



## Terms and Conditions

### 1. Definitions and Interpretation

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

**“Affiliate”** means any undertaking which is a subsidiary undertaking or parent undertaking (including the ultimate parent undertaking) of the relevant party and any company which is a subsidiary undertaking of such parent undertaking (the terms subsidiary undertaking and parent undertaking company having the meanings set out in Section 1162 of the Companies Act 2006).

**“Agreement”** means this agreement between the Customer and DWD recorded in the documents described in clause 28 of these General Conditions.

**“Charges”** means the monies payable by the Customer to DWD under this Agreement including Rental Charges, as set out in the Commercial Schedule, the relevant Service Schedule and on the DWD Website (as amended from time to time in accordance with the terms of this Agreement).

**“Commencement Date”** means the date upon which this Agreement has been signed by the Customer.

**“Commercial Schedule”** means the document or documents entitled Commercial Schedule, which set out the Charges associated with a particular Service, all of which shall form part of this Agreement.

**“Confidential Information”** means proprietary information and/or any information obtained from the other party in connection with this Agreement (including for the avoidance of doubt details of the Customer’s employees) which is: (i) reasonably identified by either party as commercially sensitive or confidential; (ii) obviously confidential in nature; or (iii) given in circumstances giving rise to an obligation of confidence.

**“Customer”** has the meaning set out in front of this Agreement in the section entitled “Your Agreement”.

**“Customer Employee”** means any employee, consultant, agent, or sub-contractor (or an employee or consultant thereof) engaged or employed by the Customer or any Third Party to provide a Service or services similar to a Service or any part of a Service.

**“Customer Request Form”** means a document which can be submitted electronically or manually by a Customer to DWD containing the detailed information necessary to fulfil a customer’s order for Services, in the form notified by DWD to the Customer from time to time.

**“Customer Service Charter”** means DWD’s standard customer service charter as amended by DWD from time to time and which is non-binding.

**“Data Protection Laws”** means all applicable laws and regulations relating to the processing of personal data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 once in force (“GDPR”) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms “Data Controller”, “Data Processor”, “Data Subjects” and “Personal Data” shall have the meaning given to them in the DPA or GDPR.

**“Employee Liability Information”** shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time.

**“End User Licensed Software”** means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a “click wrap” or “shrink wrap” licence agreement.

**“Equipment”** means equipment purchased by the Customer from DWD under this Agreement which may be used in the provision of the Services, as detailed in the Commercial Schedule, quotation, order form or other document agreed between the parties from time to time.

**“General Conditions”** means this document entitled “General Conditions for Business Customers”.

**“Incident”** means any reported event which is not part of the standard operation of a Service, and which causes disruption to or a reduction in the quality of such Service.

**“Internet”** means the global data network comprising interconnected networks using the TCP/IP protocol suite.

**“Minimum Holding”** means the minimum number of instances of a Service (e.g., lines) which must remain connected to a particular Service as specified in the Commercial Schedule or Service Schedule.

**“Minimum Holding Charge”** means, in relation to a particular Service, the Charges payable for that Service for a failure to reach and maintain the Minimum Holding(s), as specified in the Commercial Schedule.

**“Minimum Holding Period”** means, in relation to a particular Service, the number of months from the Service Commencement Date within which the Customer is required to connect the Minimum Holding(s), as specified in the Commercial Schedule or Service Schedule.

**“Minimum Period”** means the minimum number of months a particular Service or instance of a Service must be in operation for which, unless specified otherwise in any Terms, a Service Schedule or the Commercial Schedule, shall be 12 months from the Service Commencement Date.

**“Minimum Spend”** means the minimum total expenditure which must be incurred by the Customer prior to the expiry of the Minimum Term, in relation to all or a particular Service or Services, as set out in the

Commercial Schedule(s) or Service Schedule, and excludes any Equipment Charges or other line items, unless specified in the Commercial Schedule.

**“Minimum Term”** means the initial period of this Agreement as specified in the Commercial Schedule and if not specified shall be the period from the Commencement Date until the expiry of the last Minimum Period.

**“Network”** means the DWD network, and the network of any Third Party used by DWD to supply the Services, as applicable.

**“DWD”** means DWD Telecoms as set out in front of this Agreement in the section entitled “Your Agreement”.

**“DWD Employee”** means any employee or other staff of DWD or an DWD Affiliate or any employee or other staff of any direct or indirect sub-contractor or supplier of DWD or an DWD Affiliate who provides the Services on behalf of DWD.

**“DWD Representative”** means a representative of DWD and which includes a representative of DWD’s suppliers.

**“DWD Website”** means [www.dwdtelecoms.com](http://www.dwdtelecoms.com).

**“Personal Data Breach”** means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data.

**“RPI Rate”** means the “RPI Percentage change over 12 months: monthly rate” announced by the Office for National Statistics in the February preceding an RPI Change.

**“Rental Charge(s)”** means the monthly non-usage dependent part of the Charges for the Services, as specified in the Commercial Schedule.

**“Replacement Services”** means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than DWD following the termination of this Agreement (or the relevant part of this Agreement) or the termination of any or all of the Services.

**“Service(s)”** means the service(s) identified in the Commercial Schedule(s) and provided by DWD as such service(s) are described in the Terms, Service Schedules and/or Commercial Schedule as applicable and any other services agreed by the parties from time to time.

**“Service Commencement Date”** in respect of a Service or a particular instance of a Service means the date on which that particular Service or particular instance of a Service is first provided to the Customer, or as otherwise explicitly set out in this Agreement.

**“Services Provider”** means a provider of telecommunications services or other services similar to the Services, including DWD or an DWD Affiliate or any direct or indirect supplier of DWD or an DWD Affiliate.

“**Service Schedule**” means the document entitled “Service Schedule” containing additional terms relating to a particular Service which schedule shall form part of this Agreement.

“**Service Transfer**” means the transfer of a Service (or any part of a Service) that had been provided pursuant to this Agreement (as a result of termination of this Agreement or otherwise).

“**Site**” means (where applicable) a physical location at which any Equipment shall be located and/or at or to which a Service shall be provided.

“**Software**” means any software, excluding End User Licensed Software, supplied to the Customer by DWD under this Agreement and includes all other software identified in this Agreement as “Software”.

“**Solution Build Document**” and “**SBD**” means a design document produced by DWD and agreed between the parties, which describes particular Services in a greater level of detail, as further described in the relevant Service Schedule.

“**Successor Supplier**” means any entity (including the Customer where relevant) which provides the Replacement Services.

“**Target Delivery Date**” in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by DWD.

“**Termination Fee**” in respect of a Service, means the termination fee set out in the Commercial Schedule, and if not otherwise specified, means: the monthly Rental Charge for each instance of a Service multiplied by the remaining number of part or whole months in the Minimum Period for each instance of that Service; and the Minimum Holding Charge; and any shortfall between the actual Charges paid by the Customer and the Minimum Spend.

“**Term**” means the term of this Agreement as set out in clause 2.1 of these General Conditions.

“**Terms**” means documents entitled “Terms” containing additional terms relating to particular Services or Equipment which shall form part of this Agreement.

“**Third Party**” means a person, company, or entity other than DWD or the Customer.

“**TUPE Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, (as amended, re-enacted, or extended from time to time).

“**User**” means Customer Employees, subcontractors, agents, or anyone else who is permitted by the Customer to use the Service.

“**Working Day**” means Monday to Friday (excluding UK bank and public holidays).

1.2 The headings in this Agreement are for ease of reference only and shall not affect its construction.

1.3 References in this Agreement to any statute or statutory instrument shall include any re-enactment, modifications, or amendments thereto for the time being in force.

- 1.4 References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement, and paragraphs to the Service Schedules.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to "procure" or "ensure") assumed by an obligor under this Agreement takes effect as a primary obligation.
- 1.7 References in this Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a landline Service shall include both all landline Services provided to the Customer and/or each individual landline, as the context requires).
- 1.8 Where a term for acronym appears in capital letters and is not specifically defined in this Agreement it shall have its industry standard meaning as would be reasonably understood by a customer or supplier of telecommunications or information technology services.

## **2. Commencement and Term**

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

## **3. Supply of Services and/or Equipment**

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

## **4. DWD Obligations**

- 4.1 DWD will supply the Services with the reasonable skill and care of a competent telecommunications service provider.
- 4.2 DWD does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time, provided that any specific availability or service levels agreed between the parties or as set out in a Service Schedule will take precedence.
- 4.3 DWD will use reasonable endeavours to provide the Services subject to technical and commercial feasibility.
- 4.4 DWD shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not materially impact the ability of DWD to provide the Service to the Customer.
- 4.5 DWD shall use reasonable endeavours to provide the Services and/or Equipment within any time periods and/or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and except where explicitly stated DWD shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.

## **5. The Charges**

- 5.1 The Charges for Services and/or Equipment detailed in the Commercial Schedule(s) are available subject to the Customer fulfilling all of its commitments as set out in this Agreement, including but not limited to:
  - (a) paying the Charges in accordance with this Agreement; and

- (b) achieving any applicable Minimum Spend, Minimum Holding and/or Minimum Period.
- 5.2 The Customer shall pay the Charges for:
- (a) each Service provided by DWD (whether or not the Service is used by the Customer);
  - (b) where applicable, the Equipment; and
  - (c) any other products or services agreed between the parties from time to time, in accordance with this clause 5.
- 5.3 Most Charges are set out in the Commercial Schedule(s). Where a Charge is not set out in the Commercial Schedule, the Charge shall be:
- (a) as set out on the DWD Website at the time the Equipment, Service or other agreed product or service was supplied; or
  - (b) as notified to the Customer by DWD (including in a Service Schedule or SBD).
- 5.4 Usage based Charges shall be based upon data recorded by or on behalf of DWD.
- 5.5 The Charges are exclusive of value added tax which will be charged at the prevailing rate.
- 5.6 DWD will increase or decrease Rental Charges each year by the RPI Rate (an "RPI Change"). DWD will publish the relevant RPI Rate on the DWD Website as soon as it becomes available.

## 6. Invoicing and Payment

- 6.1 Unless otherwise agreed with the Customer, DWD may issue to the Customer on a monthly basis in relation to Services and on delivery in relation to Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement.
- 6.2 Unless otherwise stated in the Commercial Schedule, the Customer shall pay:
- (a) monthly, quarterly, or annually (as applicable) in advance for Rental Charges and other recurring Charges (including inclusive usage Charges); and
  - (b) monthly, quarterly, or annually (as applicable) in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.
- 6.3 If the parties agree that payments of the Charges to DWD are to be made by credit card and if payments of such Charges are not made on the due date, DWD is authorised to debit the Customer's nominated credit card company with all Charges due and payable to DWD.
- 6.4 The Customer shall pay each invoice issued by DWD under this Agreement (including any invoice relating to Termination Fees) within 30 days of the date of invoice. The invoice shall be deemed paid once DWD receives such payment as cleared funds in its nominated bank account.
- 6.5 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.
- 6.6 DWD may, without prejudice to any other rights it may have, set off any liability of the Customer to DWD against any liability of DWD to the Customer.
- 6.7 Without prejudice to any other rights of DWD, in the event of the Customer failing to pay any sums due to DWD on time or at all, notwithstanding notification by DWD of the overdue debt to the Customer, DWD shall be entitled to:
- (a) charge interest (both before and after any judgment) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 4% per annum over the base rate of the Bank of England for the time being during the relevant period; and
  - (b) suspend the provision of the relevant Service(s) with as much prior notice as DWD considers to be reasonably practicable, until such time as all payments due including all interest accrued has been paid and satisfied in full.

- 6.8 If DWD and the Customer agree in writing that DWD will issue individual invoices for certain Services for all or some of the Customer's Users, the Customer will ensure that each User pays DWD within 30 days of the invoice date either by direct debit or by continuous credit card authority. Such Users must update DWD with new credit card details should they change.
- 6.9 To avoid doubt, the Customer remains liable to DWD for all Charges whether or not invoiced to Users in accordance with clause 6.8. If Users do not pay their individual invoices within 30 days of the invoice date, the Customer must pay them within 7 days thereafter.
- 6.10 If the Customer, in breach of clause 6.7, does not ensure that all Users pay by direct debit or by continuous credit card authority, DWD may charge the Customer for the additional cost of processing non-electronic payments from Users.
- 6.11 Prior to DWD's acceptance of a customer's application for Services (and/or following any credit check described in clause 30 of these General Conditions), DWD reserves the right to set a credit limit on the Charges that can be accrued under this Agreement and DWD can review any such credit limit at any time.
- 6.12 DWD may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of each 12-month period after the deposit was taken but the decision to return any deposit prior to termination of the Agreement will be at the discretion of DWD.

## 7. New Services

### New services on the terms of the DWD Website

- 7.1 The Customer may request new services on the terms set out on the DWD Website by placing a new service order under this Agreement. DWD shall be entitled to accept or reject a new service order. Once a new service order is accepted by DWD:
- (a) the new Service shall be deemed added to the Agreement (including for the avoidance of doubt, the terms of the DWD Website applicable to the Service as well as any applicable Service Schedule(s)); and
  - (b) DWD shall supply to the Customer the Services requested in that new service order on the terms and conditions of this Agreement and any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing orders shall be ineffective.

### New services on bespoke terms

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

## 8. Customer Obligations

- 8.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:
- (a) comply with any reasonable instructions from DWD and with any health and safety, security, use of Network and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services, and/or Equipment.
  - (b) not use the Services and/or Equipment in a manner which damages the reputation of DWD or DWD's suppliers, is inconsistent with a reasonable customer's good faith use of the Services and/or Equipment (including spamming and the sending of unsolicited advertising or promotional material), and/or adversely affects the provision of the Services and/or Equipment to other customers.
  - (c) not use the Services and/or Equipment fraudulently, or in connection with a criminal offence.

- (d) not use the Services and/or Equipment in a way that contravenes any Third Party's rights or any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority.
  - (e) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or Equipment.
  - (f) notify DWD of any methods of doing business which may affect the Customer's use of the Services and/or Equipment or the Customer's ability to comply with the terms of this Agreement.
  - (g) comply with all applicable laws and regulatory provisions.
- 8.2 Subject to clause 10 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services.
- 8.3 The Customer shall provide DWD with any and all information and/or assistance that DWD may require in order to perform the Services. The Customer shall ensure the information is complete and accurate. DWD shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide DWD with the required information and/or assistance. The Customer shall reimburse DWD for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 8.3 that is incomplete or inaccurate.
- 8.4 The Customer shall notify DWD immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 8.5 The Customer agrees and acknowledges that DWD and/or a supplier of DWD may monitor and record calls or other communications including in relation to DWD's customer services.
- 8.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. DWD has no responsibility for any information, software, services, goods, or other materials obtained by the Customer using the Internet.
- 8.7 The Customer warrants to DWD that it will take all reasonable steps (including testing with up-to-date commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by DWD under this Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

## 9. Anti-bribery and Corruption

- 9.1 In addition to and without prejudice to clause 8.1g) of these General Conditions, DWD and the Customer each agree and undertake to the other that in connection with this Agreement and the transactions contemplated by this Agreement, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti-bribery and anti-money laundering.
- 9.2 In the event that DWD or the Customer (as applicable) (the "Enquirer") has any basis for a good faith belief that the other party may not be in compliance with the undertakings and/or requirements set out in clause 10.1 of these General Conditions, the Enquirer shall advise the other party in writing and the other party shall co-operate fully with any and all enquiries undertaken by or on behalf of the Enquirer in connection therewith, including by making available the other party's relevant personnel and supporting documents if reasonably deemed necessary by the Enquirer.
- 9.3 Any breach by a party of this clause 10 of these General Conditions shall be deemed to be a material breach of this Agreement not capable of remedy for the purposes of clause 13.6a) of these General Conditions.

## 10. Customer Affiliates

- 10.1 DWD acknowledges that the Customer may permit a Customer Affiliate to use the Services and/or Equipment supplied by DWD to the Customer under this Agreement. The Customer will procure that its Affiliates and all Users are aware of and comply with the terms of this Agreement. The Customer shall be liable to DWD for any and all:
- (a) claims, losses, and expenses suffered or incurred by DWD as a result of a breach of a term of this Agreement resulting from a User's use of the Services and/or Equipment; and
  - (b) losses, costs, and expenses resulting from any claims against DWD made by any of the Customer's Affiliates or Users (or any other Third Party whom the Customer has permitted to use a Service and/or Equipment) to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Agreement.
- 10.2 The foregoing liabilities shall remain in full force and effect notwithstanding any termination of this Agreement.

## 11. Variations to the Agreement

- 11.1 DWD reserves the right from time to time to vary the Agreement as explicitly stated in this Agreement, including as follows:
- (a) Subject to clause 5.3a) of these General Conditions, DWD shall be entitled to vary the Customer Service Charter and/or the DWD Website. For variations to the Charges set out on the DWD Website, such variations shall be published at <https://www.dwdtelecoms.com> at least 28 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable; and
  - (b) DWD shall be entitled to vary the provisions of this Agreement (including for the avoidance of doubt, the Charges subject to clause 13.3 of these general conditions). DWD will provide to the Customer 28 days' notice in writing of any such variation or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable.

## 12. Suspension

### Planned Outages

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

### Unplanned Outages

- 12.2 DWD may, from time to time and without notice or liability to the Customer, suspend the Services during any technical failure of the Network, because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.
- 12.3 DWD shall use reasonable endeavours to restore the Services suspended in accordance with clause 13.1 or 13.2 of these General Conditions as soon as reasonably practicable.
- 12.4 The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension arising from the circumstances described in clause 12.1 or 12.2 of these General Conditions.

### Actions of the Customer

- 12.5 DWD may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:

- (a) if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or
- (b) if the Customer allows anything to be done which in DWD's reasonable opinion may have the effect of jeopardising the operation of the Services or Network if applicable, or if the Services are being used in a manner prejudicial to the interests of DWD and/or a supplier of DWD.

12.6 If DWD has suspended the Services in accordance with clause 12.5 of these General Conditions, DWD shall restore the Services when the circumstance described in clause 12.5 of these General Conditions is remedied.

12.7 The Customer shall remain liable for:

- (a) all Charges levied in accordance with this Agreement during any period of suspension; and
- (b) all reasonable costs and expenses incurred by DWD in the implementation of such suspension or disconnection, where such suspension or disconnection arises from the circumstances described in clause 12.5 of these General Conditions.

### **Actions of DWD's suppliers**

12.8 DWD may, without prejudice to its other rights hereunder, suspend or terminate a Service if an DWD supplier suspends, terminates or let's expire the provision of services to DWD which DWD requires to provide such Service and for which DWD is unable to find a replacement supplier, having used its reasonable endeavours. DWD will provide as much notice as is reasonably possible.

### **Actions by regulators**

12.9 DWD may, where requested by or on behalf of a regulatory body (including because of fraud or misuse) or required to do so by law, suspend any Services provided under this Agreement.

## **13. Termination**

### **Termination for convenience**

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

- (a) providing to DWD 30 Working Days' notice in writing; and
- (b) paying DWD the applicable Termination Fees in respect of the Service or Services being terminated.

13.2 For the avoidance of doubt, Termination Fees may be payable in accordance with the Service Schedule or Commercial Schedule if the Customer terminates an order for Services prior to the Service Commencement Date; prior to the expiry of any applicable Minimum Period; during the Minimum Term; and/or before any applicable Minimum Holding or Minimum Spend has been achieved. Unless specified otherwise in a Service Schedule or the Commercial Schedule and without prejudice to any other DWD's rights to terminate this Agreement, DWD may terminate this Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

### **Termination resulting from changes to the Agreement**

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

- (a) DWD increases the prices set out on the DWD Website and/or the Charges in respect of that specific Service pursuant to clause 12 of these General Conditions and that increase is to the material disadvantage of the Customer; or
- (b) DWD substantially varies the terms of this Agreement that relate to that specific Service pursuant to clause 11 of these General Conditions and that variation is to the Customer's material disadvantage, provided that such notice is provided to DWD within 30 days of the date that the change is notified to the Customer.

(c) For the avoidance of doubt, any price or Charges increases that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the greater of: (i) the Retail Price Index (RPI); or (ii) the Consumer Price Index (CPI) annual inflation rate at the date DWD notifies the Customer of the applicable price increase; or (iii) 10%, shall not constitute a material disadvantage to the Customer under this clause 13.3.

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

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

#### **Termination for cause**

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

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

13.7 DWD may terminate this Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:

- (a) in the event that the Customer has committed a material breach of this Agreement that is incapable of remedy.
- (b) in the event that the Customer has committed a material breach of this Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of DWD supplying written notice specifying the breach and requiring its remedy: or
- (c) if any of the events described in clauses 8.1c), 8.1d), 8.1g) and/or 12.5b) of these General Conditions occurs.

#### **Insolvency**

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

13.9 If this Agreement is terminated and the Customer wishes to transfer to another service provider, DWD will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.

13.10 Termination or expiry of this Agreement for whatever reason shall not affect:

- (a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
- (b) any provisions of this Agreement which are of a continuing nature and any other provisions of this Agreement necessary for their interpretation or enforcement.

13.11 On termination or expiry of this Agreement (in whole or in relation to a particular Service):

- (a) any sums properly due from one party to the other will become immediately due and payable (including Charges for the Service(s) up to the date of termination, Termination Fees relating to the Service(s) and/or Charges for any costs incurred by DWD in relation to Equipment or Services ordered by the Customer but yet to be supplied by DWD).

- (b) the Customer shall cease using the Service(s); and
- (c) each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other relating to the Service(s) which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.

## 14. Equipment

- 14.1 The Customer shall comply with any instructions provided by DWD or an DWD Representative from time to time in respect of the Equipment. Certain elements of Services are dependent on the Customer using the Equipment. If the Customer does not use the correct Equipment, then:
- (a) the Services may not function correctly.
  - (b) DWD may choose not to provide the Customer with the relevant Services; and
  - (c) DWD shall have no liability for the Customer's inability to receive those Services and the Customer remains liable for the relevant Charges.

## 15. Intellectual Property

- 15.1 All intellectual property rights in the Software, Equipment, associated documents, and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software, Equipment or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, Equipment, associated documents, and all parts thereof, directly against the Customer.
- 15.2 Unless otherwise specified in this Agreement, all intellectual property developed in the provision of any Service will vest in DWD or its licensors. DWD may use know-how acquired, principles learned or developed, or experience gained during the performance of any Service, to perform work for other customers.
- 15.3 All information or materials exchanged between DWD and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of DWD, DWD's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.
- 15.4 DWD grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, any Software and the Equipment provided by DWD or its suppliers solely in the United Kingdom in connection with the proper use of the Services. The Customer undertakes not to copy, alter, adapt, translate, software develops, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), unless expressly permitted to do so by DWD or by relevant law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).
- 15.5 DWD grants to the Customer a non-exclusive, non-transferable royalty free licence for the term of this Agreement (in whole or in relation to a particular Service(s)) to use any information or materials provided by DWD to the Customer under this Agreement to the extent necessary for the Customer to receive the benefit of the Service(s). The Customer must not copy, reproduce, distribute, alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by DWD or relevant law.
- 15.6 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment, Software, information or materials provided by DWD then DWD will indemnify the Customer in relation to sums awarded or paid in settlement for such claim provided that the Customer promptly notifies DWD of such claim, makes no admission in respect of such claim, the

customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows DWD or its licensor to conduct all negotiations and proceedings (providing DWD or its licensor with all reasonable assistance) and allows DWD at DWD's own discretion and expense to modify or replace the Equipment, Software, information, or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment, Software, information, or materials in conjunction with other equipment and software or Services not supplied by DWD pursuant to this Agreement in which event the Customer shall indemnify DWD in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.

15.7 The Customer will not be entitled to and agrees not to:

- (a) use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype, or abbreviation of the name of DWD (or any of its suppliers) or any part thereof so that any person might reasonably import a connection between those goods or services and DWD (or any of its suppliers) or any part thereof.
  - (b) register or attempt to register as a trademark anything referred to in clause 15.7a) of these General Conditions; and/or
  - (c) authorise any Third Party to do anything referred to in clause 15.7a) of these General Conditions.
- The Customer further agrees not to infringe any copyright or registered or unregistered trademark rights belonging to any Third Party in respect of any Equipment.

## End user licenced software

15.8 The Customer recognises that the Services may be dependent upon End-User Licensed Software (e.g., click-through licences) and if the Customer does not accept the licence terms relating to any End-User Licensed Software, DWD shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End-User Licensed Software.

15.9 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.

15.10 The Customer shall accept and comply with all licence terms required from time to time by any Third-Party provider of any Software or materials as agreed between the relevant Third Party and DWD.

## 16. Confidentiality

16.1 Either party receiving Confidential Information (the "Recipient") from the other (the "Disclosing Party") shall not, without the Disclosing Party's prior written consent, use that Confidential Information for any purpose other than for the purposes of fulfilling a party's obligations under this Agreement, or disclose such Confidential Information to any person other than Authorised Personnel who have a need to know that information.

16.2 Clause 17.1 shall not prohibit use or disclosure of Confidential Information by either party to the extent:

- (a) the Confidential Information is published by or on behalf of the Disclosing Party or becomes generally known to the public otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality.
- (b) such Confidential Information was lawfully known to the Recipient prior to the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality.

- (c) the Confidential Information was lawfully disclosed to the Recipient by a third party that was not itself under any obligations of confidentiality.
- (d) the Confidential Information is replicated or developed independently by or on behalf of the Recipient without access to or knowledge.