

# GENERAL TERMS & CONDITIONS

Millgate Connect Limited, 7 Vantage Drive, S9 1RG  
Tel: 0114 242 7349 Email: connectorders@millgate.co.uk Company Reg: 08222474

CONNECTIVITY & TELEPHONY

Millgate Connect undertake to provide, and the Customer undertakes to use the Services described on the Order Form on the terms set out in this Agreement. These General Terms and Conditions on which we will supply Goods and Services include a number of Service Specific Annexes ("Annexes") which apply where you buy any relevant Service from us. The Definitions applicable to this Agreement can be found at Appendix 1.

## Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a **party** includes its personal representatives, successors and permitted assigns.

A reference to **We**, shall mean Millgate Connect Limited.

A reference to **legislation** or a **legislative provision** is a reference to it as amended or re-enacted.

A reference to **legislation** or a **legislative provision** includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

## 1 PROVISION OF SERVICES

1.1 We may accept or reject any Order placed under this Agreement. The Customer may not revoke an Order once it has been accepted by Us in accordance with Clause 1.4

1.2 No Order will be deemed to be accepted by Us or convey any obligation on Us to deliver Services, until such applicable Order has been signed by a duly authorised representative of Millgate or We have otherwise notified the Customer in writing the Order has been accepted, or We deliver the Service Equipment and/or Service to the Customer.

1.3 Orders placed may be subject to survey or post acceptance review, this mainly applies to Internet Connectivity. If further work is required, including ducting, poles, excessive construction work, cabling, or We have to expend additional time providing the Service, additional charges may apply. These Charges will be advised to the Customer following completion of the survey and We will obtain the Customer's agreement to these Charges before accepting and proceeding with the Order.

1.4 The Customer acknowledges that We will supply the Service Equipment and Service at the request of the Customer and that it is the Customer's responsibility to determine whether the Service Equipment and Service are suitable for its requirements.

1.5 We will be free to contract for such telecommunications Services and facilities from any Licensed Operator(s) and Equipment Supplier(s) as it may consider necessary in order to enable it to provide the Service. We will be solely responsible for paying all agreed relevant supplier charges in connection with such Services.

1.6 We may accept instructions from a person who We believe is acting within the Customer's authority.

1.7 All dates included within an Order are estimates only and We will use reasonable endeavours to achieve them.

1.8 If We must change Services due to incomplete or inaccurate information provided by the Customer, We may, at our reasonable discretion, apply additional one-time and/or recurring Charges.

1.9 The Customer may request changes to the features of the Service by written request. If the Customer wishes to change the type of Service supplied, they will be required to separately order such Service and enter into a new Agreement for the supply of that different Service.

## 2 USE OF SERVICE

2.1 We are providing the Services solely to the Customer and not to any third-party end user.

2.2 Acceptable Use Policy ("AUP"). The Customer is responsible for its content and that of any of its End Users (including any content hosted by the Customer or any User on behalf of third parties).

a) The Customer may use the Service for the Customer's own business purposes, provided that the Customer:

i) complies with, and ensures that any End User complies with, the terms of any applicable legislation and any licence applicable to the Customer when using the Services and/or Equipment;

ii) uses the Service in accordance with any published instructions, safety, and security procedures applicable to the use of that Equipment;

iii) uses the Service in accordance with the Fair Use Policy which shall apply to any use of the Services we supply to you;

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## 2.3 The Service must not be used:

- a) fraudulently or in connection with a criminal offence under the laws of any country where the Service is provided;
- b) to send, receive, upload, download, use, or re-use any information or material which is offensive, abusive, indecent, defamatory, obscene, or menacing, or in breach of confidence, copyright, privacy, or any other rights;
- c) in contravention of any instructions that We have given under this Agreement;
- d) to cause annoyance, inconvenience, or needless anxiety;
- e) to send or provide unsolicited advertising or promotional material.
- f) to create or send Malware

2.4 If the Customer or anyone else, (with or without the Customer's knowledge or approval) uses the Service in contravention of the AUP set out at clause 2.2 and 2.3; or uses the Service in any way which, is, or is likely to be, detrimental to the provision of the Service to the Customer or any other customer and fails to take corrective action within a reasonable period of receiving notice from Us, then We may deem this a material breach of this Agreement.

2.5 Where the Service enables access to the internet, the internet is independent of the Service and use of the internet is solely at the Customer's risk and subject to all applicable laws.

2.6 The Customer must not use a URL which infringes the rights of any person in a corresponding trademark or name.

2.7 Except for IP addresses expressly registered in the Customer's name, all IP addresses, Millgate based domain names and telephone Numbers made available with the Service shall at all times remain the property of Millgate or its suppliers and shall be non-transferable. All the Customer's rights to use such IP addresses, domain names or telephone Numbers will cease on termination or expiration of the Service.

2.8 VoIP telephony services support 999 public emergency call services and such calls will be routed to the national emergency call handling agents. However, these services do not operate in the same way as PSTN fixed line or mobile 999 public emergency call services, and connection to such services may not be possible in the event of a Service outage caused by loss of End User connectivity to the internet for whatever reason. For clarity We shall not be liable for any failed access to 999 public emergency services through the

VoIP telephony services. In such circumstances the Customer should use their PSTN line or mobile to make the emergency call. Furthermore, it may on occasions not be possible for the emergency services personnel to identify the caller's location and telephone number, so this information should be stated promptly and clearly by the caller at the start of the call.

## 3 RISK AND OWNERSHIP OF EQUIPMENT

3.1 Risk in Service Equipment shall pass to the Customer on Delivery.

3.2 In respect of Service Equipment that is Leased to the Customer or is provided without cost as part of the Service, the Service Equipment shall remain the property of Millgate and the Customer shall deliver up the Equipment to Us upon termination or expiry of this Agreement.

3.3 Until ownership of the Equipment has passed to the Customer, the Customer must:

- a) hold the Equipment on a fiduciary basis as Millgate's bailee;
- b) not deal with, modify, or interfere with the Equipment or remove or alter any identification mark on the Equipment showing that it is owned by Us or a third party; and shall not let any other third-party have rights over the Equipment;
- c) keep the external surfaces of the Service Equipment clean and in good condition;
- d) operate the Service Equipment strictly in accordance with the Documentation and ensure that only competent and trained persons operate the Service Equipment;
- e) notify Us immediately of any loss of or damage to the Equipment and the Customer shall be liable to Us for any such loss or damage while it is in the Customer's custody except where it can be shown that We or, where applicable, a third-party owner of the Equipment was responsible for such loss or damage;
- f) permit Us to inspect or test the Equipment remotely and/or shall provide access to the Site(s) for such purposes in accordance with clause 3.5 below.

3.4 The Customer shall notify Us as soon as possible in respect of any defect in the Equipment, and in any event within 14 days of Delivery of the Equipment, and the provisions of clause 4 (Warranty) shall apply.

3.5 The Customer grants to Millgate, its employees, affiliates, agents, and sub-contractors an irrevocable licence at any reasonable time to enter any premises where the Equipment

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is or may be stored to inspect, or, where the Customer's right to possession has terminated, to recover the Equipment in which title has not passed.

3.6 In respect of Service Equipment sold to the Customer, title to Service Equipment, shall only pass to the Customer when We have received in full, in cleared funds, all such sums due in respect of the applicable Equipment.

3.7 Delivery of the Equipment will be deemed to have taken place when the Customer either collects the Equipment from Us or when the Equipment is delivered to the Customers registered address, or such other address or Site as detailed on the Order.

## 4 WARRANTY

4.1 We warrant that the Service Equipment will be in good working order at the time of Delivery and will be free from defects in materials and workmanship for a period of 12 months from the date of Delivery.

4.2 The Customer acknowledges that We are not the manufacturer of the Equipment, and accordingly, if any Equipment is proved to the reasonable satisfaction of Us to be defective in material or workmanship and the Equipment is returned to Us within 14 days of its Delivery, then at Millgate's sole option, it will:

- a) repair and/or replace the Equipment; or
- b) substitute equivalent goods; or
- c) credit the Customer in respect of any such Equipment.

4.3 Where We replace Equipment or provide substitute goods, the original Equipment returned by the Customer will belong to Us.

4.4 The obligations in respect of Warranty contained within this clause 4 (Warranty), shall not apply to the extent that:

- a) the Equipment has been altered in any way whatsoever or has been subjected to misuse or unauthorised repair; or
- b) the Equipment has been improperly installed or connected (unless We (or its third party) carried out such installation and connection); or
- c) the Customer has failed to observe any reasonable maintenance requirements or failure to follow written instructions relating to the Service Equipment; or
- d) the Equipment has been expressly sold on a "no warranty" or 'reduced warranty' basis; or

e) defects arising from fair wear and tear.

4.5 Save as provided in this Agreement, We hereby exclude all conditions, warranties and stipulations express or implied, statutory, customary, or otherwise to the extent allowable at law, including fitness for a particular purpose.

## 5 CHARGES AND PAYMENT

5.1 We reserve the right to make variations and additions to the Call Tariffs, as and when We deem appropriate or as instructed to make such changes by OFCOM. Notification of changes will be provided with at least 7 days' notice in writing.

5.2 We reserve the right to charge the Customer for any Additional Work that is requested by the Customer once the Service has commenced. Where such work can be completed remotely, We shall charge the Customer £49.00 + VAT per 30-minute period of time incurred. Where such Additional Work requires onsite attendance We shall provide a quotation to the Customer on an ad-hoc basis subject to a minimum charge of £199.00 plus VAT. We shall not commence, and the Customer shall not be liable to pay for, any Additional Work unless the Customer has expressly instructed Us to commence such work and has expressly agreed the additional Charges (a verbally recorded phone call or email shall be an acceptable form of notice).

5.3 The Customer shall pay all Charges for Services which (where applicable) will be calculated in accordance with the applicable Order by the Due Date.

5.4 Where applicable, We may off-set any amounts we owe to the Customer against any amounts owed by the Customer to Us under this Agreement.

5.5 In the event that payment is not made by the Due Date, then We may, at Our sole discretion, apply interest to the applicable outstanding sums, of 5% per annum above the base rate of the Bank of England from time to time in force, calculated daily from the Due Date, until payment is received. A debt collection agency may be instructed to act on our behalf in cases of non-payment of invoices and in this case additional costs may be incurred for which you shall be liable in addition to the principal debt. In the event that we commence court proceedings to recover any debt owed to us pursuant to this Agreement, you may be also liable for court fees and solicitors costs (as the case may be).

5.6 All Charges payable under this Agreement shall be calculated by reference to data recorded or logged by Us and/or associates and not by reference to data recorded or

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logged by Customer. Invoices will be presented in Millgate's standard format.

5.7 Unless otherwise agreed, or expressly stated in the Order, We will invoice the Charges in pounds (£) sterling as follows:

a) Non-Recurring Charges will be invoiced on signature of the Order;

b) Recurring Charges will be invoiced monthly in advance;

c) Usage Charges will be invoiced monthly in arrears, calculated in accordance with the Order during the Minimum Term and subsequently at the Millgate prevailing rates. Other Charges (e.g., Early Termination Fees) will be invoiced in accordance with our standard payment terms.

5.8 We reserve the right to apply additional Charges to the Customer for:

a) investigating Customer reported Incidents where We find no Incident or that the Incident is not the responsibility of Us; or

b) restoring Service if the Service has been suspended.

5.9 Charges are detailed exclusive of all applicable taxes (including but not limited to value-added, sales, use and excise taxes), customs duties, and regulatory and other fees or surcharges (together "Taxes"), relating to the provision of Services.

5.10 The Customer is liable for all such Taxes including those paid or payable by Us that under applicable law are permitted to be passed on by Us to the Customer.

5.11 In the event that payment of any amount of the Charges becomes subject to withholding tax, deduction, levy or similar payment obligation on sums due to Us, the Customer will indemnify Us for such additional amounts as are necessary in order that the net amounts received by Us after all deductions and withholdings shall be not less than what would have been received in the absence of any such requirement to make such deduction or withholding.

5.12 In the event that the Customer disputes an invoice, acting reasonably and in good faith, the Customer will promptly, but in no event later than fourteen (14) days from the date of invoice, notify Us in writing of such disputed invoice, together with all information relevant to the dispute.

5.13 The Customer must pay all undisputed amounts in accordance with clause 5.3 unless the disputed amount is less than 5% of the total invoice amount in which case the

total invoice amount shall be due and payable by the Due Date.

5.14 The parties shall endeavour to resolve any disputes in good faith and as soon as is practical, and any resolved amounts will be payable within fourteen (14) Working Days after resolution, should payment not be made within fourteen (14) Working Days after resolution, interest may be applied in accordance with the principles of clause 5.13 above.

5.15 Failure to pay an invoice (other than those amounts subject to a bona fide dispute in accordance with clause 5.12 above) by the Customer, may be treated as a material breach under the provisions of clause 9 (Termination)

5.16 For the avoidance of doubt, disputes shall be resolved in accordance with the provisions of clause 18 (Dispute Resolution).

5.17 In the event of non-payment by the Due Date, We reserve the right to:

a) restrict, suspend, or terminate provision of the relevant Service and We shall be released from its obligations under this Agreement with respect to such Service until any balance due is paid; and

b) recover any Equipment (in which Title has not passed in accordance with the provisions of clause 3 (Risk & Ownership Equipment)); and the Customer shall indemnify Us in respect of any such recovery Charges as may be specified in the applicable Order or as otherwise notified by Us to the Customer.

5.18 Where We suspend Services, the Customer will remain liable for payment of any applicable Charges during such period of suspension.

5.19 The Customer will not withhold payment due under an invoice for failure by Us to include the Customer references on the invoice.

5.20 Where payment is made by the Customer by any other means other than DDM a £10+VAT per month administration charge per Service type shall be made and added to the account each month.

5.21 The Customer acknowledges that the Customer may be subject to Millgate's credit vetting procedures and that We may, at any time, require the Customer to pay a Deposit or provide a guarantee as security for payment of future invoices. Where a Deposit payment is required, payment must be received within 5 Working Days of the acceptance of the Order. We shall not be liable for any losses (examples

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including but not limited to engineering rescheduling costs, carrier rescheduling costs, administration of date change costs, and costs for cancelled resource for both Us and any appointed third-party suppliers) suffered in event of a delay of such payment of the Deposit.

5.22 Any delay by Us in invoicing any Charges shall not prohibit Us from raising an invoice later in respect of the same nor shall it relieve the Customer of liability to pay the Charges.

5.23 The Customer may be required to pay a fee of £25.00 per instance for any cancelled, dishonoured or failed Direct Debits or cheques.

5.24 The Customer authorises Us to charge the Customer's debit/credit card, where details have been provided by the Customer, with an amount equal to the outstanding balance on the Customer's credit account, where the Customer has failed to pay the Company by the Due Date.

5.25 The Customer authorises Us to levy a service Charge of three percent (3%) where We are debiting the Customer's credit card account with any outstanding balance.

5.26 We reserve the right to increase Charges in respect of Service Equipment to reflect any increase in cost to Us which is due to any factor beyond Millgate's control (including without limitation) any foreign exchange fluctuation, currency regulation and alteration of duties) provided We give written notice to the Customer at any time.

5.27 In order to reflect industry wholesale (and other relevant) price increases We may amend the Charges (excluding the Call Tariffs) on giving you at least 30 days' notice in writing. However, this notice requirement does not apply to our right to charge you for going over your usage cap in line with our Fair Use Policy. Any increase in respect of the Service/s or Maintenance shall not exceed 5% of the total fees payable under this Agreement in any given year. Millgate Connect conduct an annual review of Service Charges with any changes taking affect 1<sup>st</sup> September subject to the required notice having been provided to Customers. This clause does not apply to Customers with less than 10 employees during the Minimum Term.

5.28 Within the provision of Internet Connectivity, any Excess Construction Charges imposed upon Us by the Licensed Operator will not form part of the standard installation costs. Excess Construction Charges will be indicated to the Customer ahead of installation and costs shall be agreed by the parties in writing before any work commences.

5.29 The provisions of clause 5 (Charges and Payment) are without prejudice to any rights of termination detailed within clause 9 (Termination).

## 6 CUSTOMER OBLIGATIONS & RESPONSIBILITIES

6.1 The Customer shall co-operate with Millgate (in each case as far as is necessary to enable Us to effectively carry out its obligations under this Agreement).

6.2 You must provide us with up-to-date contact details of at least one named representative (including email addresses) with whom we are authorised to deal, and promptly notify us of any change in these details. We rely on this information for various reasons including the transmission of Service renewal notices and other important information concerning the Services. You must update us promptly if your address changes.

6.3 Your Customer Status defined as the number of employees, volunteers or similar persons; must be provided on the Order Form and where applicable on our Credit Application Form, acting honestly and in good faith; your Customer Status will influence whether certain clauses of our General Terms and Conditions apply to you. You must update us promptly if your Customer Status changes.

6.4 Where we believe (acting reasonably) that you have inaccurately reported your Customer Status to us, we may ask you to provide information to substantiate your reported Customer Status. If we remain unsatisfied with your response (acting reasonably), we reserve the right to amend your Customer Status on our records accordingly and to apply the standard terms to you in view of that revised Customer Status. We will notify you in writing if we revise your Customer Status in this way. Any dispute that occurs in connection with this clause 6.4 will be handled in accordance with the dispute resolution process set out at clause 18.

6.5 The Customer shall:

- a) ensure that its employees, affiliates, or sub-contractors co-operate with Us and our employees;
- b) on receipt of notice from Us that the Service Equipment is available for Delivery, or agreed Services are ready to be deployed, the Customer shall promptly provide suitable access at the relevant premises and Sites or give acceptance to the commencement of Services so that We or its delivery agent can satisfy its obligations under this Agreement.
- c) ensure that all preparatory work, information, items, or consents required to receive the Services are completed, made available or obtained at the Customer's own cost in

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sufficient time to allow Us to complete its work and deliver the relevant Services;

d) Promptly furnish Us with such information (including without limitation IP addresses) and documentation as requested to enable the parties to comply with their respective obligations under this Agreement.

e) comply with Millgate's reasonable requests that are necessary for reasons of health and safety, environment, sustainability, security or quality or performance of any Services;

f) provide a suitable and safe working environment and take all reasonable steps to ensure the health and safety of Millgate employees, affiliates, agents, or sub-contractors (subject to such employees complying with any Customer health and safety policy or site regulation notified in writing by the Customer). We shall not be liable for any breach of this Agreement which arises because of conflict between any such policy or site regulation and this Agreement;

g) ensure that adequate electrical power is supplied to the Service Equipment and is near the Service Equipment;

h) store safely any telecoms Service Equipment and indemnify Us for the value of the Service Equipment in the event of theft, loss or damage however caused prior and post installation and until all title of Equipment passes to the Customer on full payment of all Charges, or until the Service Equipment is returned to Us at the end of this Agreement;

i) provide any openings in buildings, premises or Sites required to connect such Equipment or Services to appropriate telecommunications facilities;

j) provide internal cabling between the Equipment and any Customer equipment at its own expense, as appropriate;

k) take up or remove any fitted or fixed floor coverings, ceiling tiles and partition covers in time to allow Us to undertake any necessary installation or maintenance Services. It is also the customer's responsibility to carry out afterwards any work that may be required to make good any cosmetic damage caused during the installation or maintenance Services;

l) ensure that any floor loading limits will not be exceeded;

m) pay all Charges properly invoiced by Us;

6.6 The Customer shall remain responsible for:

(a) access and use of the Service by End Users;

(b) all Charges incurred in connection with the Service; and

(c) compliance with this Agreement by the Customer and Users.

6.7 If the Customer delays or fails to perform its obligations under this Clause 6 (Customer Obligations & Responsibilities), then We have the right to:

a) change the Delivery date or cancel the relevant Order(s) and charge the Customer for any applicable Early Termination Fees; or

b) invoice the Customer for any reasonable Charges incurred for any work that is performed by Us on behalf of the Customer and that is directly attributable to the Customer's failure to perform.

## Security Obligations

6.8 You must:

a) where provided keep your username, password, and other security information secure (and we may change these or request that you change these at any time when we consider it necessary for security purposes);

b) take reasonable steps in respect of matters in your control (in line with our instructions and advice) to minimise any risk of security breaches in connection with the Services;

c) notify us as soon as reasonably practicable of any unauthorised access to the Services;

6.9) The Customer agrees not to contravene this Agreement, or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission or use of the Services, cause Us or the Service Provider to contravene, any applicable Laws or General Conditions.

## 7 MILLGATE OBLIGATIONS & RESPONSIBILITIES

7.1 We will provide the contact details (either e-mail or telephone as appropriate) of designated contact points, which will be the Customer's contact points for placing orders, reporting Incidents, and making inquiries relating to the Service.

7.2 We will use reasonable endeavours to meet any dates or Service Levels but, unless otherwise expressly agreed within an Order, all timescales are estimates only.

7.3 We will comply with all reasonable health and safety rules and regulations and security requirements that apply at a Site that have been notified to Us in writing.

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7.4 We shall not be liable for any delay or impact to the Services arising out of Millgate's compliance with the provisions of clause 7.3 above.

7.5 Subject to providing such notice as is reasonably practicable in the circumstances, We may (or as applicable the Network Operator or Service Provider may):

a) in addition to any maintenance performed during regularly scheduled maintenance windows, carry out Emergency Maintenance from time to time.

b) suspend a Service in an event of emergency and/or to safeguard the integrity and security of the Network and/or repair or enhance the performance of the Network, or where required to do so on order, instruction or request of Government, a Service Provider, an emergency services organisation, a court of law, tribunal or other competent administrative or regulatory body, including but not limited to OFCOM;

c) for operational reasons, change the technical specification of the Service, provided that any such change does not materially decrease or impair performance of the Service; or

d) provide an alternative, equivalent service, where it becomes necessary to do so.

7.6 We will take reasonable precautions to prevent any unauthorised access by third parties to any part of the Network used to provide Services to the Customer but shall not be liable for any loss or damage sustained by the Customer in the event of any unauthorised access.

## 8 DURATION

8.1 Each Order shall be deemed to come into effect on the applicable Service Commencement Date and shall continue in full force and effect for the Minimum Term, except and to the extent the Order is terminated in accordance with the provisions of clause 9 (Termination). Where a Minimum Term has not been stated on the Order Form, a Minimum Term of 24 months will apply to each Service.

8.2 Subject always to clause 8.3 after the Minimum Term has expired, the Agreement for the relevant Service will automatically renew for Minimum Term of 12 months (and will do so on a repeating basis thereafter) except where you give us no less than 90 days' written notice to terminate before the expiry of the Minimum Term.

8.3 Clause 8.2 shall not apply where your Customer Status has been defined as a residential or small business customer

under Ofcom's General Conditions of Entitlement. Where you satisfy this definition, the following shall apply:

a) Where you give us express consent for the Agreement to renew, the Agreement will automatically renew for a further Minimum Term of 12 months; or

b) If you do not give us express consent for the Agreement to renew, the Agreement will continue unless it is terminated by either party not giving less than 90 days' written notice of termination to the other or unless this Agreement is terminated in accordance with clause 9 (Termination).

## 9 TERMINATION

9.1 Without prejudice to any other rights that may be available at any time, each party shall have the right to terminate this Agreement forthwith in the event that:

a) the other party commits a material breach of a term of this Agreement that is incapable of remedy; or that, if capable of remedy, the other party fails to remedy within five (5) Working Days of a written notice to do so;

b) the other party at any time has a court order made or resolution passed for winding it up or a petition is presented for an administration order to be made in relation to it or is otherwise insolvent or unable to pay its debts as they fall due; or

c) a supervisor, receiver, administrator, administrative receiver, or other encumbrancer takes possession of or is appointed over, or any distress, execution or other process is levied or enforced upon the whole or a substantial part of the assets of the other party.

d) either party is guilty of fraud or wilful default.

9.2 Either party may terminate this Agreement for convenience on 90 days' written notice at any time. Where termination shall affect any existing Order Minimum Term, Early Termination Charges shall apply.

9.3 Without prejudice to its other rights We shall have the right forthwith to terminate this Agreement by providing 7 days' notice in writing to the Customer in the event that:

a) the Customer fails to provide suitable access to the relevant premises or Sites for Us to effect Delivery and installation of the Service Equipment or Service within a period of 3 months from the date of receipt of notice that the Service Equipment or Service is available for Delivery pursuant to clause 6.5b;

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b) the Customer fails to provide the required information by telephone or email to allow Us to fulfil its obligations in respect of delivering the Service or Service Equipment within a period of 3 months from the signing of this Agreement pursuant to clause 6.5d;

c) the Customer arranges for the Service Equipment to be serviced by any party other than Us; or

d) the Customer misuses or abuses the Service Equipment.

9.4 We may terminate this Agreement (and all applicable Orders) if it is unable, for whatever reason, to provide the Services or if We or the applicable Service Provider is required to terminate this Agreement by a competent administrative or regulatory authority (including without limit OFCOM) and/or network operator or the Customer is in breach of the AUP.

9.5 Should this Agreement be terminated by Us in accordance with clause 9.1a), or where the Customer is in breach of this Agreement or the Customer opts to terminate this Agreement, We reserve the right to claim in addition to any Service/s and Maintenance fees payable for the remaining Minimum Term of this Agreement (Early Termination Charges), the sum equal to 30% of the average expected or invoiced monthly Call Charges for the period up to the date of termination multiplied by the number of months remaining of the Minimum Term. Should the Customer fail to pay any Early Termination cancellation charges within 10 days of the date of invoice We reserve the right to suspend your Services.

9.6 Where a Customer chooses to port their numbers away from Millgate there is an outbound port fee of £20 per number.

9.7 Without prejudice to the provision of clause 5 (Charges and Payment) in the event that any Charges are not paid by the applicable Due Date, then We shall notify the Customer in writing that such sums are overdue. If such sums are not paid within 7 days of such notice, then without prejudice to any other rights or remedies, We shall be entitled to commence with suspending or terminating the Services.

9.8 Any termination of this Agreement shall be without prejudice to the rights of the parties accrued up to the date of such termination.

9.9 Clauses 3,11, 12.3 and 12.5 of this Agreement shall survive its termination for any reason whatsoever.

## 10 LIMITATION OF LIABILITY

10.1 Each party's maximum aggregate liability (excluding any liability to pay any Charges under this Agreement) will be limited to the greater of £10,000 (ten thousand pounds) or 100% of the total Charges paid or payable in the 12 months prior to the applicable breach in respect of the Order to which the alleged breach relates.

10.2 All warranties and conditions whether express or implied by statute, common law or otherwise in relation to the provision of the Services are hereby excluded to the fullest extent permitted by law.

10.3 The exclusions and limitations of liability set out in this Agreement will not apply to restrict either Party's liability:

a) for death or personal injury resulting from that Party's negligence; or

b) for fraud; or

c) in respect of the payment of any amounts that are due and payable in accordance with the terms of this Agreement; or

d) for any other liability which cannot be excluded or restricted by law.

10.4 Neither Party will, in an action based on breach of contract, be liable to the other for:

a) loss of profit, business, contract, corruption, or loss of data; or

b) indirect, consequential, anticipated savings or indirect or special damages; arising from a breach of this Agreement (even if advised of the possibility of such losses arising).

10.5 Subject to clause 10.3, and to the extent permitted by law, We exclude all liability to the Customer for any costs claims or demands arising from any delay in the provision of, or any defect or interruption in the supply of the Services and/or Equipment.

10.6 In no event shall We be liable for the act or omissions of the Customer, Network Operator or Service Provider, including but not limited to a failure of the Network Operator or Service Provider to provide connectivity or availability of the Services.

10.7 In the event of any shortcoming in the Service(s) and the Customer elects to divert traffic to another Service Provider, We will not be responsible for that provider's fees or charges.

10.8 We shall have the right to recover all reasonable costs incurred in investigation or remedying any fault with the



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Service or Service Equipment where it is caused by the Customers negligence or default or where the Incident does not lie with the Service or Service Equipment.

10.9 The Customer shall indemnify Us against any claims or legal proceedings which are brought against Us or its sub-contractors where the Service is found to have been used in breach of the restrictions set out in Clause 2.

10.10 The provisions of this clause 10 will survive expiry or termination (as appropriate) of this Agreement.

## 11 CONFIDENTIALITY

11.1 Each party agrees to keep confidential all information of a confidential nature (including information relating to any and all Network Operator's or Service Providers or the other party's affairs or business) and all information given in circumstances giving rise to an obligation of confidence (in each case whether or not such information is marked "Confidential") obtained by it under or in connection with this Agreement.

11.2 Neither party shall use or disclose to any third party such information or any part of it (except to the extent strictly necessary for the performance by it of its obligations under this Agreement) without the prior written consent of the other party.

11.3 The restrictions in this clause 11 (Confidentiality) shall not apply to a party in relation to information which:

- a) is in the public domain otherwise than by breach of this Agreement;
- b) was previously in the possession of that party and which was not acquired in confidence directly or indirectly from the other party or the relevant Network Operator or Service Provider;
- c) is lawfully obtained by it from a third party who is free to disclose it otherwise than in confidence;
- d) a party is obliged to disclose by operation of law or by any regulatory authority (including, but without limitation, OFCOM); or
- e) is independently developed by the receiving party, which independent development can be shown by written evidence.

11.4 Where disclosure of information to a third party (including but not limited to a party's employees, affiliates, agents and sub-contractors) is necessary for the performance by a party of its obligations under this Agreement, that party shall prior to such disclosure ensure that such persons know

of the provisions of this clause 11 (Confidentiality) and have agreed to abide by them and, if required by the other party, obtain duly binding undertakings to this effect from such third party in favour of the other party.

11.5 The obligations contained in this clause 11 (Confidentiality) shall continue in force for a period of 3 years following the termination of this Agreement.

## 12 INTELLECTUAL PROPERTY

12.1 All legal and beneficial Intellectual Property rights, whether registered or unregistered, including all copyrights, database rights, trademarks, patents, service marks, trade secrets and know-how, in whatever form in the Services shall remain at all times the property of Millgate or the property of its licensor.

12.2 To the extent that it is so entitled, We grant the Customer a non-exclusive non-transferable licence to use such Intellectual Property rights for the sole purpose of using the Services. The Customer shall not reproduce any software provided by Us. The Customer shall not modify, adapt, translate, reverse engineer, or disassemble the software.

12.3 Copyright, database rights and any other relevant Intellectual Property rights in all documents, material, drawings, and information in whatever form, including if applicable any access or source codes supplied to the Customer in connection with this Agreement, shall remain vested in Us or the owner of the rights. Such documents, material, drawings, and information are confidential and shall not be copied, disclosed, or used (except for the purpose for which they were supplied) without the prior written consent of Us.

12.4 Neither party may use the other party's marks in any advertising or publicity without first obtaining the other party's written approval to do so. Unless the approval indicates otherwise, permission to use a party's marks will last only for the duration of this Agreement.

12.5 Upon termination for whatever reason of the Services in respect of which any Intellectual Property licence or right of use is granted under this clause 12 (Intellectual Property), that licence or right of use shall terminate immediately and the Customer shall, as specified by Us, immediately return to Us or destroy all copies of any documents, material, drawings and information in the Customer's possession or control which describe or contain the relevant Intellectual Property and are not in the public domain which have been received directly or indirectly from Us.

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## 13 DATA PROTECTION AND GDPR

13.1 The parties agree to adhere to all applicable data protection and GDPR laws in relation to the Services and transfer of any data applicable under this Agreement. Full details of these policies can be found on our website; [www.millgate.co.uk](http://www.millgate.co.uk)

## 14 CALL MONITORING

14.1 The Customer agrees that We may monitor and record calls, between Us and the Customer's respective employees, affiliates and/or sub-contractors, for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees, affiliates, and sub-contractors aware of the rights reserved by Us under this clause.

## 15 SERVICE LEVEL

15.1 In providing the Services, we shall use the reasonable skill and care that may be expected from a competent communications provider and shall take steps to ensure the Services are fault free and uninterrupted so far as is reasonably practicable.

15.2. However, it is not a condition of the Agreement, nor do we warrant or guarantee that the Services will be uninterrupted, secure or error-free.

15.3 The Customer accepts and acknowledges We rely on third parties to deliver telephone calls and other communications associated with the Services. The performance of such third parties and their equipment is a matter beyond our reasonable control.

15.4 Where an Annex expressly states that a service level agreement (SLA) applies in respect of the Services, it will not constitute a breach of the Agreement if the Services fail to meet the specified levels and the only remedy available to you for that breach will be the payment of service credits specified in the relevant SLA.

15.5 We may have to suspend the Services for emergency repairs, maintenance or improvement without prior notice. If we do so, we will restore them as quickly as reasonably practicable.

15.6 Unless otherwise stated We aim to meet a 6-hr target response time based on the Working Day hours to Incidents raised to Millgate Connect Client Services Team. The Customer understands and accepts that at times it may be necessary to extend the timescales due to the complexity of

the Incident or where We or the Service Provider is dependent on a third party for resolution of the Incident.

15.7 Where the Customer logs an Incident and We incur expenses arising from Customer error, abortive site visits or site visits during which the supplied Service is found not to be at fault, then any resulting expenses must be reimbursed by the Customer.

15.8 We require the Customer (or End User) to provide any information needed to help Us or its suppliers investigate a fault in connection with the Service or Service Equipment. This may require the Customer or third-party supplier responsible for the Customer Equipment to give Us detailed diagnostics from the Customer Equipment to assist with identifying any issues. Although We and its suppliers do not specify particular devices for Customer use, the Customer shall ensure that the relevant Customer Equipment meets the specification notified to the Customer by Us.

## 16 FORCE MAJEURE

Neither party will be under any liability to the other for damage, delay or any other matters of that nature whatsoever arising out of any failure by a third party supplier, war, rebellion, civil commotion, strikes, lock outs and industrial disputes, fire, explosion, earthquake, flood, drought, bad weather, epidemics and pandemics, or the requisitioning or other act or order by any Government department, council or other constituted body ('Force Majeure'), provided always that both parties will use all reasonable endeavours (but without obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.

## 17 ANTI-BRIBERY

17.1 The Customer shall procure that its officers, employees, affiliates, agents, sub-contractors, and any other persons who perform the Services for and on behalf of it in connection with this Agreement will;

a) comply with all applicable Anti-Bribery Laws and not cause Us to breach any Anti-Bribery Laws;

b) not offer, promise, give, request, agree to receive, receive, or accept a bribe or financial or other advantage or commit any corrupt act;

c) comply with Millgate's Ethics and Anti-bribery Policy as is notified to the Customer.

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## 18 DISPUTE RESOLUTION

18.1 Millgate Connect are committed to providing excellent service and we try to deal with all complaints and concerns fairly and within a reasonable period of time.

18.2 If you are dissatisfied with any aspect of our service, please contact us so we can investigate and do our utmost to resolve the issue. You can telephone Us on 0114 2427349 or write via email to [clientservices@millgate.co.uk](mailto:clientservices@millgate.co.uk). We aim to respond to all emails within 24 hours. Our support team will do their utmost to successfully resolve any problems at the point of first contact, but where this is not possible, we will agree a course of action with you.

- If you remain unhappy with the way in which your complaint has been handled in the first instance, you may refer the issue to the Connect Operations & Programme Manager.

- If the Connect Operations & Programme Manager is unable to resolve the issue to your satisfaction, you may escalate your concern to the Managing Director. In both cases, they will aim to respond to you in writing within two working days.

18.3 As part of investigating and addressing any complaint you make, we will inform you in writing about the outcome within 7 working days of the investigation ending.

18.4 In the unlikely event that your complaint has not been resolved by Millgate Connect to your satisfaction within a period of eight weeks, or if during the process of investigating your complaint you believe the situation has reached a deadlock, you may refer your complaint to the Communications Ombudsman for independent consideration. Where your complaint has not been resolved to your satisfaction within eight weeks or you notify us that you believe the situation has reached deadlock, we will send you an ADR letter explaining your right to refer your complaint to the Communications Ombudsman. The Communications Ombudsman will make an independent decision based entirely on the merits of the complaint.

18.5 More information on the Communications Ombudsman is available on their website [www.commsombudsman.org](http://www.commsombudsman.org), or you can write to them at the following address: Communications Ombudsman, P.O. Box 730, Warrington WA4 6WU. You can also call them Monday to Friday 8am - 8pm and Saturday 9am-1pm on 0330 4401614.

18.6 Nothing contained herein shall preclude either party from seeking equitable relief at any time in a court having jurisdiction under the terms of this Agreement.

## 19 NOTICES

19.1 Any notice given to one party by the other under this Agreement can be provided electronically, by hand or recorded delivery mail to the party to be notified at the address set out in the Order, or such other address as the addressee shall notify in accordance with the provisions of this clause.

19.2 Any such notice shall, in the absence of evidence of earlier receipt, be deemed to be given, in the case of recorded delivery mail, two (2) Working Days after dispatch. Notices given by hand shall be deemed given on delivery, and by email upon acknowledgement of receipt.

## 20 ASSIGNMENT

20.1 We reserve the right, at our sole discretion, to assign all or part of this Agreement at any time to any Affiliate, subject to providing the Customer prior written notice of such assignment.

20.2 Subject to the provisions of clause 20.1, any assignment by the Customer or Us to a third party requires the prior written consent of either the Customer or Us as applicable, such consent will not be unduly delayed or withheld.

20.3 We may subcontract the performance of any of its obligations under this Agreement. The Customer agrees and understands that it may need to interact directly with such third parties as directed by Us.

## 21 STATUS OF THE PARTIES

21.1 The Customer agrees that it shall not, in any correspondence or dealings, hold itself out or represent itself as being part of Us or any Network Operator, Service Provider or any subsidiaries, holding companies or subsidiaries of those holding companies or in legal partnership with, or as an employee, representative, or franchisee of, or party to a joint venture with, any of those parties. It agrees that, other than as expressly stated in this Agreement, it has no authority or power to bind, or to contract or negotiate in the name of, or to incur any debt or other obligation on behalf of, or to create any liability in respect of Us or the applicable Network Operator or Service Provider.

## 22 RIGHTS OF THIRD PARTIES

22.1 This Agreement does not create any right enforceable by any party who is not the Customer or Us under the Contracts (Rights of Third Parties) Act 1999.

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## 23 NON-SOLICITATION

23.1 The Customer shall not, without the prior written consent of Millgate, at any time from the date of an applicable Order to the expiry of 12 months after the termination or expiry of an applicable Order, actively solicit or entice away from Us, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of Millgate in the provision of the Services to the Customer. Any consent given by Us in accordance with this clause 23 (Non-Solicitation) shall be subject to the Customer paying to Us a sum equivalent to 10 per cent of the then current annual remuneration of Millgate employee or sub-contractor.

## 24 VARIATION

24.1 No variation of this Agreement shall be effective unless agreed in writing by nominated representatives of the parties.

## 25 SEVERABILITY

25.1 If any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired by that so long as the commercial purpose of this Agreement is still capable of being fulfilled.

## 26 GOVERNING LAW AND JURISDICTION

26.1 This Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the Laws of England and Wales.

## 27 ENTIRE AGREEMENT

27.1 This Agreement represents the entire understanding of the parties in respect of the subject matter contained herein, and shall be deemed to supersede all previous agreements, contracts or other representations or understandings in respect of the subject matter.

27.2 Each party acknowledges that in entering into this Agreement (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 Agreement or not) that is not set out in this Agreement, or the documents referred to in it.

27.3 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 agreement, or other assurance.

27.4 Nothing in this clause seeks to limit or exclude either party's liability for fraud and/or fraudulent misrepresentation.

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## APPENDIX 1

**DEFINITIONS** In this Agreement the following terms shall have the following meanings:

**Additional Work** means charges for extra work falling outside of the scope of the agreed Services detailed on the Order Form (e.g. changes to configuration or an add-on to services requested after the Commencement of the Service);

**Affiliate** means any legal entity controlling, controlled by, or under common control with a party, and "Affiliated" shall be construed accordingly;

**Agreement** means the Order Form, these General Terms and Conditions; and any relevant Annex;

**Annexe or Service Specific Annex** means additional terms which apply to a relevant Service and will be appended to the Order Form;

**Call Bundle** means the number of inclusive minutes per call destination, as set out in the Order Form;

**Call Charges** means the cost per call or calls as shown on your monthly Millgate Services invoice;

**Call Tariff** means the breakdown cost per call or per minute of a Call Charge per destination, as set out in the Order Form;

**Charges** means the Charges to be paid by the Customer to Millgate Connect Limited in respect of goods and services supplied upon the Customer's request (including but without limitation those charges set out in the Order Form) these can be Recurring or Non Recurring;

**Commencement Date** means the date of activation of the Services or we send you the relevant handover document;

**Confidential Information** means any commercial, financial, or technical information, information relating to the goods and services to be provide to the Customer, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to these General Terms and Conditions;

**Credit Application Form** means the document entitled "Credit Application Form", or any other such similar form provided by Us to the Customer for completion. The purpose of the Credit Application Form is to assess the Customer's ability to meet financial obligations and to establish credit terms for the provision of telecommunication services;

**Customer** means the Customer identified within the Order Form, and "you" or "your" shall be construed accordingly;

**Customer Equipment** means any equipment (including without limitation, any router, data switch, telecommunications apparatus, or system) owned or controlled by the Customer (or Customer's nominated third party supplier), but not including the Service Equipment;

**Customer Status** means whether you are classified as a Microenterprise or Small Enterprise Customer, or Non for Profit Customer organisation with less than 10 employees as defined under Ofcom's General Conditions of Entitlement. On the Order Form we denote these using Small (less than 10) or Large Business (over 10 employees) and is further referenced under clause 6.3;

**DDM** means a direct debit mandate for facilitating payment by Direct Debit;

**Delivery** means the Customer has taken possession or loan of the Equipment and/or Services by either collection by the Customer or Millgate delivering the Equipment and/or Services to the Site/s provided by the Customer;

**Deposit** means a payment required upfront, prior to any goods or services being provided;

**Director/Manager** means any Director or Manager of Millgate Connect or the Customer;

**Due Date** means 14 days from receipt of any invoice properly made under the Agreement or any applicable Order, unless a DDM is in place;

**Documentation** means any specifications, technical manuals, user instructions or other documentation supplied by Millgate;

**Early Termination Charge** means a charge we will impose on you for terminating a Service prior to the end of its Minimum Term. This will be calculated as the monthly Service Charge/s multiplied by the number of months remaining on the Minimum Term, plus any Call Charges as defined in clause 9.5 and any additional charges as calculated in accordance with the provisions of this Agreement;

**Emergency Maintenance:** The Service Provider may interrupt the Service to conduct emergency maintenance to the Service Provider Network in order to maintain appropriate levels of service quality and to provide where possible minimum impact to the Service. In cases of emergency maintenance, it may not be possible for Millgate to provide advance notification to the Customer;

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**End User** means the Customer, employee, affiliate, sub-contract, the individual using the Service;

**Equipment** means equipment purchased or Leased by the Customer, and provided by or on behalf of Millgate to the Customer in connection with this Agreement. Also referred to as goods;

**Equipment Supplier** means the relevant supplier for the Service Equipment;

**Excess Construction Charge (ECC)** means additional charges beyond reasonable standard charges detailed to Millgate by the Licensed Operator to provide the Service to a Customer premises;

**Fair Usage Policy** Millgate Connect has a fair usage policy to prevent excessive use of our bundled plans. Where a tariff includes "Unlimited" calls, only calls made to standard UK mobile (02, Vodafone, EE, 3G) and landline numbers whilst in the UK are included in this "Unlimited" calls allowance. UK Landlines include all calls to 01, 02 and 03 numbers. Non-geographic numbers are not included. The "Unlimited" calls allowance is subject to fair use policy of 2000 minutes per VoIP line connection or per cloud licence per monthly bill cycle;

**Hosted Telephony** means the service by which your phone system is accessed via the internet also referred to as VoIP;

**Internet Connectivity** means a method of connecting to the internet;

**Incident** means a failure of the Service to operate in accordance with its published specification;

**Incident Report** means notification of an Incident which is submitted by the Customer to Millgate;

**Intellectual Property** means any patent, copyright, registered design, trademark and any other industrial or intellectual property right in respect of the Services;

**Leased** means equipment provided to you on a contractual agreement for a specific period in exchange for set payments;

**Licensed Operator** means the telecommunications provider authorised by Ofcom;

**Maintenance** means cover for your telephone system to fix faults;

**Malware** means 'logic bomb', 'worms', 'viruses', 'trojans', 'spyware', 'adware' or any software or computer code having

the same or similar effect (those expressions having the meanings as they are generally understood within the computing industry)

**Millgate** means Millgate Connect Limited, 7 Vantage Drive, Tinsley, Sheffield, South Yorkshire, S9 1RG (08222474), referred to herein as "Millgate", "We", "Us" and "Our" and shall be construed accordingly;

**Millgate Services Invoice** means the monthly invoice by Millgate for service charges, call charges, and additional work;

**Minimum Term** means in relation to the relevant Order Form, the minimum period for which you commit to receive and pay for the Services in accordance with clause 8) Duration commencing either from Service Commencement Date or the point at which the Agreement is renewed in accordance with clause 8.2 or 8.3. Terminating your Agreement before the relevant Minimum Term has expired will result in you needing to pay us an Early Termination Charge

**Network** means the relevant Network Operator's electronic communications network made available by the Service Provider and can be referred to as the "Service Provider Network;"

**Network Operator** means the relevant operator of a communications network;

**Numbers** means any telephone number(s) provided by Service Provider or Millgate to the Customer under the Agreement;

**Number Portability** means the facility by which a client can transfer its telephone number(s) when switching from another supplier to Millgate and vice versa;

**Order/s** means a written request from the Customer, and accepted by Millgate, for the provision of Services from Millgate;

**Order Form** means the sales order for the provision of Service. Which, when accompanied by an Agreement duly signed by both parties, is contractually binding under these General Terms and Conditions;

**PSTN Line** means a analogue line supporting standard phones, fax machines and modems

**Service/s** means the provision of the services as detailed within the Order Form;

**Service Equipment** means the electronic communications equipment, including without limitation telephone handsets,

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routers, switches, or telephone system that Millgate may at time to time install at the Customers premises for the purposes of providing a service;

**Service Level** means the levels of service which are offered by Millgate Connect, this is a 6-hr target response time based on the Working Day hours, that We aim to respond and resolve an Incident by. Where additional or enhanced Service specific SLA's apply these will be detailed in the accompanying Annex to this Agreement.

**Service Provider** means the third-party provider who makes available the Network and associated services, on behalf of the Network Operator;

**Service Provider Literature** means the Millgate third party strategic partner;

**Site/s** means premises where Equipment may be held or where Services are to be provided.

**Termination Fee** means the payment due from the Customer at the point of termination,

**User** means any employee, affiliate, subcontractor of the Customer that is authorised to access and use the Service.

**VAT** means value added tax chargeable under the Value Added Tax Act 1994;

**Working Day** means 0900 to 1730, Monday to Friday, excluding English bank holidays.