which includes these MSA Terms, the PID (if any) and any Service Terms or other terms set out or referred to in the Customer Agreement;

"Customer Equipment" means the hardware, software and/or peripherals to be provided by the Customer which are or may be used in connection with the Services;

"Customer Obligations" means those obligations to be undertaken by the Customer, as set out in the Customer Agreement;

"Customer Service Document" means the schedule setting out the terms and conditions upon which Solar agrees to provide Support Services to the Customer, including the Service Level Agreement, as updated from time to time and which is available from Solar's website at www.solar.co.uk;

"Credit" means any Account Credit, Contract Buy-out, Hardware Account, free of charge Equipment, Services and/or any subsidy, variation or reduction to the Charges and/or Fees, in each case which is applied to or provided with the Equipment and/or Services;

"Credit Limit" means any financial limit applied to the Customer Agreement, as notified by Solar to the Customer from time to time;

"Cut Over Date" means the target date, subject to Excused Delays, as set out in the Customer Agreement for the commencement of the Services in whole or in part;

"Data Protection Legislation" means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and including all related codes of practice;

"Delivery" means the delivery of the Equipment to the Site as agreed;

"Dual Running" means the simultaneous running (for the duration of the Implementation Period unless otherwise mutually agreed) of the existing Customer telecommunications equipment and/or services alongside the Equipment and/or Services to be delivered by Solar under the Customer Agreement.

"Early Termination Fee" means the amount of any Charges due for the period between the termination date and the latter of (a) the last date of the Minimum Term or (b) the last date of any Renewal Term (as described in clause 5.2), but for the termination and, in the event of termination during any Minimum Term, the Early Termination Fee shall include any discount on the Charges granted by Solar in relation to its standard charges during the Minimum Term;

"Effective Date" means the date the Customer Agreement becomes binding upon both parties in accordance with clause 2;

"End of Life" means where the manufacturer of any Equipment ceases, or gives notice of an intention to cease support of the Equipment;

"End of Sale" means where a Supplier no longer supplies the specified Equipment and/or Services;

"End of Support" means where Supplier support is no longer available for the Equipment and/or Services;

"Engineer to Site" means the targeted maximum time between remote diagnosis of an Incident by Solar and the arrival at the Customer's Site of an engineer (where an onsite presence is required in Solar's opinion);

"Equipment" means any equipment, hardware, software or peripheral which is supplied by Solar or any Supplier to the Customer, or placed at the Customer's sites, whether for the purpose of providing any of the Services or otherwise including any router, wireless device, card, computer or accessory;

"Excused Delays" means a delay occurring in respect of the provision of any Equipment and/or Services due in whole or part to: (a) failure by the Customer to comply with any of its obligations under the Customer Agreement; or (b) a Force Majeure Event occurring; (c) Third Party Influences including (without limitation) any delays caused by third party providers and/or local authorities due to any issues over rights of access for installation or particular difficulties with the supply of Equipment and/or Services including the installation of circuits and/or lines; and/or (d) any suspension of the provision of Equipment and/or Services in accordance with these MSA Terms;

"Fee(s)" means the applicable fee(s) or tariff(s) calculated in accordance with Solar's standard rates from time to time, which are available from Solar on request;

"Force Majeure Event" means an act of God or any other event beyond a Party's reasonable control, including (without limitation), lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, military operation, or national or local emergency, industrial dispute (including an industrial dispute involving that Party's own employees where that industrial dispute is beyond the reasonable control of that Party), terrorist act, act of Government, highway authorities, public telecommunication operators or other competent authorities, failure or shortage of power supplies, Solar's suppliers, network, software, facilities or other equipment failures, errors or

incompatibilities, denial of service attacks, hacking, spamming, viruses or other hostile computer programs, acts or omissions of any person or body for whom Solar is not responsible (including the Customer, its employees, agents, subcontractors and/or Users), in all cases whether caused within or outside the United Kingdom, the consequences of which such Party cannot reasonably prevent or avoid;

"Funder" means the party appointed by the Customer to make payment to Solar for any Charges due under the Customer Agreement;

"Group" means the relevant company and any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company (where "holding company" and **"Subsidiary"** have the respective meanings set out in section 1159 of the Companies Act 2006);

"Good Industry Practice" means the standards which would reasonably and ordinarily be expected from a skilled and experienced provider of services which are the same as or similar to the Services under the same or similar circumstances;

"Hardware Account" means a subsidy fund which, if provided by Solar, may be allocated to and deducted from the Charges due for Equipment during the Minimum Term, in accordance with the Customer Agreement;

"Implementation Services" means the supply, installation, configuration and programming of Customer Equipment, Equipment and/or Services at the Sites, including the provision of any training and/or project management in relation to the same, as referred to in the Customer Agreement;

"Implementation Period" means the period following signature of the Customer Agreement but prior to the commencement of any Services and/or the first Cut Over Date, during which Solar supply, install, configure and/or program the Customer Equipment, Equipment and/or the Services as specified in the Customer Agreement;

"Incident" means an event that is not part of the standard operation of any Equipment and/or Service and which causes or is likely to cause disruption to or a material reduction in quality of performance of that Equipment and/or Service;

"Incident Number" means the unique reference number assigned to an Incident Request. The unique reference number is automated if an Incident Request is submitted by email or via My Solar to the Service Desk and will be manually assigned if the Incident Request is submitted by telephone;

"Incident Request" means a request from the Customer to Solar for Support Services made by telephone or e-mail and/or My Solar to the Service Desk in relation to an Incident;

"Indemnify Solar against" means indemnify and keep Solar indemnified against all liabilities, claims, actions, proceedings, losses, damages and/or expenses which are brought against and/or incurred by Solar and which arise from or are in connection with the specified matter;

"Initial Response" means the automated incident report of the Customer's reported issues, which is generated following an Incident Number being assigned. The receipt of such Initial Response comprises the first response as referred to in the Service Level Agreement;

"Insolvency Event" means any event referred to in clause 17.3.2 or clause 17.3.3;

"Intellectual Property Rights" means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, moral rights, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights, rights in any software and all rights in the nature of unfair competition rights or rights to sue for passing off;

"Liability" means all loss, damage, costs, expenses (including all professional and legal costs and expenses) and other liability, whether direct, indirect or consequential and whether arising in tort (including negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise;

"MAC Packs" means packages of useable professional services (60 minutes or part thereof) which may be purchased by the Customer under which Solar may provide professional services for moves,

additions and changes to the Customer Equipment, Equipment and/or Services specified in the Customer Agreement;

"Managed Services" means the support and management of the Customer Equipment, Equipment and/or Services;

"Minimum Commitment" means the agreed minimum spend of the Customer during the Minimum Term in respect of any Managed Services or other Services, as set out in the Customer Agreement;

"Minimum Term" means the minimum period during which the Customer contracts with Solar for the provision of the Equipment and/or Services, as set out in the Customer Agreement or, if not specified in the Customer Agreement, a period of 36 months from and including the Commencement Date;

"MSA Terms" means these master services agreement terms and conditions, as updated from time to time by Solar in accordance with clause 20.2;

"My Solar" means Solar's online services suite, to which Solar shall use reasonable endeavours to provide the Customer with access on a 24 hour per day, 7 day per week, 365/6 day per year basis but for the avoidance of doubt, Solar does not guarantee to do so and shall have no Liability to the Customer in relation to any failure by the Customer to gain access to My Solar;

"Network" means the Local Area Network, network equipment, computer systems, and local cable infrastructure at the Sites, to which the Service will be connected;

"PID" means a project initiation document (if any) signed by Solar and the Customer setting out the additional details of the methodology for the Implementation Services;

"Previous Service Provider" means a third party that provides the Customer with telecommunications equipment and/or services prior to Solar;

"Response Times" means the periods of time set out in the Service Level Agreement and commencing on the assignment of an Incident Number to an Incident Request, within which Solar will, excluding any Excused Delays, use reasonable endeavours to respond to the Incident Request;

"Return to Service" means in relation to an Incident, when either (a) the performance of the affected Equipment and/or Service is restored; or (b) the performance of the affected Equipment and/or Service is restored to the point where the Incident can be categorised as no more severe than a Category 3 Incident (as referred to in the Service Level Agreement);

"Return to Service Time" means the period of time, excluding any Excused Delays, from when an Incident Number is assigned to an Incident to when there is a Return to Service;

"Services" means the services to be provided by Solar to the Customer, as set out or referred to in the Customer Agreement and **"Service"** means any one of them;

"Service Desk" means the point of contact within Solar, via which all Incident Requests will be raised and addressed as more particularly described in the Service Level Agreement;

"Service Levels" means the levels of service set out in the Service Level Agreement;

"Service Level Agreement" means the agreement set out or referred to in the Customer Service Document which sets out the Service Levels in relation to one or more of the Services;

"Service Provider" means the provider of telecommunications services specified in the Customer Agreement;

"Service Terms" means Solar's terms and conditions for specific products and/or services that are to be provided by Solar to the Customer pursuant to the Customer Agreement;

"Site(s)" means the Customer's premises set out in the Customer Agreement, at which the Equipment and/or Services are to be provided, and such other premises as may be added from time to time, with the written agreement of the parties;

"Software" means the Solar and/or third-party software, in object code form only, together with any operating systems, utilities, applications and other programs residing in memories or embedded into or incorporated within the Equipment;

"Software Licence" means any licence terms that govern the use of Software licensed to the Customer hereunder;

"Solar" means the company specified in the Customer Agreement which is a subsidiary of Solar Communications Group Limited,

company number 04313913 and with whom the Customer enters into the Customer Agreement;

"Specification" means the specification of the Equipment or Services, as appropriate, which is set out or referred to in the Customer Agreement and which may be further detailed in the PID;

"Supplier" means the supplier from whom Solar obtains the Equipment and/or facilities to provide the Services from time to time pursuant to a licence, contract or otherwise;

"Support Services" means the support services as set out in the Customer Service Document;

"Supported Hours" means times during which the Support Services are provided, as set out in the Service Level Agreement;

"Telecoms Services" means those of the Services comprising mobile, inbound, outbound and/or hosted telephony services;

"Third Party Influences" means third party manufacturer, supplier or carrier related acts, omissions or incidents that may impact on the ability of Solar to meet the Response Times, Return to Service times or perform any other relevant obligation set out in the Customer Agreement or agreed between the parties, provided always that where reasonably possible such influences are (to the extent reasonably possible) communicated to the Customer;

"Under Warranty" means Equipment that, at the relevant time, was covered by the warranty given to Solar by the manufacturer provided that such Equipment was not expressly provided to the Customer on a "no warranty" basis, and excludes any promotional items supplied from time to time with or in connection with the Equipment; and

"User" means any end-user of the Equipment and/or Services.

1.2 Interpretation

1.2.1 Terms in the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect interpretation. Any phrase introduced by the words including, includes, in particular or for example or similar shall be construed as illustrative and shall not limit the generality of the related general words.

1.2.2 References to statutory provisions include those statutory provisions as amended or re-enacted.

1.2.3 If there is any conflict or ambiguity between the provisions of these MSA Terms, the Service Terms, the Customer Service Document, the PID and/or the Customer Agreement, the conflict shall be resolved in accordance with the following order of precedence: (i) those parts of the Customer Agreement headed "Proposed Service/Equipment", "Quote Summary", "Terms of Business" and any Acceptable Use Policy/ies; (ii) the PID; (iii) the Customer Service Document; (iv) the Service Terms; (v) these MSA Terms; and then (vi) the Customer Agreement, save for those sections referred to in (i) above.

2. Introduction

2.1 These MSA Terms shall apply to and be incorporated into all Customer Agreements accepted by Solar in accordance with clause 2.2.

2.2 If the Customer wishes to purchase and Solar agrees to supply Equipment and/or Services to the Customer, it shall issue the Customer with a Customer Agreement setting out terms upon which it is willing to do so. If the Customer agrees with the Customer Agreement, it shall sign a copy of the same and return it to Solar. A Customer Agreement received by Solar from the Customer constitutes an offer by the Customer to purchase Services and/or Equipment (as appropriate) on the terms of the Customer Agreement and Solar shall not be bound by the same unless or until it accepts the Customer Agreement in accordance with this clause. The Customer Agreement shall be deemed to be accepted by Solar and comes into effect upon the earlier of: (a) Solar accepting the Customer Agreement in writing (including by email); or (b) Solar despatching the Equipment to the Customer; or (c) Solar commencing the provision of the Services referred to in the Customer Agreement.

2.3 Following the Effective Date the Customer is bound by the terms of the Customer Agreement and is not able to cancel,

terminate or vary the Customer Agreement unless expressly permitted by the terms of the Customer Agreement.

2.4 It is the Customer's responsibility to evaluate the Services and/or Equipment being purchased, including any specific functionality requirement, and to satisfy itself that the Services and/or Equipment referred to in the Customer Agreement meets the Customer's requirements, prior to submitting a signed Customer Agreement to Solar. Upon Solar's acceptance of a Customer Agreement the Customer will be bound to purchase the Services and/or Equipment referred to in the Customer Agreement.

2.5 Any terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document issued by the Customer shall not apply to or be incorporated into the Customer Agreement.

2.6 The Customer acknowledges and accepts that quotations, proposals, orders and/or other documents issued by Solar shall not be binding upon Solar unless or until the same are incorporated into a Customer Agreement which is accepted by Solar in accordance with clause 2.2. Any Customer Agreement issued by Solar is valid for a period of 30 days from the date it is issued (or such other period as is expressly referred to in the Customer Agreement), provided that Solar has not previously withdrawn it.

2.7 The Customer Agreement constitutes the entire agreement between the parties in relation to its subject matter. The Customer acknowledges that it has not relied on any warranty, statement, promise or representation made or given by or on behalf of Solar which is not set out in the Customer Agreement. The Customer understands that there is no contractual relationship between itself and any of the Suppliers or other sub-contractors of Solar, and where any such Supplier or subcontractor is involved in the provision of Equipment and/or Services to the Customer, it does so on behalf of Solar.

3. Provision And Acceptance Of The Equipment And/Or Services

Surveys

3.1 Following the date Solar issues the Customer with a Customer Agreement Solar may, at Solar's sole discretion and at Customer's cost, conduct a survey of the Site(s). Solar shall provide the results of the survey to the Customer for the Customer's approval (such approval not to be unreasonably withheld or delayed). The survey will be based on the information available to Solar at the time it conducts the survey and will: (a) confirm whether, in Solar's opinion, Solar can provide the Equipment and/or Services in accordance with the Customer Agreement or whether any changes will be required to the Customer Agreement (including, without limitation, any changes to Customer Equipment, Equipment, Services and/or Charges); and (b) specify any technical requirements and associated Charges. Upon receipt of Customer's approval of the results of the survey, which shall be deemed given if the Customer does not reject the results within 3 Business Days of the date they are issued by Solar, the changes to the Customer Agreement set out in the survey results shall apply and Solar shall issue confirmation of those changes in writing to the Customer. Where the Customer rejects the results of the survey, the original Customer Agreement will be cancelled and shall not be binding upon either party. For the avoidance of doubt, the Customer shall bear all costs arising from or in connection with the Site surveys.

Implementation Services

3.2 Solar shall notify the Customer when it or the Supplier has supplied, installed, configured and/or programmed the Customer Equipment, Equipment and/or the Services. If expressly referred to in the Customer Agreement, the Customer shall then perform the Acceptance Tests. If the Customer discovers any material non-conformity in the installation, configuration and/or programming of the Customer Equipment, or the operation of the Equipment and/or the

Services when performing the Acceptance Tests, the Customer shall notify Solar of the same.

- 3.3 To the extent that such non-conformities will have, in Solar's reasonable opinion, a material detrimental effect on the Equipment and/or Services, Solar will use reasonable endeavours to remedy such non-conformities.
- 3.4 Acceptance shall be on an individual Site by Site basis and shall take place on the earlier of:
 - 3.4.1 the Customer's written confirmation to Solar or its Supplier that the Acceptance Tests have been performed and no material non-conformities have been discovered; or
 - 3.4.2 five (5) working days from the date of Solar's notification to the Customer that it has completed the supply, installation, configuration and/or programming of the Customer Equipment, Equipment and/or the Services; or
 - 3.4.3 five (5) working days after the date on which the notified non-conformities were remedied; or
 - 3.4.4 immediately upon Solar's demonstration that any notified non-conformities will not, in Solar's reasonable opinion, have a detrimental effect on the Equipment and/or Services.
- 3.5 The Customer acknowledges and agrees that Solar shall be entitled to extend the time for performance of its obligations by an amount equal to the time taken to investigate and/or remedy any non-conformities notified by the Customer under clause 3.2 where such non-conformities relate to any act or omission of the Customer. Solar may charge a Fee for any additional time incurred by Solar investigating any notified non-conformities which later are found not to exist or not to be material.
- 3.6 If Solar becomes aware of a potential delay in the provision of the Implementation Services for any reason, Solar shall inform the Customer as soon as reasonably possible.
- 3.7 If the Customer requests a delay in the provision of Implementation Services, Solar will endeavour to accommodate this. However, if this results in Solar incurring extra costs, Solar will provide the Customer with details of these costs and the Customer shall pay these additional costs in addition to the Charges, where it decides to proceed with the delay.

General

- 3.8 Subject to the Customer Agreement, Solar will use its reasonable endeavours to provide, operate and maintain the Services in accordance with Good Industry Practice and the specification set out in the Customer Agreement as supplemented and modified (if relevant) by the PID, which shall include using reasonable endeavours to Return to Service any Service which is ongoing in nature in the event of an Incident, but the Customer acknowledges and agrees that, save to the extent expressly stated in these MSA Terms, no guarantee, representation, assurance or warranty is given in respect of any of the Equipment and/or Services including (without limitation) in relation to any fitness for purpose, compatibility, availability, Response Times and/or Return to Service times.
- 3.9 Without limiting the remainder of this clause 3, Solar will use reasonable endeavours to provide the Equipment and/or Services with effect from any target date for delivery, collection or commencement (as appropriate) specified in the Customer Agreement but the Customer acknowledges and agrees that Solar cannot guarantee to do so and Solar shall have no Liability to the Customer if it fails to provide the Equipment and/or Services in whole or part with effect from such date.
- 3.10 The Customer shall:
 - 3.10.1 prepare the Site and Customer networks in accordance with specifications stipulated by Solar and make any modifications to the Customer Equipment which are reasonably required by Solar;
 - 3.10.2 provide reasonable and safe access to the Customer Equipment, networks and/or Equipment either at the Site (which Solar shall use reasonable endeavours to ensure is within Business Hours but may, on reasonable notice (except in the case of emergency), be outside Business Hours) or via

the Network or any service connection points, together with such office facilities, information technology, telecommunications facilities (including full remote access), passwords and technical/personnel assistance as Solar reasonably requires;

- 3.10.3 provide suitable, safe and secure working conditions for those of Solar's and any Supplier's personnel at the Site, together with such scaffolding, unskilled labour, lifting gear, building work, stable and clean electrical power (without surges), heating, lighting, ventilation, private wires, jack sockets, ducting and any other items or conditions as are necessary for the efficient installation and operation of the Equipment and/or Services. Solar's decision on the routing of cables and wires, and the positioning of outlets, Equipment and other relevant apparatus at the Site shall be final and binding; and
- 3.10.4 provide accurate information in a timely manner as requested by Solar. The Customer shall ensure this information is kept up-to-date and shall promptly notify Solar of any changes.
- 3.11 Any cutting away and making good of floors, ceilings, ceiling tiles and panels, trenching, back filling, supply and erection of poles, provision of trunking and ducting at the Site(s) and/or making good of any other alterations at the Site which are necessary for the efficient installation, operation and/or provision of the Services are the Customer's sole responsibility.
- 3.12 In the event the Customer fails to provide Solar or its Supplier with access to the Sites(s) in accordance with clause 3.10, the Customer hereby agrees to pay any additional costs or expenses incurred by Solar in relation to the same and Solar shall have no liability or obligation to the Customer in relation to any resultant delay or failure in performing its obligations under the Customer Agreement.
- 3.13 Without limiting clauses 3.7 and 3.12, if the Customer or any third party over whom Solar has no control causes or contributes to any delay in the performance of any of Solar's obligations under the Customer Agreement for any reason, Solar reserves the right to invoice the Customer for any third-party costs, charges or expenses incurred by Solar in relation to the same.
- 3.14 Where an End of Sale is applicable, Solar shall use reasonable endeavours to provide the Customer with a suitable replacement as determined by Solar. Where a suitable replacement is not available, as determined by Solar, the parties shall discuss and promptly agree a mutually acceptable solution. For the avoidance of doubt, Solar shall be under no obligation to continue providing any Equipment and/or Services which are the subject of the End of Sale.

4. Use Of The Services

- 4.1 The Customer agrees in respect of the Services:
 - 4.1.1 to use the Services in accordance with the Acts, all other relevant laws, regulations, guidance and codes of practice from time to time and any direction of the Director General of Telecommunications or other competent authority including any licence granted thereunder which governs the running of a telecommunications system by Solar, its Suppliers or any of their respective sub-contractors;
 - 4.1.2 to use the Services in accordance with the Customer Agreement, and such other conditions or instructions as may be notified to it in writing by Solar or a Supplier from time to time;
 - 4.1.3 not to cause any attachments other than those approved for connection under the Acts to be connected to the Telecoms Services;
 - 4.1.4 not to knowingly or recklessly send any message or virus through the Network which causes or is likely to cause any harm to Solar, the Supplier, any of their communications systems and/or any of their customers;
 - 4.1.5 not to use any of the Telecoms Services other than as a genuine conveyance of communications for its proper benefit and for the purposes set out from time to time in Solar's Telecoms Services literature. Solar will provide the Customer

- with as much notice as reasonably practicable should there be any change to Solar's Telecoms Services literature;
- 4.1.6 not to use the Services for knowing receipt or transmission of any material or message which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which causes a nuisance, including spam;
- 4.1.7 not to interfere with or disrupt the Network or use the Services in a manner which constitutes a violation or infringement of the rights of any third party, which is a breach of any applicable law, rule, regulation, statutory obligation, code of practice or code of conduct or any Customer duty in contract, tort or otherwise, or which might cause any person, the property of any person, the telecommunications network, the quality of the Services, or any aspect of them, or any related equipment and/or services, to be impaired or damaged;
- 4.1.8 not to make or attempt to make fraudulent, illegal, unlawful, improper, or immoral use of the Services, nor to use or attempt to use the Services with the intent to avoid the payment, in whole or in part, of any Charges, Fees or other sums due under the Customer Agreement;
- 4.1.9 to maintain the Customer Equipment and all other relevant equipment and apparatus at all times during the term of the Customer Agreement in good working order and in compliance with the relevant standards or approvals for the time being designated under the Acts, other applicable laws, rules, regulations and guidance and as specified in the Customer Agreement;
- 4.1.10 to provide Solar with such information as it reasonably requests relating to the Customer's Equipment and any other relevant equipment and apparatus;
- 4.1.11 to notify Solar of any fault with the Services, or of any use of the Services in breach of the Customer Agreement, immediately upon becoming aware of it;
- 4.1.12 to keep secure any passwords provided by Solar to the Customer or anyone acting on its behalf. The Customer acknowledges that any instruction given to Solar or a Supplier by a person possessing this password shall be deemed to have been made by the Customer;
- 4.1.13 to implement security measures to prevent unauthorised access to the Services, Equipment, Customer Equipment and the Sites;
- 4.1.14 that it has no rights in any intellectual property rights comprising the Services, or arising in the course of performing the Services, and to assign (and hereby does assign) any such rights to Solar;
- 4.1.15 not to resell the Services except to members of its Group from time to time and then only with the prior written consent of Solar. The Customer shall be responsible for any act, omission including any breach of the Customer Agreement by members of its Group as if it were committed by the Customer.
- 4.2 The Customer shall indemnify Solar in full and on demand from and against all Liability suffered or incurred by Solar and/or any member of its Group directly or indirectly in relation to any fraud, negligence, default, breach of the Customer Agreement, and/or any use of the Services and/or Equipment, by the Customer, any member of its Group or any of its or their employees, agents, subcontractors or Users.
- 4.3 Solar reserves the right to record all conversations between the Customer (or any of its personnel) and Solar's Service Desk without notice.

5. Duration/Term

- 5.1 The Customer Agreement shall commence on the Effective Date and shall, subject to clause 17, continue for the Minimum Term.
- 5.2 The Customer Agreement shall automatically renew at the end of the Minimum Term for further periods of twelve (12) months (each a "Renewal Term"), unless otherwise terminated in accordance with clause 17.

6. Charges & Payments

- 6.1 Subject to clause 6.4, all invoices raised by Solar for the Charges must be paid in the currency in which they are raised within 14 (fourteen) days of the date of the invoice, or in accordance with the terms of any direct debit mandate signed by the Customer authorising periodic payment.
- 6.2 Charges are exclusive of all taxes including VAT, which shall be added to all invoices at the prevailing rate.
- 6.3 Charges based on the Customer's usage of any Equipment and/or Services shall be calculated by reference to data recorded or logged by or on behalf of Solar or a Supplier and not by reference to any data recorded or logged by the Customer.
- 6.4 Where the Customer genuinely disputes an invoice in whole or part, the Customer shall notify Solar within 10 (ten) days of the date of the invoice and the Customer may only withhold payment of such part of the invoice as is under genuine dispute.
- 6.5 Subject to clause 6.4, the Customer may not exercise any right of set off, abatement, counterclaim, retention, deduction or any other withholding against amounts invoiced to it (including where invoices have been issued late or have been subsequently amended to correct errors) by Solar.
- 6.6 Solar may request a deposit as security in respect of Charges which will become due for any Equipment and/or Services to be provided ("Deposit"), which shall be paid to Solar by the Customer within seven (7) days of Solar's written request, failing which Solar reserves the right to refuse to provide and/or suspend the provision of Equipment and/or Services and/or terminate the Customer Agreement in whole or part. The Customer may request the return of the Deposit at the expiry of a period of twelve (12) months from the date it was paid, but the decision to return it prior to expiry or termination of the Customer Agreement is at the sole discretion of Solar. For the avoidance of doubt, no interest is payable on any Deposit held by Solar.
- 6.7 Solar reserves the right to set off the Deposit against any amount due and owing by the Customer to Solar under the Customer Agreement or any other agreement between Solar or any member of Solar's Group and the Customer or any member of the Customer's Group.
- 6.8 If the Customer fails to pay any properly due and payable amount under the Customer Agreement by the due date for payment, it shall forthwith on demand by Solar pay interest, at a rate of 4% (four per cent) per annum above the base lending rate of Barclays Bank plc., on the overdue amount from the due date for payment up to the date of actual payment (both before and after judgment).
- 6.9 Solar reserves the right to reclaim from the Customer all costs and expenses (including legal costs) reasonably incurred in the collection of overdue amounts from the Customer.
- 6.10 Solar may, at its absolute discretion, require the Customer to arrange for payment of its invoices by direct debit. If the Customer refuses to comply with such request, without prejudice to any of Solar's other rights and remedies, Solar may charge a Fee for payment by other means. The Customer shall not cancel any existing direct debit arrangement with Solar in relation to the Customer Agreement until all amounts payable under the Customer Agreement have been paid.
- 6.11 Without prejudice to any of Solar's other rights and remedies, Solar will be entitled to set off any liability of the Customer or any member of the Customer's Group to Solar or any member of Solar's Group against any liability of Solar or any member of the Customer's Group whether under the Customer Agreement or otherwise.
- 6.12 For the avoidance of doubt, the Customer shall be required to pay the Charges due in relation to the provision of Equipment notwithstanding that title to it has not and/or shall not pass to the Customer.
- 6.13 Solar shall be entitled to invoice for the Charges due in relation to each individual instalment of Equipment delivered to, or

collected by, the Customer irrespective of the fact that some Equipment remains undelivered or uncollected.

- 6.14 Solar reserves the right to adjust the Charges:
 - 6.14.1 immediately to reflect any changes enforced on Solar by regulatory authorities and/or any changes in tax, duties or similar or foreign exchange rates;
 - 6.14.2 immediately to reflect any increase in engineering time required to perform the Services from that estimated by Solar;
 - 6.14.3 immediately to reflect any costs incurred by Solar as a result of the Customer providing incorrect, illegible, inaccurate and/or incomplete information;
 - 6.14.4 immediately to reflect any costs incurred by Solar as a result of the Customer failing to comply with its obligations in the Customer Agreement;
 - 6.14.5 immediately to reflect any reasonable expenses incurred by Solar in the provision of the Equipment and/or any of the Services (to the extent not accounted for in the Charges);
 - 6.14.6 with effect from the end of the Minimum Term and subsequent anniversaries thereof by not less than 1 (one) month's prior written notice to the Customer;
 - 6.14.7 immediately to reflect any rises in Supplier, Service Provider and/or manufacturer rates and/or costs and/or any rise in the cost of labour, materials or other costs including (without limitation) those arising from or in connection with any wayleaves, in each case whether reasonably anticipated or not; and/or
 - 6.14.8 to include a Fee for call destinations and/or any other Equipment or Services (including any delivery dates, quantities and/or specifications of the same requested by the Customer or agreed between the parties) which are not stated on the Customer Agreement from time to time without notice.
- 6.15 Where Solar provides notice to adjust the Charges under clause 6.14.6 and the Customer does not agree such increases the Customer may terminate the Customer Agreement in accordance with clause 17.2. During such notice of termination, the increase in Charges under clause 6.14.6 shall not apply.
- 6.16 Solar's invoices shall be issued in an electronic format and accessible via My Solar. Should paper copies be requested an additional administration charge may be applied to the invoices.

Minimum Commitment

- 6.17 Where a Minimum Commitment applies in respect of all or any of the Services, it shall apply for the Minimum Term of the relevant Services. For the avoidance of doubt, the Customer must meet and/or exceed the Minimum Commitment set out in the Customer Agreement.
- 6.18 If the Customer has failed to meet any Minimum Commitment for a Service during the Minimum Term, upon termination of that Service or the Customer Agreement itself (whichever is earlier), the Customer shall pay to Solar any shortfall in such Minimum Commitment.

7. Change Control

- 7.1 Solar may make changes or adjustments to any Equipment, Services and/or Specifications set out or referred to in the Customer Agreement, as it deems necessary to take account of any changes in any manufacturer's specifications, to comply with safety, legal, regulatory or other requirements, recommendations and/or instructions relating to any Customer Equipment, Equipment and/or the Services and/or to take account of any matter which becomes evident during a Site survey or otherwise, provided that the revised Customer Agreement shall provide the Customer with Equipment and/or the Services materially equivalent to those set out in the original Customer Agreement.
- 7.2 The Customer may request, and/or Solar may recommend, changes to one or more aspects of the Customer Agreement. Solar shall advise the Customer, where possible within ten (10) business days of the date Customer requests or Solar recommends such changes, of the likely impact of any such

changes on the provision of the Equipment and/or Services, including any effect on the Charges and/or the target date for delivery, collection and/or commencement of the relevant Equipment and/or Services, if relevant.

- 7.3 The parties shall discuss any recommendation or request made under clause 7.2 as soon as practicable, but (without prejudice to the other provisions of this clause 7) neither Party will be obliged to agree to any change.
- 7.4 Until such time as any change requested or recommended under clause 7.2 is agreed in writing by both parties, Solar shall, unless otherwise agreed in writing, continue to provide the Equipment and/or Services as if such change had not been requested.
- 7.5 Any change agreed by the parties via clause 7.4 shall constitute a variation of the Customer Agreement and shall be made in writing and signed by both parties.

8 Equipment

- 8.1 The Customer shall accept delivery of or collect the Equipment on the delivery or collection date specified in the Customer Agreement (or as otherwise agreed with Solar). No claim for non-delivery of all or part of the Equipment will be considered unless Solar is advised in writing of such complete or partial non-delivery within one (1) working day of the date on which part of the Equipment was delivered or collected or, in the case of non-delivery or collection, the date Solar advised the Customer that the Equipment was due to arrive or available to collect. In the absence of such notice, the Customer's right to claim for complete or partial non-delivery shall be deemed to have been waived. Subject to the remaining provisions of this clause 8, risk in the Equipment passes to the Customer upon delivery or collection.
- 8.2 If any Equipment is damaged or faulty upon delivery or collection, the Customer may, subject to any other terms set out in the Customer Agreement, return such Equipment provided that the Customer notifies Solar of the damaged or faulty Equipment, and makes the same available for collection, properly packaged, within two (2) working days of the date the Equipment was delivered to or collected by the Customer (together with all accessories and original packaging), failing which the Customer shall be deemed to have accepted the Equipment and shall have waived its right to claim for such damaged or faulty Equipment.
- 8.3 Unless title to the Equipment passes to the Customer expressly under the Customer Agreement, the Customer shall, from delivery or collection of the Equipment:
 - 8.3.1 hold the Equipment on a fiduciary basis as Solar's bailee;
 - 8.3.2 not destroy, deface or obscure any identifying labels or marks on the Equipment, maintain the Equipment in satisfactory condition and in the same condition as that in which it was delivered or made available;
 - 8.3.3 keep the Equipment insured on Solar's behalf for its full replacement value against all risks with a reputable insurance company. On request, the Customer shall provide a copy of the relevant policy of insurance to Solar; and
 - 8.3.4 hold the proceeds of insurance referred to in clause 8.3.3 on trust for Solar and neither mix them with any other money nor pay them into an overdrawn bank account.
- 8.4 If the Customer is required to return Equipment to Solar pursuant to the Customer Agreement, the Customer shall be responsible for ensuring that such Equipment reaches Solar in accordance with clause 8.5. Unless the Customer obtains written confirmation of receipt of the Equipment by Solar, it shall be liable for failure to return the Equipment and shall pay Solar, upon demand, the full replacement cost of the same.
- 8.5 Unless and until title to the Equipment has passed to the Customer under the Customer Agreement, Equipment must be surrendered in re-saleable condition, subject to reasonable wear and tear, together with all manuals and packaging, upon expiry or termination of the Customer Agreement.
- 8.6 Time shall not be of the essence in respect of any delivery, repair, installation, maintenance or other services to be carried

out by Solar in respect of the Equipment under the Customer Agreement, and any specified dates are estimates only. Solar accepts no Liability for any failure to meet any such dates.

- 8.7 The Customer acknowledges that Solar is not the manufacturer of the Equipment and accordingly that any assurances given by Solar are limited as set out in this clause 8 and clause 14. Save where Solar is providing Managed Services (in which case the Service Terms applicable to such Managed Services shall apply), except as stated in this clause 8 or clause 14, Solar shall have no Liability or obligation in relation to the Equipment. For the avoidance of doubt this shall include no obligation to carry out any repair or maintenance in respect of any Equipment.
- 8.8 In relation to the operation and/or use of the Equipment, the Customer shall:
 - 8.8.1 not move, repair, test, reconfigure, alter, program, maintain, adapt, or make any additions or changes to the Equipment without the prior written consent of Solar;
 - 8.8.2 provide a suitable operating environment for the Equipment in accordance with the manufacturer's operating instructions and comply with all reasonable instructions of Solar or the manufacturer in relation to its housing, storage and use;
 - 8.8.3 only use the Equipment in conjunction with the Services;
 - 8.8.4 carry out required end-user maintenance of the Equipment in accordance with Solar's or the manufacturer's instructions from time to time;
 - 8.8.5 save to the extent specified otherwise in the Customer Agreement, be responsible for obtaining, maintaining and, where appropriate, paying for all necessary licences, consents, test lines and/or approvals and for complying with any conditions related to the connection, installation, operation and/or use of the Equipment and/or Services, including any such licenses, consents and/or approvals as are necessary to connect to the Equipment and/or Services to the Customer Equipment and/or the Network;
 - 8.8.6 comply with all statutory requirements (including the requirements of the Communications Act 2003), bylaws, regulations, and network operators' requirements, and operate the Equipment in accordance with the manufacturer's guidance, Solar's reasonable instructions and good industry practice;
 - 8.8.7 be solely responsible for any costs or charges relating to the use (whether malicious, fraudulent or otherwise) of the Equipment by the Customer or a third party, whether from or within the Customer's premises or via external means. The Customer acknowledges that voicemail ports that are configured to allow external calls may be vulnerable to fraudulent access. Any such configuration is solely at the Customer's risk and Solar will have no Liability for the cost of any external calls made using such voicemail ports.
- 8.9 If Solar is required to deliver any Equipment and/or perform any Services outside of Business Hours, Solar shall be entitled to charge the Customer a Fee.
- 8.10 The Customer warrants that any Customer Equipment supplied or used by the Customer in conjunction with the Equipment and/or Services is: (a) compatible with the Equipment and/or Services; (b) in good working order; and (c) complies with all applicable legislation and industry standards and any standards specified in the Customer Agreement or otherwise by Solar from time to time.

9 Dual Running

- 9.1 Customer shall bear all costs arising from or in connection with Dual Running including failure to comply with clause 9.2.
- 9.2 Customer hereby undertakes to notify and instruct the Previous Service Provider to cease the provision of any equipment and/or services which are replaced by the Equipment and/or Services at the end of the Implementation Period or such other period as the parties agree.
- 9.3 For the avoidance of doubt Solar excludes all Liability suffered or incurred by the Customer arising from or in connection with any delay in the provision of the Equipment and/or Services

(including any need for the Previous Service Provider to continue providing any equipment and/or services which are to be replaced by the Equipment and/or Services) beyond the end of the Implementation Period (or such other period as the parties agree) to the extent that it is an Excused Delay or it is caused directly or indirectly by:

- 9.3.1 any act or omission of the Customer, any member of the Customer's Group or any of its or their employees, sub-contractors, agents and/or Users; or
- 9.3.2 any changes including any additions to the scope of the Equipment and/or Services to be provided;
- 9.3.3 the execution of any contingency actions and/or changes to the Customer Agreement which are made in accordance with clause 7.

10 Confidentiality

- 10.1 Each Party will keep strictly confidential all Confidential Information of the other received or obtained during the negotiation or performance of the Customer Agreement and, except with the prior written consent of the other or to the extent that disclosure is required by law, will not disclose such Confidential Information to any third party or copy or use it for any purpose other than for the proper performance of its obligations or the proper exercise of its rights under the Customer Agreement.
- 10.2 Neither Party will acquire any right in nor title to Confidential Information of the other nor any licence in respect of it except as expressly stated in the Customer Agreement. Each Party will protect Confidential Information of the other as if it were its own Confidential Information and will not copy, summarise, modify or disclose it except to the minimum extent necessary to perform its obligations or exercise its rights under the Customer Agreement. Each Party will ensure that all persons to whom it discloses Confidential Information of the other are bound by obligations of confidentiality and non-disclosure at least equivalent to those in the Customer Agreement.
- 10.3 The duties imposed on the parties by clauses 10.1 and 10.2 above do not extend to information or data which at the time of its disclosure or use by the receiving Party:
 - 10.3.1 is generally available and known to the public other than by reason of the receiving Party's breach of this clause 10;
 - 10.3.2 the receiving Party can demonstrate had previously come lawfully into the receiving Party's possession from a third party under no restriction as to its use or disclosure; or
 - 10.3.3 the receiving Party can demonstrate was developed independently without reliance on Confidential Information of the other.
- 10.4 Each Party agrees and acknowledges that damages alone may not be an adequate remedy for breach of this clause 10 and that each Party may be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this clause 10.
- 10.5 On termination of the Customer Agreement, each Party shall (save to the extent necessary for the enforcement of any rights under the Customer Agreement):
 - 10.5.1 return to the other Party or destroy (at the other Party's option) all documents and materials (and any copies thereof) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 10.5.2 erase all of the other Party's Confidential Information from its computer systems (to the extent possible); and
 - 10.5.3 certify in writing to the other Party that it has complied with the requirements of this clause, PROVIDED THAT a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

11 Intellectual Property and Proprietary Rights

- 11.1 As between the Customer and Solar:
 - 11.1.1 title to and ownership of the Equipment shall remain vested in Solar (or its Suppliers) unless expressly stated in the Customer

- Agreement. If title expressly passes to the Customer under the Customer Agreement it shall only do so when the Customer or the Funder has paid the Charges due in relation to the same in full; and
- 11.1.2 title to and ownership of the Customer Equipment shall remain vested in the Customer unless otherwise specified in the Customer Agreement or subsequently agreed; and
- 11.1.3 all Intellectual Property Rights and all other rights in the Equipment and/or arising out of the performance of the Services shall, as between Solar and the Customer, be owned by Solar unless otherwise specified in the Customer Agreement. Subject to and in consideration for the Customer paying the Charges due to Solar in accordance with the Customer Agreement, Solar hereby licences those intellectual property rights to the Customer free of charge and on a non-exclusive, non-transferable, non-sub-licensable, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Equipment and/or the Services. This licence shall terminate if and when the Customer Agreement expires or terminates for any reason.
- 11.2 The Customer unconditionally agrees to adhere to and be bound by the terms and conditions of all Software Licences, as provided or made available to the Customer from time to time (including any updated versions of them which are provided or made available to the Customer) and the Customer shall have no right to assign, sublicense or transfer such Software Licences.
- 11.3 Solar warrants that its provision of the Equipment and/or the Services (including such Equipment supplied by Solar that is altered, reinstalled, adjusted, repaired or otherwise modified by Solar in the course of its provision of the Services) will not infringe any third-party patent, copyright, and/or trade secret rights existing under the laws of England and Wales.
- 11.4 Subject to clauses 11.6, 11.7, 11.8, 11.9 and 13, Solar agrees to defend the Customer from and against any claim or action by any third party that the receipt and/or use by the Customer of the Equipment and/or Services in accordance with the Customer Agreement infringes the intellectual property or proprietary rights of a third party ("Customer IPR Claim"), and shall indemnify the Customer against all costs awarded under any final judgment, court order or settlement arising directly out of or in connection with that Customer IPR Claim.
- 11.5 Subject to clauses 11.6 and 13, the Customer agrees to defend Solar from and against any claim or action by any third party that the receipt and/or use by Solar or a Supplier of the Customer Equipment and/or any other information, materials, systems, equipment and/or services made available to Solar or a Supplier for use in connection with the Customer Agreement infringes the intellectual property or proprietary rights of a third party ("Solar IPR Claim"), and shall indemnify Solar in full and on demand from and against all Liability incurred by Solar out of or in connection with that IPR Claim.
- 11.6 The indemnities at clauses 11.4 and 11.5 above are subject to the following conditions:
- 11.6.1 both parties hereby agree to give prompt notice to the other in writing as soon as the notifying party becomes reasonably aware of any actual or alleged Solar IPR Claim or Customer IPR Claim; and
- 11.6.2 the Party benefitting from the indemnity (the "Indemnified Party") hereby agrees to make no admissions (written or oral) in respect of the Solar IPR Claim or Customer IPR Claim (as appropriate) without the prior written consent of the Party giving the indemnity (the "Indemnifying Party"); and
- 11.6.3 the Indemnified Party must grant the Indemnifying Party sole control of the defence and/or settlement of the Solar IPR Claim or Customer IPR Claim (as appropriate) and the costs incurred or recovered in such negotiations or settled claim shall be for the Indemnifying Party's account; and
- 11.6.4 the Indemnified Party shall give the Indemnifying Party all reasonable assistance requested at the Indemnified Party's reasonable expense; and
- 11.6.5 in the case of a Customer IPR Claim, the Customer shall allow Solar to modify the Equipment and/or Services, or any part thereof, so as to avoid any Customer IPR Claim, provided that the modification does not materially and negatively affect the functionality of and/or materially increase the Charges payable for, the Equipment and/or Services.
- 11.7 If the Equipment and/or Services become, or in Solar's opinion are likely to become, the subject of a claim covered by the indemnity at clause 11.4, Solar may at its sole option either: (a) repair, replace or modify the affected Equipment and/or Services so that they are no longer infringing (provided that such repaired, replaced or modified version does not materially and negatively affect the functionality of, and or materially increase the Charges due in relation to the same) or (b) procure the right for the Customer to continue to use the Equipment and/or Services or the relevant part thereof or if neither (a) or (b) above are commercially reasonable, then Solar may (c) terminate that part of the Customer Agreement relating to the infringing or allegedly infringing Equipment and/or Services and refund to the Customer the portion of the Charges paid for that terminated element from the effective date of termination, less any depreciation (calculated on a straight line basis over 3 years from the Effective Date).
- 11.8 Clause 11.4 will not apply to any infringement arising from: (a) any modification, alteration, repair, adjustment or configuration of the Equipment and/or Services made by anyone other than Solar or under Solar's direction or instruction; or (b) the Customer's use of the Equipment and/or the Services in breach of the Customer Agreement and/or in conjunction with software (other than the Software), hardware or data, where the use of such software, hardware or data in combination with the Equipment and/or Services gave rise to the infringement; or (c) use of any Software other than the most current, unaltered update, if such claim might reasonably have been avoided by the use of such update; or (d) compliance by Solar with designs, plans, instructions or specifications furnished by the Customer, or on the Customer's behalf.
- 11.9 Clause 11 states each Party's entire liability for infringement of any third party Intellectual Property Rights.
- 11.10 The Customer hereby grants Solar a royalty free, worldwide, non-exclusive licence (with rights to sub-licence to its Suppliers) to use the Software and all systems, technology, equipment and/or services in the possession or control of the Customer (including the Customer Equipment) to the extent reasonably necessary to enable Solar to perform its obligations under the Customer Agreement. Such licence shall terminate when the Customer Agreement expires or terminates. The Customer hereby warrants that it has the right to grant Solar a licence in accordance with this clause 11.10.
- 12 Data Protection & Security**
- 12.1 In this clause 12, the terms "Data Processor", "Data Controller", "Data Subject", "Personal Data", "process" and "processing" have the meanings given to them in the Data Protection Legislation.
- 12.2 The Customer acknowledges and agrees that:
- 12.2.1 Solar collects, receives, stores and otherwise processes details comprising the Customer's name, address, contact details and accounting/billing information as a Data Controller. Customer acknowledges and agrees that such details may be provided by Solar to and processed by relevant Suppliers and/or other third parties (including any credit reference agencies) from time to time; and
- 12.2.2 Solar may collect, receive, store and/or otherwise process personal data relating to the Customer, its employees, agents, contractors, customers and/or users of the Equipment and/or Services ("Customer Data") in providing the Equipment and/or Services as a Data Processor. To the extent that Solar acts as a Data Processor in the course of providing the Equipment and/or Services, it shall:
- (a) process the Customer Data only for the purpose of providing the Equipment and/or Services and in accordance with the

- Customer's instructions (unless required by the Data Protection Legislation or other applicable law);
- (b) implement and maintain appropriate technical and organisational measures to protect the Customer Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access;
 - (c) not permit any processing of Customer Data by any third party without the prior written authorisation of the Customer and shall only work with any such sub-processor under a written contract containing materially the same obligations as under this clause. Notwithstanding the foregoing, the Customer acknowledges and agrees that the Suppliers shall have access to and process Customer Data for the purpose of enabling them to provide the Equipment and/or Services in whole or part;
 - (d) ensure that all of its staff with access to the Customer Data are informed of the confidential nature of the Customer Data and are under a duty to keep the Customer Data confidential;
 - (e) promptly inform the Customer if any Customer Data is lost or destroyed or becomes damaged, corrupted, or unusable;
 - (f) on reasonable notice, allow for and contribute to audits, including inspections, by the Customer in relation to its compliance with this clause;
 - (g) provide such reasonable assistance as the Customer may require to respond to requests for exercising the Data Subjects' rights under the Data Protection Legislation and/or to ensure compliance with the Customer's obligations under Data Protection Legislation with respect to the security of processing, data protection impact assessments, prior consultation with a supervisory authority regarding high risk processing and any remedial action and/or notifications to be taken in response to any Customer Data breach and/or any complaint or request relating to the Customer Data including any notification of the breach to supervisory authorities and/or communication to any affected Data Subjects; and
 - (h) on termination, at the Customer's cost, either return all of the Customer Data to the Customer or securely dispose of the Customer Data, save for one copy which may be retained by Solar for auditing processes and any copies that Solar is required by any applicable law to retain.
- 12.3 Customer acknowledges and agrees that Solar may use and disclose to relevant third parties any information referred to in clause 12.2.1 and/or any Customer Data if it is required to do so by law, to enforce or protect the rights of Solar, a Supplier and/or any relevant third party, for the purpose of fraud prevention, debt collection, credit management, safety of the Customer, its employees, agents, contractors, customers and/or Users of the Equipment and/or Services, for emergency services provision and/or in the event that the whole or any relevant part of Solar's business is sold to a third party. Disclosure to third parties may include debt collection agencies, credit reference agencies, financial institutions, emergency service organisations and other suppliers of equipment and/or services which are the same as or similar to the Equipment and/or Services.
- 12.4 Unless the Customer notifies Solar that it does not wish to receive marketing information, Solar may send the Customer information relating to its goods and/or services from time to time which may be of interest to the Customer.
- 12.5 The Customer represents and warrants that it has obtained informed and express consent or has established another other lawful basis for processing of the Customer Data by Solar and all relevant third parties in accordance with the Data Protection Legislation. Customer shall Indemnify Solar against all Liability suffered or incurred by Solar as a result of any failure by the Customer to comply with this clause.

13 Exclusions and Limitations Of Liability

- 13.1 The Customer is advised to take out insurance cover in respect of the matters for which Liability is excluded by Solar under the Customer Agreement and to take steps to allow business continuity in the event of a failure of the Equipment and/or disruption to the Services.
- 13.2 Without prejudice to the provisions of clauses 3, 8 and 14, to the extent that Solar has any Liability to the Customer and/or any member of the Customer's Group in relation to the

Customer Agreement, such Liability shall be limited: (a) in relation to any item of Equipment, to the Charges paid for such Equipment; (b) in relation to any particular Service, to the Charges paid for that Service in the twelve (12) month period prior to the Liability arising; and (c) in aggregate, to the total of all Charges and Fees paid under the Customer Agreement in the twelve (12) month prior to the Liability arising.

- 13.3 The Customer acknowledges and agrees that Solar does not own or have any control over the content, security or any other aspect of any data, information or material that the Customer or any of its employees, agents, subcontractors or Users enter, upload, transmit or otherwise supply in the course of receiving and using the Equipment and/or Services ("**End User Content**"). The Customer shall indemnify, defend, and hold Solar harmless from all Liability incurred by or asserted against Solar or any of its Group companies related to, arising out of or in connection with End User Content, including without limitation, any claims: (a) that such End User Content violates or misappropriates the Intellectual Property Rights or other rights of any third party; (b) in respect of the integrity, deletion, destruction, damage, loss or failure to store End User Content; and (c) in respect of the Customer's or any User's use or misuse of End User Content or disclosure of End User Content to third parties; or (d) in relation to the Customer's collection or receipt of such End User Content.

14 Warranties

- 14.1 Solar shall, subject to clause 14.6, where any Equipment Under Warranty is proved to the reasonable satisfaction of Solar to be defective in material or workmanship and the benefit of any warranty from the manufacturer has not been transferred to the Customer, return such Equipment to the manufacturer for repair or replacement. The Customer acknowledges and agrees that (other than Equipment which is damaged or faulty upon delivery or collection, to which the provisions of clause 8.2 shall apply), this clause sets out Solar's entire responsibility and the Customer's sole remedy in relation to any Equipment which is defective in material or workmanship during the term of the Customer Agreement and Solar shall not be responsible in the event that, despite Solar managing the warranty claim with the manufacturer of the defective Equipment Under Warranty, the manufacturer refuses to repair or replace such Equipment.
- 14.2 Both parties agree that the provisions of clauses 3, 8, 13 and this clause 14 set out Solar's entire Liability and responsibility and the Customer's sole remedy in respect of the Equipment and/or Services and are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the merchantability, satisfactory quality or fitness for any particular purpose, to the fullest extent permitted by law.
- 14.3 Solar does not warrant that the Equipment, Software and/or Services will prevent or restrict any fraudulent intrusion, hacking or similar and the Customer shall be responsible for putting in place adequate security measures to prevent the fraudulent use of the Equipment, Software and/or the Services and the Customer's other systems and processes, including without limitation hacking, toll fraud, rogue dialling or any other form of fraud that results in the Customer to incurring sums in addition to the Charges and/or Fees.
- 14.4 Solar shall not assume any Liability whatsoever arising from or in connection with any fraudulent use or misuse of any Customer Equipment, Equipment and/or Services, save to the extent that such fraudulent use or misuse results directly from any wilful misconduct on the part of Solar.
- 14.5 Solar specifically excludes any implied or express representation, warranty or similar that the Equipment, Software and/or Services supplied by Solar will: (a) be fit to operate in conjunction with any other hardware, software or systems of the Customer, any Group company of the Customer and/or any third party, other than with those hardware items and software products that are specifically identified as being compatible in the Customer Agreement; (b) operate

- uninterrupted or error-free; or (c) have any program defects detected and/or corrected.
- 14.6 Solar's obligations under this clause 14 do not extend to any defect caused in whole or part by fair wear and tear; deliberate, negligent or accidental damage by the Customer or any of its Group companies or any of their respective employees, agents, subcontractors or Users; any breach of the Customer Agreement by the Customer; or hacking, virus or other malicious computer program.
- 14.7 Customer warrants that it has the capacity and authority to enter into the Customer Agreement.
- 15 Escalation**
- 15.1 If the Customer wishes to raise a complaint in relation to the performance by Solar of its obligations under the Customer Agreement, it may do so in accordance with Solar's customer complaints code of practice which is available at <http://www.solar.co.uk> or in hard copy on written request.
- 16 Suspension**
- 16.1 Solar may from time to time without notice suspend the provision of any Equipment and/or Services and/or suspend performance of any of its obligations under the Customer Agreement and/or any other agreement between Solar and any member of the Customer's Group in any of the following circumstances without Liability or obligation to the Customer or any of the Customer's Group:
- 16.1.1 if Solar is obliged to do so to comply with law, an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;
- 16.1.2 during any technical failure, modification, repair, testing or maintenance of the Equipment or any telecommunications network or other equipment (including Equipment) through which the Services are provided, or in the case of emergency;
- 16.1.3 if the operation of any relevant telecommunications network is suspended by a Supplier or if the provision to Solar of any other equipment and/or services comprising the Equipment and/or Services is suspended for any reason;
- 16.1.4 if Solar reasonably believes that the Customer or any member of the Customer's Group will not be able to, or is unable to, make any payment which is due or is to fall due to Solar or any member of Solar's Group under the Customer Agreement or any other agreement between any member of Solar's Group and any member of the Customer's Group;
- 16.1.5 if Solar reasonably believes or has cause to believe that the Equipment and/or Services are being used in breach of the Customer Agreement or otherwise in an unauthorised or illegal manner;
- 16.1.6 the Customer is in material breach of any of its obligations under the Customer Agreement;
- 16.1.7 if a Credit Limit is exceeded;
- 16.1.8 if any of the circumstances set out in clause 17.3 arise;
- 16.1.9 if the Customer suffers a security attack as referred to in clause 25; and/or
- 16.1.10 in relation to a line provided to the Customer as part of the Services, if no chargeable call traffic is carried by it for a period of sixty (60) consecutive days or more.
- 16.2 The Customer shall reimburse Solar for all reasonable costs and expenses incurred as a result of implementing any suspension in accordance with the Customer Agreement and/or any recommencement as appropriate (including, without limitation, paying a reasonable fee for reconnecting any Customer Equipment, Equipment and/or Services), and shall remain liable for any applicable line rental charges for the duration of any suspension.
- 16.3 The Customer shall be liable for any charges incurred by the Customer in relation to its use of other telecommunications services, whether provided by Solar, any Solar Group company or any other person during any period of suspension of the provision of the Equipment and/or Services under the Customer Agreement.
- 17 Disconnection and/or Termination**
- 17.1 The Customer Agreement may be terminated in its entirety for convenience by either Party giving not less than 90 (ninety) days prior written notice to the other Party but shall not take effect until the expiry of all the Minimum Term of each of the items of Equipment and/or Services provided under it.
- 17.2 Either Party may terminate the Customer Agreement in relation to one or more individual items of Equipment and/or one or more Services following expiry of the Minimum Term for such Equipment and/or Services, by giving not less than 90 (ninety) days prior written notice to the other Party.
- 17.3 Without prejudice to any of Solar's other rights and remedies, Solar may cease providing any Equipment and/or disconnect one or more of the Services, suspend performance of any of its obligations under the Customer Agreement and/or terminate the Customer Agreement and/or any other agreement between Solar or any member of Solar's Group and the Customer or any member of the Customer's Group by giving notice to the Customer (which shall take effect immediately or upon the date set out in the notice) in any of the following circumstances:
- 17.3.1 if the Customer fails to comply with any of the material terms of the Customer Agreement after being given notice of its failure (including a failure to pay any sums due) and fails to remedy the failure within 10 Business Days;
- 17.3.2 if the Customer ceases to carry on business or is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 17.3.3 if the Customer makes or offers to make any arrangement or composition (including any voluntary arrangement) with any one or more of its creditors, or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if any resolution or petition to wind up the Customer is issued, passed or presented (other than for reconstruction or amalgamation), or if a receiver is appointed over any of the Customer's assets;
- 17.3.4 if sums are overdue to Solar under the Customer Agreement or any other agreement between Solar or any member of Solar's Group and the Customer or any member of the Customer's Group;
- 17.3.5 if there is a change of control or ownership of the Customer;
- 17.3.6 if the performance of the Customer Agreement is prevented in any circumstance beyond Solar's reasonable control;
- 17.3.7 if the Customer does or allows to be done anything which in Solar's reasonable opinion will or may have the effect of jeopardising the operation of the Services, Equipment or any of Solar's or its Supplier's other systems, equipment, services and/or the telecommunications network;
- 17.3.8 if Solar reasonably suspects the Equipment and/or Services are being used for any illegal, improper, immoral, fraudulent or unlawful purpose, or in a manner prejudicial to the interests of the Customer and/or Solar, or the Customer acts in a threatening or abusive manner;
- 17.3.9 if the Customer is in breach of clause 23;
- 17.3.10 if any licence or permission of Solar or any member of Solar's Group or any Supplier to operate or use the telecommunications network or any part of it or otherwise to provide the Equipment and/or Services is revoked, suspended or terminated for any reason;
- 17.3.11 if the operation of the telecommunications network is terminated or suspended or if the provision of any equipment and/or services to Solar or a Supplier which Solar or a Supplier requires to provide the Equipment and/or Services is discontinued for any reason;
- 17.3.12 if any information supplied to Solar by the Customer is materially false or misleading; and/or
- 17.3.13 if the Customer's average billing in respect of the Services becomes so low as to be un-commercial for Solar to continue to provide the Services.

- 17.4 In the event of termination of the Customer Agreement by Solar pursuant to clauses 17.3.1 to 17.3.4, 17.3.5, 17.3.7, 17.3.8, 17.3.9, 17.3.12 and/or 17.3.13 above:
- 17.4.1 The Customer shall immediately pay to Solar the Early Termination Fee in accordance with clause 17.9; and
- 17.4.2 all rights (including all licenses) granted to the Customer under the Customer Agreement shall cease and the Customer shall immediately cease all use of the Equipment and/or Services (save, in respect of the Equipment, where title has passed to the Customer pursuant to the Customer Agreement); and
- 17.4.3 to the extent that title to any Equipment supplied by Solar has not passed to the Customer, the Customer shall forthwith return such Equipment to Solar in accordance with clauses 8.4 and 8.5 and if it fails to do so, Solar may enter upon the Customer's Site and exercise its right to reclaim the Equipment.
- 17.5 Notwithstanding termination of the Customer Agreement and the provisions of clause 17.4, the Customer will be liable for and shall pay to Solar on demand any call charges, line rental and other charges incurred in the event of the Customer's or any of its Group companies or any of their respective employees, agents, subcontractors or Users continued use of the Equipment and/or Services after the date of termination.
- 17.6 Termination of the Customer Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at the date of termination.
- 17.7 On termination of the Customer Agreement, the Customer shall permit Solar to recover any items of Solar's property on the Customer Site(s) without delay.
- 17.8 On termination of the Customer Agreement for any reason, Solar may submit invoices for any Charges and Fees not yet invoiced, any sums due in accordance with clause 17.5, the Early Termination Fee (if any), any sums due upon termination pursuant to any of the Service Terms and any other costs or charges incurred by Solar in connection with such termination (including, without limitation, any costs incurred in relation to the transfer of Equipment and/or Services to a new service provider appointed by the Customer and any charges or expenses levied by any Supplier) and the Customer shall immediately pay these invoices and any outstanding unpaid invoices together with any interest due on the same to Solar.
- 17.9 On termination of the Customer Agreement in whole or part by the Customer for any reason prior to the expiry of any (i) Minimum Term, or (ii) Renewal Term applicable to any Equipment and/or Services so terminated, Customer shall pay to Solar on demand an Early Termination Fee in respect of those Equipment and/or Services, together with any interest due on the same.
- 17.10 Other than as set out in this clause, neither Party shall have any further obligation to the other under the Customer Agreement after its termination.
- 17.11 The following clauses shall continue to apply after the termination of the Customer Agreement: clauses 1, 6, 8, 10, 11.1, 11.2, 12, 13, 14, 17, 18, 22, 23, 24 and 25.
- 18 Notices**
- 18.1 Any notice given under the Customer Agreement shall be in writing and shall be served by delivering it personally or sending it: (i) to Solar by first class post, fax or email to Solar's customer services department at its registered office or any other address notified to the Customer in accordance with this clause; or (ii) to the Customer by first class post, fax or e-mail at the address of the Customer notified to Solar from time to time in accordance with this clause. Any such notice shall be deemed to have been received: (i) if delivered personally, at the time of delivery; (ii) in the case of first class post, 48 hours from the date of posting; (iii) in the case of fax, at the time of transmission, subject to receipt of the appropriate "clear" transmission report; (iv) in the case of e-mail, at the time of transmission PROVIDED that in relation to delivery personally, by fax or email, such delivery is within Business Hours (if not such delivery shall be deemed to have taken place at the start of the next Business Day) . The Customer shall immediately notify Solar of any changes relevant to the provision of the Equipment and/or Services such as a change of address.
- 19 Assignment and Subcontracting**
- 19.1 Solar may at any time assign the whole or any part of the Customer Agreement or any of its rights or obligations under the Customer Agreement to any third party with the prior consent of the Customer (such consent not to be unreasonably withheld or delayed). Solar may assign the whole or any part of the Customer Agreement or any of its rights or obligations hereunder to any member of the Solar Group without the prior consent of the Customer. Nothing in the Customer Agreement shall prevent or restrict Solar from subcontracting its rights or obligations under the Customer Agreement, provided that Solar shall remain liable for the acts and omissions of its subcontractors as if they were those of its own.
- 19.2 The Customer shall not (without the prior written consent of Solar) assign, transfer or delegate or otherwise deal with all or any of its rights and/or obligations under the Customer Agreement.
- 20 Variation**
- 20.1 Without prejudice to any other provisions of the Customer Agreement, Solar may vary the Customer Agreement and/or introduce changes and/or updates to the Equipment and/or Services as required by its Suppliers or to take account of any applicable law, rules, regulations or Government conditions or operating licence terms, Supplier terms, market changes or similar matters provided that Solar shall, where reasonably practicable, give the Customer reasonable prior notice of any such variation and Solar shall use reasonable endeavours to procure that the Services and/or Equipment (as appropriate) won't be materially and negatively impacted by such change.
- 20.2 Solar may from time to time update these MSA Terms, the Service Terms and/or the Customer Service Document. If it does so, the latest version shall be uploaded to Solar's website. Solar may (but shall not be obliged) to notify the Customer of any material changes to the same in advance of such changes taking effect. However, Customer acknowledges and agrees that it is responsible for regularly checking Solar's website to ensure it is aware of the latest version of these MSA Terms, Service Terms and Customer Service Document. By continuing to use the Equipment and/or Services, as appropriate, Customer shall be deemed to have accepted the same.
- 20.3 Subject to the other provisions of this clause 20, no variation of the Customer Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 21 Internet Access & Software**
- 21.1 The Equipment and/or Services may be used by the Customer to access and/or link into web sites, resources and/or networks available worldwide. Solar shall not be liable for or have any responsibility for their content or any services offered on or through them and does not endorse the same. The Customer agrees to, and shall procure that all of its employees, agents, subcontractors and Users and those of the Customer's Group companies shall comply with the terms and conditions and acceptable use policies of such web sites, resources and networks.
- 21.2 Where internet access forms part of the Services, the Customer agrees that:
- 21.2.1 the Customer is entirely responsible for all visual, textual or other information, whether publicly posted or privately transmitted on the internet ("Information") which is uploaded, downloaded, emailed, received and/or otherwise transmitted via the Equipment and/or Services;
- 21.2.2 all dealings with third party providers of products and/or services by the Customer, any of the Customer's Group companies or any of their respective employees, agents, sub-

- contractors and/or Users using the Equipment and/or Services are, unless otherwise stated, as between the parties, solely between the Customer and the relevant third-party provider; and
- 21.2.3 access to certain sites, information and/or products and services of third parties may require particular hardware and/or software which is beyond the scope of the Equipment and/or Services.
- 21.3 Unless otherwise expressly stated in the Customer Agreement, Solar shall not be liable for advice, instructions and/or directions which it gives to the Customer in relation to the configuration of the Equipment and/or Services to Customer Equipment or any other hardware of the Customer.
- 21.4 Any Software provided as part of the Equipment and/or Services is the property of the relevant licensor of the same and, subject to any contrary terms in any licence provided in conjunction with the Software, the Customer is granted a non-exclusive, non-transferable, non-assignable licence, non-sub-licensable licence to use the Software solely in conjunction with the relevant Equipment and/or Services (as applicable). The Customer shall not copy, sub-licence, make modifications to or attempt to reverse engineer or decompile the Software except to the extent permitted by law, and shall comply with the terms of the relevant licence.

22 Non-Solicitation

- 22.1 Recognising that the Customer Agreement will bring the officers, employees, agents and subcontractors of Solar and/or any of its Group companies to the Customer's attention, the Customer hereby undertakes to Solar and agrees that during the term of the Customer Agreement, and for a period of 6 (six) months after the Customer Agreement has expired or has been terminated for any reason whatsoever, the Customer will not knowingly, directly or indirectly, including by use of an agent, induce or endeavour to induce any officer, employee, agent or subcontractor of Solar or any of its Group companies who has been involved in the supply of the Equipment and/or the provision of Services to the Customer to leave their current employer and shall not itself employ or engage the services of any such person nor permit any company in the Customer's Group to do so except with the prior written consent of the CEO of the current employer.

23 Anti-Bribery

- 23.1 For the purpose of this Clause 23, the meaning of adequate procedures and foreign public official shall be determined in accordance with section 7 (2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6 (5) and 6 (6) of that Act and section 8 of that Act respectively.
- 23.2 Both parties:
- 23.2.1 shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 23.2.2 shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 23.2.3 shall have and shall maintain in place throughout the term of the Customer Agreement its own policies and procedures, including but not limited to the Bribery Act 2010, to ensure compliance with the requirements set out in clause 23.2.1, and will enforce them where appropriate;
- 23.2.4 shall promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Customer Agreement;
- 23.2.5 warrant that they have no foreign public officials as officers, employees or direct or indirect owners at the Effective Date of the Customer Agreement and agree to immediately notify the other Party if during the validity of the Customer Agreement a foreign public official becomes an officer or employee or acquires a direct or indirect interest.

- 23.3 Either Party shall, upon the reasonable written request of the other Party provide such supporting evidence of compliance with this clause 23 as may be reasonably required.
- 23.4 Solar's anti-bribery policy can be found on its website at www.solar.co.uk. Customer acknowledges and agrees that it shall comply with the same.

24 Entire Agreement

- 24.1 Subject to clause 20, each party agrees that the Customer Agreement (together with any variations and/or amendments to it), constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between the parties, whether written or oral, relating to their subject matter whether or not made by the Customer and Solar. Neither Party places any reliance on any representation, warranty or other statement relating to the subject matter of the Customer Agreement save as expressly set out in the Customer Agreement.
- 24.2 Each party agrees that: (i) it has not relied on, and shall have no remedy or claim in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Customer Agreement; and (ii) it shall have no remedy or claim for innocent or negligent misrepresentation based upon any statement in the Customer Agreement unless it was made fraudulently, except to the extent that either Party has any outstanding liability to the other under a previous arrangement or contract.
- 24.3 If any provision or part of the Customer Agreement is deemed to be invalid or unenforceable for any reason then the remainder shall be read as if the invalid or unenforceable provision or part had to that extent been deleted and the validity of the remaining provisions shall not be affected.

25 Miscellaneous

Security and Limits On Usage

- 25.1 Solar hereby agrees to use reasonable endeavours to assist the Customer, where the Customer has suffered a security attack to its network (such as a DDoS or malware attack) and has no services, policies, procedures and/or cover in place to mitigate the effects of the same and/or prevent a security attack from re-occurring. Any assistance provided by Solar to the Customer shall be agreed in writing and shall be a variation to the Customer Agreement.
- 25.2 Notwithstanding clause 25.1, the Customer acknowledges and agrees that Solar shall not have any Liability to the Customer or any member of the Customer's Group in the event that the Customer suffers a security attack, save to the extent arising directly from any breach by Solar of the terms of the Customer Agreement and then such Liability shall be limited as set out in clause 13.
- 25.3 Where Customer Equipment and/or Equipment (including any ports and/or sockets) and/or any other aspects of the Customer's network are left in an unlocked or exposed state, Solar shall have no Liability to the Customer in relation to the same. It is the Customer's responsibility to ensure that its security procedures are adequate, enforced and maintained.
- 25.4 Where Solar provide telephony services as part of the Services, the Customer acknowledges and agrees that it is responsible for all Charges due relating to the use of the same and, if it requires any limits on using such Services for calls to international numbers, premium rate and non-geographical numbers it shall be responsible for enforcing the same.
- 25.5 Solar shall undertake any applicable penetration tests on the network infrastructure of Solar and/or any third party from time to time during the term of the Customer Agreement. The Customer shall not perform any type of penetration testing on such network infrastructure unless otherwise agreed by the parties in writing or expressly stated in the Customer Agreement.

Governing Law

- 25.6 The Customer Agreement shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction on the English courts.

Third Party Rights

- 25.7 A person who is not a party to the Customer Agreement has no right under the Contracts (Rights of Third parties) Act 1999 to enforce any term of the Customer Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

Waiver

- 25.8 Any concession or waiver allowed by Solar to the Customer shall neither prevent Solar from exercising any of its rights nor prejudice Solar's rights to take any subsequent action.
- 25.9 Notwithstanding any other provisions of the Customer Agreement (including clauses 3, 8 and 13 of these MSA Terms), if the Customer notifies Solar of any failure by Solar to provide any Equipment and/or Services and Solar is liable to the Customer in respect of such failure in accordance with the Customer Agreement, the parties may agree a new Minimum Term in respect of such Equipment and/or Services. Such agreement shall be in full and final settlement of the Customer's claim for Solar's failure and the Customer shall be deemed to irrevocably waive its rights in relation to that claim.

Severance

- 25.10 If any provision of the Customer Agreement is held by any court of competent jurisdiction to be contrary to applicable law and/or unenforceable, such provision shall be considered severed from the Customer Agreement but all remaining provisions shall continue and remain in full force and effect.

Cumulative Nature Of Remedies

- 25.11 Unless there is express provision to the contrary in the Customer Agreement, no remedy conferred by any terms of the Customer Agreement is intended to be exclusive of any other remedy available under the Customer Agreement or at law. Each and every remedy is cumulative and is in addition to each and every other remedy available under the Customer Agreement or existing at law (whether in equity, by statute, at common law or otherwise).

Independent Contractor

- 25.12 Solar and the Customer shall remain independent contractors and nothing in the Customer Agreement, and no action taken by the parties pursuant to the Customer Agreement, will make any Party the agent or employee of the other nor will it create a partnership, joint venture or employment relationship between the parties.

Counterparts

- 25.13 The Customer Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each of the parties has executed at least one counterpart.