

## SDT LIMITED

### MASTER TERMS AND CONDITIONS

#### 1. DEFINITIONS

1.1 In these Master Terms, the following definitions shall apply:

**'Agreement'** means these Master Terms and Conditions and any engrossed Service Order Form(s) (SOF), Supplement(s) and Service Schedules, all of which, taken together constitute the agreement between the parties for the supply of Goods and Services;

**'Applicable Service'** means a Service or part thereof for which SDT makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment;

**'Commencement Date'** means the date of commencement of this Agreement, as set out on the SOF;

**'Confidential Information'** means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging or pertaining to a party and concerning the business and affairs of that party;

**'Customer'** means the person, firm or company who has placed an order for Goods and/or Services with SDT;

**'Customer Data'** means data that is the property of the Customer;

**'Customer Information'** means information supplied by the Customer (including names, email addresses, telephone numbers) which is required by SDT to enable it to deliver the Services under the terms of this Agreement;

**'Equipment'** means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches;

**'Fault'** means any defect or failure in the Services;

**'Force Majeure'** means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, epidemic, pandemic, industrial action, government restrictions, legislation, Act of God or any other occurrence of a like nature;

**'Goods'** means the goods supplied to the Customer by SDT in conjunction with the Services under the terms of this Agreement, (comprised of Equipment and Software) and any reference to Services herein shall also include Goods unless otherwise indicated;

**'Group'** means in relation to either party, itself and each of its holding companies or subsidiaries for the time being and any subsidiary of any such holding company and the terms **'holding'**, **'company'** and **'subsidiary'** shall have the meanings given to them in the Companies Act 2006;

**'Hour'** means clock hour, which may fall outside of the Working Day;

**'Infrastructure'** means SDT's servers and associated storage;

**'Intellectual Property'** means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

**'Master Terms'** means these Master Terms and Conditions;

**'Minimum Term or Initial Term'** means the initial term of this Agreement, set out in the SOF;

**'Reseller'** means an organisation which is authorised by SDT to either re-sell SDT's Services or sell such Services on SDT's behalf;

**'RFS Date'** (Ready For Service Date) means the date from which the Services are available for use (at all sites) by the Customer, as notified by SDT;

**'Services'** means the services provided to the Customer by SDT under the terms of this Agreement.

**'Service Component'** means an individual component of the Services which is separately itemised on the Order and described in the Schedules;

**'Service Order Form (SOF)'** means the order form which details the services to be carried out, the duration of the services to be performed and Commencement Date as specified therein;

**'Service Credit'** means credit applied to the Customer's account to be used as credit against future invoices;

**'Service Schedule'** means the schedule which forms part of any service-specific Supplement attached hereto which sets out the detailed services to be provided and any applicable service levels;

**'Software'** means any software and associated documentation provided by SDT to the Customer or its end users pursuant to this Agreement or used by SDT to provide the Services, including any software which is embedded in the Equipment;

**'Subsequent term'** means any term of this Agreement which is subsequent to the expiry of the Initial Term or any Subsequent Term, which will run Back-to-Back unless notice to terminate is given according to the notice terms;

**'Supplements'** additional terms and conditions relevant to the services provided which should be read in conjunction to these Master Service Agreement and which the current version is available at [www.sdt.co.uk/terms-conditions](http://www.sdt.co.uk/terms-conditions)

**'Tariff'** means the document that lists prices and charges, as amended from time to time and made available by SDT on request;

**'Ticket'** means the Customer's report of a Fault or programming request;

**'Working Day'** means 9.00am to 5.00pm Monday to Friday, excluding Bank and Public Holidays;

**'Working Hour'** means any hour within the Working Day.

## **2. THE PARTIES**

The parties to this Agreement are:

(1) SDT Limited, company registration number 2938419, whose registered office is at Unit 12, Beech Court, Wokingham Road, RG10 0RQ; and

(2) The Customer, whose name and place of business are each set out on the Order.

## **3. GENERAL**

3.1 These Master Terms govern the overall relationship of the parties to this Agreement in relation to the Services provided by SDT to the Customer. The Services to be provided to the Customer shall be as set out in each of the attached Supplement(s).

3.2 SDT shall provide the Services to the Customer in the manner and on the terms of these Master Terms, any relevant Supplement(s) and SOF.

3.3 From time to time, the Customer may engage SDT to provide additional Services under the terms of an additional Supplement and relevant Order, which shall be incorporated into and subject to the terms of this Agreement.

3.4 In the event of a conflict between the terms set out in the relevant Order, these Master Terms and the terms and conditions set out in the relevant Supplement, the following order of precedence shall apply:

- (a) The terms of the Order;
- (b) The terms of the Supplement and its attached Service Schedule;
- (c) The terms of these Master Terms.

3.5 In this Agreement:

- (a) The words **'including'** and **'includes'** when followed by particular examples shall be construed as illustrative and not exhaustive;

- (b) Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;
- (c) References to a '**person**' include a natural person, body corporate, unincorporated body of persons, individual, company, firm, government, state or agency of the state;
- (d) References to the singular include the plural and vice versa;
- (e) Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;
- (f) A reference to a statute, statutory provision, order, regulation instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;
- (g) A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;
- (h) A reference to the parties is a reference to SDT and the Customer and a reference to a party is a reference to one of them;
- (i) All periods expressed in days shall mean calendar days unless expressly stated otherwise.

#### **4. COMMENCEMENT AND TERM**

- 4.1 This Agreement shall be deemed to come into effect on the Commencement Date set out in the SOF and shall run for the initial term or subsequent term specified in SOF. This Agreement shall either continue to run or terminate in accordance with the terms of the applicable Supplement(s).
- 4.2 Additional Supplements shall come into force on the date specified in the relevant SOF and shall continue until such time as specified in such Supplement, or until such Supplement is terminated earlier, in accordance with the terms set out therein or the terms of these Master Terms.
- 4.3 The termination of any particular Supplement shall not affect any other Supplement or these Master Terms save that on termination of the last remaining Supplement, the entire Agreement shall be deemed terminated.

#### **5. SDT'S OBLIGATIONS**

- 5.1 During the term of this Agreement, and subject to the performance by the Customer of its obligations hereunder, SDT shall:

- (a) At the commencement of this Agreement provide an estimated target for the RFS Date and make reasonable endeavours to provide the Services by such date; and
  - (i) Promptly notify the Customer if it becomes aware of any subsequent change thereto;
  - (ii) On the RFS Date, notify the Customer that the Services are available for use;
  - (iii) Promptly respond to and rectify any non-conformity in the Services that is raised by the Customer.
- (b) Provide the Services set out in the Supplement(s) and associated Service Schedule(s), in accordance with any relevant service levels, including:
  - (i) The delivery and (if set out in the Order), installation of pre-configured Equipment at the Customer's site(s) which is referred to in the Order attached hereto;
  - (ii) The provision of training in the use of the Equipment and Services as appropriate; and
  - (iii) Providing timely responses to Fault reports made by the Customer and using reasonable endeavours to repair any Fault in the Services SDT provides according to the service level or targets set out in the relevant Service Schedule.
- (c) Warrant that it holds all licences, authorisations, approvals and consents necessary to allow it to provide the Services.
- (d) Undertake to provide the Services with reasonable skill and care.

## **6. CUSTOMER'S OBLIGATIONS**

6.1 During the term of this Agreement the Customer shall:

- (a) If installation or implementation charges are indicated on the Order to be estimates, undertake to pay the actual charge incurred for the installation or implementation of the Equipment or Services;
- (b) Promptly report Faults and/or place calls for support services using the designated telephone number, email-address or web portal as notified to the Customer on the Commencement Date or as updated from time to time;
- (c) Provide suitably qualified personnel for such times as may be reasonably required by SDT:
  - (i) To promptly provide any information which SDT may reasonably require in order to perform its obligations;
  - (ii) To give SDT information and assistance in identifying and correcting any Faults;

- (iii) To receive and execute any appropriate corrective measures (or other instructions in relation to this Agreement) given by SDT; and/or
  - (iv) To carry out any diagnostic tests on the Equipment requested by SDT.
- (d) Allow SDT, its subcontractors or agents proper access to the Customer's premises and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested and indemnify SDT and its subcontractors for any claims that arise out of the Customer's failure to comply with the provisions of this clause 6.1 (d);
- (e) Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with SDT's instructions;
- (f) If SDT has to install Equipment at a third party's site, seek all necessary permissions prior to SDT gaining access to said site;
- (g) Following SDT's installation of Equipment at the Customer's site, be responsible for replacing items of furniture and any necessary redecoration;
- (h) Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause SDT to contravene any legislation, regulation or authorisation;
- (i) Indemnify SDT against all claims made by third parties arising from Faults in the Service;
- (j) Indemnify SDT against all claims for non-performance of services provided under agreements with third parties even if SDT invoices the Customer for such services;
- (k) Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Customer and any other party for the supply of similar services;
- (l) Disclose to SDT any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement;
- (m) In the event of a failure or interruption to the Services which has been investigated and/or rectified by SDT and found to be caused by the Customer or a third party (not connected with or under the control of SDT), pay any reasonable charges levied by SDT in respect of the work carried out;
- (n) Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents:
  - (i) Necessary to allow it to use the Services;
  - (ii) Necessary for any software or data which may be supplied to SDT for the purpose of assisting with the provision of the Services.
- (o) Provide all equipment necessary to enable access to the Services and take all reasonable measures to ensure that such equipment used in conjunction with the Services is free from viruses, worms, Trojan horses or any other malware;

- (p) Not, unless deemed by SDT to be a Reseller, supply, sell, sub-license, transfer or otherwise make the Services available to any third party.

## **7. CONFIDENTIALITY**

- 7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of fulfilling its obligations under this Agreement. Neither party shall disclose Confidential Information to any other person without the other's prior written consent except when such disclosure is necessary for the fulfilment of its obligations under this Agreement, in which case the disclosing party will obtain a binding commitment from the receiving party to keep such information confidential.
- 7.2 Each of the parties to this Agreement shall, and procure that its staff, agents and subcontractors shall, keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performing this Agreement, except:
  - (a) To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;
  - (b) To the extent that it can be shown that the information was lawfully in the receiving party's possession prior to the date of its disclosure by any other party;
  - (c) To the extent that the receiving party may have received the information from a third party without any restriction as to its disclosure;
  - (d) Where the receiving party receives or has received written consent to such disclosure from the party entitled to provide such consent;
  - (e) To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required to be disclosed;
  - (f) To the extent that it can be shown that the Confidential Information has been independently developed by the receiving party;
  - (g) Where the parties agree in writing that the information need not be kept confidential.
- 7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained from the other party during the performance of the Agreement within thirty days of such request.
- 7.4 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party.

- 7.5 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Working Days to make its representations.
- 7.6 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, to seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.
- 7.7 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

## 8. DATA PROTECTION

- 8.1 In this Agreement the terms:
- (a) **'Data Protection Legislation'** means the Data Protection Act 2018, the General Data Protection Regulation (GDPR) EU2016/679, any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;
  - (b) **'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing'** shall have the meanings defined in the Data Protection Legislation;
  - (c) **'Sub-Processor'** means a subcontractor or supplier to SDT who Processes Customer Data on SDT's behalf.
- 8.2 SDT and the Customer each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary registrations and notifications and the Customer agrees to obtain and maintain all necessary consents (including the consents of all relevant Data Subjects) which are required by SDT for the purpose of performance of this Agreement.
- 8.3 The parties to this Agreement agree that in relation to Customer Information SDT shall be a Data Controller and shall:
- (a) Collect from the Customer, Process, use or share with its suppliers or subcontractors Customer Information and that SDT shall determine the purpose of Processing to enable it to provide the Services, including:
    - (i) Administration, tracking and fulfilment of Customer orders;
    - (ii) Management of Fault reports;
    - (iii) Administration of access to SDT's support portal;
    - (iv) Administration of access to the Services;
    - (v) Raising and issuing invoices;



- (vi) Management of this Agreement, including issuing notices and providing management reporting.
- (b) Process the Customer Information in accordance with the applicable Data Protection Legislation and where applicable, SDT's Privacy Policy;
- (c) Not disclose to any person Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to SDT;
- (d) Be entitled to use selected Customer Information and data pertaining to the Customer's use of the Services to advise appropriate members of the Customer's staff about additional products, services and offers, but If the Customer does not consent to being so advised, it may notify SDT and forthwith upon receipt of such notice SDT shall cease to advise the Customer about additional products, services and offers.

8.4 The parties agree that in relation to Personal Data contained within Customer Data that SDT Processes on behalf of the Customer, the Customer shall be the Data Controller and SDT shall be the Data Processor and that under the terms of this Agreement:

- (a) The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by applicable law following the termination thereof;
- (b) The nature of Processing is the transmission and storage of Customer Data as required for performing the Services and the purpose of the Processing is the performance of the Services under the terms of this Agreement;
- (c) The parties acknowledge that save for email and internet protocol addresses, which may be transmitted via the Services, types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Customer and SDT shall not be privy to such information;
- (d) To the extent necessary to enable it to provide the Services, SDT shall be entitled to and may transfer Customer Data outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of clause 8.7 (a);
- (e) This Agreement forms, inter alia, the Customer's complete written instructions to Process Customer Data.

8.5 The Customer agrees that it shall be solely responsible for its compliance with its obligations under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure, where such Customer Data is:

- (a) Created within SDT's Infrastructure by the Customer using applications including email, desk-top applications, third party software and software developed by or for the Customer, including such applications being executed in managed desktop and Infrastructure as a service environments;
  - (b) Created within SDT's Infrastructure either automatically or in response to third party user input using third party software or software developed by or for the Customer, including websites and web services;
  - (c) Created within SDT's Infrastructure by any other means, including telephone voice recording.
- 8.6 The Customer hereby agrees that certain Services SDT provides under the terms of this Agreement will be provided to SDT by one or more suppliers or subcontractors; that SDT shall be entitled to change its suppliers or subcontractors at its sole discretion and in respect of Personal Data, SDT's suppliers or subcontractors may act in the capacity of a Controller, Processor or Sub-Processor.
- 8.7 The Customer, in its capacity of Data Controller hereby authorises SDT, in its capacity of Data Processor to Process Customer Data and to permit its suppliers and subcontractors who may be acting in the capacity of Sub-Processor to Process Customer Data for the purposes of performing its obligations under this Agreement, subject to SDT's, its suppliers' and subcontractors' compliance with the following conditions:
- (a) Not to transfer Customer Data outside of the United Kingdom or the European Economic Area or to an International organisation without complying with the provisions of the Data Protection Legislation regarding, inter alia, the adequate level of protection of any Personal Data that may be contained therein;
  - (b) To promptly notify the Customer if it becomes aware of any accidental destruction, disclosure or unlawful Processing of Customer Data;
  - (c) To undertake to implement appropriate processes and technology to ensure that:
    - (i) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
    - (ii) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
    - (iii) SDT's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.
  - (d) To undertake to assist the Customer with the Customer's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to SDT by:
    - (i) Communicating to the Customer within five Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
    - (ii) In response to written instructions, assisting the Customer in providing Subject Access to the extent practicable;

- (iii) In the event of a security breach which involves Customer Data or Customer Information, providing to the Customer details of the Customer Data or Customer Information that is involved in the breach;
    - (iv) And the Customer agrees to reimburse SDT for its reasonable expenses incurred for any assistance provided under this clause 8.7 (d).
  - (e) To undertake to, on termination of this Agreement:
    - (i) On request, return to the Customer copies of all Customer Data;
    - (ii) Delete all Customer Data that is held within SDT's (or its supplier's) Infrastructure (unless such is prohibited by applicable law);
    - (iii) Retain relevant Customer Information in line with its published Privacy Policy.
- 8.8 The Customer agrees that in the event of SDT's ceasing to trade and any subsequent novation of this Agreement or part thereof by SDT, all Customer Data and Customer Information will be transferred to SDT's assignee.

## **9. CHARGES AND PAYMENT**

- 9.1 In consideration for the provision of the Services, the Customer shall pay the charges in accordance with this clause 9 (the '**Charges**').
- 9.2 SDT shall invoice the Customer according to the billing period set out in the Order and the Charges will be calculated using the details recorded by SDT.
- 9.3 The Customer agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim) within fourteen days of the date of SDT's invoice.
- 9.4 SDT shall be entitled to offset any monies owed to the Customer against any monies owed to SDT.
- 9.5 Invoices shall be deemed accepted by the Customer unless a written objection, which clearly identifies the reason for the dispute is received by SDT within five Working Days of the date of the invoice. If the Customer disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within ten Working Days of the receipt by SDT of the Customer's letter, the dispute shall be escalated in accordance with the provisions of clause 18 of this Agreement.
- 9.6 If the Customer fails to make any payment in respect of Goods or Services on a timely basis, SDT shall be entitled to take one or more of the following actions:
- (a) Suspend the provision of the Services to the Customer under clause 12.1 below until such time as the outstanding invoice(s) is/are paid;

- (b) Charge the Customer interest at the rate of 6% per annum above the prevailing Bank of England base lending rate, on any amount outstanding from the due date to the date of actual payment and such interest shall accrue on a daily basis;
  - (c) Terminate this Agreement under clause 11.1 below;
  - (d) Recover from the Customer damages for any costs or losses suffered by SDT as a result of the Customer's failure to make payment.
- 9.7 If during the performance of its obligations under this Agreement SDT incurs reasonable expenses, SDT shall be entitled to charge the Customer at cost for such expenses.
- 9.8 If SDT is requested to provide Goods or Services in addition to those set out in the Order, SDT shall charge the Customer for the provision of such Goods or Services at its prevailing rates.
- 9.9 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charges, if applicable.
- 9.10 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.
- 9.11 The Charges for the Services may be changed by SDT at the end of the Minimum Term and each subsequent anniversary thereof and any proposed changes to the Charges will be notified to the Customer in writing not less than sixty days prior to the end of the Minimum Term and any anniversary thereof.
- 9.12 Notwithstanding the provisions of clause 9.11, SDT shall be entitled to increase its Charges for any part of the Services at any time if its suppliers increase their charges, by providing the Customer with not less than thirty days' written notice of any such increase.
- 9.13 SDT shall be entitled to conduct credit checks in respect of the Customer from time to time.
- 9.14 SDT may request that the Customer pays a deposit before the commencement of the Services or during the term of this Agreement if SDT becomes aware of an adverse change to the Customer's financial standing and:
  - (a) SDT shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;
  - (b) Deposits shall not attract interest.
- 9.15 If the Customer elects not to pay for the Services by direct debit, SDT shall levy a monthly handling charge which shall be charged at SDT's prevailing rate, as set out in the Tariff.
- 9.16 If a Customer's direct debit fails to clear, SDT shall be entitled to levy a handling charge, which shall be charged at SDT's prevailing rate, as set out in the Tariff.
- 9.17 If the Customer requests additional billing reports, SDT shall levy a monthly handling charge which shall be charged at SDT's prevailing rate, as set out in the Tariff.

- 9.18 If the Customer asks SDT to modify the Order after the Order has been accepted by SDT and SDT accepts the Customer's request, SDT shall be entitled to charge the Customer for all costs, charges and expenses incurred up to the date of the modification.
- 9.19 Time is of the essence with regard to all payments due under the terms of this Agreement.

## **10. LIMITATION OF LIABILITY**

- 10.1 This clause 10 sets out SDT's entire financial liability (including any liability for the acts or omissions of its employees, subcontractors, agents and suppliers) to the Customer in respect of:
- (a) Any breach of the express or implied terms of this Agreement by SDT, its employees, subcontractors or agents;
  - (b) Any use made by the Customer of the Services;
  - (c) Any of the Services, their supply or failure or delay in the supply thereof;
  - (d) Any misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement, whether arising in contract (including under any indemnity), tort (including negligence), or under common law or statutory duty.
- 10.2 Nothing in this Agreement shall limit SDT's liability:
- (a) For death or personal injury caused by or arising from the negligence of SDT;
  - (b) For any damage incurred by the Customer resulting from fraudulent misrepresentation by SDT;
  - (c) For any breach by SDT of warranties as to title, quiet possession and freedom from encumbrance which may be implied by Section 2 of the Supply of Goods and Services Act 1982;
  - (d) For any other liability that cannot be excluded or limited by law.
- 10.3 Notwithstanding any other provision of this Agreement but subject only to clause 10.2, SDT's maximum aggregate liability in one calendar year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise for any direct loss or damage howsoever caused shall be limited to the lesser of:
- (a) 100% of the Charges payable for the Services (excluding VAT or similar taxes) by the Customer during the 12 month period immediately preceding the date of the relevant claim; or
  - (b) The sum of £ 50,000.00.
- 10.4 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.

- 10.5 Subject to any express terms and conditions of this Agreement to the contrary, SDT shall not be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for:
- (a) Any direct or indirect loss of production, time, goodwill, reputation, use, opportunity, revenue, profit, contracts, business, expenditure or anticipated savings;
  - (b) Any loss or corruption of data or information;
  - (c) Losses incurred by third parties;
  - (d) Any indirect, special loss or damage;
  - (e) Any purely economic losses or punitive damages;
  - (f) Any loss or damage that could not be reasonably foreseen and the Customer thereby waives and releases any claims it might otherwise have to be compensated in respect of such losses (without limitation), even if SDT has been advised of the possibility of such loss or damages.
- 10.6 SDT shall not in any event have any liability for any deficiency in the provision of the Services which:
- (a) Can be reasonably attributed to the acts or omissions of the Customer (including fraud) or its employees, agents or subcontractors including any failure to provide complete and accurate information in a timely fashion to SDT;
  - (b) Can be reasonably attributed to the unserviceability, unsuitability, misconfiguration or misuse of any of the Customer's equipment which is utilised in connection with the Services;
  - (c) Arises from or is a consequence of the use of the Services other than in accordance with the express terms of this Agreement;
  - (d) Occurs during any period during which the Services have been suspended by SDT in accordance with clause 12.
- 10.7 SDT shall not in any event have any liability for non-provision of the Services arising from a delay to the RFS Date, howsoever caused.
- 10.8 The Customer acknowledges and agrees that data transmitted over technology including the public internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that SDT shall not be liable for any losses the Customer may incur resulting from the interception, corruption or loss of such data, and:
- (a) The Customer shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and
  - (b) The Customer shall be responsible for adopting such security measures as are appropriate to protect the Customer's systems.

10.9 The Customer acknowledges and agrees that:

- (a) The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
- (b) SDT shall not be liable to the Customer in respect of any fraud or otherwise illegal activity perpetrated by the Customer, its employees, agents and subcontractors, nor any third party howsoever occurring;
- (c) SDT shall not be liable for any losses incurred by the Customer or any third party arising out of the Customer's breach of clause 8 of this Agreement;
- (d) The Customer shall be liable for all losses incurred by SDT arising from the Customer's breach of clause 8 of this Agreement;
- (e) SDT shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services;
- (f) Nothing in this clause 10 excludes or limits the Customer's liability to pay the Charges due under the terms of this Agreement.

10.10 The Customer agrees and accepts that the express obligations and warranties made by SDT in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement.

10.11 The Customer acknowledges that SDT's obligations and liabilities are exhaustively defined in this Agreement.

## **11. TERMINATION**

11.1 This Agreement may be terminated (without prejudice to the terminating party's other rights and remedies) by written notice to the other party:

- (a) Forthwith by SDT if SDT's invoice remains unpaid five Working Days after receipt of written notice from SDT to do so;
- (b) Forthwith by SDT if two consecutive direct debit requests are rejected;
- (c) Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same; or
- (d) Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect

of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or

- (e) Forthwith by SDT in advance of the supply of Services under the terms of this Agreement if SDT's supplier declines to accept SDT's order for the supply of Services;
  - (f) Forthwith by either party if SDT ceases to be authorised by a competent authority to provide the Services;
  - (g) Forthwith by either party if the other party ceases to trade;
  - (h) Forthwith by either party if the other party commits a breach which cannot be remedied;
  - (i) Forthwith by either party if the other party is repeatedly in breach of this Agreement;
  - (j) Forthwith by either party if a right of termination arises in the event of Force Majeure;
  - (k) In accordance with any additional terms of the attached Supplement(s).
- 11.2 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party, nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

## **12. SUSPENSION OF SERVICES**

- 12.1 SDT shall be entitled to suspend the provision of the Services in whole or in part, without notice or liability to the Customer if:
- (a) In SDT's reasonable opinion, the Services are being used for activities that are in breach of any acceptable use clause contained in any supplemental terms and conditions attached hereto or for any other fraudulent, illegal or wrongful activity, knowingly or otherwise, by the Customer;
  - (b) In SDT's reasonable opinion, the Customer is in breach of any other provision of this Agreement;
  - (c) Any payment is unpaid by its due date;
  - (d) SDT is instructed to do so by the Government or any other competent authority;
  - (e) There are critical operational reasons or emergency reasons requiring suspension;
  - (f) Any planned or emergency work is required to systems that underpin the performance of the Services;
  - (g) Any applicable consent, wayleave or authority required by SDT or its supplier is withdrawn, revoked or otherwise ceases to have effect.



- 12.2 In the event of suspension of Services under the terms of clause 12.1:
- (a) Then where suspension occurs pursuant to clauses 12.1 (a)-(c):
    - (i) The Services shall be restored by SDT during Working Hours when the situation which has given cause to the suspension is resolved by the Customer and SDT shall be entitled to charge a reinstatement fee; and
    - (ii) If the Customer fails to rectify the situation which has given rise to the suspension within fourteen days of the commencement of the suspension, SDT shall be entitled to terminate the Agreement under the terms of clause 11;
  - (b) Suspension of any part of the Services under the terms of this Agreement shall not constitute termination and the Customer shall in any event continue to pay all Charges in relation to this Agreement during the period of suspension of the Services;
  - (c) SDT shall not be liable for any costs, expenses or losses or other liabilities incurred by the Customer as a result of suspension of the Services.
- 12.3 SDT shall not be obliged to suspend the Services or give notice of suspension prior to exercising its right to terminate this Agreement.

### **13. PERFORMANCE AND SERVICE CREDITS**

- 13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement which is set out in the Service Schedule(s) (if any) attached to the relevant Supplement(s).
- 13.2 SDT commits to ensure that the Applicable Services meet the performance targets set out in the service level agreement.
- 13.3 If SDT does not meet its commitment in relation to an Applicable Service, the Customer shall be entitled to claim a Service Credit as set out in the relevant Service Schedule.
- 13.4 To make a claim for Service Credit, the Customer must notify SDT within three days of the beginning of the incident that gives rise to the claim.
- 13.5 The notification of the claim must include:
- (a) Customer name and contact;
  - (b) The start and end time for each incident for which a claim is being made;
  - (c) Clear and accurate evidence to enable SDT to confirm the claim for Service Credit.
- 13.6 Failure to provide the required information as set out in this clause shall invalidate the claim for Service Credit.

- 13.7 In the event of a claim for a Service Credit, SDT shall review such claim and determine at its sole discretion whether or not a Service Credit is due.
- 13.8 The Customer acknowledges and accepts that:
- (a) Service levels set out in the Service Schedule(s) are conditional upon the Customer allowing SDT unrestricted 24/7 access to its site(s) without prior notice in the event of a malfunction or other failure of the Services;
  - (b) For certain performance measures, Service Credit eligibility will be based solely on SDT's own measures of core performance of the Services (acting reasonably and in good faith);
  - (c) It is technically impractical to provide the Services free from Faults or interruption and SDT does not give any undertaking to do so. The Customer therefore agrees that Service Credits set out for any Applicable Service shall constitute the Customer's sole financial remedy for SDT's failure to meet any service level targets set out in the Service Schedule(s), and that such financial remedy is provided in full and final satisfaction of SDT's liability for such failure;
  - (d) Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target. For the avoidance of doubt, Service Credits shall not be payable for the consequential lack of availability or otherwise of Service Components that are reliant upon the serviceability of the Service Component that has failed to meet its performance target.
- 13.9 If a Service Credit is deemed due, such shall be applied to the Customer's account within thirty days of the date of SDT's determination.
- 13.10 The payment of Service Credits is subject to the following limitations:
- (a) Service Credits are non-refundable and non-transferrable and may only be used as credit against future invoices due in respect of the Customer's usage of the Services under the terms of this Agreement;
  - (b) The aggregate monetary amount of credits payable by SDT in any month shall not exceed 15% of the recurring monthly charge (excluding VAT and usage-based charges) for the relevant Service.
- 13.11 Service Credits shall not apply following any failure of SDT to provide the Applicable Services due to:
- (a) Incidents outside of SDT's reasonable control including Force Majeure events; or
  - (b) Law enforcement activity; or
  - (c) Actions of a third party including denial of service attacks; or
  - (d) Suspension or termination of Services by SDT under the terms of this Agreement; or
  - (e) Any action, inaction or default whatsoever by the Customer, its employees, agents or subcontractors in connection with the Applicable Services; or

- (f) Any incident, action or event that occurs before the RFS Date.
- 13.12 The Customer shall be ineligible to claim for Service Credits under the terms of this Agreement if:
- (a) The Customer is in breach of any part of the Agreement; or
  - (b) The Services have been suspended or terminated by SDT under the terms of this Agreement; or
  - (c) Invoices issued by SDT are due to be paid but remain outstanding; or
  - (d) Notice to terminate this Agreement has been served by either party.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property in the Equipment and associated documentation owned or supplied by SDT in the performance of this Agreement shall be and will remain vested in SDT and the Customer shall not acquire any rights, title or interest in or to any such Intellectual Property. SDT grants to the Customer a royalty-free, non-exclusive, revocable, non-transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.
- 14.2 The Customer hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted in accordance with Section 50B of the Copyright Designs and Patents Act 1988, the Customer hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.
- 14.3 In the event of the Customer's breach of clause 14.2, the Customer undertakes to:
- (a) Immediately notify SDT of the breach;
  - (b) Take reasonable steps to remedy the breach within 48 hours of having become aware of the breach.
- 14.4 The Customer shall indemnify SDT in respect of all losses, damages, costs or expenses and other liabilities (including reasonable legal fees) arising from any and all claims from third parties relating to the Customer's infringement of or non-compliance with any third party licences or other end user terms applicable to the use of any Software, images or other data, either by the Customer and/or its employees, subcontractors, agents or customers.
- 14.5 In the event of an Intellectual Property rights claim arising from Equipment or Software provided by SDT to facilitate the use of the Services, SDT will licence to the Customer or procure a licence to the Customer of an alternative item.

## **15. MISCELLANEOUS**

- 15.1 SDT cannot accept responsibility for any statements or representations made to the Customer unless they are made in writing.
- 15.2 For the purposes of this Agreement, communications made between SDT and the Customer by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 25.
- 15.3 SDT shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 15.4 The parties agree to comply with the provisions of the Bribery Act 2010; and
- (a) Implement such processes and procedures as are necessary to ensure compliance therewith; and
  - (b) Promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.
- 15.5 Nothing in this Agreement shall prohibit SDT from supplying the same or similar Goods or Services to other persons.
- 15.6 If the Customer wishes to change the scope of the Services, it shall submit details of the requested change to SDT, in writing; and
- (a) SDT shall within a reasonable time provide a written response which shall identify:
    - (i) An estimate of the time required to make the change;
    - (ii) Any variations to the Charges;
    - (iii) Any impact of the change on this Agreement or the performance of the Services hereunder.
  - (b) SDT will not be obliged to implement the changes until the Customer has agreed in writing to the necessary variations.

## **16. THIRD PARTY RIGHTS**

This Agreement does not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act of 1999 and it is not the intention of the parties to this Agreement to confer any such rights.

## **17. GOVERNING LAW**

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts.

## **18. DISPUTE RESOLUTION**

18.1 If the Customer is not satisfied with any aspect of the Services, in the first instance the Customer should make a complaint to SDT.

18.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have the authority to settle the same.

18.3 Except in the case of disputes arising from non-payment of invoices which are deemed accepted by the Customer:

- (a) If the dispute is not resolved through negotiation within ten Working Days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the Communications Ombudsman's Scheme;
- (b) Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 18.3 until they have attempted to settle said dispute by mediation and that mediation has terminated;
- (c) The fees and the costs of such mediation or arbitration shall be borne equally by the parties.

18.4 Nothing in this clause 18 shall prevent either party from:

- (a) Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;
- (b) Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

## **19. FORCE MAJEURE**

19.1 Subject always to the provisions of this clause 19 and subject to the Customer's payment obligations under this Agreement which shall not be negated by a Force Majeure event, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.

- 19.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:
- (a) Notify the other in writing as soon as reasonably possible and in any case within five Working Days of the onset of such Force Majeure, specifying its nature and the extent of the circumstances;
  - (b) Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and
  - (c) Notify the other party as soon as the Force Majeure event has ceased to affect performance of the Agreement and resume performance of its obligations as soon as reasonably possible.
  - (d) If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving notice in writing.

## **20. ASSIGNMENT**

- 20.1 SDT shall be entitled to subcontract all or any part of the Services without notice to the Customer.
- 20.2 SDT shall be entitled to:
- (a) Assign the benefit of this Agreement on notice to the Customer, but such assignment shall not relieve SDT of any of its obligations under this Agreement; or
  - (b) Assign the benefit and burden of this Agreement to an affiliated body or third party in the event of a sale of all or substantially all of its assets on notice to the Customer.
- 20.3 The Customer shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of SDT.

## **21. VARIATION**

- 21.1 No modification, amendment or other variation to this Agreement made by the Customer shall be valid unless agreed in writing and signed by both parties.
- 21.2 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

## **22. PERSONNEL**

- 22.1 The Customer agrees not to approach any employees or subcontractors of SDT in order to persuade them to join the Customer in any role that relates directly or indirectly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement and for a period of six months after its termination or expiration. If the Customer breaches the terms of this clause 22.1 the Customer agrees, by way of liquidated damages and not as a penalty, to pay SDT a sum equal to the annual salary or otherwise of the employee or subcontractor concerned.
- 22.2 Nothing in this Agreement or in either party's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, or joint venture or any mutual obligation between the parties other than as set out in this Agreement.
- 22.3 SDT shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.

## **23. WAIVER**

- 23.1 No forbearance, delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of any of them.
- 23.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.
- 23.3 Any waiver to be effected must be agreed in writing.

## **24. SEVERABILITY**

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law.

## **25. NOTICES**

- 25.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery and first class post addressed to the company secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Working Days of sending.

25.2 Either party may at any time notify the other of a change of address or person for the purpose of the serving of notices under the terms of this Agreement, subject to the terms of this clause 25.

**26. ENTIRE AGREEMENT**

26.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and any terms and conditions attached to the Customer's purchase order.