

Genesis General Terms and Conditions of Business

1 Definitions

1.1 In these terms and conditions (unless the context otherwise requires):

Acceptable Use Policy means the Genesis policy for the Customer's use of the Services, as set out on the Genesis Website, and as may be revised by Genesis from time to time;

Activation Date means with respect to an Order, the date on which the Services or any part thereof first become active and available for use by the Customer under that Order;

Associate means in respect of any party hereto:

- (1) any firm or body corporate in which such party directly or indirectly:
 - (a) owns more than half the capital or business assets; or
 - (b) has the power to exercise more than half the voting rights; or
 - (c) has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate; or
 - (d) has the right to manage the business of such firm or body corporate;
- (2) any person, firm or body corporate which directly or indirectly has in or over such party the rights or powers listed in sub-clause (1) above (**a controller**); and
- (3) any firm or body corporate in which a controller directly or indirectly has the rights or powers listed in sub-clause (1) above.

Charges mean the charges payable by the Customer to Genesis for the provision of the Services as set out in the Genesis Price List and any other charges payable pursuant to this Contract;

Commencement Date means the date upon which this Contract is executed by both parties;

Confidential Information means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

Contract means the contract between Genesis and the Customer comprising these Terms and Conditions, together with the Order Form and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto;

Customer means the person, proprietorship, partnership or company named in the Order Form;

Customer Equipment means any hardware and/or software owned, controlled, licensed or provided by the Customer or otherwise made available by the Customer for the purposes of receiving the Services;

Customer Services means the helpdesk support to be provided by Genesis as may be notified to the Customer from time to time;

Genesis means Genesis Communications Limited of Waterfold Park, Rochdale Road, Bury BL9 7BJ;

Genesis Equipment means any apparatus, equipment, hardware and/or software (including in each case any necessary licences) provided by Genesis or any third party contractor or agent of Genesis to the Customer to enable provision of the Services;

Genesis Price List means the list of charges in force from time to time and available on the Genesis Website, together with the method of calculation of the charges;

Genesis Website means the website located at www.genesis.co.uk or such other website as may be notified by Genesis from time to time;

Initial Minimum Period means the period commencing on the Commencement Date and running for the number of months specified in the Order Form;

Minimum Contract Period means (subject to the Services detailed in the Order Form):

- (1) the Minimum Period and 30 days thereafter; OR
- (2) the fixed period of the contract

Minimum Period means the initial or subsequent minimum period of time as set out in this Contract that the Customer has agreed to receive and pay for the Services;

Order means an order placed by the Customer with Genesis for the provision of Services;

Order Form means the Genesis paper or web-based application form containing the details of an order placed by the Customer and any additional Terms and Conditions that specifically apply to the Services comprising the order;

Proprietary Software means any third party software;

Service Failures means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Customer or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of Genesis;

Service Level in relation to the Services means the performance standard, if any, set out in this Contract;

Services means any services to be provided by Genesis to the Customer pursuant to this Contract and as described in the Order Form;

Specific Terms and Conditions means any terms that appear in an Order Form and apply (in addition to these General Terms and Conditions) to the specific Services detailed in the Order Form;

Start Date means the target date for the commencement of the provision of the Services to the Customer.

Subsequent Minimum Period means a period, commencing immediately upon expiry of the previous Minimum Period and being of equal duration to the Initial Minimum Period;

Third Party Service Provider means any provider of any Third Party Services;

Third Party Services means any part of the Services which Genesis procures from a third party, including any third party services and/or equipment which Genesis uses in order to provide the Services.

- 1.2 The terms "includes" and "including" shall be construed as if followed by the words "without limitation".
- 1.3 Words importing the masculine shall include the feminine and neuter and vice-versa and words importing persons shall include bodies corporate and unincorporated associations and partnerships.
- 1.4 The headings to the clauses of this Contract are for convenience only.

2 Term and Start Date

2.1 This Contract shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Contract) for the Minimum Contract Period, being EITHER

2.1.1 the Minimum Period (including, as the case may be, an Initial Minimum Period or any Subsequent Minimum Period) and thereafter unless and until terminated by either party giving to the other on or after the expiry of the Minimum Period not less than 30 days' prior written notice, such notice to expire not earlier than 30 days after the end of the Minimum Period; OR

2.1.2 the fixed period of the Contract, if the Order Form so specifies.

2.1.3 for the avoidance of doubt, a Minimum Period will automatically be deemed to continue into a Subsequent Minimum Period unless terminated in accordance with Clause 2.1.1.

2.1.4 in default of the number of months being specified in this Contract, the Minimum Period shall automatically be 24 months.

2.2 Genesis shall use its reasonable endeavours to adhere to the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. Genesis shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter.

2.3 No Order shall be binding upon Genesis unless and until accepted in writing by Genesis.

3 Obligations of Genesis

3.1 Genesis shall provide or procure the provision of the Services in accordance with the terms of this Contract. Genesis shall use all reasonable endeavours to activate and make the Services available by any date specified or agreed to by Genesis. Genesis shall not be liable for any failure to meet such date. The Services shall commence on the Activation Date notified by Genesis.

3.2 The Services are provided solely for use by the Customer in the course of the Customer's business.

- 3.3 Genesis shall use reasonable skill and care when providing the Services, but the Customer acknowledges that it is technically impracticable to provide Services that are fault free and/or continuously available and Genesis does not undertake to do so.
- 3.4 Genesis shall not be obliged to provide the Services to the Customer:
- 3.4.1 if the Customer enters into this Contract otherwise than in the course of its business; or
- 3.4.2 if the Customer uses the Services otherwise than in the course of its business; or
- 3.4.3 if the Customer is not located in a geographic location where the Services can be received; or
- 3.4.4 if the Customer remains in breach of Clause 4.2; or
- 3.5 3.4.5 where there is a technical reason why the Customer would not be able to receive the Services. The Customer must immediately report any fault to Genesis via the Customer Services, providing sufficient information to enable Genesis to investigate the problem. Genesis shall log the time of receipt of all such reports.
- 3.6 Where Genesis spend time investigating a fault reported by the Customer and conclude that there has been a Service Failure Genesis reserves the right to charge the Customer for all reasonable costs and expenses incurred in investigating the report and the Customer agrees to pay such charges.

4 Obligations of the Customer

- 4.1 The Customer shall only use the Services in accordance with the terms of this Contract, the Acceptable Use Policy, any relevant manuals provided by Genesis from time to time and any other reasonable operating instructions given to the Customer by Genesis.
- 4.2 The Customer shall provide when requested to do so by Genesis and at the sole discretion of Genesis such information, data, statistics and other details as Genesis may reasonably require to enable Genesis to fulfil its obligations pursuant to this Contract.
- 4.3 The Customer agrees not to use the Services in a way which would:
- 4.3.1 contravene or cause Genesis to contravene any laws or regulations including, but not limited to, the Communications Act 2003 ("the Act"), and any licence under the Act which is applicable to Genesis;
- 4.3.2 contravene the Acceptable Use Policy;
- 4.3.3. cause a degradation of the Services to any other customer of Genesis;
- 4.3.4. contravene any reasonable operating instructions or other instructions (including, without limitation, any manual) which Genesis may provide from time to time;
- 4.3.5. involve the sending of unsolicited marketing or advertising materials;
- 4.3.6. result in the transmission, receipt, upload, download, use, re-use or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or

abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, copyright, confidential information, privacy or any other rights; or

4.3.7. breach or cause Genesis to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998.

4.4 Except as otherwise expressly permitted under this Contract, the Customer shall not:

4.4.1. modify the Services without Genesis' prior written consent; redistribute, copy or use the Services, or transfer rights to the use of the Services to any third party;

4.4.2. disclose details of the Services to any third party without Genesis' prior written consent; or

4.4.3. use the Services except in conjunction with Genesis' recommended operating guidelines

4.5 Any software provided by the Customer ("**Software**") for the purpose of receiving the Services is provided subject to the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, details of which shall be made available on request. The Customer shall observe and comply with these licensing conditions, including any restrictions on the use, copying, decompilation and transfer of the Software.

4.6 Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Contract in accordance with a valid and subsisting Software Licence.

4.7 Any obligation under this Contract on the Customer to do, or refrain from doing, any act or thing shall include an obligation upon the Customer to procure that each of its Associates also do, or refrain from doing, such act or thing.

4.8 Except to the extent and in the circumstances expressly required to be permitted by law, the Customer shall ensure that neither it nor any third party shall copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software.

4.9 The Customer agrees to indemnify Genesis against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by Genesis arising from any breach by the Customer of its obligations under this Contract including this Clause 4, and for all costs and expenses reasonably incurred by Genesis in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this Contract by either party.

5 Equipment

5.1 The Customer shall ensure that the Customer Equipment:

5.1.1. is capable of enabling access to the public switched telecommunications network using exchange lines provided by BT or alternative carrier ;

5.1.2. is supplied and maintained in a safe condition and good working order;

5.1.3. meets the minimum technical specifications required to be compatible with the Services; and

- 5.1.4. conforms at all times with the relevant standard designated by all relevant legislation, including the Act and all applicable regulations, instructions and orders.
- 5.2 Genesis shall not be under any obligation to connect or keep connected any Customer Equipment if it does not so conform or if it is liable to cause or does cause death, personal injury or damage to property or to impair the quality of the Services provided by Genesis.
- 5.3 The Customer acknowledges that the Genesis Equipment shall remain the property of Genesis or the supplier of such equipment and the Customer will at all times make clear to third parties that the same is the property of Genesis or a third party supplier of such equipment. Genesis may modify, substitute, renew or add to the Genesis Equipment from time to time at its absolute discretion.
- 5.4 The Customer undertakes:
- 5.4.1. to comply with all instructions which Genesis may notify to the Customer for use of the Genesis Equipment;
- 5.4.2. not to allow the Genesis Equipment to be repaired or maintained other than by an authorised representative of Genesis;
- 5.4.3. not to damage the Genesis Equipment and not to add modify or in any way interfere with the performance of the Genesis Equipment;
- 5.4.4. not to attempt to sell the Genesis Equipment; and
- 5.4.5. not to remove any identification mark affixed to the Genesis Equipment showing that it is the property of Genesis or other third party supplier of such equipment.

6. Charges and Payment

- 6.1 The Customer shall pay Genesis the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Customer with effect from the Activation Date.
- 6.2 Genesis may vary all or any of the Charges at any time on giving not less than 30 days' notice to the Customer to pass through any changes made by a Third Party Service Provider.
- 6.3 Genesis may increase all or any of the Charges at any time on giving not less than 30 days' notice to take account of any increase in Genesis costs of providing the Services.
- 6.4 Genesis may increase the Charges at any time on giving not less than 30 days' notice to reflect any increase in the charges prevailing in the marketplace for services comparable to the Services.
- 6.5 Genesis may at any time on notice to the Customer amend any terms as to payment so as to ensure that it is paid the Charges on or prior to the date on which Genesis is to pay any Third Party Service Provider in respect of the Services or goods to which such charges relate.
- 6.6 Genesis may, without prejudice to its other rights and remedies under this Contract and in its sole discretion, set off or contra any and all amounts and/or credits to which the Customer may otherwise be entitled against any and all monies which fall due for payment by the Customer to Genesis.

- 6.7 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in Genesis invoices at the applicable rate(s).
- 6.8 Genesis shall issue invoices for the Services in accordance with the billing dates specified in this Contract.
- 6.9 The Customer shall pay within 14 days of the date of the Genesis invoice, unless otherwise agreed by Genesis. The Customer shall not be entitled to set-off, contra or withhold any payment due to Genesis against any sums of whatsoever nature that are due to the Customer from Genesis or that the Customer claims are due from Genesis, and time of payment of all sums under this Contract is of the essence.
- 6.10 Where Charges are not paid by the Customer in accordance with this clause 6 above Genesis may require the Customer to pay all sums due under this Contract on demand, and reserve the right to charge:
- 6.10.1 interest (both before and after any judgment) on all amounts overdue from the Customer pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of statutory interest in force from time to time accruing on a daily basis from the due date of payment until receipt by Genesis of the overdue amount (including any accrued interest and compensation, PLUS
- 6.10.2 compensation arising out of late payment pursuant to section 5A of The Late Payment of Commercial Debts Regulations 2002.

7 Security of the Services

- 7.1 Genesis provide no guarantee or warranty as to the security of the Services and the Customer shall indemnify and hold Genesis harmless against any claim or demand of whatsoever nature and howsoever arising as a result of the said security or any failure thereof.
- 7.2 Where the Customer is aware or becomes aware of any matter which the Customer knows or ought reasonably to be expected to know constitutes a threat to the security of the Services, then the Customer has a duty pursuant to this Contract immediately to advise Genesis of such matter.
- 7.3 The Customer is responsible for the security and use of all user names and passwords (“**Credentials**”) (whether provided by Genesis or otherwise) giving access to the Services.
- 7.4 Genesis shall have no liability to the Customer for any misuse or unauthorised use or compromise of the Credentials.
- 7.5 the Customer must inform Genesis immediately if the Customer becomes aware or has reason to believe that the Credentials have been misused or compromised.
- 7.6 Genesis reserve the right to restrict, suspend or terminate any aspect of the Services if it believes (acting reasonably) that the Customer’s Credentials have been compromised or if it is so informed by the Customer pursuant to Clause 7.5.
- 7.7 Genesis and its Third Party Service Providers and/or other sub-contractors shall be entitled to inspect and monitor from time to time all usage being made of the Services including communications being made and received to verify compliance with this Contract.

8 Variation of Services

- 8.1 Genesis shall be entitled, upon giving as much notice to the Customer as is practical in the prevailing circumstances, to make variations and additions to the Service from time to time (acting reasonably) including:-
- 8.1.1. to improve or add to the Services;
 - 8.1.2. to make changes for operational reasons where these do not have a materially adverse effect on the Services; and/or
 - 8.1.3. to pass through any change made by a Third Party Service Provider to any Third Party Services; and/or
 - 8.1.4. in order to comply with any law or legal obligation (whether under common law, statute, tort or otherwise), or any change to any law or legal obligation; and/or
 - 8.1.5. in order to comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Office of Communications; and/or
 - 8.1.6. in order to maintain the integrity or security of the Service and/or any part of the systems use or to provide the Service.

For the avoidance of doubt, Genesis shall not be obliged to give any greater notice of any changes by a Third Party Service Provider than the Third Party Service Provider gives to Genesis.

- 8.2 Genesis may at any time change the Services:

- 8.2.1 if it needs to do so to comply with any applicable safety or other statutory requirements; or
- 8.2.2 where the change does not materially detract from the quality or performance of the Services.

- 8.3 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties (including without limitation rent, rates, service charges, gas and electricity), and any third party premises that may host any systems used to provide the Services, the following terms will apply:

- 8.3.1 Genesis shall use all reasonable endeavours to monitor and supervise the supply of such Third Party Services, but Genesis shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default, or non-availability of such Third Party Services, unless due to Genesis' negligence or default;
- 8.3.2 if the third party changes its specifications for the Third Party Services after the date of this Contract, or that third party replaces the same with a new version, or ceases to supply the same, or Genesis decides to replace the same Genesis shall be entitled (without prejudice to any of its other rights and remedies) to substitute for the Third Party Services an alternative which shall as far as is reasonably possible provide substantially the same functionality, and to make a reasonable resulting variation to the Charges and other terms of this Contract. Genesis would as far as practicable pre-plan this with the Customer;

8.3.3 if the third party increases its charges for the Third Party Services, Genesis shall be entitled to make a resulting increase to the Charges to pass on the cost increase in accordance with clause 6.2; and

8.3.4 Genesis may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Service and re set-up.

8.4 The Customer shall indemnify and hold Genesis harmless against any claim or demand of whatsoever nature and howsoever arising as a result of variation pursuant to this Clause.

8.5 The Customer shall be deemed to have repudiated this Contract if the Customer fails and/or refuses to accept any variations, additions, changes, substitutions or replacements pursuant to this Clause 8 and Genesis reserve the right to suspend or terminate this Contract pursuant to Clauses 9 or 10 respectively.

9 Suspension of Services

9.1 Genesis reserves the right to interrupt the service or change the technical specification of the Services for operational reasons (such as maintenance or service upgrades) or because of an emergency. In these circumstances where possible Genesis will give notice to the Customer of such interruption however, the Customer shall have no claim against Genesis for any such interruption.

9.2 Genesis may suspend the provision of the Services or any part thereof in its absolute discretion and without notice if:

9.2.1. the Customer fails, or Genesis believes the Customer will fail, to meet any of its obligations under this Contract including, but not limited to:

9.2.1.1. failure to make payment pursuant to clause 6; or

9.2.1.2. failure to comply with the Acceptable Use Policy;

9.2.2. technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services; or

9.2.3. in the opinion of Genesis the Customer's conduct may result in the breach of any law or is otherwise prejudicial to the interests to Genesis; or

9.2.4. in the opinion of Genesis it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance; or

9.2.5. Genesis are obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority; or

9.2.6. Genesis is entitled to terminate this Contract in accordance with its terms; or

9.2.7. any Third Party Service Provider temporarily suspends or takes out of use the Services for operational purposes.

9.3 Genesis shall, where practical, give the Customer notice of intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 9.2.2., 9.2.4 or 9.2.5 above, shall restore the Services as soon as Genesis are reasonably able to do so.

9.4 If Genesis exercise their right to suspend the Services this shall not restrict their right to terminate this Contract.

9.5 The Customer shall indemnify and hold Genesis harmless against any claim or demand of whatsoever nature and howsoever arising as a result of suspension pursuant to this Clause.

10 Termination

10.1 Genesis may terminate this Contract with immediate effect by notice in writing if the Customer:

10.1.1. fails to pay any sums due to Genesis whether pursuant to clause 6 or within 14 days of receiving a written payment demand from Genesis; or

10.1.2. fails to comply with the Acceptable Use Policy; or

10.1.3. fails to remedy a material breach of this Contract capable of remedy within 30 days of receiving the notice specifying the breach; or

10.1.4. is in material breach of this Contract and that breach cannot be remedied; or

10.1.5. commits persistent breaches of the Contract whether remedied or not.

10.2 Genesis may terminate this Contract with immediate effect by notice in writing if:

10.2.1 the Customer changes the structure, ownership or shareholding of its business; or

10.2.2 any of the circumstances set out in clause 3.4 occur.

10.3 Either party may terminate this Contract with immediate effect by notice in writing to the other party if the other:

10.3.1. commits a material breach of this Contract and (where capable of remedy) fails to remedy the breach within 30 days of a written notice to do so; or

10.3.2. is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), compulsory liquidation or a receiver or manager or administrator or administrative receiver is appointed over their assets, anything analogous to, equivalent or similar to the above occurs to a party in any jurisdiction governing that party; or

10.3.3. ceases trading; or

10.3.4. is unable to pay its debts as and when they fall due within the meaning of section 123 of the Insolvency Act 1986.

10.4 In the event of termination of this Contract by Genesis pursuant to Clauses 10.1 or 10.2.1 10.3 or 10.6.1 during the Minimum Contract Period (or prior to the end of the fixed period of the Contract as the case may be) the Customer shall be deemed to have repudiated this Contract and shall pay to Genesis (subject to the Services detailed in the Order Form), EITHER

- 10.4.1 any unpaid Charges due at the date of termination plus an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt. OR
- 10.4.2 the remaining Charges in full that the Customer would have incurred in respect of the remainder of the fixed period of the Contract plus the cancellation fee detailed in the Order Form less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.
- 10.4.3 The provisions of this clause 10.4 are without prejudice to any other rights and remedies of Genesis.
- 10.5 Genesis may terminate this Contract if there is a material impact on its ability to provide the Services for whatsoever reason and shall, insofar as it is able to do so, give the Customer due notice of the said termination.
- 10.6 Genesis may terminate this Contract with immediate effect by notice in writing to the Customer if:
- 10.6.1. the Customer fails to comply with any of the material terms or conditions of this Contract and the Customer does not remedy such failure within 14 days of a request to do so; or
- 10.6.2. Genesis is informed by any Third party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or
- 10.6.3. any Third Party Service Provider supporting the Services ceases to do so for whatever reason; or
- 10.6.4. any Third Party Services cease to be provided (in whole or in part) by any Third Party Service Provider to Genesis or for use or resale by Genesis for whatever reason; or
- 10.6.5. any Third Party Service Provider changes the terms of its provision of telecommunications services to Genesis for the Services beyond the reasonable control of Genesis; or
- 10.6.6. if any Third Party Services which are essential to the provision of the Services ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or
- 10.6.7. if any authorisation licence or other permission for Genesis or any Third Party Service Provider under the Act is revoked, withdrawn or not renewed for whatever reason.
- 10.7 The Customer shall indemnify and hold Genesis harmless against any claim or demand of whatsoever nature and howsoever arising as a result of termination pursuant to this clause 10
- 10.8 Upon termination of this Contract each party shall return to the other party any Confidential Information and/or Equipment of the other which it has in its possession. In the event of the Genesis Equipment not being returned in what Genesis in its sole discretion consider to be satisfactory condition and good working order, Genesis reserve the right to charge the Customer with the repair or replacement cost of the Genesis Equipment at the prevailing rate.

10.9 Termination of Services pursuant to this Clause 10 shall be deemed to include any other Services that are materially dependent upon the Services being terminated.

11 Termination by the Customer

11.1 Where the Customer purports to terminate this Contract after expiry of the Minimum Contract Period other than in accordance with clause 2.1 or 10.3 Genesis shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to Genesis an amount equivalent to the cost of 30 days Charges which the Customer would have incurred had the Customer given 30 days' prior written notice of termination in accordance with clause 2.1.1.

11.2 Where the Customer purports to terminate this Contract during the Minimum Contract Period (or prior to the end of the fixed period of the Contract as the case may be) other than in accordance with clause 10.3, Genesis shall be entitled (without prejudice to any of its other rights and remedies) to treat such purported termination as a repudiatory breach and accept such repudiation by terminating this Contract in which case the Customer shall pay to Genesis,(subject to the Services detailed in the Order Form) EITHER

11.2.1 any unpaid Charges due at the date of termination plus an amount equal to the remaining Charges for Services that the Customer would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the rate of the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt; OR

11.2.2 the remaining Charges in full that the Customer would have incurred in respect of the remainder of the fixed period of the Contract plus the cancellation fee detailed in the Order Form less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.

11.2.3 The provisions of this clause 11.2 are without prejudice to any other rights and remedies of Genesis.

11.3 Termination of Services pursuant to this Clause 11 shall be deemed to include any other Services that are materially dependent upon the Services being terminated.

12 Force Majeure

12.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges and to indemnify Genesis) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.

12.2 If any event described in clause 12.1 lasts more than 14 days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving 30 days written notice to the other party.

12.3 A party relying on this clause 12 shall use reasonable endeavours to mitigate the effects of a force majeure event.

13 Information and Confidentiality

13.1 The Customer will provide Genesis with any information which Genesis may reasonably require to enable to proceed with the performance of its obligations under this Contract.

13.2 The Customer acknowledges that Genesis reserve the right to review or edit any of the Customer's information (including but not limited to information such as origin, destination, duration, route and time) or third party information which the Customer uses in connection with the Services for the purposes of any of the following:

13.2.1. performing its obligations under this Contract;

13.2.2. correcting, maintaining and improving the Services;

13.2.3. ensuring that the Customer is complying with the Acceptable Use Policy;

13.2.4. monitoring the performance of the Services including the Customer's usage;

13.2.5. collating information to provide non-specific statistics to assist in Genesis' or any Genesis third party supplier's business planning;

13.2.6. complying with applicable laws, regulations and statutory instruments; or

13.2.7. complying with any request for information or disclosure from a Court or other appropriately authorised body.

13.3 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract except that Genesis may disclose Confidential Information to its suppliers and sub-contractors and employees of its Associates who will comply with the obligations of confidentiality on Genesis set out in this clause 13.. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights. These restrictions shall not apply to any information which:

13.3.1. is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 13; or

13.3.2. is acquired from a third party who owes no obligation of confidence in respect of the information; or

13.3.3. is or has been independently developed by the recipient; or

13.3.4. is in the possession of the receiving party without restriction regarding disclosure before the date of receipt from the disclosing party; or

13.3.5. is trivial or obvious (for the avoidance of doubt an element that is trivial or obvious in and of itself should not necessarily be taken as such in the context of this Contract)

13.3.6 is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information. Genesis and the Customer each agree to comply with their respective obligations under applicable data protection legislation (including the Data Protection Act 1998) and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable Genesis to process personal data in connection with the performance by Genesis of its obligations under this Contract.

- 13.4 Any and all data supplied by the Customer is held and may be used and disclosed in accordance with Genesis' current privacy policy available on the Genesis Website.
- 13.5 Without prejudice to the Customer's rights under this Clause 13, the Customer consents to Genesis using the Customer's corporate name, trading style and/or logo to identify the Customer in Genesis' marketing material and/or websites PROVIDED ALWAYS that the Customer may withdraw its consent at any time by giving Genesis not less than 14 days notice in writing.
- 13.6 Notwithstanding anything to the contrary, Genesis shall be entitled to put any data obtained under or in connection with this Contract into a computerized directory and may use and disclose such data in order to enable Genesis to provide the Services and market other products and services to the Customer.
- 13.7 Notwithstanding anything to the contrary, the Customer agrees that Genesis shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and details of the Customer's information processed using the Services, upon written notice to the Customer
- 13.8 The provisions of this clause 13 shall survive the termination of this Contract.

14 Intellectual Property

- 14.1 The Customer acknowledges that any and all of the copyrights, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with any of the Services or any of the Genesis Equipment (including for the avoidance of doubt software provided by Genesis) are and shall remain the sole property of Genesis and in respect of the Proprietary Software are and shall remain the sole property of the licensors or suppliers to Genesis.
- 14.2 Any and all software, documents, drawings and information supplied to the Customer in connection with this Contract are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Genesis' prior written consent.
- 14.3 Where software is provided to enable the Customer or to use the Services, Genesis grants the Customer, for the duration of this Contract, a non-exclusive, non-transferable license to use the software for that purpose, and shall extend only to the right to access and use the Services and no other rights are granted to copy, install or run any software, application or systems of the Customer or any third party. Use of any Proprietary Software or systems provided shall be subject to the standard terms of the licensors or suppliers to Genesis.

15 Limitation of Liability

- 15.1 Genesis shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for:
- 15.1.1. loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect); or
 - 15.1.2. loss of, corruption of, or damage to data or software (whether direct or indirect); or
 - 15.1.3. loss of use of any computer or equipment (whether direct or indirect); or
 - 15.1.4. wasted management or staff time (whether direct or indirect); or
 - 15.1.5. any special indirect or consequential loss or damage; or
 - 15.1.6. any loss suffered by any third party or any liability to any third party.

For the purposes of the foregoing, "loss" includes a partial loss or reduction in value as well as a complete or total loss.

- 15.2 The total liability of Genesis (other than liability governed by clause 15.3) arising out of or in connection with this Contract (whether arising in contract, in tort, (including negligence), or as a result of pre-contract or other representations, or as a result of breach of statutory duty or otherwise howsoever) shall be limited to a sum equivalent to the total of Charges paid to Genesis in the previous 12 months or £100.00 (whichever the greater), for any one cause of action or series of causes of action arising out of the same event, act or omission (the "Per Claim Cap") and, in aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any 12 month period.
- 15.3 Genesis' liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".
- 15.4 Nothing in this Contract shall exclude or restrict the liability of either party for:
- 15.4.1. death or personal injury arising as a result of its negligence; or
 - 15.4.2. for its fraud; or
 - 15.4.3. for any other liability which cannot be excluded or limited by law.
- 15.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 15.6 Genesis are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.
- 15.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of Genesis arising under this Contract.

- 15.8 Genesis shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.
- 15.9 Genesis will not be responsible to the Customer or to any other user if changes in any of Genesis facilities, operations, procedures or the Services:
- 15.9.1 render obsolete or necessitate modification or alteration to any of the Customer's equipment, software and communication lines, including any public lines required by the Customer properly to access the Services;
- 15.9.2 otherwise affect performance.
- 15.10 If a number of events give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.
- 15.11 Subject to clause 15.4 the Customer shall indemnify Genesis in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Customer's possession, operation, use, modification or supply to a third party of the results of any of the Services provided under or in connection with the Contract.
- 15.12 The Customer indemnifies Genesis and its Third Party Services Providers, sub-contractors and other suppliers against any claims or damages arising from the Customer's access to or use of the Service and any information, data or material produced, transmitted or downloaded on the Service.
- 15.13 The Customer acknowledges and agrees that the allocation of risk contained in this clause 15 is reflected in the Charges and is also a recognition of the fact that the Genesis Equipment and Proprietary Software cannot be tested in every possible combination and therefore Genesis does not warrant that the operation of such equipment and/or software will be uninterrupted or error free, and it is not within Genesis' control how and for what purpose such software is used by the Customer.
- 15.14 Each provision of this Contract excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts will continue to apply

16 Severability

Each provision of this Contract operates separately. If any provision of this Contract is held to be invalid in whole or part such provision shall be deemed not to form a part of the Contract and the enforceability of the remainder of the Contract shall not be affected.

17 Variation and Assignment

- 17.1 Notwithstanding any other provision of this Contract, Genesis may vary this Contract at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in Genesis' contracts with any Third Party Supplier or any law or statutory obligation and will:

17.1.1 notify the Customer as soon as practical after Genesis has been notified or otherwise been made aware of the need for the said change;

17.1.2 use its reasonable endeavours to ensure that any change to the Contract does not result in any deterioration in the Services;

17.1.3 vary the Acceptable Use Policy to an extent that is reasonable and does not conflict with or undermine the terms of this Contract.

17.2 Without prejudice to any and/or all of the provisions of this Contract, Genesis may in its absolute discretion:

17.2.1 assign or otherwise transfer the benefit of this Contract or any part thereof to any third party; or

17.2.2 subcontract the performance of this Contract or any part thereof to one or a number of third parties.

17.3 The Customer shall not assign, sub-contract or otherwise transfer this Contract or any of its rights or obligations arising under it without the written consent of Genesis.

17.4 Except as expressly permitted under this Contract, no variation to the terms of this Contract shall be valid unless agreed to in writing by a duly authorised representative of each party.

17.5 The Customer warrants and represents that it is entering into this Contract in the course of a business.

17.6 Nothing in this Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer.

18 Entire Contract

18.1 The Contract as herein defined constitutes the entire contract between Genesis and the Customer and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter.

18.2 In the event of any conflict between the Terms and Conditions of this Contract and the terms of any other document, then the order of precedence as to their interpretation shall be:

18.2.1 the Order Form;

18.2.2 the Specific Terms and Conditions;

18.2.3 these General Terms and Conditions;

18.2.4 the terms of any other document.

18.3 Each party acknowledges that in entering into this Contract (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Contract or not) that is not set out in this Contract or the documents referred to in it. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. The only remedy available to any party in respect of any representation, warranty, collateral contract or other assurance that is set out in this Contract (or any document referred to in it) is for breach of contract under the terms of this Contract (or the relevant document). Nothing in this Contract shall, however, limit or exclude any liability for fraud.

19 No Waiver

Any waiver of any breach of any provision of the Contract will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Contract.

20 Counterparts

This Contract may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same document.

21 Notices

21.1 Notices given under this Contract must be in writing and may be delivered by hand or first class post to the following addresses:

21.1.1 To Genesis at the address of the Genesis office shown on the Order Form or any alternative address which Genesis notifies to the Customer;

21.1.2 To the Customer at the address to which the Customer asks Genesis to send invoices, the address of the Customer shown on the Order Form or, if the Customer is a company, to its registered office.

A party may change its address for service of notices by notice to the other in accordance with this clause.

21.2 A notice shall be treated as having been received:

21.2.1 if delivered by hand between 9.00 am and 5.00 pm on a Business Day (which time period is referred to in this clause as **Business Hours**), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and

21.2.2 if sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.

21.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

21.4 For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

22 Third Party Rights

A third party that is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

23 Operative Law

This Contract shall be construed in accordance with and governed by the laws of England and in the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts, save that Genesis may enforce any judgment or court order against the Customer anywhere in the world where the Customer may have assets.