

# GBIS Communications



## Terms and Conditions – September 2020

### 1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in each Contract (as defined below):

“Acceptable Use Policy” means GBIS Communications acceptable use policy for all or any of the Services, as updated from time to time by GBIS Communications and made available on GBIS Limited website.

“Airtime” means wireless airtime and/or network capacity procured from the relevant network operator.

“GBIS Communications”, “we” or “our” means GBIS Limited whose registered office is at **Vivary Mill, Vivary Way, Colne, BB8 9NW** and whose registered company number is 6009094, and any reference to “us” “we” and “our” is a reference to GBIS Communications.

“GBIS Communications Equipment” means any equipment, including tools, systems, cabling or facilities, provided and/or used by GBIS Communications or any Third Party Supplier directly or indirectly in the supply of the Goods and/or Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

“Business Customer” means a Customer which is not a consumer or a small business who has 10 or less employees.

“Charges” has the meaning given to it in clause 12.1 of these Terms.

“Commencement Date” means the date the Contract comes into existence in accordance with clause 2.2 of these Terms.

“Contract” has the meaning given to it in clause 2.2.

“Customer” or “you” means the person(s), firm or company identified as the Customer in the Order Form as the case may be, and any reference to “you” and “your” is a reference to the Customer.

“Data Protection Legislation” means the General Data Protection Regulation (Regulation (EU) 2016/679), as implemented in the United Kingdom and all other applicable laws and regulations in the UK relating to the processing of Personal Data by a party under the Contract.

“Data Subject” has the meaning given to it in the Data Protection Legislation.

“Deliverables” means all documents, products and materials developed by GBIS Communications or a Third Party Supplier or their agents, subcontractors, consultants and/or employees in relation to Goods and/or Services in any form, including computer programs, data, reports and specifications (including drafts).

“Delivery Point” means the place where delivery of the Goods is to take place under clause 6, as specified in the Order Form.

“Early Termination Payment” means the payment due following termination of the Contract by the Customer within the Minimum Term or any Renewal Term, as set out in clause 3.1.

“Goods” means the goods (including any part or parts of them) to be supplied by GBIS Communications to the Customer under the Contract, including any Goods to be provided by a Third Party Supplier and any Deliverables to be provided in relation to such Goods, as set out in the Order Form.

“Group” means, in relation to a company, that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time.

“Inbound Calls” means calls made to (not from) any telephone numbers comprising the Goods and/or Services.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Minimum Term” means the minimum term of the Contract which shall commence on the Service Commencement Date and shall end at the end of the period set out in the Order Form.

“Mobile Services” means the provision of all or any of the following, as set out in the Order Form: airtime, equipment, software, GPRS, mobile internet and email access, SMS, SMS land to mobile text messaging service, location based services and/or other wireless services.

“Order Form” means the form prepared by GBIS Communications in respect of a request for the Goods and/or Services and includes any services detailed in the proposal prepared by GBIS Communications referred to within the Order Form.

“Pre-existing Materials” means all data, documents, software, specifications, reports, programs, information and/or other materials provided or made available by GBIS Communications or a Third Party Supplier relating to the Goods and/or Services which existed prior to the commencement of the Contract.

“Personal Data” means any personal data, as defined in the Data Protection Legislation, which is processed by a party pursuant to the Contract.

“Process” and “Processing” have the meanings given to them in the Data Protection Legislation.

“Product Schedule” means any specific terms and conditions available from GBIS Communications website from time to time which are applicable to the Goods and/or Services provided to the Customer from time to time, as referred to on the Order Form.

“Renewal Term” means the automatic renewal of the Minimum Term as set out in clause 3.2.

“Revenue Share” the amount (if any) payable by GBIS Communications to the Customer in relation to Inbound Calls, as expressly referred to in the Order Form.

“Services” means the services to be provided by GBIS Communications under the Contract, including Third Party Supplier services, each as identified in the Order Form, and including any Deliverables provided as part of the Services.

“Service Commencement Date” means, subject to clause 5.2, the date that GBIS Communications notifies the Customer that the installation and/or set up of the Goods and/or Services is complete or, in the absence of notification, the date the Customer commences use of the Goods and/or Services.

“Scheduled Maintenance” means any maintenance to any hardware, software, networks or systems affecting the provision or use of the relevant Goods and/or Services, which is notified to the Customer by GBIS Communications in advance of such maintenance taking place.

“Subsidiary” means in relation to a company (a holding company) means a subsidiary (as defined in section 1159 of the Companies Act 2006) and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company.

“Terms” means these Terms and Conditions.

“Third Party Supplier” means the third party selected by GBIS Communications from time to time to perform the Services and/or to supply the Goods in whole or part.

“VAT” means value added tax chargeable under English law for the time being and any similar additional tax.

“VOIP” means Voice Over Internet Protocol being the use of the internet as the transmission medium for telephone calls by digital means (rather than traditional telephone system based on copper wires carrying analogue data).

## **2. APPLICATION OF TERMS**

2.1 These Terms shall apply to and be incorporated into the Contract. If there is any inconsistency between these Terms and the terms contained in the Order Form or the Product Schedules, the following order of prevalence shall apply to the extent of such inconsistency: the Order Form, followed by the Product Schedules, followed by these Terms.

2.2 An Order Form should not be accepted by a Customer who is not a Business Customer. The Customer’s acceptance of the Order Form constitutes confirmation by the Customer that it is a Business Customer and an offer by the Customer to purchase Goods and/or Services. No offer placed by the Customer shall be accepted by GBIS Communications other than:

2.2.1 by an Order Form being countersigned by GBIS Communications;

2.2.2 by GBIS Communications confirming via email its acceptance of an Order Form signed by the Customer; or

2.2.3 by GBIS Communications starting to provide the Services or supply the Goods, whichever is earlier, upon which a binding contract for the supply and purchase of the Goods and/or Services on these Terms and the terms of the Order Form (including any relevant Product Schedules) will be established (a "**Contract**").

2.3 It is your responsibility to evaluate the Goods and/or Services set out in any Order Form, including any specific functionality requirement, prior to submitting a signed Order Form to GBIS Communications to ensure the Goods and/or Services meet your particular purpose. Upon a Contract coming into existence in accordance with clause 2.2 (above) you will be legally bound to purchase the Goods and/or Services referred to in the Contract.

2.4 These Terms apply to the Contract, to the exclusion of all other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.5 Order Forms are given by GBIS Communications on the basis that no Contract shall come into existence except in accordance with clause 2.2.

2.6 The Contract 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 GBIS Communications which is not expressly set out in the Contract.

### 3. TERM

3.1 If the Customer wishes to terminate the Contract during the Minimum Term or any Renewal Term, it may (subject to clause 3.3) do so by providing written notice to GBIS Communications ("**Early Termination Notice**"). Upon termination pursuant to this clause 3.1 or where GBIS Communications terminates the Contract during the Initial Term or any Renewal Term pursuant to clause 9.1, the Customer shall pay to GBIS Communications an amount equal to the balance of Charges that would otherwise have been due from the Customer for the remainder of the Minimum Term or Renewal Term (as appropriate) ("**Early Termination Payment**"). In the event that Charges are based on usage of the Goods and/or Services and/or rebates rather than recurring charges, the Early Termination Payment shall be calculated by GBIS Communications by reference to the average monthly usage charge and/or rebate paid to the Customer by GBIS Communications during the Minimum Term or Renewal Term (as appropriate) up to the date the Customer serves the Early Termination Notice.

3.2 Following the expiry of the Minimum Term, the Contract will automatically renew for further 12 month terms (each a "**Renewal Term**"), unless GBIS Communications or the Customer provides the other party with notice in writing at least 90 days prior to the end of the then current Minimum Term or Renewal Term.

3.3 Within thirty (30) days of receipt of an Early Termination Notice, GBIS Communications shall confirm in writing the amount of the Early Termination Payment due from the Customer. For the Customer's Early Termination Notice to be effective, the Customer must accept and pay the Early Termination Payment in full in cash or cleared funds. If the Customer no longer wishes to terminate the Contract, the Customer may revoke the Early Termination Notice by notifying GBIS Communications in writing.

3.4 If the Customer does not revoke the Early Termination Notice and the Early Termination Payment is not made within 14 days of the date of GBIS Communications written notice confirming the amount of the Early Termination Payment, GBIS Communications shall be entitled to either:

3.3.1 terminate the Contract, without liability to the Customer, immediately on giving notice to the Customer and shall be entitled to recover the Early Termination Payment from the Customer; or

3.3.2 consider the Customer's Early Termination Notice to have been withdrawn and treat the Contract as continuing in full force and effect.

3.4 Until the Contract is validly terminated, GBIS Communications shall continue to provide the Goods and/or Services and to invoice the Customer for all sums due in relation to the same in accordance with the Contract.

#### **4. PROVISION OF THE SERVICES/GOODS**

4.1 GBIS Communications agrees to:-

4.1.1 exercise reasonable care and skill in providing the Services and/or Goods;

4.1.2 subject to clause 4.2, use its reasonable endeavours to provide the Services and/or Goods and deliver the Deliverables to the Customer in accordance with the Contract including any specifications, delivery dates and/or timetables comprising the same (and if not delivery dates and/or timetables are specified, within a reasonable time); and

4.1.3 comply with all applicable laws and regulations relevant to the provision of the Services and/or Goods.

4.2 Customer acknowledges and agrees that:

4.2.1 all samples, drawings, descriptive matter, specifications and advertising issued by GBIS Communications and any descriptions or illustrations contained in or referred to in GBIS Communications website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this Contract shall not be construed as being a sale by sample;

4.2.2 all delivery dates and/or timetables specified in the Order Form are an estimate only and time is not of the essence in relation to the delivery and/or performance of the Goods and/or Services. Subject to clause 9.2.4 and 13, Customer acknowledges and agrees that GBIS Communications shall have no liability or obligation to the Customer in relation to any late delivery and/or performance nor shall any delay entitle the Customer to terminate or rescind the Contract. Customer further acknowledges and agrees that certain Goods and/or Services may have long lead times, for example, the lead time for installation of fibre broadband can be in excess of 9 months from the date of the signed Order Form;

4.2.3 it is a business customer using the Goods and/or Services for the benefit of its own business and that it is not entitled to resell any of the Goods and/or Services to any third party;

4.2.4 it shall use the Goods and/or Services in accordance with any reasonable instructions provided by GBIS Communications and/or any Third Party Supplier and shall provide any information in

relation to such use which is reasonably requested by GBIS Communications and/or such Third Party Suppliers;

4.2.5 in respect of Mobile Services: (a) GBIS Communications has no knowledge of and no liability in respect of any text or picture messages sent to or from the Customer and/or any of its employees, agents, contractors or advisers using any mobile devices comprising the Goods and/or connected to the Services; (b) to the extent the Customer is entitled to free Airtime, the provision of such free Airtime shall be subject to any conditions specified in the Acceptable Use Policy; (c) Customer is responsible, at its own cost, for procuring, commissioning and installing any hardware and/or software required to operate the Mobile Services, save to the extent expressly stated on the Order Form; (d) the Customer must promptly notify GBIS Communications if any mobile devices and/or SIM cards comprising Goods are lost, stolen or damaged. The Customer shall be responsible for paying all Charges due in relation to any such lost, stolen or damaged mobile devices and/or SIM cards up to the date it notifies GBIS Communications of the same. Customer shall pay all sums due in relation to the provision of replacement mobile devices and/or SIM cards, as specified by GBIS Communications; and (e) the Customer's mobile devices will only work in the areas covered by the network selected by the Customer. Information regarding the areas covered by each network are available from GBIS Communications upon request. GBIS Communications shall not be liable whatsoever for any mobile devices which do not work as a result of changes or disruption to the network;

4.2.6 use of certain Services may be subject to the Customer obtaining and maintaining suitable compatible equipment which meet minimum requirements, as made known by or on behalf of GBIS Communications or a Third Party Supplier; and

4.2.7 GBIS Communications may deliver the Goods and/or Services in instalments where agreed with the Customer.

4.3 GBIS Communications may:-

4.3.1 change the technical specification of the Goods and/or Services or the manner in which they are provided or performed, in order to comply with the requirements of the Third Party Supplier or any applicable law (including any applicable safety requirement);

4.3.2 change the technical specification of the Services and/or Goods and/or the manner in which they are provided or performed for operational reasons, provided that any such changes do not have a materially adverse effect on the performance or provision of the Services and/or Goods;

4.3.3 suspend the Services in whole or part for an emergency, operational reasons (such as maintenance, service upgrades or network unavailability), regulatory or legal reasons or because of matters outside of its control (including any matters within the control and/or ambit of the Third Party Supplier). GBIS Communications shall give the Customer as much notice as is reasonably possible of the same.

4.4 Our support hours are from 09:00 to 17:30 Monday to Friday excluding bank holidays in England ("**Support Hours**"). If you become aware of an interruption to any of the Services or any other failure of the Services, please call our main telephone number specified on our website or complete a contact log via the website and obtain a fault log number. The time at which you obtain the fault log number shall be the "**Service Interruption Notification Point**".

4.5 In case of a Service Interruption and there is a service level agreement contained or attached to the Order Form or relevant Product Schedule you may be entitled to apply for service credits. Service credits are only available for Service Interruptions occurring during Support Hours, i.e. no more than 8.5 hours' worth of service credits are available for any single day. No service credits shall be made if you have not been provided with a service level agreement or the Service Interruption is attributable to any of the events specified in the service level agreement, Scheduled Maintenance, emergency maintenance or factors beyond our reasonable control, including but not limited to, malicious attacks to any GBIS Communications or third party infrastructure associated with the provision or use of the Goods and/or Services, downtime caused by third parties including (without limitation) internet service providers and/or installation by the Customer of any third party software onto any of GBIS Communications Equipment.

4.6 Service credits are not available if the Customer or any of its employees, agents or contractors are in breach of any of its obligations under any Contract.

4.7 Service credits may only be offset against future charges incurred after the relevant Service Interruption began and only in relation to the same Contract. Service credits shall not be converted into a cash refund, or offset against charges due under other Contracts. If we give notice to terminate a Contract, we will deduct any service credits relating to that Contract from the final invoice in relation to that Contract.

4.8 A claim for service credits can only be made within a maximum of 5 working days after the Service Interruption relating to the claim began. A claim should be made in writing to our registered address.

4.9 In the absence of any specific service level agreement, GBIS Communications will use reasonable endeavours to respond to notifications of Service Interruptions and associated communications received by telephone or email within 4 Support Hours and will use reasonable endeavours to rectify the same. GBIS Communications does not provide any assurance or guarantee in relation to the resolution time for any Service Interruption.

4.10 In investigating any Service Interruption or carrying out any Scheduled Maintenance or emergency maintenance, GBIS Communications shall not be liable for the loss of any data or information stored on any equipment that may be affected by the carrying out of such investigation and/or maintenance and the Customer shall ensure that appropriate backups of all data and information are maintained. If it is necessary for GBIS Communications to reset any software, GBIS Communications shall not be responsible for resetting or reloading equipment programming and user profiles.

4.11 The Customer acknowledges that GBIS Communications does not represent, warrant or guarantee that the Services shall be available without interruption or error free and that the provision of the Services is subject to matters beyond GBIS Communications reasonable control including, without limitation, the geographic extent of airtime coverage and local geography, topography and/or atmospheric conditions, other physical or electromagnetic interference, number of users, and/or Third Party Suppliers, each of which may affect the provision and/or quality of the Services.

4.12 Where the Customer is provided with telephone number(s) (including any codes) as part of the Services, the Customer acknowledges and agrees that, save as expressly stated in this clause, it will

acquire no right, title, interest or claim in or to the same. Without limiting the foregoing, the Customer will have the right to request that such numbers are ported to its new service provider following the expiry or termination of the Contract and GBIS Communications shall use reasonable endeavours, to assist the Customer's selected service provider to do so (but Customer acknowledges and agrees that the porting of such numbers is outside of GBIS Communications reasonable control and GBIS Communications shall have no liability to the Customer in the event that the porting of such numbers is not possible). Where the Customer makes such a request (either to GBIS Communications or to the Third Party Supplier direct) to port such numbers to a new service provider, the Customer agrees to pay GBIS Communications the sum of £15 per number. GBIS Communications will use its reasonable efforts to ensure that the Customer is able to keep the telephone numbers originally assigned to it during the period of the Contract but GBIS Communications reserves the right to change the telephone numbers on reasonable notice (where practicable) for operational, technical or regulatory reasons (including where required by any Third Party Supplier).

4.13 In respect of VOIP services, the Customer accepts that: (a) the Customer's ability to make emergency calls and their priority treatment cannot be guaranteed and that any suspension or interruption of the VOIP service may result in the Customer being unable to make emergency calls; (b) the Customer acknowledges that the VOIP service may sometimes be limited, unavailable or interrupted due to events beyond GBIS Communications control, such as those specified in clause 18 (Force Majeure).

4.14 Unless expressly stated otherwise in writing, the Customer shall be responsible for the back-up of any data or information on its, or its licensors', software or systems and the Customer shall ensure that any third party operating and application software is created and stored so that the system and files of any Goods and/or Services provided by GBIS Communications may be restored in the event of any damage, corruption or other similar loss of data howsoever occasioned.

4.15 The Customer agrees to indemnify GBIS Communications in full and on demand and accepts full responsibility for any loss, damage, costs, expenses or other liability suffered by GBIS Communications as a result of any act or omission by the Customer or any of its employees, agents or subcontractors in connection with the provision of Goods and/or Services which results in the Customer or GBIS Communications failing to comply with any applicable laws including, without limitation, any failure to adhere to the rules of the TPS (Telephone Preference Service) and/or CTPS (Corporate Telephone Preference Service), or any other requirement under the Privacy and Electronic Communications (EC Directive) Regulations 2003 or the Data Protection Legislation.

## **5. INSTALLATION**

5.1 We will use reasonable endeavours to notify you following the installation and/or setup of the Goods and/or Services of the date the installation/setup was completed, which shall also be the Service Commencement Date. In the absence of notification, the Service Commencement Date shall be the date the Customer commences use of the Goods and/or Services. This provision applies equally to new Goods and/or Services and upgrades of existing Goods and/or Services. If any Goods and/or Services referred to in an Order Form commence on different dates, each shall have its own individual Service Commencement Date, and therefore its own individual Minimum Term and Renewal Term thereafter. Where Goods and/or Services referred to in an Order Form have different Service Commencement Dates, they will each be treated as individual and distinct Contracts for any termination purposes.



5.2 Charges shall start to accrue for the Goods and/or Services from the Service Commencement Date. Where the Goods and/or Services replace existing Goods and/or Services, charges for the replaced Goods and/or Services shall stop accruing on the Service Commencement Date for the replacement Goods and/or Services. Where the Customer or any of its employees, agents or contractors unreasonably delay or hinder any troubleshooting, set-up, installation or re-installation of the Goods and/or Services (including, without limitation, which constitutes a breach of clause 5.3) and/or postpone or delay any troubleshooting, set-up, installation and/or re-installation of the Goods and/or Services, GBIS Communications reserves the right to determine that the Service Commencement Date shall start on the date which GBIS Communications reasonably believes the set up and/or installation of the Goods and/or Services (as appropriate) would have been completed, but for such delay or hindrance on the part of the Customer.

5.3 To enable GBIS Communications to carry out its obligations and exercise its rights under the Contract, the Customer shall provide GBIS Communications (and/or its employees, agents, contractors and suppliers, including Third Party Suppliers) with such assistance, cooperation, information, facilities (including but not limited to everything necessary relating to number porting, cat5e cabling and the provision of a suitable LAN) and access to its offices and/or other relevant locations as GBIS Communications shall reasonably require, subject to reasonable advance notice. Any period of delay in providing GBIS Communications (and/or its employees, agents, contractors and suppliers) with such assistance, cooperation, information, facilities and/or access shall be excluded from any service credit calculations. The Customer shall take all reasonable health and safety precautions to protect GBIS Communications staff, employees, agents, contractors and suppliers when attending at the Customer's offices or other relevant locations controlled by the Customer.

5.4 The Customer shall indemnify GBIS Communications in full and on demand from any charges, costs or other expenses levied on GBIS Communications by any agent, contractor, supplier or Third Party Supplier as a result of that entity not being permitted access to your offices or other relevant locations as previously arranged and agreed with the Customer. The Customer shall be entitled to see reasonable documentary evidence of such incurred charges, costs or expenses levied on GBIS Communications for such aborted visits.

## **6. DELIVERY OF THE GOODS**

6.1 GBIS Communications shall use reasonable endeavours to deliver the quantity of Goods set out in the Order Form by the Customer in accordance with the agreed specification and timetable, each as set out in the Order Form, to the Delivery Point. The charges for delivery shall be as set out in the Order Form but in the absence of the same, GBIS Communications shall be entitled to charge the Customer for all reasonable delivery costs and charges associated with the delivery of the Goods to the Delivery Point.

6.2 The Customer shall take delivery of the Goods from the Delivery Point immediately upon delivery and shall arrange for unloading of the same. Risk in the Goods passes to the Customer upon delivery of the Goods to the Delivery Point.

6.3 If for any reason the Customer fails to accept delivery of any of the Goods when they are delivered to the Delivery Point, or GBIS Communications is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, access, licences or authorisations, the Goods shall be deemed to have been delivered; risk in the Goods shall pass to the Customer; and GBIS Communications may store the Goods until delivery, whereupon the Customer shall be liable

for all related costs and expenses (including, without limitation, storage and insurance) incurred by GBIS Communications.

6.4 GBIS Communications shall not be liable for any non-delivery of Goods or failure to deliver the agreed specification or quantity of Goods unless the Customer gives written notice to GBIS Communications and provides evidence of the same to the reasonable satisfaction of GBIS Communications within 7 days of the date when delivery took place or would in the ordinary course of events have taken place.

6.5 The Customer's rights and any liability of GBIS Communications for non-delivery of the Goods or failure to deliver the agreed specification or quantity of Goods in whole or part shall be as set out in clauses 4.2.2, 9.2.4 and 13.

## **7. TITLE IN THE GOODS**

7.1 Ownership of the Goods shall only pass to the Customer if the Order Form expressly states that title to the same passes to the Customer and then only if GBIS Communications has received in full (in cash or cleared funds):

7.1.1 all sums due to it in respect of such Goods; and

7.1.2 all other sums which are due to GBIS Communications from the Customer under the Contract.

7.2 Until ownership of the Goods has passed to the Customer, the Customer shall:

7.2.1 hold such Goods on a fiduciary basis as GBIS Communications bailee.

7.2.2 store such Goods (at no cost to GBIS Communications) separately from all other goods and other items of the Customer or any third party in such a way that they remain readily identifiable as GBIS Communications property.

7.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to such Goods.

7.2.4 maintain such Goods in satisfactory condition and keep them insured on GBIS Communications behalf for their full price against all risks to the reasonable satisfaction of GBIS Communications. On request the Customer shall produce the policy of insurance to GBIS Communications; and

7.2.5 not remove, alter or copy any software installed on any of the Goods.

7.3 Until title to the Goods passes, the Customer will, upon GBIS Communications request, deliver up the Goods in the Customer's possession and if the Customer fails to do so forthwith, GBIS Communications may enter the Delivery Point owned, occupied and controlled by the Customer and repossess and remove the Goods.

## **8. WARRANTIES**

8.1 Subject to clauses 4, 8.2, 9.2.4 and 13, the Customer acknowledges and agrees that GBIS Communications shall have no liability or obligation to the Customer or any third party in relation to the Goods and/or Services. In the event that the Customer discovers a defect in the Goods upon or following delivery, the Customer may be entitled to rely on the manufacturer's warranty for such Goods. The Customer shall be responsible for contacting such manufacturer and pursuing such

warranty claim and acknowledges that GBIS Communications shall have no liability or obligation to the Customer or any third party in relation to the same.

8.2 GBIS Communications warrants that: (a) the quantity of Goods delivered to the Customer will comply with the quantity specified in the Order Form; and (b) the specification of the Goods delivered will comply in all material respects with that set out or referred to in the Order Form; and (b) the Services will comply in all material respects with any description set out or referred to in the Order Form for the term of the Contract relating to such Services.

8.3 Customer warrants that:

8.3.1 it will receive and use the Goods and/or Services (including any Deliverables) only for the purpose expressly stated in the Order Form and in accordance with the terms of the Contract and, where relevant, the Acceptable Use Policy; and

8.3.2 it will not, without the prior written consent of GBIS Communications, copy, adapt, de-compile, reverse engineer, disassemble or modify any of the Goods, Deliverables, Pre-Existing Materials and/or Services (including without limitation any software, manuals or documentation comprising or relating to the same) save to the extent expressly permitted in the Contract or by applicable laws or with the prior written consent of GBIS Communications; and

8.3.3 its use of the Goods and/or Services (including any Deliverables) shall comply with all applicable laws and regulations, including without limitation laws regarding the processing and transmission of data (including Personal Data). The Customer shall not use or permit the use of the Goods and/or Services (including any Deliverables) for any menacing, unlawful, abusive, obscene, threatening, defamatory, discriminatory or fraudulent purpose or in a manner which constitutes a violation or infringement of any rights of a third party, including without limitation, in any way that interferes with the ability of GBIS Communications to provide goods and/or services to other customers or, avoids or limits the Customer's obligation to pay the Charges or which comprises hoax calls or similar to emergency services or marketing messages which are sent without the recipient's prior consent; and

8.3.4 it has the right to enable GBIS Communications and its employees, agents and subcontractors to use any data (including Personal Data) transferred to or generated by GBIS Communications in the course of performing the Contract for the purpose of providing the Goods and/or Services and in the manner envisaged by GBIS Communications privacy policy (as updated from time to time), located at [www.GBIS Communications.cloud/privacy](http://www.GBIS Communications.cloud/privacy) and incorporated herein by this reference; and

8.3.5 it will obtain and maintain such licenses, permissions and/or consents as are necessary to enable it to receive and use the Goods and/or Services (including any Deliverables) in accordance with the Contract.

8.3.6 it will effect and maintain adequate security measures to safeguard the Goods and/or Services and shall comply with all of GBIS Communications reasonable advice with regard to the use of the Goods and/or Services, including, without limitation, the implementation of upgrades to the IT infrastructure, specified operating system and computer hardware

8.4 Subject to clause 8.3.4, each party warrants that it shall Process any data (including Personal Data) arising from the provision or receipt of the Goods and/or performance of the Services in accordance with the Data Protection Legislation.

8.5 GBIS Communications shall not be obliged to assist the Customer with any claim under any warranty provided by a manufacturer of the Goods, as referred to in clause 8.1, or be liable in respect of any claim made by the Customer in relation to the Goods and/or Services under clauses 4, 8.2 or otherwise, if:

8.5.1 the Customer makes any further use of such Goods and/or Services the subject of the claim after giving a notice to GBIS Communications that the Goods and/or Services do not comply with a manufacturers' warranty or do not comply with the specification referred to in clause 8.2 or are otherwise defective;

8.5.2 the defect arises because the Customer failed to follow the manufacturers or GBIS Communications or a Third Party Supplier's oral or written instructions as to the storage, installation, commissioning, use and/or maintenance of the Goods and/or Services or (if there are none) good trade practice;

8.5.3 the defect arises as a result of GBIS Communications or a Third Party Supplier following any instructions supplied by the Customer;

8.5.4 the Customer alters or repairs such Goods and/or Services without the prior written consent of GBIS Communications.

8.5.5 the Customer is in breach of clause 8.3.

8.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

8.5.7 the Goods and/or Services differ from their description as a result of changes made in accordance with clause 4.3.

8.6 Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Goods and/or Services and then any such liability shall be limited in accordance with clause 13.

## **9. TERMINATION AND SUSPENSION**

9.1 Without prejudice to any other rights or remedies which the parties may have, GBIS Communications may suspend the provision of the Goods and/or Services and/or terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:

9.1.1 the Customer fails to pay any Charges or other sums due under the Contract in accordance with clause 12, following the provision by GBIS Communications of 7 days' notice to the Customer that such amounts are overdue; or

9.1.2 the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of it being notified in writing of the breach; or

9.1.3 the Customer suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or

9.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

9.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer; or

9.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or

9.1.7 a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

9.1.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or

9.1.9 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

9.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.3 to clause 9.1.9 inclusive; or

9.1.11 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

9.1.12 there is a change of control of the Customer (as defined in section 1124 of the Corporation Tax Act 2010) that we have not given our prior written consent to; or

9.1.13 the Customer encumbers or in any way charges any of the Goods and/or Deliverables in respect of which title has not passed to the Customer in accordance with the Contract; or

9.1.14 GBIS Communications reasonably suspects that the Customer is using the Goods and/or Services in breach of any terms of the Contract and/or in contravention of any applicable laws, rules, regulations, codes of conduct or codes of practice and/or that the Customer has provided false or misleading information.

9.2 Without prejudice to any other rights or remedies which the parties may have, the Customer may terminate the Contract without liability to GBIS Communications immediately on giving notice to GBIS Communications if:

9.2.1 GBIS Communications commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of it being notified in writing of the breach; or

9.2.2 GBIS Communications suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or

9.2.3 GBIS Communications suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

9.2.4 GBIS Communications fails to deliver the Goods and/or to commence provision of the Services within 12 weeks of the estimated date for delivery or provision confirmed by GBIS Communications to the Customer or in the absence of such confirmation, within 12 weeks of the date that the Customer provides GBIS Communications with the information, equipment, access and facilities that it needs to deliver the Goods and/or provide the Services, provided that the Customer gives GBIS Communications not less than four weeks' advance notice of its intention to terminate and GBIS Communications has failed to deliver the Goods and/or commence the provision of the Services within such notice period, save where such delay or failure is outside of GBIS Communications' reasonable control (and for the avoidance of doubt, any delay caused by a Third Party Supplier shall be outside the reasonable control of GBIS Communications).

9.3 GBIS Communications may also terminate the Contract in whole or part if any Third Party Supplier withdraws any of the Goods and/or Services provided under the Contract and GBIS Communications cannot find an alternative supplier of the relevant Goods and/or Services or other workaround prior to the date of withdrawal by the relevant Third Party Supplier.

9.4 On termination of the Contract for any reason:

9.4.1 the Customer shall immediately pay to GBIS Communications an amount equal to any outstanding unpaid invoices for Charges and other sums due and any interest due on the same and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, GBIS Communications may submit an invoice, which shall be payable immediately on receipt;

9.4.2 the Customer shall, unless otherwise agreed, immediately return all Goods and Deliverables (save to the extent title has passed to the Customer pursuant to the Contract) and all of GBIS Communications Equipment, Pre-existing Materials and confidential information (including all copies of the same in whatever media). If the Customer fails to do so, then GBIS Communications may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and shall have no right to use the same (save to the extent agreed otherwise).

9.4.3 GBIS Communications shall, save where the Customer is required to pay an Early Termination Payment in accordance with clause 3.1, repay any Charges paid in advance for Goods and/or Services not yet provided.

9.4.4 to the extent that GBIS Communications provides assistance in relation to the migration of the Services to another service provider, the Customer shall reimburse all reasonable costs incurred by GBIS Communications and pay GBIS Communications reasonable compensation in relation to the same; and

9.4.5 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

9.5 On expiry or termination of the Contract, unless otherwise agreed, GBIS Communications shall cease the provision of all Services provided under the Contract.

9.6 If GBIS Communications suspends the provision of the Goods and/or Services pursuant to clause 9.1, the Customer shall reimburse all reasonable costs, expenses and other liabilities suffered or

incurred by GBIS Communications in relation to such suspension. If GBIS Communications in its sole discretion agrees to recommence the provision of the Goods and/or Services at any time following a period of suspension, such recommencement shall be subject to the Customer paying all reasonable costs, expenses and other liabilities suffered or incurred by GBIS Communications in relation to the same including (without limitation) any reconnection charges.

9.7 On termination of the Contract (however arising), clauses 3.3, 9, 10, 11, 12, 13, 15, 19, 20 and 21 shall survive and continue in full force and effect and GBIS Communications (but not the Customer's) rights contained in clause 7 shall remain in full force and effect.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 As between the Customer and GBIS Communications, subject to clause 7.1, all Intellectual Property Rights and all other rights in the Goods, Services, Deliverables, GBIS Communications Equipment and the Pre-existing Materials shall be owned by GBIS Communications or its licensors ("**GBIS Communications Rights**").

10.2 Subject to clause 10.3 and to the Customer paying all Charges and other sums due under the Contract, GBIS Communications licenses the GBIS Communications Rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods and/or the Services in its business in the manner anticipated in the Order Form. If the Contract expires or terminates, this licence shall automatically terminate.

10.3 The grant of the licence to use any of the GBIS Communications Rights which are owned by a third party (including, without limitation, any Third Party Supplier) is subject to the Customer agreeing such licenses or other terms of use as that third party requires.

10.4 GBIS Communications may use the Customer's logo, trademark, and/or name in relation to the advertisement, promotion or other marketing of its products and/or services to other actual or potential customers.]

10.5 Subject to clause 10.2, nothing in this Contract shall entitle the Customer to use, modify, change or alter any GBIS Communications Rights without the prior written consent of GBIS Communications.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

11.1 Each party shall keep in confidence any information relating to the other party and/or its business (including, without limitation, its products, services, employees, contractors, customers or suppliers) (whether written or oral howsoever stored) of a confidential nature (including software and where relevant manuals) obtained under or in connection with this Contract and shall not without the prior written consent (such consent not to be unreasonably withheld or delayed) of the other party disclose that information to any person other than:

11.1.1 its employees or professional advisers.

11.1.2 the employees of a Group company who need to know the information in order to fulfil the receiving party's obligations or to exercise its rights under the Contract.

11.2 Without prejudice to clause 11.1, the Customer shall keep in strict confidence any information (whether written or oral and howsoever stored) relating to the Pre-Existing Materials, GBIS Communications Equipment, GBIS Communications Rights, Deliverables, Goods and/or Services. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of exercising its rights or performing its obligations under the Contract, and shall ensure that such employees, agents and/or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

11.3 This clause 11 shall not apply to:-

11.3.1 any information which is in the public domain other than through a breach of the Contract;

11.3.2 information lawfully in the possession of the recipient before the disclosure under the Contract took place;

11.3.3 information obtained from a third party who is free to disclose it; and/or

11.3.4 information which a party is required to disclose by any legal or regulatory body to which it is subject and for the avoidance of doubt, this shall include any information which GBIS Communications is required to disclose in relation to the Customer's use of the Goods and/or Services.

11.4 To the extent that GBIS Communications acts as a Data Processor in the course of providing the Goods and/or Services, it shall:

11.4.1 process the Personal Data only in accordance with the Customer's instructions;

11.4.2 implement and maintain appropriate technical and organisational measures to protect the Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access;

11.4.3 not permit any processing of Personal Data by any third party other than for the purposes of delivering the Goods and/or Services 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;

11.4.4 ensure that all of its employees, agents or other persons with access to the Personal Data are informed of the confidential nature of the Personal Data, are subject to a binding written contractual obligation to keep the Personal Data confidential, have undertaken training in the laws relating to handling Personal Data and shall only have access to such part or parts of the Personal Data as is strictly necessary for performance of that person's duties;

11.4.5 not transfer the Personal Data outside the European Economic Area without the prior written consent of the Customer, unless the appropriate safeguards in place in accordance with the Data Protection Legislation;

11.4.6 promptly inform the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable;

11.4.7 on reasonable notice, allow for and contribute to audits, including inspections, by the Customer in relation to its compliance with this clause;



11.4.8 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 Personal Data breach and/or any complaint or request relating to this Contract including any notification of the breach to supervisory authorities and/or communication to any affected Data Subjects; and

11.4.9 on termination, at the Customer's cost, either return all of the Personal Data to the Customer or securely dispose of the Personal Data except to the extent that any applicable law requires GBIS Communications to retain such Personal Data.

11.5 Customer acknowledges and agrees that GBIS Communications may use and disclose to relevant third parties information regarding the Customer, end users of any of the Goods and/or Services and the Customer's account with GBIS Communications (including any Personal Data for the purpose of fraud prevention, debt collection, credit management, emergency services provision, if required by law or regulatory authority and/or in the event that the whole or any relevant part of GBIS Communications 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 mobile related goods and services.

11.6 Unless the Customer notifies GBIS Communications that it does not wish to receive marketing information, GBIS Communications may send the Customer information relating to its goods and/or services which may be of interest to the Customer.

## 12. PAYMENT OF CHARGES

12.1 The Customer shall pay the charges due for the Goods and/or the Services (comprising non-recurring and recurring charges) in the amounts in full without deduction or set-off and by the dates set out in the Order Form (the "**Charges**"). For the avoidance of doubt, where Charges are based on usage, they shall be calculated based on data recorded or logged by GBIS Communications or the relevant Third Party Supplier and not by reference to any data recorded or logged by the Customer. Without prejudice to clause 14, GBIS Communications shall have the right to increase the Charges, with effect from each anniversary of the Service Commencement Date ("**SCD Anniversary**"), by an amount equal to 3% above the increase in the retail prices index over the period from the date of the last increase (or the first Service Commencement Date, as applicable) to the date ending immediately prior to the date the increase is to take effect.

12.2 Subject to clause 12.4, payment of the Charges shall be made in the manner and amounts set out or calculated in accordance with the Order Form. Where the Customer elects a payment method other than by direct debit, GBIS Communications reserves the right to charge the Customer an administrative charge of £50 per month. In the absence of any agreed payment terms, payment shall be made by the Customer to GBIS Communications within 14 days of the date of GBIS Communications invoice for the same.

12.3 All Charges are exclusive of VAT. VAT will be charged at the rates as are chargeable on the supply of the Services and/or Goods at the same time as payment is due for the supply of the Services and/or Goods and will be payable by the Customer and specified on all invoices.

12.4 If the Customer reasonably disputes any invoice raised by GBIS Communications in whole or part it shall notify GBIS Communications in writing of the same prior to the date payment is due. Customer acknowledges and agrees that, subject to it paying all undisputed elements of such invoice, clauses 12.5 and 12.7 shall not apply to such disputed elements, provided that a representative of Customer meets with a representative of GBIS Communications and attempts to resolve the dispute in good faith. Customer acknowledges and agrees that it shall have no right to dispute any invoiced amounts unless it notifies GBIS Communications in writing of the same prior to the date payment is due.

12.5 Time for payment of the Charges shall be of the essence. Without prejudice to any other actions available to GBIS Communications, GBIS Communications may suspend the performance of the Services and/or delivery of Goods in the event that any undisputed Charges are overdue until all such undisputed Charges are paid in full in cash or cleared funds.

12.6 All amounts payable to GBIS Communications under the Contract shall become due immediately upon expiry or termination of the Contract.

12.7 If the Customer fails to pay GBIS Communications any sum due pursuant to the Contract by the due date, the Customer shall be liable to pay interest to GBIS Communications on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

12.8 The Customer will be responsible for all Charges incurred in respect of any Goods and/or Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the same. GBIS Communications may, but is not obliged to, detect unauthorised or fraudulent use of the Goods and/or Services.

### **13. LIMITATION OF LIABILITY – THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

13.1 Clauses 4, 8.2 and this clause 13 set out the Customer’s entire remedy and GBIS Communications entire liability (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer under or in connection with the Contract in respect of:

13.1.1 any breach of the Contract;

13.1.2 any use made by the Customer or any of its employees, agents and/or subcontractors of the Goods, Services, GBIS Communications Equipment, the Pre-existing Materials, GBIS Communications Rights and/or the Deliverables or any part of them; and

13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

13.2 Save where expressly set out otherwise, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3 Nothing in these Terms limits or excludes the liability of GBIS Communications:

13.3.1 for death or personal injury resulting from negligence; or

13.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by GBIS Communications; or

13.3.3 for any other liability which cannot be excluded or limited by law.

13.4 Subject to clauses 13.3, 13.5 and 18, GBIS Communications total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, contemplated performance or lack of performance, of the Contract shall be limited as follows: (a) if GBIS Communications fails to deliver the Goods in whole or part or such Goods do not comply in all material respects with the description set out or referred to in the Order Form upon delivery, GBIS Communications shall (at GBIS Communications option) either deliver those Goods not previously delivered, deliver replacement Goods or if it is unable to do so within a reasonable period, it shall refund the Customer any sums actually paid by the Customer for such Goods, provided that the Customer notifies GBIS Communications in writing of such failure within 7 business days of the date of delivery (or the date delivery should have taken place); and (b) if GBIS Communications is unable to provide the Services following installation/set up, GBIS Communications shall refund the sums actually paid by the Customer for such Services during the period in which GBIS Communications failed to provide them; and (c) if the Services do not comply in all material respects with the description set out in the Order Form, GBIS Communications shall use reasonable endeavours to rectify the same in accordance with Clause 4. Customer acknowledges and agrees that if the Goods are defective upon delivery or a defect arises at any point after delivery, GBIS Communications shall have no liability or obligation to the Customer in relation to the same but the Customer may pursue a claim against the manufacturer of the Goods in accordance with clause 8.1. Without prejudice to the foregoing, to the extent that GBIS Communications has any other liability to the Customer under or pursuant to the Contract, such liability shall be limited to the Charges paid by the Customer in the six month period prior to the liability arising (grossed up where the Contract has been in existence for less than six months).

13.5 Subject to clause 13.3, GBIS Communications shall not be liable for: (a) loss of profits, loss of business, loss of data, loss of reputation, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information and/or any special, indirect, consequential or pure economic loss, whether the same are direct, indirect or consequential and whether reasonably foreseeable or otherwise; and/or (b) any loss, damages, costs, expenses or other liability suffered or incurred in relation to any failure by GBIS Communications to perform its obligations due to any act, default or negligence of the Customer or any of its officers, employees, agents or subcontractors including (without limitation), any use of the Goods and/or Services by Customer or anyone authorised by it with equipment which has not been approved by GBIS Communications.

13.6 The Customer undertakes to indemnify and hold harmless GBIS Communications, its employees, agents and subcontractors including (without limitation all Third Party Suppliers) and their respective assigns and licensees, from and against any actions, demands, proceedings, claims, costs (including without limitation legal costs), expenses, damages and other losses incurred or suffered by any of them, whether direct, indirect or consequential and whether reasonably foreseeable or not, as a result of a breach or threatened breach of this Contract and/or the Third Party Terms by the Customer or any of its employees, agents or contractors.

13.7 Each provision set out at clauses 13.1 to 13.6 (inclusive) is to be construed as a separate provision so that if for any reason one or other of the provisions is held invalid, unreasonable or unenforceable in any circumstances, the other provision shall continue in force and effect notwithstanding termination of this Contract.

#### **14. VARIATION**

14.1 Without prejudice to clauses 4.3 and 12.1, GBIS Communications may vary: (a) these Terms from time to time by uploading the revised version at [www.GBIS Communications.cloud/terms](http://www.GBIS Communications.cloud/terms) and GBIS Communications will notify the Customer of such changes which shall take effect immediately upon receipt of GBIS Communications notice; (b) the terms of each Product Schedule from time to time by uploading the revised version at [www.GBIS Communications.cloud/terms](http://www.GBIS Communications.cloud/terms) and GBIS Communications will notify the Customer of such changes which shall take effect immediately upon receipt of GBIS Communications notice; (c) any details set out in an Order Form, including any Charges, by providing the Customer with written notice of any such changes which shall take effect 30 days following the date of the notice. GBIS Communications may issue notice of such variations by email or other reasonable means.

14.2 The Customer may dispute any material change to the Contract made under clause 14 (including any changes to the Charges but not, for the avoidance of doubt, those changes to the Charges made pursuant to clause 12.1) by providing GBIS Communications with written notice within 30 days of the Customer's receipt of GBIS Communications notice of the change setting out the reason for its dispute. The parties will then enter into negotiations in good faith in order to resolve the dispute. If reasonable efforts have been made to reach an agreement but the parties have failed to resolve the dispute within 30 days of the date of Customer's notice of the dispute, the Customer may terminate the Contract by providing not less than 1 month's written notice to GBIS Communications and during such period the terms of the Contract which existed prior to such variations being made shall take effect. Any such notice from the Customer to terminate shall be null and void in the event that GBIS Communications withdraws the disputed change within 30 days of receipt of such notice from the Customer.

#### **15. GENERAL**

15.1 Each right or remedy of GBIS Communications under this Contract is without prejudice to any other right or remedy of GBIS Communications whether under this Contract or not.

15.2 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and use reasonable endeavours to agree an amendment to such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the parties' original commercial intention. If they are unable to do so, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.3 Failure or delay by GBIS Communications in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by GBIS Communications of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed as a waiver of any subsequent breach or default and shall in no way effect the other terms of the Contract.

15.5 Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## **16. RESTRICTION ON ASSIGNMENT**

16.1 The Customer shall not be entitled to assign any of its rights or obligations under the Contract without the prior written consent of GBIS Communications.

16.2 GBIS Communications may at any time assign, mortgage, charge subcontract, delegate, declare a trust over or deal in any manner with any or all of its rights and obligations under the Contract.

## **17. NOTICES**

17.1 Any notice to be served on either party shall be in writing and delivered by hand or sent by prepaid post (or, by email from GBIS Communications to the Customer where the Customer has chosen to receive invoices (including any reminders and related correspondence) by email) to the addressee at the following address:-

To GBIS Communications: By post to GBIS Communications cloud limited, Vivary Mill, Vivary Way, Colne, BB8 9NW or any other postal address that GBIS Communications notifies to the Customer from time to time.

To the Customer: the Customer's postal or email address shown on the Order Form (or any postal or email address the Customer notifies to GBIS Communications in writing as an address to which invoices should be sent).

17.2 A notice or other communication required to be given by the Customer under or in connection with the Contract shall not, save as set out above, be validly served if sent by email.

## **18. FORCE MAJEURE**

GBIS Communications shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of GBIS Communications or any other party), failure of a utility service or transport network, act of God, war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors (including in particular any Third Party Supplier).

## **19. GOVERNING LAW AND JURISDICTION**

19.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English Law.

19.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract.

## **20. NON-SOLICITATION**

The Customer agrees that during the term of the Contract and for a period of 12 months following expiry or termination of it (however arising) that it shall not directly or indirectly canvass, or seek to solicit any person who is or has been engaged as an employee, agent or subcontractor of GBIS Communications without paying to GBIS Communications 30% of the relevant employee's, agent's or contractor's annual gross salary or annual gross sum paid by GBIS Communications to that person and such Customer acknowledges and agrees that such amount constitutes a genuine pre-estimate of the loss that GBIS Communications would suffer as a result.

## **21. DISPUTE RESOLUTION**

21.1 If any dispute arises in connection with the Contract that cannot be dealt with via discussion with GBIS Communications customer services department, the parties will attempt to settle it by:

21.1.1 firstly, a senior manager of the Customer and GBIS Communications exchanging full details of the dispute and then meeting to seek to resolve the dispute;

21.1.2 if 21.1.1 does not successfully resolve the dispute, secondly, a Director/CEO of the Customer and GBIS Communications exchanging any further details relating to the dispute and then meeting to seek to resolve the dispute; and

21.1.3 if 21.1.1 or 21.1.2 does not successfully resolve the dispute, thirdly, if GBIS Communications so elects, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR within 7 days of a party requesting a mediator be appointed and the mediation shall take place in London within 7 days of the mediator's appointment.

21.2 During the process of resolving a dispute in accordance with clause 21.1, the Customer will not issue any court proceedings but GBIS Communications may still issue court proceedings at any time.