

## Genesis Vehicle Tracking Terms and Conditions

### 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** means the charges payable by the Customer for 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 and the schedules hereto, together with any relevant Order Form and other documents specifically incorporated into such contract;

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

**Gateway** means the connection which enables the communication of information to and from the GPRS/3G enabled device installed in the Customer's vehicle(s) and the Customer's back office system;

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

**Genesis Equipment** means any apparatus or equipment provided by Genesis or any third party contractor or agent of Genesis to the Customer to enable provision of the Services under this Contract;

**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 Software** means the software and related documentation owned by or licensed to Genesis and used in providing the Services;

**Genesis Vehicle Tracking** or **GVT** means the provision of a fully managed hosted Gateway allowing the transfer of data to/from any GPRS/3G enabled device and Customer back office system subject to the provisions of schedule 1;

**Genesis Website** means the website located at [www.genesis.co.uk](http://www.genesis.co.uk) or such other website as may be notified by Genesis from time to time;

**Initial Minimum Period** means a period of 36 or 60 months commencing on the Commencement Date as specified in the Order Form;

**Installation Date** means the date when the Genesis equipment is installed in the Customer's vehicle(s);

**Mapping Software** or **GVT Mapping Software** means the provision of a fully managed hosted GVT Web Based Mapping Solution allowing the Customer to track mobile workers by way of a fixed in vehicle tracking solution subject to provisions of schedule 2;

**Minimum Period** means any Initial Minimum Period or Subsequent Minimum Period for which this Contract is to be in force;

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

**Order Form** means the Genesis written order form containing the details of an Order;

**Proprietary Software** means any third party software;

**Server** means the server and other computer hardware used to provide the Services;

**Service** and **Services** means the GVT Service and/or the GVT Mapping Software as specified in the Order Form;

**Software** means the Genesis Software and/or any Proprietary Software

**Subsequent Minimum Period** means a period, commencing immediately upon expiry of the a Minimum Period, of either 36 months or 60 months (whichever is of equal duration to the Initial Minimum Period);

**Supported Hours** means the hours between 9:00am to 17:30pm Monday to Friday excluding all UK bank and public holidays;

**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;

**Year** means each successive period of 12 months commencing on the Commencement Date

- 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 Duties**

- 2.1 Genesis shall provide the Services with reasonable skill and care and in accordance with the terms of this Contract.
- 2.2 Genesis shall use all reasonable endeavours to provide and install or procure the provision and installation of the Genesis Equipment so that the Service can be provided on or before any installation date specified or agreed to by Genesis. Any installation date is an estimate only and Genesis shall not be liable for any failure to meet such installation date. The Service shall commence on the Activation Date notified by Genesis.
- 2.3 In addition to the obligations of Genesis as otherwise specified in the Contract, the Customer shall be solely responsible for the following:
  - 2.3.1. the accuracy and content of any information provided by the Customer to Genesis;  
and
  - 2.3.2. any information, programs and other information that the Customer receives as a result of the use of the Services, including without limitation the entire responsibility for any loss of data, programs, breach of security, viruses and disabling or harmful devices that the Customer may download or otherwise experience as a result of the Customer's use of the Services.
- 2.4 The Customer agrees to use the Services in a manner consistent with any and all applicable laws and regulations and to comply with the provisions of Schedule 1 where the Services include the GVT Service and Schedule 2 where the Services include the GVT Mapping Software.
- 2.5 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.

## **3 Service Levels and Refunds**

- 3.1 Genesis will provide the service level as detailed below.
- 3.2 Genesis will open its support desk to service any support telephone calls for Customers:
  - 3.2.1. during Supported Hours; and

- 3.2.2. outside the Supported Hours for such problems as Genesis is reasonably satisfied are of a business critical nature, being those which cause the business of the Customer to stop operating and will cause financial loss to the Customer's business. In the event that any such call is not business critical Genesis shall be entitled to make an additional charge in accordance with its standard scale of charges for the time being in force for any support provided by Genesis
- 3.3 Genesis will log all incoming telephone support calls and a telephone or email response will be given within 4 working hours and Genesis will use its reasonable endeavours to resolve problems as soon as it is able.
- 3.4 Subject to the provisions of the schedules, the Server shall be available to provide the Services to the Customer 98% of the time during Supported Hours. For the avoidance of doubt Genesis is unable to and does not guarantee service availability in respect of any part of the Services which require the use of any service (including but without limitation telecommunications and Internet service provider services) provided by any third party.
- 3.5 Genesis will track and calculate, on a monthly basis, any non-availability of the Server as is required by clause 3.4, measuring periods of non-availability from the time Genesis logs a call from the Customer notifying Genesis of any such non-availability until the time the Server is available. Periods of non-availability which are wholly or partly caused and whether directly by any Force Majeure Event (as defined in clause 11) or which is outside of Maintenance (as defined in schedules 1 and/or 2) or otherwise outside the responsibility of Genesis pursuant to the Contract or which is otherwise caused by the act or omission of the Customer (**together a Non-Fault Event**) are not included in calculating such periods of non-availability.
- 3.6 If in any calendar month, the level of availability of the Server (other than for reasons of a Non-Fault Event) falls below 98%, as outlined in clause 3.4 above (calculating periods of non availability in complete hours), the Customer will be entitled to a credit (calculated in accordance with the provisions of clause 3.7) against the monthly charge for the relevant period.
- 3.7 For each whole percentage point by which the level of availability of the Server in the month in question falls below the target level of 98% provided for in clause 3.4, Genesis will provide a credit equivalent to 10% of the monthly charges due from the Customer in that month, subject to a maximum of 50% in any calendar month. Any credit entitlement will be applied to any payments due to Genesis. It shall be a matter for Genesis' absolute discretion as to which of any of the payments due to Genesis any credit entitlement is applied to.
- 3.8 The Customer shall not be entitled to any credit nor to withhold payment nor to any other remedy in respect of non-availability of the Server save as set out in this clause 3, and the remedy set out in this clause 3 is the Customer's exclusive remedy in relation to any non-availability of the Server to the entire exclusion of any other remedy of the Customer in contract or tort (including negligence) or otherwise.
- 3.9 Genesis may offer updates or modifications to the Software and will notify the Customer of its proposed charges in respect thereof.
- 3.10 From time to time it will be necessary for Genesis to schedule maintenance (including but not limited to network maintenance, replacement of faulty components, or testing of the uninterruptible power supply) which may cause a disruption to the Service. Genesis will use reasonable endeavours to provide a minimum of 60 hours' notice before conducting such planned Service-affecting maintenance but does not guarantee it will always be able to do so.

- 3.11 Where significant changes are planned by Genesis, it will provide the Customer with a minimum of 28 days notice when it is reasonably practicable to do so. Emergency maintenance, updates, and other procedures will be scheduled by Genesis on a case-by-case basis.
- 3.12 Planned maintenance activity is not considered to be part of the scheduled service time and is excluded from any non-availability criteria identified in this clause 3.
- 3.13 Genesis shall not be obliged to provide the Services to the Customer:
- 3.13.1. if the Customer enters into this Contract otherwise than in the course of its business;  
or
- 3.13.2. if the Customer uses the Services otherwise than in the course of its business; or
- 3.13.3. if the Customer is not located in a geographic location where the Services can be received; or
- 3.13.4. where there is a technical reason why the Customer would not be able to receive the Services.

#### **4 Charges and Payment**

- 4.1 The Customer shall pay the Charges to Genesis for the Services as specified in this Contract and as subsequently varied pursuant to this Contract.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 The Customer shall pay to Genesis the Charges for the provision and/or installation of the Genesis Equipment, together with other advance charges agreed and detailed in the Order Form prior to the Installation Date
- 4.7 The Customer will pay the Charges within 14 days of the date of Genesis' invoice unless otherwise agreed by Genesis in writing. Any query on the content of any invoice must be raised by the Customer in writing to Genesis within seven days from the date of invoice. If no query is raised, the invoice shall be deemed to be accepted by the Customer. 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.
- 4.8 Where Charges are not paid by the Customer in accordance with this clause 4. then, without prejudice to any other right or remedy available to Genesis, Genesis shall be entitled to:

- 4.8.1. require the Customer to pay all sums due under this Agreement on demand; and/or
  - 4.8.2. suspend performance of the Services and support provided for in clause 3 forthwith on giving written notice to the Customer; and/or
  - 4.8.3. charge 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); and/or
  - 4.8.4. charge compensation arising out of late payment pursuant to clause 5A of The Late Payment of Commercial Debts Regulations 2002.
- 4.9 The amount of Charges and all other sums payable by the Customer under the Contract are quoted exclusive of VAT, which shall be payable by the Customer at the then prevailing rate in addition to the amount of the Charges.
- 4.10 The Customer shall also pay to Genesis all reasonable travelling, hotel subsistence and other out-of-pocket expenses incurred in the course of the carrying out of the Services and the support provided for at clause 3 subject to, if the Customer so requests, Genesis providing to the Customer receipts in respect of such expenditure.
- 4.11 All payments by the Customer to Genesis shall be made in the currency specified in the Order Form.

## **5 Term and Termination**

- 5.1 The provisions of the Contract shall come into effect on the Commencement Date and shall (subject to earlier termination pursuant to this clauses 5) shall continue in force for the Initial Minimum Period and thereafter upon the expiry of each Minimum Period for a Subsequent Minimum Period unless the Customer terminates the Contract by giving to Genesis not less than 30 days' written notice expiring at the end of the Initial Minimum Period or any Subsequent Minimum Period.
- 5.2 Genesis may terminate this Contract by notice to the Customer with immediate effect:
- 5.2.1. if any amount payable by the Customer to Genesis under this Contract shall become overdue and shall not have been paid by the Customer within 30 days after notice from Genesis that such amount is overdue; or
  - 5.2.2. if there is any material impact on Genesis' ability to provide the Service for whatever reason (including the termination of any contract with any third party on which the provision of the Services depends) and shall, insofar as it is able to do, give the Customer notice of the said termination; or
  - 5.2.3. the Customer changes the structure, ownership or shareholding of its business; or
  - 5.2.4. any of the circumstances set out in clause 3.13 occurs.
- 5.3 Either Party may terminate this Contract with immediate effect by notice in writing to the other party if the other:
- 5.3.1. 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

- 5.3.2. 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
- 5.3.3. ceases trading; or
- 5.3.4. is unable to pay its debts as and when as they fall due within the meaning of section 123 of the insolvency Act 1986.
- 5.4 In the event of termination by Genesis pursuant to clauses 5.2.1, 5.2.3 , or 5.3 or 5.7.5 the Customer shall be deemed to have repudiated this Contract and shall pay to Genesis in addition to any unpaid Charges due at the date of termination, an amount equivalent to the Charges that the Customer would have incurred up to the end of the Minimum Period had the termination not taken place less an accelerated payment discount at the base rate of the Bank of England current at the date of termination calculated on a daily basis to reflect early receipt. The provisions of this clause 5.4 are without prejudice to any other rights and remedies of Genesis,
- 5.5 Where the Customer purports to terminate this Contract during any Minimum Period other than in accordance with clause 5.3 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 in addition to any unpaid Charges due at the date of termination, an amount equivalent to the Charges that the Customer would have incurred up to the end of the Minimum Period had the termination not taken place less an accelerated payment discount at the base rate of the Bank of England current at the date of termination calculated on a daily basis to reflect early receipt. The provisions of this clause 5.5 are without prejudice to any other rights and remedies of Genesis.
- 5.6 Genesis may terminate this Contract if there is a material impact on its ability to provide the Services for whatsoever reason (including where any telecommunications licence under which Genesis has the right to run its telecommunication system is revoked or amended) and shall, insofar as it is able to do so, give the Customer due notice of the said termination.
- 5.7 Genesis may terminate this Contract with immediate effect by notice in writing to the Customer if:
- 5.7.1. 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 authorisation); or
- 5.7.2. any Third Party Service Provider supporting the Services ceases to do so for whatever reason; or
- 5.7.3. any Third Party Services ceases 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

- 5.7.4. any Third Party Service Provider changes to the terms of its provision of telecommunications services to Genesis for the Services beyond the reasonable control of Genesis; or
  - 5.7.5. 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
  - 5.7.6. 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
  - 5.7.7. 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.
- 5.8 Upon termination of this Contract the Customer shall immediately stop using the Service, and the Customer's right to use and Genesis's obligations to provide the Service shall immediately terminate. Upon termination of this Contract the Customer shall return to Genesis any Genesis Equipment and Software in its possession or control and each party shall return to the other any other property in its possession or control owned by and belonging to the other.
- 5.9 Termination of the Contract for whatever reason shall not affect:
- 5.9.1. the accrued rights and liabilities of the parties arising out of the Contract as at the date of termination and, in particular, but without limitation, the right to recover all charges from the Customer; or
  - 5.9.2. clauses 6 and 12 which shall remain in full force and effect.

## **6 Intellectual Property Rights and Equipment**

- 6.1 The Customer acknowledges that any and all of the copyrights, trade marks, 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 Software 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.
- 6.2 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.
- 6.3 The Customer undertakes:
- 6.3.1. to comply with all instructions which Genesis may notify to the Customer for use of the Genesis Equipment;
  - 6.3.2. not to allow the Genesis Equipment to be repaired or maintained other than by an authorised representative of Genesis;
  - 6.3.3. not to damage the Genesis Equipment and not to add modify or in any way interfere with the performance of the Genesis Equipment;
  - 6.3.4. not to attempt to sell the Genesis Equipment; and

- 6.3.5. 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.
- 6.4 In the event that new inventions, designs or processes evolve in performance of or as a result of the performance of any of the Services, the Customer acknowledges that the same shall be the property of Genesis.
- 6.5 The Customer shall indemnify and keep indemnified Genesis fully against all liabilities, costs and expenses which Genesis may incur as a result of any work done or services provided in accordance with the Customer's instructions which involves the infringement of any copyright, patent or other intellectual property or proprietary right (including, but not limited to, linking to third party websites and/or third party proprietary material).
- 6.6 The Customer agrees that it will not itself or through any Associate agent or other third party:
- 6.6.1. modify or (except to the extent and in the circumstances permitted by law), copy or decompile the Genesis Software or Proprietary Software nor copy any user manuals or documentation supplied by Genesis;
- 6.6.2. sell, lease, licence or sub-licence the Genesis Software or Proprietary Software or the documentation connected with any of it.
- 6.7 The Customer shall allow all persons authorised by Genesis to enter the Customer's premises at all reasonable times for any purpose arising from the Contract including but without limitation to check the Customer's compliance with the terms of it. The Customer shall provide a suitable and safe working environment for Genesis' employees or anyone acting on Genesis behalf.

## **7 Liability**

- 7.1 The Customer acknowledges that Genesis' obligations and liabilities in respect of the Services are exhaustively defined in the Contract. The Customer agrees that the express obligations and service levels made by Genesis in the Contract are in lieu of and to, the extent permitted by law are to the exclusion of any other warranty, condition, term, undertaking or representation of any kind implied by, statute at common law, by a Court of dealing or otherwise, including (without limitation) as to the condition, quality, performance or fitness for purpose of any deliverables pursuant to the Services or any part of them and that the same are hereof excluded to the extent permitted by law.
- 7.2 Nothing in this Contract shall exclude or limit liability of either party for death or personal injury resulting from its negligence or for its fraud or for any other liability which cannot be excluded or limited by law.
- 7.3 Subject to clause 7.2, Genesis shall not be liable (whether arising in contract, or tort (including negligence), or as a result of pre-contract or other representations or statements, or as a result of breach of statutory duty or otherwise in connection with this Contract) for:
- 7.3.1. any loss of production, revenues, profits, contracts or customers, operation time, goodwill, business or of expected future business, anticipated savings (in each case whether direct or indirect); or
- 7.3.2. any loss of, loss of use of or corruption to software or data, loss of use of any computer (in each case whether direct or indirect); or
- 7.3.3. loss of or damage to the Customer's reputation or goodwill (whether direct or indirect);

7.3.4. wasted management or staff time(whether direct or indirect);

7.3.5. any special, indirect or consequential loss or damage; or

7.3.6. any losses 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.

7.4 Subject to clause 7.2, Genesis' liability (other than liability governed by clause 7.5) to the Customer (whether arising in contract, or tort (including negligence), or as a result of pre-contract or other representations, or as a result of breach of statutory duty or otherwise in connection with this Contract) shall be limited:

7.4.1. in aggregate in respect of any and all causes of action arising in any Year to the Charges paid by the Customer in that Contract Year or £200.00 (whichever is the greater);

7.4.2. in respect of any event or series of connected events to an amount not exceeding the total Charges paid by the Customer to Genesis in the 6 months prior to the event or series of events in question.

7.5 Subject to clause 7.2, Genesis' liability (whether arising in contract, or tort (including negligence), or as a result of pre-contract or other representations, or as a result of breach of statutory duty or otherwise in connection with this Contract) for damage to tangible property shall be limited to £5,000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitute "tangible property".

7.6 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.

7.7 Genesis shall not be liable in contract, tort (including negligence) or otherwise howsoever for unauthorised access to or alteration, theft or destruction of emails, files, programs, information or data of the Customer by any person through accident or by fraudulent means or devices.

7.8 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:

7.8.1. 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;

7.8.2. otherwise affect performance.

7.9 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.

7.10 Subject to clause 7.2 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.

- 7.11 The Customer acknowledges and agrees that the allocation of risk contained in this clause 7 is reflected in the Charges and is also a recognition of the fact that the Genesis Software and Proprietary Software cannot be tested in every possible combination and therefore Genesis does not warrant that the operation of such 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.
- 7.12 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.

## **8 Variation of Services**

- 8.1 Genesis shall be entitled, upon giving not less than 30 days notice to the Customer where practical, 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; and/or
  - 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 Services.

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 Genesis may at any time make changes to the Third Party Services and, subject to giving the Customer at least 30 days' prior written notice, may cease utilising a Third Party Service Provider in favour of an alternative Third Party Service Provider.
- 8.4 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties, and any third party premises that may host any systems used to provide the Services, the following terms will apply:
- 8.4.1. 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;

8.4.2. 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;

8.4.3. 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 4.2; and

8.4.4. 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.

## **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 4; 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 is obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority.

9.2.6. Genesis is entitled to terminate this Contract under clause 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 or 11; 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 Variation and Assignment**

- 10.1 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:
- 10.1.1. notify the Customer within 48 hours of Genesis being notified or otherwise becoming aware of the need for the said change;
- 10.1.2. use its reasonable endeavours to ensure that any change to the Contract does not result in any deterioration in the Services.
- 10.2 Without prejudice to any and/or all of the provisions of this Contract, Genesis may in its absolute discretion:
- 10.2.1. assign or otherwise transfer the benefit of this Contract or any part thereof to any third party; or
- 10.2.2. subcontract the performance of this Contract or any part thereof to one or a number of third parties.
- 10.3 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.
- 10.4 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.
- 10.5 The Customer warrants and represents that it is entering into this Contract in the course of a business.
- 10.6 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.

## **11 Force Majeure**

- 11.1 Neither Genesis nor any of its employees, agents or sub-contractors shall be considered in breach of the Contract or under any liability whatsoever to the Customer for non-performance, part-performance, defective performance or delay in the performance of any of the Services supplied or to be supplied or any software supplied or to be supplied by Genesis, its employees, agents or sub-contractors under the Contract which is directly or indirectly caused by or as a result of any circumstances or event beyond its reasonable control (a "Force Majeure Event"). Without prejudice to the generality of the foregoing, the following shall be regarded as such circumstances or event:

- 11.1.1. Acts of God, explosion, flood, lightening, tempest, fog, bad weather, storm fire or accident.
  - 11.1.2. War, hostilities (whether war be declared or not), invasion, acts of foreign enemies.
  - 11.1.3. Riot, civil commotion or disorder.
  - 11.1.4. Theft or malicious damage.
  - 11.1.5. Acts, restrictions, regulations, bye-laws, refusals to grant any licences or permissions, prohibitions or measures of any kind on the part of any local or central government or other authority.
  - 11.1.6. Compliance with any law or governmental order, rule, regulation or direction;
  - 11.1.7. Import or export regulations or embargoes.
  - 11.1.8. Strikes, lock-outs or other industrial action or trade disputes of whatever nature (whether involving employees of Genesis or a third party).
  - 11.1.9. Failure of or problems with telecommunication lines.
  - 11.1.10. Defaults of internet service providers for any reason whatsoever.
  - 11.1.11. Incompleteness or inaccuracy of any technical information which it is the responsibility of the Customer to provide.
  - 11.1.12. Acts of terrorism.
  - 11.1.13. Any partial or complete failure or any inability to use any part of the building or equipment (including but without limitation its computers) of Genesis.
- 11.2 In the event that the Force Majeure Event continues for more than 14 days either party may terminate this Contract with immediate effect by giving notice in writing to the other party.

## **12 Confidentiality and Data Protection**

- 12.1 During the term of the Contract and thereafter the following provisions shall apply where a party discloses Confidential Information ("the Disclosing Party") to the other party hereto ("the Receiving Party").
- 12.2 Subject to clause 12.3, the Receiving Party:
- 12.2.1. may not use any Confidential Information for any purpose other than the performance of its obligations and/or the exercise of its rights under the Contract;
  - 12.2.2. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party and 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 12; and
  - 12.2.3. shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information.

- 12.3 The obligations of confidence referred to in this clause 12 shall not apply to any Confidential Information which:
- 12.3.1. is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party; or
  - 12.3.2. is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party; or
  - 12.3.3. is required to be disclosed by any applicable law or regulation; or
  - 12.3.4. is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to this Contract in respect of information and who imposes no obligations of confidence upon the Receiving Party.
- 12.4 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.
- 12.5 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.
- 12.6 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 Service and market other products and services to the Customer.
- 12.7 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.
- 12.8 This clause 12 will survive the termination of this Contract.

### **13 Notices**

- 13.1 Notices given under this Contract must be in writing and may be delivered by hand or first class post to the following addresses:
- 13.1.1 To Genesis at the address of the Genesis office shown on the Order Form or any alternative address which Genesis notifies to the Customer;
  - 13.1.2 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 .
- 13.2 A notice shall be treated as having been received:

- 13.2.1 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
- 13.2.2 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.
- 13.3 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).
- 13.4 For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

#### **14 General**

- 14.1 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provisions in question shall be unaffected.
- 14.2 The Contract embodies and sets out the entire agreement and understanding of the Customer and Genesis and supersedes all prior, oral or written agreements, understandings or arrangements relating to the subject matter of the Contract. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set out in the Contract. Nothing in this Contract shall, however, operate to limit or exclude any liability for fraud.
- 14.3 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.
- 14.4 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.
- 14.5 Time for delivery or installation or performance of the Service under this Contract is not of the essence, and any specified dates or times for delivery and performance of the Services is an estimate only.
- 14.6 The Customer warrants and represents that it is entering into this Contract in the course of a business.
- 14.7 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

14.8 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.

## Schedule 1

### GVT Gateway Service

1 In this Schedule 1, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Maintenance** means the maintenance services to be provided by Genesis, its employees, agents or sub-contractors in accordance with the provisions of paragraph 3 of this Schedule 1.

2

(a) The GVT Gateway Service shall be performed in accordance with the standard procedures of Genesis and/or any relevant third party supplier (the **Gateway Standard Procedures**).

(b) Genesis reserves the right to control, direct and establish technical procedures for the use of the GVT Gateway Service and the Customer agrees to follow the reasonable instructions of Genesis and the Gateway Standard Procedures with respect to the use of the same. Genesis also reserves the right to make operational changes to the GVT Gateway Service including any identifier of the Customer.

3

(a) If the Customer shall discover that the Gateway fails to perform in accordance with the documentation relevant thereto then the Customer shall within 14 days after such discovery notify Genesis in writing of the defect or error in question and provide Genesis (so far as the Customer is able) with a documented example of such defect or error;

(b) Genesis shall thereupon use its reasonable endeavours to correct promptly such defect or error. Genesis shall provide the Customer with all assistance reasonably required by the Customer to enable the Customer to implement the use of the corrected Gateway;

(c) such Maintenance shall not include service in respect of:

(i) defects or errors resulting from any modification to the Gateway made by any person other than Genesis;

(ii) incorrect use of the Gateway;

(iii) any fault in the equipment used by the Customer or the telecommunication lines linking the Customer's equipment and software to the Server;

(d) Genesis shall be entitled to make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by Genesis:

(i) at the request of the Customer but which do not qualify as Maintenance by virtue of any of the exclusions referred to in paragraph 3.(c) above; or

(ii) at the request of the Customer but which Genesis finds are not necessary

For the avoidance of doubt nothing in this paragraph 3 (d) shall impose any obligation on Genesis to provide services in respect of the exclusions referred to in paragraph 3(c).

- (e) Genesis shall be under no obligation to provide Maintenance in respect of:
  - (i) any software other than the Gateway;
  - (ii) incorrect or unauthorised use of the Gateway or operator error;
  - (iii) any fault in the equipment and software used by the Customer;
  - (iv) any fault in the telecommunications equipment or lines connecting the Customer's equipment and software to the Server;

4 The Customer shall:

- (a) ensure that at least two personnel have a full understanding of the workings of the current version of the Gateway such that there can be prompt and effective exchange of information between the Customer and Genesis;
- (b) provide Genesis with access to and use of all information (including but without limitation sample output and other diagnostic information) and facilities (including but without limitation the Customer's premises and/or computer systems deemed necessary by Genesis in order to provide the GVT Gateway Service;
- (c) provide notice to Genesis of the Customer's intention to change its hardware or operating systems or data feeds.
- (d) effect and maintain adequate security measures to safeguard the Genesis Software from access or use by any unauthorised person.

## Schedule 2

### Mapping Software

1 In this Schedule 2, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Maintenance** means the maintenance services to be provided by Genesis, its employees, agents or sub-contractors in accordance with the provisions of paragraph 3 of this Schedule 2.

2

- (a) Genesis agrees to place the Mapping Software on the Server and procure that it shall be made available for access by the Customer via the Internet and public telecommunications system.
- (b) Genesis shall allow storage of information received by the Customer on the Server using such Mapping Software, information will include that which is required for the organisational management of collections and deliveries and tracking of items/jobs and orders.
- (c) All Mapping Software services shall be performed in accordance with the standard procedures of Genesis and/or any relevant third party supplier (**the Mapping Standard Procedures**).
- (d) Genesis reserves the right to control, direct and establish technical procedures for the use of the Mapping Software and the Customer agrees to follow the reasonable instructions of Genesis and the Mapping Standard Procedures with respect to the use of the same. Genesis also reserves the right to make operational changes to the Mapping Software including any identifier of the Customer.

3 In addition to the support provided for at clause 3 of the General Terms and Conditions, Genesis shall provide the Maintenance detailed below for the Mapping Software:

- (a) if the Customer shall discover that the Mapping Software fails to perform in accordance with the documentation relevant thereto then the Customer shall within 14 days after such discovery notify Genesis in writing of the defect or error in question and provide Genesis (so far as the Customer is able) with a documented example of such defect or error;
- (b) Genesis shall thereupon use its reasonable endeavours to correct promptly such defect or error. Genesis shall provide the Customer with all assistance reasonably required by the Customer to enable the Customer to implement the use of the corrected Mapping Software;
- (c) such Maintenance shall not include service in respect of:
  - (i) defects or errors resulting from any modification to the Mapping Software, made by any person other than by Genesis;
  - (ii) incorrect use of the Mapping Software;
  - (iii) any fault in the equipment used by the Customer or the telecommunication lines linking the Customer's equipment and software to the Server;

- (iv) defects or errors caused by the use of the Mapping Software on or with equipment or computer programs not approved in writing by Genesis.
- (d) Genesis shall be entitled to make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by Genesis:
  - (i) at the request of the Customer but which do not qualify as Maintenance by virtue of any of the exclusions referred to in paragraph 3.(c) above; or
  - (ii) at the request of the Customer but which Genesis finds are not necessary

For the avoidance of doubt nothing in this paragraph 3(d) shall impose any obligation on Genesis to provide services in respect of the exclusions referred to in paragraph 3(c)

- (e) Genesis shall be under no obligation to provide Maintenance in respect of:
  - (i) any software other than the Mapping Software;
  - (ii) incorrect or unauthorised use of the Mapping or operator error;
  - (iii) any fault in the equipment and software used by the Customer;
  - (iv) any fault in the telecommunications equipment or lines connecting the Customer's equipment and software to the Server;
  - (v) any computer programs used in conjunction with the Mapping Software;

4 The Customer shall:

- (a) ensure that at least two personnel have a full understanding of the workings of the current version of the Mapping Software such that there can be prompt and effective exchange of information between the Customer and Genesis;
- (b) provide Genesis with access to and use of all information (including but without limitation sample output and other diagnostic information) and facilities (including but without limitation the Customer's premises and/or computer systems deemed necessary by Genesis in order to provide the Mapping Software and Maintenance;
- (c) ensure that only persons who are properly trained and authorised by Genesis are allowed to operate the Mapping Software;
- (d) not make any unauthorised alterations or modifications to the Mapping Software without the written consent of Genesis.
- (e) provide notice to Genesis of the Customer's intention to change its hardware or operating systems.
- (f) effect and maintain adequate security measures to safeguard the Genesis Software from access or use by any unauthorised person.