



IDE Group Connect Limited  
Standard Terms and Conditions  
for the Supply of IT Services

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IDE Group Connect Limited  
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Registered Office: Napoleon House, Riseley Business Park, Riseley, Reading RG7 1NW  
Company Registered in England and Wales, Company Number 05237920

## 1. Definitions and Interpretation

1.1 In the Agreement unless the context otherwise requires:

**“Additional Charges”** means charges calculated in accordance with the Rate Card and chargeable on a time and material basis (or other basis set out in the Rate Card or agreed under the Change Control Procedure) for providing Additional Services and additional Deliverables;

**“Additional Services”** means a Service provided by IDE at the Customer's request which is not part of the Services specified in the relevant Order and for which an additional Charge may be levied by IDE;

**“Affiliate”** means in relation to a Party, an entity which is, from time to time, a subsidiary or a holding company, or a subsidiary of that Party's ultimate holding company the terms **“subsidiary”** and **“holding company”** having the meanings given to them in the Companies Act 2006;

**“Agreement”** means these T&C's for the Supply of IT Services inclusive of the relevant Schedules, Appendices and annexures to these T&C's inclusive of any Order signed by authorised representatives of the Parties entered into by the Parties subject to the terms set out in these T&C's;

**“Appendix”** means a document described as an appendix to these T&C's or any Order providing a further specification or description of any aspect of the Service that has been agreed by the Parties;

**“Applicable Laws”** means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which generally apply to IDE's business in the provision of the Services;

**“Background IPR”** means any and all Intellectual Property Rights in pre-existing material that are used by IDE in relation to the Deliverables and/or the Services, or delivered to the Customer in relation to the Deliverables and/or the Services and which is not Developed IPR;

**“Business Day”** means a day, other than Saturday or Sunday, on which banks are open for business in London;

**“Business Hours”** means the time between 09:00 – 17:30 on a Business Day;

**“Change Control Procedure”** means the procedure set out in Clause 12.3;

**“Charges”** means the charges for the Services and Deliverables as specified in the relevant Order;

**“Commencement Date”** means the date agreed between the Parties and documented in the relevant Order on which the Parties obligations as set out in that Order shall commence;

**“Confidential Information”** means all information or data (in whatever medium including in written, oral, visual or electronic form) which by its nature or content is identifiable as confidential and/or proprietary to the disclosing Party and/or any third party or disclosed by or on behalf of a Party to the other or otherwise received by the other in the negotiation, entering into and performance of this Agreement, which is expressly marked as confidential or which concerns the technology, know how, methodology of supply, business, developments and finances of that Party and any of its Affiliates or of the suppliers, customers or clients of that Party. Confidential Information shall include but not be limited to:

- i) information relating to the disclosing Party's strategic objectives and planning for both its existing and future Information Technology needs;
- ii) information relating to the disclosing Party's business activities, business relationships, products, services, clients and staff;
- iii) information contained in or constituting the disclosing Party's equipment or Software, including third party products, and associated material documentation;
- iv) the disclosing Party's technical, scientific, commercial, financial and market information and trade secrets;
- v) the disclosing Party's data concerning its business relationships, architectural information, demonstrations, processes and machinery;
- vi) intellectual property that is proprietary to the disclosing Party or that is proprietary to a third party and in respect of which the disclosing Party has rights of use or possession;
- vii) the disclosing Party's plans, designs, drawings, functional and technical requirements and specifications;
- viii) information concerning faults or defects in the disclosing Party's systems, equipment and/or Software or the incidence of such faults or defects;

**“Credits”** means the percentage of the monthly fee entitled to be levied by the Customer on IDE for failing to meet any agreed Service Levels as more particularly described in the relevant Schedule and Credits or Service Credits shall be construed accordingly;

**“Customer”** means the company or legal entity that entered into the Agreement with IDE for IDE to supply the IT Services described in the relevant Order;

**“Customer’s Manager”** means the Customer’s manager that shall serve as the Customer’s nominated representative with and to whom IDE shall communicate, when required, all relevant information pertaining to the Agreement;

**“Data”** means all and any Customer information including business information, data supplied to IDE by, or on behalf of, the Customer or its Affiliates or generated by IDE from any such data;

**“Data Controller”** has the meaning set out in the Data Protection Legislation;

**“Data Processor”** has the meaning set out in the Data Protection Legislation;

**“Data Protection Legislation”** means up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

**“Data Subject”** has the meaning set out in the Data Protection Legislation;

**“Deliverable”** means any know-how, hardware, document, computer disks or other data storage media, records, software, plans, prototypes and any other items (whether or not similar to the foregoing) or other works created or supplied or to be created or supplied by IDE (whether alone or jointly) in the course of providing the Services;

**“Developed IPR”** means Intellectual Property Rights in any Deliverables created by IDE (or by a third party on behalf of IDE) specifically and exclusively for the purposes of this Agreement;

**“Dispute Resolution Procedure”** means the procedure set out in Clause 24;

**“Documentation”** means all documentation necessary for the recording of Products procured and/or Services rendered and prepared in relation to the supply of Products and/or rendering of the Services;

**“End of Life Equipment”** means Equipment or Software which is no longer supported by the Vendor thereof and shall be supported by IDE on a reasonable endeavours basis only;

**“Equipment”** means hardware computer products together with the relevant documentation described in the relevant Order;

**“Expert”** means a person appointed in accordance with these T&C’s to resolve certain matters as specified in the Agreement;

**“Force Majeure”** means any cause beyond the reasonable control of a Party which affects the performance by a Party of its obligations under this Agreement, including (insofar as beyond such reasonable control) acts of God, war, riots, insurrection, embargoes, strikes outside a Party’s direct control, fire, floods, epidemics, tempest or terrorism but excluding any failure of a Party’s or its Sub-contractors’ supply chain;

**“GBP”** or **“£”** means pound sterling, the official currency of the United Kingdom;

**“GDPR”** means General Data Protection Regulation ((EU) 2016/679);

**“Good Industry Practice”** means in relation to any undertaking the exercise of the level of skill, care, planning, supervision, diligence, prudence, control, foresight and judgement as can reasonably be expected from a skilled and experienced person engaged in the same or similar type of undertaking under the same or similar circumstances;

**“IDE’s Manager”** means IDE’s manager that shall serve as IDE’s nominated representative with and to whom the Customer shall communicate, when required, all relevant information pertaining to the Agreement;

**“IDE”** shall mean IDE Group Connect Limited, a limited company registered in England and Wales (company number 05237920) whose registered address is at Napoleon House, Riseley Business Park, Riseley, Reading RG7 1NW;

**“IDE Software”** means proprietary Software owned by IDE or its affiliates and utilised in the provision of the Services;

**“Information Technology”** means all and any information technology products and services as those terms are generally defined within the information technology industry;

**“Intellectual Property Rights”** means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered), copyright, database rights and rights in trade and service marks (both registered and unregistered), together with all applications for, rights to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right;

**“Inventory”** means the list of Equipment set out in the relevant Order;

**“Licensor”** means the person granting a licence to Customer pursuant to a Licence Agreement;

**“Locations”** means the sites listed in the relevant Order where the Services shall be delivered and/ or provided to the Customer;

**“Losses”** means losses, liabilities, penalties, fines, costs, expenses (including reasonable legal costs) and damages suffered or incurred by a Party or any of its Affiliates under this Agreement as a result of the other Party’s breach of this Agreement, negligence or breach of statutory duty, but excluding for the avoidance of doubt any losses, liabilities, penalties, fines, costs, expenses and damages incurred as a result of a third party or as a result of the negligence, breach of statutory duty or breach of Agreement by the Party suffering the Losses or by any Affiliate, agent, employee or contractor of such Party or such Affiliate;

**“Order”** means a document which shall be in the format used by IDE in the ordinary course of business when issuing a Purchase Order, Statement of Work, Service Order Form, Quotation or Pricing Model when specifying a Service, Product or Project Plan to be provided by IDE to the Customer, and which the Parties agree to and which both Parties have signed to indicate its agreement to such document;

**“Party”** or **“Parties”** means a party to the Agreement or both parties to the Agreement as the circumstances may require;

**“Personal Data”** has the meaning set out in the Data Protection Legislation;

**“Products”** means Equipment and/or Software or other Information Technology products listed in an Order, to be procured by IDE and supplied to the Customer under the terms of the Agreement;

**“Project Plan”** means a document prepared by and agreed to by authorised signatories of the Parties and which describes an element of the delivery of the Service described in the Agreement and which shall be subject to these T&C’s;

**“Purchase Order”** means a commercial document and an official acceptance by the Customer of a Quotation issued by IDE, indicating types, quantities, and agreed prices for Products or Services, or an official offer issued by the Customer and accepted by IDE, indicating types, quantities, and agreed prices for Products or Services, which the Customer requires from IDE and which in conjunction with these T&C’s forms the Agreement between the Parties;

**“Quotation”** means a commercial document and shall usually be an official offer issued by IDE to the Customer (although in exceptional circumstances it can be issued by the Customer to IDE), indicating types, quantities, and agreed prices for Products or Services, which the Customer offers to deliver to

the Customer for the Customer to consider whether to accept or decline;

**“Rate Card”** means the agreed costs of Additional Services or Deliverables relating to Products, parts, materials, personnel, Software, Services and the like as set out in the relevant Order and/ or in operation and use by IDE at the relevant time;

**“Schedule”** means a schedule to these T&C’s or a schedule to an Order which shall apply to the Services provided under a relevant Order;

**“Security Policy”** means a document provided by IDE to the Customer that describes IDEs security policies and procedures. Including how IDE adheres to Payment Card Industry (“PCI”) data standards;

**“Service Order Form”** or **“SOF”** means a commercial document issued by IDE to the Customer in the course or ordinary business, which sets out types, quantities, and agreed prices for Products, Services or Projects to be provided by IDE to the Customer and which in conjunction with these T&C’s forms the Agreement between the Parties;

**“Services”** means the services to be provided to the Customer as described in the relevant Order and as further generically described in the Schedules;

**“Service Levels”** means those service levels set out in the relevant Order which describes the level of attainment which IDE shall reasonably endeavour to achieve in the provision of the Services;

**“Service Review”** means the mutually agreed upon review of the Service at such intervals as is documented in the relevant Order, and shall be attended by senior representatives of both Parties or by those representatives of the Parties as is documented in the relevant Order;

**“Site”** means the sites of IDE from which IDE shall deliver the Services and/ or utilise in the provision of the Services or as may be specified in the relevant Order;

**“Software”** means IDE’s Software and Third Party Software as specified in the relevant Order;

**“Software Documentation”** means all documents and other written material describing, explaining or assisting in the use of the relevant Software, including all user manuals;

**“Specifications”** means the specifications for the relevant Services and Deliverables to be provided to the Customer as stipulated in the relevant Order;

**“Statement of Work”** or **“SOW”** means a commercial document issued by IDE to the Customer in the ordinary course of business, which sets out types, quantities, and agreed prices for Products, Services or Projects to be provided by IDE to the

Customer and which in conjunction with these T&C's forms the Agreement between the Parties;

**"Sub-contractor"** means those sub-contractor/s of IDE as it may use in the ordinary course of its business or as may be specified in the relevant Order;

**"Term"** means the term set out in a relevant Order, inclusive of the Initial Period described in that Order;

**"Terms and Conditions"** or **"T&C's"** means the terms and conditions set out in the body of this document and which IDE may amend, change or replace from time to time;

**"Third Party Software"** means the third party software procured and supplied by IDE as specified in a relevant Order;

**"Third Party Software Agreement"** means the third party software agreement specified in a relevant Order;

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1 words importing the singular only shall include the plural and vice versa; words importing the whole shall be treated as including a reference to any part thereof;

1.2.2 reference to a **"person"** includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);

1.2.3 references to **"written"** or **"in writing"** include faxes, email and any non-transitory form of visible reproduction of words but not text messaging via mobile phone;

1.2.4 references to this Agreement or to any other document is a reference to this Agreement or that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;

1.2.5 references to Clauses and Sub-clauses are to the Clauses and Sub-clauses in these T&C's;

1.2.6 references to Annexures, Appendices and Schedules are to the annexures, appendices and schedules to these T&C's and/ or the relevant Order;

1.2.7 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

1.2.8 reference to the word **"include"** or **"including"** (or similar term) are not to be construed as implying any limitation and general words introduced by the word **"other"** (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;

1.2.9 headings used in these T&C's and any relevant Order, are for convenience only and shall not affect its construction or interpretation;

1.2.10 any reference to one gender shall include the other;

1.2.11 any reference to natural persons includes legal persons and vice versa;

1.2.12 if any provision in a definition is a substantive provision conferring rights or imposing duties on a Party, notwithstanding that it is only in the definition Clause, effect shall be given to it as if it were a substantive provision in the body of these T&C's;

1.2.13 where any number of days is prescribed, same shall be reckoned excluding the first and including the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

1.2.14 where figures are referred to in numerals and words, if there is a conflict between the two, the words shall prevail;

1.2.15 an expression defined in these T&C's shall bear the same meaning in the Schedules, Appendices, SLA's, Orders and Project Plans

which do not themselves contain a definition of that expression;

- 1.2.16 where any expression is defined within the context of any particular Clause in these T&C's, the expression so defined, unless it is clear from that Clause that the expression so defined has limited application to that Clause, shall bear the meaning ascribed to it for all purposes in these T&C's, notwithstanding that the expression has not been defined in this interpretation Clause;
- 1.2.17 any rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply;
- 1.2.18 if any provision of these T&C's requires the consent, approval or agreement of any Party, that Party may not act unreasonably in withholding any such consent, approval or agreement; and
- 1.2.19 references to "Customer" shall be deemed to include references to Affiliates to whom Services or Products are supplied under these T&C's (but so that Customer alone shall be responsible for the performance of all its obligations under these T&C's, notwithstanding that the Services or Products in question may be supplied to an Affiliate).

## **2. Order Process**

- 2.1 The Agreement governs the overall relationship of the Parties in relation to the Services and Deliverables provided by IDE to the Customer.
- 2.2 An Order shall not enter into force, be legally binding or have any other effect unless the Order has been signed by the authorised representatives of both Parties to it.

## **3. Order of Precedence**

- 3.1 For the purposes of the Agreement and the relationship between the Parties and in the event of any conflict or inconsistency arising between these T&C's, a Schedule, an Order, then the following order of precedence will be applied and the document higher in the order of precedence will prevail with

respect to such conflict or inconsistency and represent the overriding obligation on the parties:

- 3.1.1 the Order; and then
- 3.1.2 the main body of these T&C's; and then
- 3.1.3 the relevant remaining Schedules of these T&C's.

## **4. Whole Agreement**

- 4.1 These T&C's, together with all Schedules, Orders, exhibits and/or Project Plans, constitutes the whole and entire Agreement between the Parties with regard to the subject matter hereof and there have not been and there are no agreements, representations or warranties between the Parties other than those specifically set forth herein (but this shall not be taken as excluding liability for any fraudulent misrepresentation). These T&C's supersedes all previous agreements on the subject matter hereof.
- 4.2 Both Parties expressly acknowledge that the provisions of this Clause satisfy the requirements of reasonableness specified in the Unfair Contract Terms Act 1977 and or any statutory modifications thereof and that both Parties shall be unable to claim the contrary at any future date in the event of any dispute with the either Party.

## **5. Commencement and Duration**

- 5.1 Each Order shall be deemed to have commenced on the Commencement Date and subject to earlier termination in accordance with Clause 19, shall continue in force until terminated by either Party giving the other Party not less than ninety (90) days' notice. For the avoidance of doubt such termination notice shall not take effect before the end of the Initial Period stipulated in such Order and after the Initial Period it shall not take effect before the end of every subsequent renewal period.
- 5.2 With effect from the Commencement Date, the Customer hereby appoints IDE as the provider and supplier of Products and Services, identified in the relevant Order. The Customer and those Affiliates of the Customer who carry on business or operations from the Locations, upon the terms and conditions of these T&C's. IDE hereby accepts such appointment.

## **6. Purchase and Licensing of Products**

- 6.1 Customer may purchase Products from IDE pursuant to these T&C's, upon the terms and conditions of

these T&C's and any Order signed by both Parties. In the event of any such purchase, any terms and conditions appearing in any Customer documents or orders shall be superseded by the terms and conditions set out in these T&C's or the relevant Order.

6.2 If Software is required by Customer, Customer shall enter into licences to use Software, by either:

6.2.1 signing a Licence Agreement (as designated by IDE) with IDE or the Licensor and shall be liable to pay the necessary licence fees and/or charges; or

6.2.2 where permitted by Licensor, accept a licence which is deemed to have been granted by a Licensor and accepted by Customer upon the compliance by Customer with specified terms and conditions.

6.3 All Software licensed for use by Customer shall be subject to the terms and conditions of the Licence Agreement signed or deemed to have been accepted by Customer in relation to the specific Software.

## 7. The Services

7.1 IDE shall provide the Services with reasonable skill and care and in accordance with these T&C's, its Schedules, the relevant Order and the schedules to such Order, Applicable Laws and Good Industry Practice.

7.2 IDE is not authorised to carry out work for the Customer which is not the subject of a properly executed Order. However, if IDE carries out any work at the Customer's express request in writing which is not the subject of an Order the provisions of these T&C's will apply to the work undertaken unless otherwise agreed in writing and such work shall be charged on a time and materials basis calculated in accordance with IDE's Rate Card.

7.3 The Services are provided at the Customer's request and the Customer accepts that it is responsible for verifying that the requirements set out in the Schedules to these T&C's and/ or the relevant Order for the Services are suitable for its own needs.

7.4 Notwithstanding the provisions set out in Clause 7.3, IDE accepts that it has a duty of care to advise the Customer of any requirements, risks or potential issues in the performance of the Services as specified by the Customer, and recommend mitigating actions

or resolutions to those issues. If IDE perceives there are gaps in the Services as requested by the Customer, IDE is responsible for making the Customer aware of these gaps.

7.5 Unless otherwise specified in an Order, time shall not be of the essence for the performance of the Services but IDE will use all reasonable endeavours to adhere to any timescales agreed between the Parties.

7.6 In the event of there being any deficiency or failure in the supply by IDE of any Services the Customer will allow IDE a reasonable time period within which IDE must correct such deficiency or failure at IDE's cost.

7.7 In performing its obligations under these T&C's and any Order, IDE and its personnel shall:

7.7.1 comply with all applicable anti-bribery and anti-corruption laws and regulations (which shall include (without limitation) the UK Bribery Act 2010) (collectively, the "**Anti-bribery Laws**");

7.7.2 not offer any bribe or facilitate payment to any public official or other person; and

7.7.3 not do anything that may cause the Customer, or any of its Affiliates to breach an Anti-bribery Law.

7.8 IDE will provide the Services to Customer at or in relation to Customer's and its Affiliates' businesses carried on from the Locations.

7.9 The Parties shall follow the requirements and procedures detailed in the relevant Schedules for all Services to be ordered and provided in terms of these T&C's.

7.10 The Services shall be provided in respect of Customer's and its Affiliates' Equipment listed in the Inventory. Any change by the Customer and/ or its Affiliates to the Equipment may only be made on Notice to IDE and IDE shall be entitled to adjust the Charges payable by the Customer, accordingly and IDE shall provide the Services in respect of all such Equipment provided that:

7.10.1 Any new Equipment shall be deemed to have been added to IDE's copy of the Inventory within 45 (forty-five) days of Customer notifying IDE of such Equipment;

7.10.2 IDE shall use reasonable endeavours to provide the Services in respect of End of Life Equipment, but the SLA and Service Level

commitments given in these T&C's shall not apply to such Equipment;

7.10.3 Customer shall not remove Equipment from the Inventory except in circumstances where the Equipment is End of Life Equipment or is otherwise being replaced or upgraded.

7.10.4 The Customer shall not receive any reduction in support Charges for Equipment removed from the Inventory.

## **8. Service Levels, SLA's**

8.1 The Schedules and/or relevant Orders may contain qualitative and quantitative levels of performance ("Service Levels") for certain specified Services. With respect to each Service which has an associated Service Level, IDE shall provide such Service throughout the Term in a manner that meets the associated Service Level.

8.2 IDE shall procure that Sub-contractors undertake to comply with this Clause 8 insofar as same concerns those Services provided by such Sub-contractors.

8.3 As part of the Services, throughout the Term, IDE shall measure and monitor its performance of the Services and compare such performance to that required by the Schedules and/or the relevant Order.

## **9. Representations and Undertakings**

9.1 IDE represents and undertakes that it shall at all relevant times:

9.1.1 use staff with suitable training, education, experience and skill to perform the Services;

9.1.2 have good title to or will procure good title to the Equipment supplied and have the right to sell all Equipment supplied;

9.1.3 provide the Services with promptness and diligence and in a workmanlike manner;

9.1.4 have all the necessary licences, certificates, authorisations and consents required under the laws of the Locations in which the Services are provided, for the provision of the Services to Customer;

9.1.5 comply with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services;

9.1.6 ensure that the supply of all Products and the provision of all Services under these T&C's do not infringe or constitute an infringement or misappropriation of any intellectual property or other proprietary rights of any third party;

9.1.7 use all reasonable endeavours not to introduce any computer virus or other contamination, whether knowingly or not, onto any of Customer's equipment or systems; and

9.1.8 comply with all applicable health and safety and physical and data security regulations guidelines policies and procedures when on any Customer Location or when given access to any Customer IT systems or facilities, where such Customer regulations, guidelines, policies and procedures have previously been made known to IDE.

9.2 Customer undertakes and represents that:

9.2.1 it is the owner of or has all necessary licences, certificates, authorities and consents in respect of Customer Proprietary Software and other intellectual property rights required for the purposes of enabling IDE to provide all Services under these T&C's;

9.2.2 Customer software and other Intellectual Property Rights referred to in Clause 9.2.1 do not infringe or constitute an infringement or misappropriation of any intellectual property right or other proprietary rights of any third party; and

9.2.3 it will use all reasonable endeavours not to introduce any computer virus or other contamination, whether knowingly or not, onto any of IDE's equipment or systems.

## **10. Supplier and Customer Obligations**

10.1 IDE shall:

10.1.1 provide the Services in accordance with the description and specifications and the terms and conditions of these T&C's and the relevant Orders;

10.1.2 provide the Services in accordance with all Applicable Laws, regulations guidelines and



- to such professional standards as are customary in IDE's industry;
- 10.1.3 undertake the Services in an efficient and effective manner in order to complete the activities set out in the relevant Order;
- 10.1.4 ensure that its personnel comply with the Customer's policies while they are at the Location/s.
- 10.1.5 take all necessary and prudent steps to ensure that the performance of the Services will not:
- (a) endanger the health or safety of any person; or
  - (b) damage any property, plant, equipment and facilities belonging to the Customer and/or its Affiliates or employees, and
- 10.1.6 notify the Customer as soon as it becomes aware of any such health and safety hazards or issues which arise in relation to the Services; and
- 10.1.7 co-operate with the Customer in all matters relating to the Services and keep the Customer informed of the progress of the Services on a regular basis and in a timely manner as specified in the relevant Order.
- 10.2 The Customer shall:
- 10.2.1 co-operate with and consult fully with IDE, at its reasonable request, to enable IDE to fulfil its obligations under the Agreement and shall promptly provide (to IDE) all information relevant to the Services;
- 10.2.2 if the Customer or its Affiliate or any of its or their officers, agents, employees or contractors shall fail to perform its or their obligations under the Agreement, IDE shall be deemed not to be in breach of the Order and these T&C's to the extent that the Customer's failure (or that of any of its Affiliates, or the Customer's or Affiliates' employees, officers or contractors) contributed to any breach by IDE and IDE shall be entitled to additional time to perform those obligations which were so delayed taking into account the amount of any delay caused by the Customer or it's Affiliates or its or their employees, officers or contractors;
- 10.2.3 the Customer shall on reasonable notice provide access to the personnel of IDE to the Locations and facilities during normal working hours or as is reasonably requested or as may reasonably be required in order to provide the Services;
- 10.2.4 provide IDE with any information, data, documentation and/or information (including Confidential Information), which IDE determines to be reasonably required for the efficient and effective provision of the Services in a timely manner;
- 10.2.5 ensure that the information which the Customer furnishes to IDE is accurate, complete, non-infringing and in compliance with any information, disclosure or requirements which are imposed upon the Customer as a result of any Applicable Law, regulation, directive or guideline;
- 10.2.6 inform IDE of all health and safety rules and regulations and any other reasonable security requirements that apply at the Location;
- 10.2.7 be solely responsible for and shall provide (or procure the provision of) all Customer responsibilities; and
- 10.2.8 hereby give IDE the same undertakings and representations in respect of Customer responsibilities and the provision thereof by or on behalf of Customer as are referred to in Clause 9.1.
- 10.3 If Customer fails to provide any Customer responsibilities in a manner which is consistent with Customer's representations and undertakings referred to in Clause 10.2.8, and/or in compliance with any service levels applicable thereto, and as a result thereof the provision of any Services is adversely affected, then without prejudice to IDE's rights in terms of Clause 19, Customer's failure shall be construed as an excused performance problem in relation to those Services which are adversely affected for the duration of Customer's failure.
- 10.4 Each Party shall be responsible for the acts and omissions of its Affiliates and Sub-contractors.

10.5 Each Party shall co-operate fully with the other in undertaking a Service Review.

## 11. Contract Management

11.1 The Managers of each Party shall meet at such time, location and at such intervals as agreed in the relevant Order to discuss the progress of the Service provision by IDE.

11.2 At the meetings (described in Clause 11.1), the representatives shall discuss any issues which may arise relating to the performance of either Party's obligations under the Order including any commercial and financial issues arising from the progress of the Order. The issues arising in such meetings shall be documented in a brief report and circulated to both Parties. Such reports shall be deemed to be part of the Confidential Information.

## 12. Change Control

12.1 From time to time IDE or Customer may propose changes in or additions to the Locations, Services or other aspects of the relevant Order. Subject to Clause 7.2, no such changes or additions shall be effective or binding on the Parties unless a written change order or change note (a "CCN") is signed by authorised representatives of both Parties.

12.2 All CCN's shall be implemented in accordance with the procedures set out in Clause 12.3.

12.3 Change Control Procedure.

12.3.1 Any requirement for any change to any Order ("**Change**") shall be subject to the Change Control Procedure below and shall indicate the classification of the Priority of Change and Changes will be prioritised as high, medium or low;

12.3.2 The Parties shall conduct discussions relating to any proposed Changes in good faith.

12.3.3 Subject to the Party required to make a Change not being out of pocket, neither Party shall unreasonably withhold its consent to any Change.

12.3.4 Until such time as a CCN has been signed by the Parties, IDE shall, continue to adhere to the relevant Order in accordance with the terms of the T&C's and the relevant Order.

12.3.5 In the event that the Parties are unable to agree to the actual sought Change, then IDE shall have final determination.

12.3.6 If Customer desires to propose a Change referred to in Clause 12.1, Customer shall deliver a written notice to IDE, describing the proposal and IDE shall respond to such proposal as promptly as is reasonably possible by preparing at IDE's expense, and delivering to Customer, a written proposal ("**Customer Proposal**"), which shall indicate:

- (a) the effect of the Customer Proposal, if any, on the amounts payable by Customer and the basis on which such effect was calculated;
- (b) the effect of the Customer Proposal, if any, on Service Levels with a full explanation reasonably acceptable to Customer;
- (c) the anticipated impact on resources of IDE with specific reference to capacity, risk and security;
- (d) the anticipated impact on planned capital expenditure for the provision of the Services, if any, including planned dates for replacement of assets and Equipment, and details of such Equipment;
- (e) the anticipated time schedule for implementing the proposal, including details of the exact deliverables in terms of the proposal and milestone dates.

12.3.7 If IDE desires to propose a Change or addition referred to in Clause 12.1, then IDE shall deliver a written notice to Customer, describing the proposal ("**IDE Proposal**"), which shall indicate:

- (a) the effect of the IDE Proposal, if any, on the amounts payable by Customer and the basis on which such effect was calculated;
- (b) the effect of the IDE Proposal, if any, on Service Levels with a full explanation reasonably acceptable to Customer;

- (c) the anticipated impact on resources of IDE, if any, with specific reference to capacity, risk and security;
  - (d) the anticipated impact on planned capital expenditure for the provision of the Services, if any, including planned dates for replacement of assets and Equipment, and details of such Equipment;
  - (e) the anticipated time schedule for implementing the proposal, including details of the exact deliverables in terms of the proposal and milestone dates.
- 12.4 On receipt of a Proposal the recipient shall have twenty one (21) days within which to accept or reject such Proposal, failing which the Proposal shall be regarded as accepted and shall become effective on the twenty second (22<sup>nd</sup>) day after receipt by the recipient of the Proposal, unless the Proposal stipulates a later date at which the Change shall become effective.
- 12.5 If the Customer accepts (in accordance with the provisions set out in Clause **Error! Reference source not found.** then the order set out in that Proposal, shall become a CCN and any changes in or additions to the Services described in the CCN shall thereafter be “**Services**”. Any other changes described in the CCN shall automatically amend the applicable Schedule and/ or the relevant Order and/or other aspect of these T&C’s, and the Parties shall make any further modifications to the applicable Schedule and/ or the relevant Order and/or these T&C’s to reflect the Change order.
- 12.6 Any discussions or communications required to implement Clause 12.3.6 and Clause 12.3.7 shall not bind the Parties unless documented in a signed CCN.
- 13. Charges and Payment Terms**
- 13.1 In consideration for the provision of the Services and Products, the Customer shall pay IDE the Charges in accordance with this Clause 0, the Schedules and the relevant Order. The Charges shall be paid in GBP, unless otherwise specified in the relevant Order.
- 13.2 Unless otherwise agreed IDE shall invoice the Charges to the Customer at the intervals specified in the relevant Order. In the case of Additional Services, IDE shall invoice the Customer once the Additional Services have been performed or as otherwise agreed with the Customer.
- 13.3 Save in the event of a bona fide dispute (of which the Customer must notify IDE within fifteen (15) Business Days of receipt of the applicable invoice for the dispute to have any bearing), all invoices shall be paid by the Customer within fourteen (14) days from the date of receipt of a correct and validly submitted invoice being issued by IDE.
- 13.4 Where there is a bona fide dispute in relation to an invoice or any part of it, the Customer shall pay all undisputed sums within such fourteen (14) days for payment.
- 13.5 In the event that any invoice is disputed by Customer, any payment withheld shall be limited to the disputed line item in question. Once the dispute has been resolved, the disputed line item amount shall become due within ten (10) days from the date of such resolution.
- 13.6 Any Service Credits accrued during any one calendar month shall be applied to the amount due to be invoiced for the next calendar month in relation to that part of the Service for which the Service Credits apply.
- 13.7 All payments shall be made by the Customer by an electronic transfer of funds to the bank account of IDE, to be notified in writing to the Customer from time to time.
- 13.8 Unless otherwise specified in the relevant Order, payment for Services shall be made without deduction or set off.
- 13.9 If the Services include a Service Level Agreement component, and such agreement includes Service Credits in the event of default on agreed Service Levels, then the Service Credit regime will be specified in the relevant Order that describes the scope and Service Levels, and the payment for those Services may be net of any deduction or set off for Service Credits.
- 13.10 All amounts payable under the relevant Order are stated exclusive of value added tax, which shall be payable (subject to the receipt of a valid VAT invoice)

- in addition to the principal amount at the rate and in the manner for the time being prescribed by law.
- 13.11 If the Customer terminates an Order in accordance with the provisions of that Order and/ or these T&C's after the initiation of the Services, then the Customer shall reimburse IDE for any reasonable costs already incurred by or any reasonable future expenditure to which IDE committed to with a third party in order to enable IDE to provide the Services and/ or Products to the Customer as required by the Agreement (as can be evidenced in writing by IDE) prior to the date of such Notice of termination and shall pay IDE on a pro-rated basis for any Services rendered up to the date of termination.
- 13.12 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay to IDE the bona fide undisputed sums on the due date, IDE may:
- 13.12.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of Royal Bank of Scotland until payment is made, whether before or after judgment; and/or
- 13.12.2 give written notice to the Customer that the Customer has failed to pay an undisputed sum due to IDE and if the Customer does not pay the undisputed sum within fourteen (14) days of the written notice then IDE may suspend all Services until payment has been made in full; and/or
- 13.12.3 terminate these T&C's (after serving fourteen (14) days' notice of breach) and all current Orders in respect of which payment has been delayed or not made.
- 13.13 The pricing or Charges shall be annexed to or be included in the relevant Orders in respect of Products and Services which are initially to be provided under these T&C's and shall determine IDE's charges and fees in relation to all Products supplied and/or Services during the first contract year. In the event that Products or Services in addition to those referred to in an applicable Order are to be provided, then the Rate Card of IDE shall apply in respect of the provision of such Products and/ or Services.
- 13.14 Subject to Clause 13.17, charges for Products will be invoiced in accordance with the applicable provisions of the relevant Order referred to in Clause 13.13 or if not so specified therein, will be invoiced on delivery of Products to Customer.
- 13.15 Subject to Clause 13.17, unless otherwise agreed to in the relevant Order, all invoices for Services will be issued to Customer annually in advance.
- 13.16 For the duration of the Term of the Order, IDE shall maintain records of and any relevant supporting Documentation in respect of any amounts billed to and payments made by Customer in terms of these T&C's and the relevant Order.
- 13.17 Unless Customer is obligated by the statutory laws of the territory in which the Products are supplied or Services are provided to make deductions or withholdings from payments due to IDE hereunder, all payments made by Customer under these T&C's (including any Order) shall be made without deduction of any taxes, withholdings or other charges or imposts of whatever nature or wherever or by whomsoever imposed.
- 13.18 At least one month prior to the end of the first and all subsequent contract years IDE shall provide a Notice to the Customer of the Charges applicable to the following contract year. Such changes shall take effect on the first day of the second and all subsequent contract years. In determining Charges for the following year, IDE shall have regard to the following factors:
- 13.18.1 changes to IDE's costs (charged by third parties) of providing the Services and Products;
- 13.18.2 the volumes of Services and Products ordered by, and supplied to, the Customer;
- 13.18.3 the price at which IDE supplies the Services and Products to comparable customers;
- 13.18.4 the price at which comparable products are supplied by other suppliers in the open market; and
- 13.18.5 any Deficit.
- 13.19 The Customer may reject the change in the Charges stipulated in the Notice received in accordance with Clause 13.18 and shall provide such rejection Notice to IDE within one (1) month of receiving the Notice contemplated in Clause 13.18. On receipt of such rejection Notice, IDE Shall be entitled to increase the Charges for the second contract year and all

subsequent contract years by the higher of five percent (5%) and the annual inflation rate of the UK's Retail Prices Index ("RPI"), as published by the UK Office for National Statistics on the date of the start of the second or any subsequent contract year.

- 13.20 In addition to the mechanism to change the Charges set out in Clause 13.18 and Clause 13.19, if increases in any of the costs charged by third parties to IDE or any of the costs incurred by IDE in the provision of the Services exceed ten percent (10%) over any consecutive three (3) month period, then IDE shall have the right to adjust the Charges to reflect that increase ("**Charges Adjustment**"). IDE shall give the Customer not less than one month's prior notice in writing of the proposed changes ("**Charges Adjustment Notice**"). If the Customer objects to the Charges Adjustment set out in the Charges Adjustment Notice, then the Customer may refer the matter to the Expert for determination.
- 13.21 IDE shall provide all such evidence as the Customer may reasonably request in order to verify increases in any of the costs described in Clause 13.20.
- 13.22 In addition, IDE shall, on request, allow the Customer to inspect and take copies of (or extracts from) all relevant records and materials of IDE relating to any Charges Adjustment as may be reasonably required in order to verify those matters.
- 13.23 All disputes concerning a Charges Adjustment shall be resolved by the determination of the Expert in accordance with Clause 24.

#### **14. Forex**

- 14.1 IDE reserves the right to and may vary the quoted price of Products and Services, by giving notice to Customer at any time before or after acceptance of the relevant Order, to reflect any relevant fluctuation in foreign exchange currency rates which varies the cost price to IDE by more than two percent (2%) from the date of quotation and the date of invoice of the relevant Service or Product.

#### **15. Intellectual Property**

- 15.1 The Intellectual Property Rights and all other rights in the Background IPR shall be owned by IDE. IDE licenses all such rights to the Customer free of charge on a non-transferable, non-sub licensable, non-exclusive, worldwide basis to such extent as is

necessary to enable the Customer to make use of the Deliverables and the Services during the Term. If the relevant Order is terminated, this licence will automatically terminate.

- 15.2 The Developed IPR in any specific deployment produced for the Customer under this Agreement shall be owned by IDE and IDE grants to the Customer a non-exclusive, royalty-free and worldwide licence to use such Developed IPR in its business for the Term. For the avoidance of doubt the Customer shall not own any IPR in the general design of the deployed solution.
- 15.3 All Intellectual Property Rights in Data and in content, works, databases, materials, software and deliverables made available to IDE by or on behalf of Customer in relation to the Services (the "**Customer IP**") and any modifications to such Customer IP made by IDE pursuant to the Services shall, as between the Parties, belong to the Customer.
- 15.4 In relation to any Background IPR or any IDE or third party equipment supplied or utilised by IDE in relation to the provision of Services and which has not been sold to Customer ("**IDE Equipment**"):
- 15.4.1 no title or other similar rights therein or thereto shall pass to Customer;
- 15.4.2 upon the termination or cancellation of a relevant Order, for any reason arising, IDE shall be entitled to the return of all Background IPR and/or IDE Equipment and to gain reasonable access to all Locations, equipment and material in which Background IPR and/or IDE Equipment is installed, stored or located for this purpose or alternatively (if deemed appropriate by IDE in its discretion) to require Customer to return any Background IPR and/or IDE Equipment and to expunge such Background IPR from any equipment, Information Technology, systems or similar device into which Background IPR is installed, entered or programmed;
- 15.4.3 upon termination or cancellation, for any reason arising, of any licence or right of use or similar entitlement in relation to Software and other intellectual property owned by third parties which is provided and used by

IDE in the provision of Services, IDE shall have the same rights and entitlements to the return and/or deletion (expunging) of such third party Software and intellectual property as provided in Clause 15.4.2;

15.4.4 Customer shall not, under any circumstances, copy, modify, decompile, reverse assemble, disassemble or make any adaptation or derivative or sell, resell, transfer, license, sub-license or distribute the Background IPR.

15.5 If appropriate, the Parties shall agree in any relevant Order who will be the owner of any intellectual property to be developed, where applicable, under the terms of such Order and failing any such agreement, Customer shall be the owner thereof. Where it is agreed that the owner of such intellectual property shall be IDE, the Parties may agree in that Order that restrictions may be imposed upon IDE in respect of the sale or licence to use that intellectual property or any portion thereof to or by particular third parties identified for a specified time period.

15.6 Nothing contained in these T&C's shall restrict IDE's use of general ideas, concepts, know-how, methods or techniques developed in relation to the Services.

## **16. Intellectual Property Indemnification**

16.1 Customer and IDE each agree to defend the other against any action to the extent that such action is based on a claim that the use of any Software, Intellectual Property Rights, Services or Confidential Information provided by the indemnifying Party:

16.1.1 infringes a copyright or other intellectual property right under Applicable Law; or

16.1.2 constitutes an unlawful disclosure, use or misappropriation of another Party's trade secrets.

16.2 The provisions of this Clause 16.1 shall not extend to any Software, Intellectual Property Rights, Confidential Information or Services which have been modified (other than by the indemnifying Party) or have been used incorrectly and not for their intended use or have been utilised in conjunction with any other Software or Confidential Information or Services not supplied by the indemnifying Party and where such utilisation gives rise to the action referred to in Clause 16.1.

16.3 For the purposes of Clause 16, the indemnifying Party will bear the expense of such defence and pay any damages that are attributable to such claim finally awarded by a court of competent jurisdiction. If any Software, intellectual property, Services or Confidential Information become the subject of a claim under this Clause, or in the indemnifying Party's opinion are likely to become the subject of such a claim, then the indemnifying Party may, at its option:

16.3.1 modify the Software, Intellectual Property Rights, Services or Confidential Information to make them non-infringing or cure any claimed misuse of another's trade secrets, provided such modification does not adversely affect the functionality of the Software or the nature of the Services, or

16.3.2 procure for the indemnitee the right to continue using the Software, intellectual property or Confidential Information or enjoying the benefit of the Services, or

16.3.3 replace the Software with substantially equivalent Software that is non-infringing or that is free of claimed misuse of another's trade secret.

16.4 Any costs associated with implementing any of the alternatives referred to in Clause 16.3 shall be borne by the indemnifying Party. The indemnified Party's sole and exclusive remedy in respect of any claims of infringement shall be that which is specified in this Clause 16.

## **17. Warranties and Indemnity**

17.1 Each Party warrants and represents that, as at the date of these T&C's and at the date that each Order is executed:

17.1.1 it has full capacity and authority to enter into and to perform as required under the Order;

17.1.2 the Order is executed by a duly authorised representative of that Party; and

17.1.3 once duly executed the Order as enhanced by these T&C's will constitute its legal, valid and binding obligations.

17.2 IDE warrants on an ongoing basis that:

17.2.1 its obligations under this Agreement shall be performed by appropriate experienced, qualified, skilled, competent, trained and efficient personnel, including its sub-

- contractor's personnel, using reasonable skill and care and in accordance with Good Industry Practice and in compliance with all the statutory requirements and regulations relating to the performance of the Service; and
- 17.2.2 all Sub-contractors and IDE's employees shall be adequately supervised; and
- 17.2.3 it is an independent contractor and as such will be responsible for making appropriate PAYE deductions for tax and national contributions for remuneration it pays its staff; and
- 17.2.4 it is responsible for the professional quality, technical accuracy, completeness and coordination of the Services provided under this Agreement; and
- 17.2.5 all Services provided by IDE under this Agreement will conform to all objectives and specifications set forth in the Schedules and the Orders.
- 17.3 IDE gives to Customer the same warranties in respect of Products which are in turn given to IDE and authorised by the supplier, manufacturer and Licensor (as the case may be) of the Product concerned and IDE agrees to provide the support services in respect of the Product as agreed upon in this Agreement. To the extent permitted, IDE will pass through such warranties to Customer so that the supplier, manufacturer or Licensor of the Product will be construed to have given the warranties directly to Customer. IDE will give Customer all reasonable support in enforcing its rights in respect of any warranties given by any such supplier, manufacturer or Licensor.
- 17.4 Except as expressly provided in these T&C's and relevant Schedules, Appendices and exhibits, IDE gives no representations, undertakings or warranties, express or implied, by operation of law or otherwise. Without derogating from the generality of the foregoing (but subject to any express warranties provided in these T&C's) the warranties of "fitness for purpose" and merchantability are excluded. Any warranties given by IDE extend solely to Customer and its Affiliates and are not transferable.
- 17.5 Subject to the provisions set out in Clause 17.7, if IDE fails to meet applicable professional standards or otherwise violates the above representations, warranties and covenants, in addition to any other remedies Customer may seek, IDE shall without additional compensation promptly correct or revise such errors or deficiencies in its Services as outlined in these T&C's, the Schedules, Appendices and the relevant Order.
- 17.6 Except to the extent caused by any default, negligence, delay or breach of statutory duty by the Customer, its Affiliates, its or their contractors, officers or employees, IDE will fully indemnify and hold the Customer and its Affiliates harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against Customer and/or its Affiliates as a result of or in connection with:
- 17.6.1 any breach by IDE of Clause 22 (Confidentiality);
- 17.6.2 any breach by IDE of Clause 28 (Data);
- 17.6.3 any breach by IDE of Clause 30 (Security); and
- 17.6.4 any claim that use of the Deliverables and/or Services in accordance with these T&C's and the relevant Order (in each case to the extent they do not comprise Customer IP) infringes the Intellectual Property Rights or other rights of any third party.
- 17.7 Except to the extent caused by any default, negligence, delay or breach of statutory duty by IDE, its Affiliates, its or their Sub-contractors, officers or employees, the Customer will fully indemnify and hold IDE and its Affiliates harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by or awarded against IDE and/or its Affiliates as a result of or in connection with:
- 17.7.1 any breach by the Customer of Clause 22 (Confidentiality);
- 17.7.2 any breach by the Customer of Clause 28 (Data);
- 17.7.3 and breach by the Customer of Clause 30 (Security); and
- 17.7.4 any claim that use of the Customer IP in accordance with this Agreement infringes

the Intellectual Property Rights or other rights of any third party.

## **18. Limitation of Liability**

- 18.1 Notwithstanding the provisions of any other Clause in the Agreement (including those provisions set out in an Order which relate to Credits or Service Credits), this Clause prevails over all other Clauses and sets out the entire liability of each Party and its Affiliates to the other Party and its Affiliates, under or in connection with this Agreement (including any liabilities on termination of this Agreement) including the Appendices, whether in contract, tort (including negligence), misrepresentation or otherwise. All references to a Party in this Clause 18 shall be deemed to include all its Affiliates.
- 18.2 Neither Party excludes or limits any liability to the other Party for:
- 18.2.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of itself, its employees, agents or sub-contractors;
  - 18.2.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
  - 18.2.3 any deliberate or wilful act intended to cause harm to the other;
  - 18.2.4 fraudulent misrepresentation or criminal act or omission;
  - 18.2.5 the indemnities in Clause 17.
- 18.3 Without prejudice to Clause 11.2, the total liability of IDE (including the paying of any levied service credit) for any loss of or damage to the Customer's tangible property (including real property) shall not exceed one hundred thousand pounds sterling (£100,000) in any year of the Agreement. Without prejudice to Clause 11.2 the total and aggregate liability of the Parties for any loss or damage in respect of the provision of the Services or under or in respect of these T&C's and any Order, shall not exceed the amounts payable by the Customer in the year of this Agreement to which the act complained of relates, regardless of whether such action arose in breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 18.4 Subject to Clause 18.2, neither Party shall under any circumstances whatsoever be liable for loss of profits, loss of business, loss of actual or anticipated savings, depletion of goodwill, loss of goods, loss of contract, or for any special, indirect, consequential or pure economic loss, costs, damages charges or expenses.
- 18.5 Except for the warranties at Clause 17 and those provided in any Order, all warranties not expressly provided in the Agreement are expressly excluded to the fullest extent permitted by Applicable Law.
- 18.6 If the Customer or its Affiliate or any of its or their officers, agents, employees or Sub-contractors shall fail to perform its or their obligations under these T&C's or an Order, IDE shall be deemed not to be in breach of the Agreement to the extent that the Customer's failure (or that of any of its Affiliates, or the Customer's or Affiliates' employees, officers or contractors) contributed to any breach by IDE and IDE shall be entitled to additional time to perform those obligations which were so delayed taking into account the amount of any delay caused by the Customer or its Affiliates or its or their employees, officers or contractors.
- 18.7 Each Party has a duty to mitigate the Losses that would otherwise be recoverable from the other Party pursuant to the Agreement (including under any indemnity) by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.
- 18.8 Each Party's liability under these T&C's and each Order shall be reduced, in all circumstances by:
- 18.8.1 any amounts previously paid (as at the date of satisfaction of such liability) by a Party (or any of its Affiliates) to the other Party (or any of its Affiliates) in satisfaction of such liability under this Agreement; and
  - 18.8.2 the amount to which the other Party (or its Affiliates, agents, officers, employees or contractors) has contributed to the default, negligence, liability or Losses.
- 18.9 Except in respect of a breach of the confidentiality obligations in Clause 22 or in respect of the indemnity given in Clause 16, each Party's liability to the other for any and all claims, Losses, damages or expenses from any cause whatsoever shall be limited to the direct damages proven, provided that:



- 18.9.1 in the case only of Customer's claim against IDE for proven direct damages, the same shall not exceed the amount paid by Customer to IDE in the immediately preceding 12 (twelve) month period prior to the cause of action arising in respect of:
- (a) Products supplied, if Customer's claim relates to and arises from the supply of Products; or
  - (b) Services, if Customer's claim relates to or arises from the provision of Services, less any amounts which have been paid (or credited) as penalties in terms of any Services schedule over that twelve (12) month period.
- 18.10 Subject to Clause 18.9, in no event shall either Party be liable to the other for any incidental, consequential, or any other indirect loss or damage (including but not limited to lost profits or revenues and loss of data), nor for exemplary or punitive damages.
- 18.11 These limitations of liability shall apply regardless of the form of action, whether in contract, delict, (tort), strict liability, or otherwise and regardless of whether either Party has been advised as to the possibility of such damages and/or Losses.
- 19. Termination**
- 19.1 Any Order may be terminated by either Party on notice to the other Party, if the other Party is in material breach of an obligation under these T&C's or an Order.
- 19.1.1 Such termination shall be effective thirty (30) days after receipt of a written notice of termination unless during the relevant period of thirty (30) days, the defaulting Party has cured the default or is diligently proceeding to cure the default by taking effective and continuing steps to do so and the default is in fact cured within a reasonable period of time after the receipt of the relevant notice.
- 19.1.2 In the event that such material breach is not curable then the non-defaulting Party may issue written notice of termination providing the defaulting Party no less than three (3) weeks' notice of such termination.
- 19.2 Any Order may be terminated immediately by either Party on written notice to the other Party:
- 19.2.1 if the other Party is dissolved or struck off the register of companies maintained by Companies House or a winding up order is made against the other Party or a meeting is convened, resolution passed or any step taken by the other Party with a view to the winding-up of the other Party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
- 19.2.2 if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the other Party;
- 19.2.3 if the other Party enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other Party;
- 19.2.4 if notice of intention to appoint an administrator is given by any person (including the other Party's directors, the other Party or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the other Party into administration as defined by the Insolvency Act 1986; or
- 19.2.5 if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above Sub-Clauses in relation to the other Party.
- 19.3 Either Party may terminate an Order (without prejudice to its other rights and remedies) by written notice to the other Party, if the relevant Party:
- 19.3.1 is to cease to carry on all or a material part of its business at any time or is to dispose of all its assets or a substantial part of its assets;

- 19.3.2 any of its personnel allocated to the Order or other personnel commits any fraud, dishonesty or gross misconduct in relation to these T&C's or an Order or offers or gives or agrees to give to any person any gift, consideration, inducement or reward of any kind for doing or not doing anything in connection with the Order.
- 19.4 IDE may terminate an Order (without prejudice to its other rights and remedies) by written notice to the Customer, if IDE seeks to consolidate its service provision for any reason, including but not limited to, economies of scale or profitability.
- 19.5 For the purposes of this Clause 19 and elsewhere in these T&C's, "**IDE Event of Default**" means any of the following circumstances, acts or omissions by IDE:
- 19.5.1 the occurrence of any of the events described in Clause 19.2; or
- 19.5.2 any other breach by IDE of any other material term of these T&C's or the relevant Order which is not remedied within thirty (30) days of receipt of written Notice requiring it to do so; or
- 19.5.3 any other material breach by IDE of any other material term of these T&C's or the relevant Order, which is not remediable inclusive of but not restricted to those relating to and set out in Clauses 22, 26, 29 and 30, within thirty (30) days of receipt of written notice requiring it to do so; or
- 19.5.4 notwithstanding any credit granted, should IDE not meet the Service Levels set out in the relevant Order for two quarters during a contract year, then such failure shall be considered to be a material breach as set forth in Clause 19.5.
- 19.6 A breach or default by IDE in relation to any particular Services or Product procurement which has been paid for in advance shall be refunded by IDE within thirty (30) days of termination for the undelivered Products or Services.
- 19.7 Subject to Clause 19.8, if an IDE Event of Default occurs, Customer shall be entitled to terminate the relevant Order on Notice which, at Customer's election, may take effect immediately on receipt of the Notice by IDE, or within such further period, not exceeding sixty (60) days, and Customer shall be entitled to recover all legal costs incurred as a result of the IDE Event of Default, provided that notwithstanding any such termination, Customer shall be bound by and adhere to all orders for Products made in terms of the relevant Order prior to the date of termination aforesaid unless the IDE Event of Default which gives rise to the termination of these T&C's:
- 19.7.1 is an event described in Clauses 19.5.1; or
- 19.7.2 is a breach of an order placed by Customer for Products, in which event Customer shall not be required to adhere to or receive or pay for Products in respect of that Product order only.
- 19.8 If any Service provides for the payment of penalties or liquidated damages in the event of the failure of any Services therein and payment of such penalties or liquidated damages is made by IDE then such payment shall be deemed to have remedied the failure concerned and then the Customer shall not be entitled to exercise its rights in terms of Clause 19.7.
- 19.9 For the purposes of this Clause 19 "**Customer Event of Default**" means any of the following circumstances, acts or omissions by Customer:
- 19.9.1 a failure by Customer to make timely payment to IDE of any amount due to it in terms of these T&C's and when such failure is not rectified within fourteen (14) days of receipt of written Notice by Customer; or
- 19.9.2 the occurrence of any of the events described in Clause 19.2; or
- 19.9.3 any other breach by Customer of any other material term of these T&C's which is not remedied within 30 (thirty) days of receipt of written notice requiring it to do so; or
- 19.9.4 any other material breach by Customer of any other material term of these T&C's which is not remediable inclusive of but not restricted to those relating to and set out in Clauses 22, 26, 28, 29 and 30, within thirty (30) days of receipt of written notice requiring it to do so.
- 19.10 If a Customer Event of Default occurs, IDE shall be entitled to terminate the relevant Order then applicable, take possession of all Products which have

not been paid for in full, and IDE shall be entitled to recover all legal costs incurred as a result of the Customer Event of Default.

- 19.11 A breach or default by Customer in relation to any particular Services or Product procurement which has been paid for in advance shall not be refunded as part of the undelivered Products or Services.
- 19.12 If a Customer Event of Default occurs, IDE shall be entitled to terminate the relevant Order on written Notice which, at IDE's election, may take effect immediately on receipt of the Notice by the Customer, or within such further period, not exceeding sixty (60) days, and IDE shall be entitled to recover all legal costs incurred as a result of the Customer Event of Default, notwithstanding any such termination.
- 19.13 The Customer may by giving at least thirty (30) days written notice terminate any Order for convenience during the Term or Initial Period described in such Order, in which case IDE reserves the right to charge early termination fees which will be calculated on request at the time of receipt of Notice of termination. The calculation method shall be determined by IDE and shall be no less than the Charges which IDE shall be entitled to invoice Customer for the Term or the Initial Period, whichever is the shortest without IDE being required to mitigate its losses.
- 19.14 For the avoidance of doubt, the Charge raised by IDE and calculated by IDE in accordance with the provisions of Clause 19.13 following Customer's termination in accordance with Clause 19.13 shall not be regarded as a penalty but the Parties agree that such Charge shall be a pre-estimation of its liquidated damages and is reasonable and proportionate to protect IDE's legitimate interest that the Customer performs its obligations under the Agreement as agreed.
- 19.15 In the event that the Customer wish to terminate an Order for cause, which shall not include a termination in accordance with Clause 19.13 or a termination in accordance with Clause 19.2 then the Customer shall be required to issue Notice of Termination within three (3) months from the later date of the IDE Event of Default occurring or the Customer becoming aware of such IDE Event of Default, in order for the Customer to be entitled to rely on the termination remedies provided within this Clause 19. In the event that the

Customer fails to issue Notice of Termination as prescribed in this Clause 19.15, then the Customer's failure to exercise such termination rights shall constitute a waiver of such rights.

## **20. Consequences of Termination and Exit Management**

- 20.1 Termination of an Order shall not affect any other Order.
- 20.2 At the time of the handover of the Services at termination:
- 20.2.1 subject to all Charges due for payment being paid in full, IDE shall co-operate generally with the Customer in order to achieve an effective transfer without disruption to the provision of the Services;
- 20.2.2 IDE shall allow the Customer or any Party nominated by the Customer full access to all documents, reports, summaries and any other information necessary for the transfer except to the extent that such information is commercially sensitive;
- 20.2.3 subject to all Charges due for payment being paid in full, IDE shall transfer to the Customer, or any party nominated by the Customer, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services, including historical and technical data and helpdesk logs in respect of the Services;
- 20.2.4 In the event that IDE is required to provide assistance, support or services in addition to those provided to the Customer immediately prior to the issue of Notice of termination, then IDE shall be entitled to Charge Customer for such assistance, support or Services at its the prevailing rate in accordance with the provisions set out in Clause 20.6.
- 20.3 On termination of an Order for any reason, the Customer shall pay within thirty (30) days of the date of termination of the Order any outstanding amount which remains unpaid and pay all undisputed invoices and any interest due to IDE. IDE may after termination of an Order submit invoices for any part of the Services that it has supplied, but not yet invoiced. The

Customer shall pay these invoices in accordance with this Clause 20.3.

20.4 On termination of any Order, the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and Clauses which expressly or by implication have effect after termination.

20.5 On termination of an Order:

20.5.1 any Intellectual Property Rights licensed by IDE to the Customer pursuant to Clause 15.1 or the relevant Order shall automatically terminate and the Customer shall cease to use, either directly or indirectly such Intellectual Property Rights; and

20.5.2 any Customer IP made available to IDE by or on behalf of Customer in relation to the Services pursuant to Clause 15.3 shall automatically terminate and IDE shall cease to use, either directly or indirectly such Customer IP; and

20.5.3 the Customer shall grant IDE such access to the Location/s as IDE may reasonably require to remove IDE's Equipment; and

20.5.4 the receiving Party shall on the written request of the disclosing Party destroy or return to the disclosing Party all Confidential Information received during the term of these T&C's or an Order together with all partial or complete copies of the same.

20.6 Customer shall pay IDE the market related costs reasonably incurred by IDE in carrying out the exit management plan. The amount and/or method of calculation of IDE's costs shall be agreed before the commencement of implementation of the exit management plan. Any dispute or disagreement in respect thereof shall be referred for resolution in terms of Clause 24. Any services provided as part of, and during, the implementation of the exit management plan and which shall be as is described in Clause 20.2.4 shall be paid by the Customer within seven (7) days from the date of receipt of invoice from IDE for such services and IDE shall be entitled to issue such invoices in advance of such services being provided.

## 21. Exclusions

21.1 In addition to any exclusions set out in any Schedule, an Order or these T&C's, the Services to be provided in terms of the Agreement do not include the provision of services, nor repairs or replacements necessitated by or related to:

21.1.1 damage caused by accident, fire, water, lightning or other act of God;

21.1.2 damage caused by riots, civil disorder, acts of violence, sabotage or similar acts;

21.1.3 damage caused by abnormal operating conditions such as high or low temperatures or humidity or dust levels which are beyond the published environmental specifications of the manufacturer of the Equipment or Software as may be provided by IDE;

21.1.4 the negligent use, abuse or misuse by Customer (or Customer's representatives, employees, agents or Sub-contractors) of the Equipment or Software;

21.1.5 damage during any transportation of Equipment or Software, which is not carried out by IDE or its agents or Sub-contractors;

21.1.6 electrical work not performed by IDE or its Sub-contractors;

21.1.7 causes external to the Equipment such as failure or fluctuation of electrical power;

21.1.8 Equipment or Software that has become unserviceable or obsolete;

21.1.9 modifications, repairs or replacements or attempted modifications, repairs or replacements not approved by IDE in writing prior to such modifications, repairs or replacements being performed or attempted by another Party, including Customer;

21.1.10 the refurbishment of any Equipment or Software not performed by IDE or its Sub-contractors;

21.1.11 the provision of any accessories or consumables not provided by IDE or its Sub-contractors;

21.1.12 any changes or modifications to Equipment or Software required as a consequence of any technical or regulatory changes

introduced by the appropriate regulatory authorities.

## 22. Confidentiality

22.1 Each Party will treat as confidential all information obtained from the other Party under or in connection with the Agreement which is designated as confidential by the other Party or which is by its nature clearly confidential. The recipient Party will not disclose such confidential information to any person (except only to those employees, agents, Sub-contractors, companies and other representatives who need to know it) or use such confidential information for purposes other than the Services without the other Party's prior written consent. The obligations under this Clause will not extend to information which:

22.1.1 was in the possession of the recipient Party (with full right to disclose) before receiving it from the disclosing Party;

22.1.2 is already or becomes public knowledge (otherwise than as a result of a breach of this Clause);

22.1.3 is independently developed by the recipient Party without access from the disclosing Party to or use of such information;

22.1.4 is required to be disclosed by law or by any court of competent jurisdiction or any competent judicial, governmental or regulatory body, PROVIDED THAT the disclosing Party shall prior to such disclosure and, to the extent permitted by law, use its reasonable endeavours to inform the other Party of the full circumstances of disclosure and the Confidential Information that will be disclosed and take all such steps as may be reasonable and practical in the circumstances to agree the contents of such disclosure with the affected Party before making the disclosure and shall further only disclose that part of the Confidential Information requiring disclosure. If the disclosing Party is unable to inform the affected Party before the Confidential Information is disclosed pursuant to this Clause it shall (to the extent permitted by law) inform the affected Party, immediately

after the disclosure, of the full circumstances of the disclosure and the Confidential Information which has been disclosed.

22.2 Any tender, proposal or submission disclosed by the Customer and subsequent proposal submitted by IDE pursuant to these T&C's which never becomes an Order shall be deemed Confidential Information.

22.3 Each Party will ensure that all persons to whom it discloses any Confidential Information of the other Party are aware, prior to disclosure, of the confidential nature of the information and that they owe a duty of confidence to the other Party.

22.4 Each Party will establish and maintain adequate security measures to safeguard information and data of the other Party in its possession from unauthorised access use or copying.

22.5 This Clause 22 shall continue in force after the termination of this Agreement without limit in point of time.

## 23. Non-Solicitation

23.1 Except as otherwise expressly agreed between the Parties in writing, neither Party during the Term of a relevant Order or for a period of twelve (12) months after completion of Services pursuant to such Order may directly or indirectly, by or through itself, its Affiliates, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

23.1.1 solicit or induce, or endeavour to solicit or induce a Restricted Employee (as defined below) of the other Party; or

23.1.2 employ or engage or offer to employ or engage a Restricted Employee of the other Party without the written consent of the other Party save that either Party may employ or engage any Restricted Employee of the other Party who has responded directly to a bona fide recruitment drive, either through an agency or advertisement in the press and not directly or indirectly as a result of any solicitation or inducement by the other Party.

23.2 For the purpose of Clause 23 "solicit" or "induce" means the soliciting or inducing of such Restricted Employee with a view to engaging such Restricted Employee as an employee, director, Sub-contractor or

independent contractor, but shall exclude any bona fide advertisement campaign generally seeking employees, directors, sub-contractors or contractors with specific skills. “**Restricted Employee**” means a person employed or engaged on behalf of either Party for a continuous period for twelve (12) months or more who was employed or engaged in the provision or receipt of the Services under any Order.

23.3 In the event of any breach by either Party of the provisions of Clause 23.1, which results in the employment or engagement of any Restricted Employee then the Parties agree that:

23.3.1 the said Restricted Employee shall not commence his employment until a period of not less than sixty (60) days have elapsed since the date the Party employing the Restricted Employee first advised the other Party in writing ; and

23.3.2 the Party employing the Restricted Employee shall pay on demand a fee equal to forty percentage points (40%) of that Restricted Employee’s total annual remuneration (including for the avoidance of doubt – salary, bonus, commission and the monetary equivalent of any employee benefits) within fourteen (14) days of receipt of invoice, or in the alternative acknowledges that the other Party shall have the right to seek damages for breach.

23.3.3 the sums referred to in this Clause 23 are a fair and a genuine estimate of the loss and damages that the Parties would suffer if the other Party breaches Clause 23.1.

## **24. Dispute Resolution**

24.1 Without prejudice to the termination provisions in Clause 19, if a Party believes in good faith that the other Party has breached any material term of the Agreement, that Party shall notify the other Party, in writing setting forth in reasonable detail the nature of the alleged breach (“**Notice of Breach**”). If the other Party does not dispute the validity of the Notice of Breach, it must promptly undertake to cure and remedy the breach set out in the Notice of Breach, which must be done within five (5) days from the date of receipt of the relevant Notice, alternatively it must promptly undertake to cure and remedy the breach

set out in the Notice of Breach. If the other Party disputes the validity of the Notice of Breach, then the Parties must comply with the following provisions.

24.2 Any dispute to be resolved under this Clause 24 must first be submitted for resolution to the Managers of each Party. If such Managers are unable to resolve the dispute within five (5) Business Days after the date on which the Party allegedly in breach notified the other Party that it disputes the validity of the Notice of Breach, then the dispute must be submitted to the directors (or persons of comparable authority) of each Party for resolution. If such directors are unable to resolve the dispute within ten (10) Business Days after the date on which such dispute is notified to the said directors, then each Party is free to pursue whatever remedies that may be available to it in respect of the subject matter of the dispute.

24.3 The cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution under this Clause will be suspended during the implementation of the dispute resolution procedures set out in this Clause 24 and commence to run on the day after the dispute has been resolved in favour of the aggrieved Party or the dispute resolution procedures set out above have been exhausted, whichever is applicable.

24.4 Before resorting to legal proceedings the Parties may (but will not be obliged to) attempt to settle by negotiation in good faith all disputes or differences between them out of or in connection with the Agreement. The Parties further agree that (provided that both Parties consider that such negotiations will be assisted thereby), they will endeavour to appoint a mediator by mutual agreement, or failing mutual agreement each Party will appoint a mediator of their choice and the two appointed mediators will appoint a third mediator to assist them and the Parties in such negotiations. Mediation will take place in London or such other place as the Parties mutually may agree. Both Parties agree to co-operate fully with the appointed mediator (or mediators), and to provide such assistance as necessary to enable the mediators to discharge their duties, and to bear equally between them the fees and expenses of the mediators, but otherwise each Party shall bear their own costs. Unless the Parties agree otherwise in writing, if

mediation is unable to resolve the dispute within thirty (30) days from the date that a mediator has been appointed, then either Party may seek to have the dispute determined by the courts of England and Wales.

## **25. Sub-Contractors, Affiliates and Assignment**

25.1 Notwithstanding the provisions set out in Clause 25.4.2, IDE may appoint Sub-contractors to supply Products (or any part thereof) or to provide any part of the Services.

25.2 IDE shall procure that all Sub-contractors appointed in terms of Clause 25.1 undertake in writing to comply, and do comply, with the provisions of these T&C's and the relevant Order and undertake in writing appropriate duties of care and skill to the Customer. Notwithstanding the appointment of any Sub-contractor, IDE shall remain liable to Customer under these T&C's and any Order for the supply of Products and the provision of Services.

25.3 IDE shall ensure that all Sub-contractors are subject to the same duties of confidence in respect of Customer's Confidential Information and intellectual property as IDE is under these T&C's, and no such Confidential Information or intellectual property may be disclosed to them until they have agreed in writing to adhere to such duties.

25.4 Subject to the foregoing, neither Party shall:

25.4.1 cede, assign or transfer its rights and/or obligations in terms of this Agreement without the prior written consent of the other (such consent to not be unreasonably withheld or delayed), provided that IDE shall be entitled to cede and/or assign all or any part of its rights and/or obligations under this Agreement to an Affiliate;

25.4.2 charge, put into trust or sub-contract this Agreement or any of its rights, benefits or obligations under it to any other person, firm or company or otherwise deal with all or any part of the Agreement without the prior written consent of the other (such consent to not be unreasonably withheld or delayed); and

25.5 The Agreement shall be binding upon and continue for the benefit of IDE's and the Customer's permitted assigns and successors.

## **26. Trademarks, Trade Names and Publicity**

26.1 Neither Party may make any announcement in relation to the Agreement or otherwise publicise its existence or its contents, and use or refer to the other Party's trademarks, logos, name or other corporate identifications in any disclosure, without that Party's prior written consent.

## **27. Notices**

27.1 Any notice or communication required to be given under the Agreement by either of the Parties shall be in writing and to the address detailed in the Order marked for the attention of:

27.1.1 in the case of IDE, the Group Sales Director; and

27.1.2 in the case of the Customer, such person nominated by the Customer in the Order as the Manager, or failing such nomination to the Finance Director or such equivalent person responsible for such duty at the Customer.

27.2 Any notice, request, instruction or other document to be given shall be delivered or sent by first class post as recorded delivery or by facsimile - or email transmission (both transmissions must be confirmed by letter sent by first class post as recorded delivery, posted within twelve (12) hours from the time of the transmission) to the address or number set out in Clause 27.1 (or such other address or number as stipulated in the Order) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery, (if sent by post) forty eight (48) hours after posting and (if sent by facsimile or email transmission) twelve (12) hours after despatch.

## **28. Data**

28.1 All Data generated by IDE in the performance of the Services remains the property of the Customer and IDE will not disclose the same to any third party other than as is necessary in securing services under sub-contracts to the Agreement. All Data shall always be subject to the provisions of Clause 29.

28.2 All Data pertaining to the relevant Order whether in paper form or electronic documents, databases and spreadsheets and specialist applications, remains the

property of the Customer and will be provided to the Customer by IDE as specified in the relevant Order.

28.3 IDE will ensure that all documents, data and software, including without limitation the Customer's software, hardware, data, and Confidential Information:

28.3.1 are at all times kept under secure conditions to protect them effectively from unauthorised access or interference; and

28.3.2 shall not be removed from the Locations without the prior written consent of the Head of IT and/or the IT Service Delivery and Operations Manager of the Customer (or their equivalents), save as required to deliver the Services in accordance with the terms of the Agreement and the relevant Order.

## 29. Data Protection and Data Processing

29.1 Each Party warrants that it is properly registered under the Data Protection Act 1998 to the extent required for the processing and treatment of Personal Data required in the performance of the Services.

29.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 29 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

29.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and IDE is the Data Processor. The Parties shall document in the Order the scope, nature and purpose of processing by IDE, the duration of the processing and the types of Personal Data and categories of Data Subject.

29.4 Without prejudice to the generality of Clause 29.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to IDE for the duration and purposes of the Agreement.

29.5 Without prejudice to the generality of Clause 29.2, IDE shall, in relation to any Personal Data processed in connection with the performance by IDE of its obligations under the Agreement:

29.5.1 process that Personal Data only on the written instructions of the Customer unless IDE is required by the laws of any member of the European Union or by the laws of the

European Union applicable to IDE to process Personal Data ("Applicable Data Processing Laws"). Where IDE is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, IDE shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit IDE from so notifying the Customer;

29.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, anonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

29.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

29.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(a) the Customer or IDE has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective legal remedies;



- (c) IDE complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (d) IDE complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 29.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 29.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 29.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- 29.5.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 29.
- 29.6 The Customer consents to IDE appointing third-party Data Processors of Personal Data under this Agreement. IDE confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 29. As between the Customer and IDE, IDE shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 29.
- 29.7 Either Party may, at any time on not less than thirty(30) days' notice, revise this Clause 29 by replacing it with any applicable Data Controller to Data Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).
- 30. Security**
- 30.1 IDE shall maintain the security of Data, Services and Deliverables in accordance with the specific security requirements of the Customer as defined in the Security Policy, any relevant Order and in accordance with Good Industry Practice.
- 30.2 If IDE wishes to make any change to its systems or hardware used for the relevant Order or which will have a material impact on the Services, or Deliverables of the relevant Order, IDE shall notify the Customer and request approval in accordance with the Change Control Procedure.
- 30.3 Without limitation to Clause 30.1 IDE shall at all times ensure that the level of security employed by IDE in conjunction with the Customer is appropriate throughout the Term to prevent:
- 30.3.1 loss of integrity or availability of the Data stored and processed by or on behalf of IDE under the relevant Order
  - 30.3.2 loss of confidentiality of any Confidential Information or part thereof on any Data, Services or Deliverables;
  - 30.3.3 unauthorised access to, use of, or interference with the Data, Services or the Deliverables ; and
  - 30.3.4 unauthorised access to networks, Sites or systems used by IDE or any Sub-contractor of IDE in performing the relevant Services.
- 30.4 IDE shall document it's security policies and procedures within the Security Policy document. IDE shall provide to the Customer on request a copy of it's Security Policy as soon as is reasonably practicable after the Commencement Date of the Order and thereafter annually. Any agreed changes to the Security Policy will be actioned by IDE within ten (10) Business Days of such agreement and IDE shall issue an updated version of the Security Policy to the Customer
- 30.5 IDE shall ensure that if relevant that all necessary measures that are reasonable are taken to ensure that the PCI certification is achieved every twelve (12) months. An Attestation of Compliance will be provided by IDE to the Customer each year verifying the PCI certification of IDE.
- 30.6 IDE shall not at any time knowingly introduce any computer virus or other contamination onto any of the Customer's systems or IDE's systems. IDE shall ensure

that it complies with Good Industry Practice in the prevention and removal of any computer virus on IDE's systems.

30.7 The Customer shall not at any time knowingly introduce any computer virus or other contamination onto any of IDE's systems or any Customer systems managed by IDE as part of the Services.

### **31. TUPE**

31.1 The Customer and IDE believe that the commencement and provision of the Services will not constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) 2006 as amended or replaced from time to time ("TUPE"). Consequently no employee will transfer to IDE on the commencement of the Services under any Order.

### **32. Insurance**

32.1 IDE shall at its own expense for as long as IDE supplies Services under this Agreement:

32.1.1 maintain a policy of Public Liability Insurance with a limit of indemnity of not less than one million pounds sterling (£1,000,000) for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance, unless otherwise specified in an Order; and

32.1.2 maintain a policy of Professional Indemnity Insurance with a limit of indemnity of not less than one million pounds sterling (£1,000,000) for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance, unless otherwise specified in an Order.

32.2 IDE shall, as soon as is reasonably practical after a request from the Customer, supply the Customer with copies of all insurance policies and evidence that the relevant premiums have been paid.

### **33. Risk and Ownership**

33.1 All risk in and to any Deliverables and Products shall pass to the Customer upon delivery thereof to the Customer by IDE, as evidenced by proof of delivery or acceptance signed by the Customer.

33.2 Subject to Clause 14.1, ownership in and to all Equipment shall pass to Customer only as and when payment has been received in full in respect of such Equipment by IDE.

### **34. Force Majeure**

34.1 Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under an Order to the extent that its performance is interrupted or prevented by Force Majeure. Such delay or failure shall not constitute a breach of the Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for thirty (30) Business Days or more, the Party not directly affected by the Force Majeure but prevented by the Force Majeure event directly affecting the other Party may, at its option, terminate the Order (without penalty) immediately by giving written notice of such termination to the other Party.

34.2 Any Party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as is reasonably possible after the removal of the Force Majeure event and shall so notify the other Party.

34.3 Notwithstanding the provisions of Clause 34.1, in the event that IDE terminates the Order due to a Force Majeure event that directly affect the Customer, then IDE shall be entitled to recover in accordance with the payment provisions in the Order such sums of expenditure to which it has committed in accordance with the Term to enable it to provide the Services and/or Products to the Customer.

### **35. Documentation and Reporting**

35.1 IDE shall provide such Documentation in respect of Products supplied or Services, if so specifically required in terms of the relevant Order.

35.2 IDE shall provide to the Customer with such reports as are stipulated in the Schedules and the Order.

### **36. Acceptance Testing Procedures and Criteria**

36.1 Prior to handing over a Deliverable (developed specifically in accordance with the obligations set out in a Schedule, Order or Project Plan) to Customer, acceptance testing shall be carried out in accordance

with the procedures and criteria contained in the relevant Project Plan where applicable.

### 37. Miscellaneous Provisions

- 37.1 Unless otherwise provide for in these T&C's or an Order, the Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the Parties.
- 37.2 The Agreement and any confidentiality agreement and all other documents referred to within it constitute the entire agreement between the Parties with respect to its subject matter; and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.
- 37.3 Each Party acknowledges to the other that it has not been induced to enter into the Agreement by any oral or written statements, collateral or other warranties, assurances, or undertakings by or on behalf of the other Party or any other person (together "Statements") save for those contained in the Agreement.
- 37.4 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to Statements.
- 37.5 Nothing in this Agreement shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.
- 37.6 For the avoidance of doubt, the Agreement shall:
- 37.6.1 prevail over and take the place of any other items or conditions stipulated, incorporated, referred to or contained in any document or communication from either Party in the course of negotiations; and
- 37.6.2 apply to the exclusion of any other terms or conditions on which any Quotation, tender or proposal have been requested by the Customer or given by IDE. Without prejudice to the preceding sentence, no other agreement, representation or promise of any kind shall form part of, alter, vary supersede or operate as a waiver of any or all of the provisions of the Agreement, unless such waiver is expressly made,

references the Agreement or the relevant Order and made and accepted in writing by duly authorised representatives of the Parties.

- 37.7 Nothing in the Agreement shall be construed as or shall operate to create a partnership or joint venture of any kind, an agreement of employment or a relationship of principal and agent between the Customer and IDE, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 37.8 No waiver, forbearance or failure or delay on the part of either Party to exercise any right or remedy under the Agreement shall be construed or operate as a waiver or relinquishment of that Party's rights to future performance of such provision nor shall any single or partial exercise of any right or remedy preclude the taking of any further or other right or remedy and the other Party's obligations in respect of such future performance shall continue in full force and effect. The rights and remedies provided in the Agreement are cumulative and are not exclusive to any rights or remedies provided by law.
- 37.9 A waiver of any right or remedy under these T&C's or an Order is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 37.10 A Party that waives a right or remedy provided under these T&C's, an Order or by law in relation to the other Party, or takes or fails to take any action against that Party, does not affect its rights in relation to the other Party.
- 37.11 If any part or provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be rendered void, invalid or unenforceable, such voidness, validity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect and the Parties shall use all reasonable endeavours to replace the relevant provision with one that is enforceable and which is closest to the commercial intent of that provision

- 37.12 The Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has signed at least one counterpart. Each counterpart when executed shall be treated as an original and all the counterparts together shall constitute one and the same instrument.
- 37.13 IDE shall be entitled to enforce the Agreement against each Affiliate of the Customer without prejudice to the fact that the Customer shall be responsible for the acts and omissions of its Affiliate. Subject to the aforesaid, nothing in the Agreement is intended to confer on any person any right to enforce any term of the Agreement

which that person would not have had but for the Contracts (Rights of Third parties) Act 1999.

- 37.14 The Parties shall meet annually to review the Agreement in accordance with the requirements set out in the T&C's and the Order.
- 37.15 The law which is to apply to this Agreement and under which the Agreement is to be governed and construed is English law. Subject to the Dispute Resolution Procedure set out herein, the Courts of England and Wales shall without limitation, inclusive of any question regarding its existence, validity or termination have exclusive jurisdiction in relation to any matter arising in relation to the Agreement.

## **GENERIC SERVICE SCHEDULE**

Unless otherwise provided for in a Service Schedule or otherwise provided for in a relevant Order, the terms set out in this Schedule shall apply to the provision of all the Services and Products provided by IDE under the terms of the T&C's.

### **1. Service Charges**

- 1.1 Any Excess Usage shall be charged, unless stated otherwise in the Order, at the rate stated in the relevant Service Schedule. All Excess Usage Charges shall be invoiced in arrears and shall be paid within thirty (30) days from the date of invoice.
- 1.2 IP transit is measured in 1Mbps increments. Should the Customer exceed the increment by 1 decimal position the Customer shall be charged for the next whole increment of usage. An example of this is 1.1Mbps shall be charged at 2Mbps. If a dispute is raised against an Excess Usage Charge, IDE shall provide all relative data to the Customer as to how the Excess Usage Charge was established. Such data shall be deemed to be correct unless proven to the contrary by an agreed independent third party with suitable industry knowledge.
- 1.3 All Support Services shall be charged at the Charges stated in the relevant Service Schedule, unless stated otherwise in the Order.
- 1.4 All charges for shipping and storage shall be payable by the Customer.

### **2. Service Suspension**

- 2.1 Pursuant of Paragraphs 6.1 and 6.2 of this Schedule, the Customer shall have seven (7) days to comply with any reasonable request provided to the Customer in writing by IDE. Failure to adhere to this Paragraph 2.1 shall result in a suspension of the relevant Service.
- 2.2 The Customer shall adhere to the AUP set out in the relevant Service Schedule and failure to adhere to this Paragraph 2.2 shall result in IDE being entitled suspend that Service, without incurring any liability for such suspension.

### **3. Maintenance**

- 3.1 If the Customer detects any defect or impairment in the operation or performance of the Service delivery it shall provide Notice to IDE of the nature of such defect or impairment and IDE shall respond to such notification in accordance with the SLA set out in this Schedule and the SLA set out in the relevant Service Schedule and shall make the necessary corrections to the Service or Equipment in accordance with the relevant SLA.
- 3.2 If IDE detects any defect or impairment in the operation or performance of the Customer Equipment, it shall notify the Customer of the nature of such defect or impairment. The Customer shall follow IDE's reasonable instructions to amend the defect or impairment.
- 3.3 Subject to the provisions of Paragraph 3.4, in the extent that the need for any maintenance results from any one or more of the following:
  - 3.3.1 misuse or neglect of or accidental or wilful damage to the Service Equipment or facility where such misuse, neglect or damage occurs as a result of Customer action in inaction; or
  - 3.3.2 failure by the Customer to comply with any of the provisions of this Agreement;then IDE will be entitled to charge the Customer and the Customer shall pay such Charge invoiced by IDE, using it's current Rate Card
- 3.4 If any event referred to in Paragraphs 3.3 occurs, then IDE shall provide the Customer reasonable written notice of its intention to make such charge.
- 3.5 If a Customer prevents or delays (by way of an act or omission) the performance of maintenance, IDE shall have the right to charge to the Customer all reasonable costs incurred by such delay or prevention.
- 3.6 IDE may suspend the Service from time to time for necessary technical reasons and (including without limitation, Equipment upgrades or Service degradation mitigation) without invalidating its SLA provided that IDE shall provide the Customer with notice via IDE's NOC of a minimum of:
  - 3.6.1 three (3) days' of such suspension and such suspension shall not exceed more than one (1) hour.; or
  - 3.6.2 five (5) days' of such suspension if it is expected that the suspension shall be for longer than one (1) hour.

3.7 IDE may suspend the Service with immediate effect and without prior notification in the unlikely event of an emergency. Any emergency maintenance shall only be performed if IDE, acting in good faith and using Good Industry Practise, establishes an immediate danger to any of the following:

- 3.7.1 the Customer or its employees, any IDE employee or any third party; or
- 3.7.2 Customer Equipment or Service Equipment; or
- 3.7.3 the Location, Site or the facility (inclusive of any related facility equipment); or
- 3.7.4 a Force Majeure event

#### **4. Service Outages and Excused Outages**

4.1 In the event that IDE is required to suspend a Service for the reasons described in Paragraph 2 or the Service Suspension provisions set out in the relevant Service Schedule, then such period shall be deemed as an Excused Outage.

4.2 In the event that IDE is required to suspend a Service for the reasons described in Paragraphs 3.6 and 3.7s such period shall be deemed as an Excused Outage under the proviso that IDE shall endeavour to use all reasonable opportunities to mitigate any downtime that the Customer may experience.

4.3 Should the Customer suffer a failure of the Service delivery which is attributable in part or solely due to the actions or inactions of the Customer, the period shall be deemed as an Excused Outage.

#### **5. Termination of Services**

5.1 The Termination Notice Period for any Service is no less than ninety (90) days prior to the end of the Initial Term or any Subsequent Term.

5.2 Should either Party wish to terminate a Service it must provide written notification of its intent to the other Party. Such notification must be provided in accordance with Paragraph 5.1.

#### **6. Miscellaneous**

6.1 The Customer warrants that it shall ensure that any Customer Equipment connected to the Equipment of IDE or the IDE network shall comply with all relevant legislation, standards and licence requirements and shall be in good working order and suitable for the purposes for which it will be used in relation to the Services. IDE reserves the right to disconnect any Customer Equipment which is not compliant with any legal or regulatory requirements or is liable to cause death or personal injury or to cause damage to or to impair the Equipment of IDE. The Customer shall indemnify, defend and hold IDE harmless from any liability incurred as a result of its failure to comply with this Paragraph 6.1.

6.2 The Customer warrants and undertakes that it:

- 6.2.1 shall house the Equipment of IDE and Customer Equipment in the space allocated by IDE in accordance with IDE's reasonable instructions, as may be given from time to time;
- 6.2.2 shall not move, modify, relocate or in any way interfere with IDE's Equipment;
- 6.2.3 shall not cause IDE's Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of IDE;
- 6.2.4 shall not remove, tamper with or obliterate any words or labels on IDE's Equipment;
- 6.2.5 shall not create or allow any charges, liens, pledges or other encumbrances whatsoever to be placed on IDE's Equipment. Title IDE's Equipment shall at all times belong and remain with IDE or the relevant IDE affiliate;
- 6.2.6 shall not use IDE's Equipment except in accordance with such reasonable written instructions as IDE may from time to time give;
- 6.2.7 shall not dispose of IDE's Equipment other than in accordance with IDE's written instructions or authorisation
- 6.2.8 shall not use IDE's Equipment beyond the capacity that it has been provided under the Order.

6.3 The Customer shall ensure that it provides all relevant contact details requested under the Customer information form.

6.4 IDE shall provide to the Customer a Service Specification form with further detailed information relating to the Service specified in the Order.

6.5 The Customer shall grant or shall procure the grant to IDE of all licences, waivers or consents necessary to permit IDE to install or setup the Service which may require access to Customer Equipment.

6.6 The Customer shall provide to IDE all reasonable information required for IDE to perform its obligations under this Agreement. The Customer shall ensure that any information that is given to IDE is accurate in all material respects.

## **7. IP Addresses**

7.1 IDE may assign to the Customer IP addresses as part of the provision of Services. Such IP addresses shall (upon IDE request and to the extent permitted by law) revert to IDE after termination of the relevant Service, whereupon the Customer shall cease using such addresses. At any time after such termination, IDE may re-assign such addresses to another user or Customer.

7.2 All IP addresses requested by the Customer shall be accompanied with a Ripe IP justification form as provided by IDE from time to time.

7.3 In the event that the Customer wishes to use their own PI space, the Customer shall advise IDE in writing and IDE shall route accordingly. If the Customer utilises its own PI space, it shall retain ownership of the PI space until such point where it is surrendered by the Customer.

7.4 Should the Customer require an advance routing facility, IDE reserves the right to charge for such facility and advise the Customer accordingly.

## **8. Service Level Agreements**

8.1 The SLA shall provide details of IDE's response times and Service Credits in relation to Service outages.

8.2 Responses Times

8.2.1 IDE shall use all reasonable endeavours to respond to Customer tickets raised via the IDE Portal within the relevant SLA:

8.2.2 In the event that a Customer erroneously raise a ticket, IDE reserves the right to invoice the Customer accordingly.

8.3 Service Outages (this paragraph does not apply to the Telephony Services)

8.3.1 Where reasonably practicable, IDE shall endeavour to place a notification of a Service Outage on the IDE NOC website within thirty (30) minutes of a Service Outage occurring.

8.3.2 In the event of a Service Outage, IDE shall use all reasonable endeavours to resume the Service with the minimum delay.

8.3.3 In the event of a Service Outage, subject to Paragraph 4 of this Schedule or the terms and conditions of the T&C's, the Customer shall be entitled to Service Credits should IDE fail to adhere to the applicable SLA.

## **9. Service Support Form**

9.1 Support Portal (this paragraph does not apply to the Virtual Services)

9.1.1 The Customer is provided with a login to IDE Support Portal found at idegroup.com. The login details are provided in the 'Connection Notice' document which is issued with the 'Handover Document' during the installation process.

9.1.2 The Support Portal allows the Customer to place support requests directly online and determine the severity category based on the SLA provided in Annex A.

9.1.3 The Customer will be provided with an automatically generated ticket number which will allow the Customer to track the support ticket through to its resolution. In accordance with the problem priority defined within Annex A, if the Customer deems the support request to be of a priority 1 or 2 category, the Customer must follow up the support ticket with an immediate call to the NOC quoting the provided ticket number.

9.2 Escalation of technical support (this paragraph does not apply to the Virtual Services)

9.2.1 In the event that the Customer does not receive a response within the allotted as defined in Annex A, the Customer may escalate a ticket that is in the process of being dealt with by our technical support team. The Customer must follow the escalation procedure, as defined in the IDE Handover Document.

## COLOCATION SERVICE SCHEDULE

### **1. Colocation Definitions**

- 1.1 In these Service Terms & Conditions the following terms and phrases shall have the following meanings:
- “**Colocation**” means the act of situating multiple related items, with multiple owners, in a single location;
- “**Colocation AUP**” means the Acceptable Usage Policy for the Colocation Service as defined in this Schedule;
- “**Connection Notice**” means the formal notice of a Service being ready for Customer use and the Service Commencement Date;
- “**ETF**” means early termination fees which are billed to the Customer for the premature termination of Services prior to the end of the Initial Term or any subsequent Term;
- “**Excess Usage**” means any usage of Services that exceeds the agreed amount stated within the Order;
- “**Excused Outage**” means a period of time during the Service Term where IDE is not liable to provide Service Credits in lieu of the Customer’s inability receive access to or gain use of the Service;
- “**Handover Document**” means the document provided to the Customer upon handover of the active Service to the Customer;
- “**Master AUP**” means the Master Acceptable Usage Policy as defined within the relevant Schedule;
- “**Service Charge**” means the recurring charge to be paid by the Customer to IDE for the period defined in the Payment Profile of the Order for the agreed Services.
- “**Service Credit**” means a credit applied to the Customer’s account in respect of an event of an unexcused failure by IDE to achieve the SLA’s, as defined in Annex A of the applicable Service Terms & Conditions;
- “**Service Equipment**” means any equipment provided to the Customer for the purpose of delivering a Service to the Customer;
- “**Service Outage**” means a period of time in which an active Service, provided by IDE to the Customer, is unavailable in such a manner as defined in the applicable Service Terms & Conditions;
- “**Support Portal**” means the IDE online web portal that is found at [idegroup.com](http://idegroup.com);

### **2. Colocation Service Charges**

- 2.1 In the event that IDE’s supplier of the Colocation space is required to increase the cost of Service during the Service Term, the Customer shall be responsible for any such increase upon receiving 30 days prior written notification from IDE. In such event, IDE shall only pass to the Customer the proportionate increase as provided by the Colocation space supplier. For the avoidance of doubt, this may occur from time to time during the Service Term.
- 2.2 Any Excess Usage shall be charged at the Fees stated in paragraph 7 below unless stated otherwise. All Excess Usage Fees shall be invoiced in arrears on 30 days terms.
- 2.3 IP transit is measured in 1Mbps increments. Should the Customer exceed the increment by 1 decimal position the Customer shall be charged for the next whole increment of usage. An example of this is 1.1Mbps shall be charged at 2Mbps. If a dispute is raised against an Excess Usage charge, IDE shall provide all relative data to the Customer as to how the Excess Usage charge was established. Such data shall be deemed to be correct unless agreed otherwise by IDE or proven to the contrary by an agreed independent third party with suitable industry knowledge.
- 2.4 All Support Services shall be charged at the Fees stated in paragraph 7 below, unless stated otherwise.
- 2.5 All charges for shipping and storage shall be payable by the Customer.

### **3. Termination of Colocation Services**

- 3.1 Upon termination of a Colocation Service, the Customer shall ensure that the Colocation Space is completely vacated and returned to IDE in the physical and aesthetic condition that the Colocation space was originally provided to the Customer prior to the commencement of the Colocation Service. The Customer shall be solely responsible for all remedial work required to return the Colocation space to its original state, and to this respect, the Customer indemnifies IDE against any such costs incurred as a result of the Customer, its employees or representatives. In such circumstance, IDE shall provide a quotation and invoice to the customer for all reasonable direct costs incurred and the Customer shall make immediate payment on the outstanding amount.
- 3.2 Within 5 days following the effective termination date of a Colocation Service, the Customer shall remove all of the Customer’s Equipment from the Colocation space. If the Customer fails to remove the Customer’s Equipment within 5 days, IDE may, at the



Customer's sole cost and expense, disconnect, remove and store or dispose of the Customer's Equipment without prior notice to the Customer.

3.3 Upon notice of termination of the Colocation Service, IDE shall issue to the Customer a final invoice for all outstanding amounts. The Customer shall make payment of the invoice prior to gaining access to remove the Customer Equipment.

**4. Relocation of Colocation Services**

4.1 IDE reserves the right upon prior written notice, to relocate the Customer's Colocation Service and all relevant Customer Equipment and Service Equipment provided that IDE shall not arbitrarily or discriminatorily perform such changes.

4.2 In the event that IDE relocates the Customer's Colocation Service pursuant of paragraph 4.1, subject to a duly authorised officer of IDE preapproving such expenditure, IDE shall at its own expense pay reasonably incurred costs for the act of relocating the Service. For the avoidance of doubt, the Customer shall continue to pay the Charges as set in the agreed Order relating to the Service.

4.3 Should IDE relocate the Customer's Service pursuant of paragraph 4.1, IDE shall ensure that the relocation site is comparable to the previous location provided and shall work with the Customer to minimise any disruption to the Customer Service.

**5. Power and Climate SLA for IDE Owned Facilities**

5.1 IDE provides an ambient temperature of the data floor at an average temperature of 23°C. The temperature may fluctuate by +/- 3°C. This temperature range is only applicable where the outside temperature is no higher than 35°C and no lower than -1°C. For the avoidance of doubt, if at the time the maximum outside temperature exceeds 35°C or the minimum outside temperature is lower than -1°C, IDE will not be liable to give Service Credits in relation to the climate control of the data floor. The temperature is measured on the basis of the data floor average temperature in any 24 hour period.

Power Availability - Duration of the availability of the power service levels as % of the number of minutes in the relevant calendar month	Cooling Availability - Duration of the availability of the cooling service level as % of the number of minutes in the relevant calendar month	Credit - % reduction in Monthly recurring charge
< 99.95%	< 99.95%	1%*

\*The Service Credit provided to the Customer by IDE shall be 1% of the Service Charge for each completed hour that the Service falls below the SLA up to a maximum of 15% of the monthly Service Charge.

**6. Colocation AUP**

6.1 Hazardous Material

6.1.1 The Customer shall ensure that the Colocation space, any space directly adjacent to the Colocation space and any shared space within the facility, car park or loading bays is kept tidy and free from any of the Customer's boxes, cardboard or other disposables. Unless specifically advised to the contrary, IDE does not provide onsite facilities for the disposal of packaging and other waste.

6.1.2 The Customer shall under no circumstance perform any of the following whilst on a data centre data floor:

- a) Use photographic devices unless specifically permitted by a IDE member of staff;
- b) Take food, drink or any liquids on to the data floor;
- c) Leave any unattended items that are not securely stored within the Customer's Colocation space.
- d) Store cardboard or any flammable materials on the data floor or in the Customer's Colocation space.

6.2 Site Policies

6.2.1 The Customer shall, at all times, adhere to site policies as advised by IDE to the Customer from time to time.

6.3 Deliveries

6.3.1 No deliveries shall be accepted at a Colocation facility without the Customer creating a ticket via IDE's Support Site advising IDE of its intent to have a package delivered to the Colocation facility. The agreed deliveries may be stored for a reasonable time and the Customer shall be liable for any storage charges as defined in paragraph 7.

6.4 Excessive Use of Services & Service Equipment

6.4.1 The Customer shall use Services and Service Equipment within the parameters that the Service or Service Equipment has been provided under the relevant Order. Should the Customer exceed the parameters of the Service or Service Equipment, as defined in the relevant Order, the excessive use may have detrimental effects on the Service Equipment, the Service, the facility, or other Customers using the Service. IDE may, acting in good faith, advise the Customer to amend their excessive use of the Service or Service Equipment and the Customer shall strictly adhere to the request within a reasonable period of time.

**7. Colocation Support Services & Excess Usage Pricing**

7.1 Unless stated to the contrary in the Order for the Service, this paragraph 7 provides the pricing model for Support Services and Excess Usage in relation to the Colocation Service.

7.2 Support Services are subject to availability and confirmation by IDE.

Support Service & Excess Usage

Support Services	Period	Fee
Excess Power (per amp)	Per month	£150
Remote hands*	Per hour	£150
On site storage	Per day	£25
Cable run	Per annum	Subject to quotation by IDE

\*Charges for remote hands at BIS (Greenwich) are greater than displayed and are therefore subject to quotation by IDE.

**8. Colocation Service Support Form**

8.1 Site Policies may be provided to the Customer by IDE and shall be updated from time to time.

## **CONNECTIVITY SERVICE SCHEDULE**

### **1. Preamble**

1.1 These Connectivity Service Terms & Conditions provide the agreed conditions of the Customer utilising the Connectivity Services. These Connectivity Service Terms & Conditions apply solely to the Connectivity Services and are governed by the IDE T&C's. Upon an Order being agreed between the Parties, these Connectivity Service Terms & Conditions shall be incorporated into the Agreement.

### **2. Connectivity Definitions**

2.1 In these Service Terms & Conditions the following terms and phrases shall have the following meanings:

“**CDR**” means Committed Data Rate which is the minimum amount of IP Transit that the Customer is committed to during the Initial Term or any Subsequent Term as defined in the Order;

“**Connectivity**” means both the IP Transit and Interconnect Services provided by IDE;

“**Connectivity AUP**” means the Acceptable Usage Policy for the Connectivity Services as defined in Annex B of these Connectivity Service Terms & Conditions;

“**EFM**” means Ethernet First Mile which is a symmetric telecommunication link provided on a copper connection between two or more points for the purpose of delivering Connectivity;

“**Excess Transit**” means any IP Transit use above the CDR;

“**IP Transit**” means the act of passing IP traffic from one location to another via a layer 2 or layer 3 connection as measured in Mbps.

“**OCP**” means the Order Confirmation Period of 10 days which shall only take effect and commence upon IDE confirming to the Customer a requirement for Excess Survey Charges;

“**Provider**” means a third party Service provider (these may include but are not limited to BT, Virgin Media or TALKTALK);

### **3. Service Fees**

3.1 Any Excess Usage shall be charged at the Fees stated in paragraph 7 below, unless stated otherwise in an Order. All Excess Usage Fees shall be invoiced in arrears on 30 days terms.

3.2 IP transit is measured in 1Mbps increments. Should the Customer exceed the increment by 1 decimal position the Customer shall be charged for the next whole increment of usage. An example of this is 1.1Mbps shall be charged at 2Mbps. If a dispute is raised against an Excess Usage charge, IDE shall provide all relative data to the Customer as to how the Excess Usage charge was established. Such data shall be deemed to be correct unless agreed otherwise by IDE or proven to the contrary by an agreed independent third party with suitable industry knowledge.

3.3 All Support Services shall be charged at the Fees stated in paragraph 7 below, unless stated otherwise in an Order.

3.4 All charges for shipping and storage shall be payable by the Customer.

### **4. Termination of Connectivity Services**

4.1 If neither Party provides notice to the other of its intent to terminate a Connectivity Service, it shall be accepted as a tacit response on behalf of both Parties of their intent to extend the Service Term by a minimum of the Subsequent Term.

4.2 Upon notice of termination of the Connectivity Service, IDE shall issue to the Customer a final invoice for all outstanding amounts. The Customer shall make immediate payment of the invoice.

### **5. Excess Transit Usage**

5.1 Excess Transit shall be calculated on a 95th Percentile, 5 minute average model.

### **6. Connectivity SLA**

6.1 IDE offers multiple circuit types and termination end-point options. The access technology and termination end-points can be organised in such a fashion as to improve site availability figures.

6.2 IDE offers the following types of resilience as standard:

Option	Routing	CE Termination	PE Termination	Availability
Resilient – Fully Diverse	Two access circuits fully diversely routed to CPE	Dual	Dual	99.99%
Resilient - Diverse	Two access circuits fully diversely routed to site	Dual	Dual	99.97%
Resilient	Two access circuits routed to site	Dual	Single	99.95%
Non- resilient	One access circuit	Single	Single	99.75%

## 7. Service Credits

7.1 IDE provides two SLA's in relation to Connectivity:

- non-diverse connections (Connectivity provided by IDE on a single non-diverse connection); and
- dual diverse connections (Connectivity provided by IDE on dual diverse and independent connections).

Network availability for Resilient Fully Diverse Connectivity Services	
Availability (%)	Reimbursement rate (% of monthly Connectivity )
99.99 - 99.96	10
99.95 - 99.70	15
99.69 - 99.00	20
98.99 - 95.00	25
94.99 - 90.00	30

Network availability for Resilient Diverse Connectivity Services	
Availability (%)	Reimbursement rate (% of monthly Connectivity )
99.97 - 99.94	5
99.93 - 99.70	10
99.69 - 99.00	15
98.99 - 95.00	20
94.99 - 90.00	25

Network availability for Resilient Connectivity Services	
Availability (%)	Reimbursement rate (% of monthly Connectivity )
100 - 99.96	2.5

99.95 - 99.70	5
99.69 - 99.00	10
98.99 - 95.00	15
94.99 - 90.00	20

Network availability for Non - Resilient Connectivity Services	
Availability (%)	Reimbursement rate (% of monthly Connectivity )
100 - 99.75	0
99.75 - 99.70	5
99.69 - 99.00	10
98.99 - 95.00	15
94.99 - 90.00	20

#### 8. Availability Calculations

The **Availability** of the Connectivity Service shall be calculated at the end of each month in accordance with the following formula:

$$A = X - Y / X \times 100\%$$

Where:

“A” the **Availability** of the service (expressed as a percentage).

“Y” Minutes of **downtime** in the calendar month less any Excused Outages

“X” Total **minutes** in the calendar month based on 1 minute past midnight on the 1st to midnight on the last day of the month.

#### 9. Excess Usage Pricing

9.1 Unless stated to the contrary in an Order for the Service, this paragraph 9 provides the pricing model for Support Services and Excess Usage in relation to the Connectivity Services.

9.2 Support Services are subject to availability and confirmation by IDE.

##### Support Service & Excess Usage

Support Services	Period	Fee
Excess Transit (per Mb)	Per month	£19
Remote hands*	Per hour	£150
On site storage	Per day	£25
Cable run	Per annum	Subject to quotation by IDE

\* Charges for remote hands at BIS (Greenwich) are greater than displayed and are therefore subject to quotation by IDE.

**10. Site Surveys and Excess Survey Fees**

- 10.1 Upon IDE accepting an Order for a Connectivity Service, IDE shall engage the Provider who will subsequently perform a Site Survey.
- 10.2 Upon receipt of the Site Survey, IDE shall advise the Customer as to whether the Provider has provided any Excess Survey Fees.
- 10.3 IN THE EVENT THAT THE SITE SURVEY RESULTS IN EXCESS SURVEY FEES THAT ARE UNDER THE VALUE OF £100 PER COPPER PAIR (I.E. £200 FOR 2 PAIRS AND £400 FOR 4 PAIRS) THEN THE ORDER WILL PROGRESS AS NORMAL AND THE CUSTOMER SHALL BE LIABLE TO PAY SUCH EXCESS SURVEY FEES INVOICING BY IDE.
- 10.4 If, upon completion of the Site Survey, the Provider confirms to IDE that there is no requirement to apply Excess Survey Fees in relation to the Connectivity, the order shall continue to be processed. For the avoidance doubt, if IDE has not advised the Customer of Excess Survey Fees, the Customer may not terminate the Connectivity order without incurring ETF's.
- 10.5 In the event that IDE confirms a requirement to apply Excess Survey Fees to the Customer's Connectivity order above the value of £100 per copper connection, the Customer will be required to provide written notification of their acceptance of the Excess Survey Fees during the OCP. Until such point where the Customer provides written notification, the Connectivity order shall be suspended for the OCP. Should no confirmation of the Customer's intent to accept the Excess Survey Fees be received within the OCP, IDE shall accept such tacit response as the Customer's intent to cancel the Connectivity order. Should the Customer cancel the Connectivity order during the OCP no ETF's shall be incurred. **FOR THE AVOIDANCE OF DOUBT, CANCELLATION OF THE CONNECTIVITY SERVICE DOES NOT INCLUDE CANCELLATION OF ANY OTHER ITEMS INCLUDED WITHIN THE APPLICABLE ORDER.** Should the Customer wish to proceed with the Connectivity Service after the OCP, the order will be subject to a new quotation and Site Survey.

**11. Connectivity Incident Resolution Targets**

- 11.1 IDE whilst working with the Provider shall use reasonable endeavours to resolve incidents within the timescales set out in the Table below.

Severity	Issue resolution target, measured in Clock EFM based Wholesale Ethernetr Service Hours
Priority 1	6
Priority 2	12
Priority 3	24
Priority 4	48

- 11.2 It may be necessary to extend the timescales in the Table above due to the complexity of an incident or where the Provider is dependent on a third party of the Provider for resolution of the incident.
- 11.3 Order's that have yet to be completed are not subject to the resolution or response times indicated above.
- 11.4 For Priority 1 incidents, the Customer agrees that intrusive testing (testing which shall have a detrimental effect on the circuit during the testing period by either IDE, the Provider or their respective contractors) by the Provider can occur without seeking permission. For any other issue where the Provider believes that intrusive testing is required it will seek permission from IDE before doing so and subsequently IDE shall seek the relevant permission from the Customer.
- 11.5 IDE NOTE: IDE SHALL ENSURE IT ACTS IN A TIMELY MANNER IN PROCESSING THE CUSTOMERS' REQUIREMENTS TO THE PROVIDER AND WHERE POSSIBLE OPEN COMMUNICATIONS DIRECTLY. INFORMATION RELATING TO CLOCK HOURS AND PARKED TIME CAN BE REQUESTED BY THE CUSTOMER UPON COMPLETION OF THE SERVICE OUTAGE.
- 11.6 Clock Hours shall be defined as the difference in hours between the Start Time and Stop Time excluding Parked Time:
  - 11.6.1 "Start Time" is the initiation (timestamp) of an incident on the Providers incident handling system;
  - 11.6.2 "Stop Time" is when the status of the incident becomes Resolved; and

11.6.3 Parked Time will be excluded from the gross elapsed time and, therefore, Clock Hours will reflect the time for which the Provider or its sub-contractors are wholly responsible.

11.7 Parked Time is where the progression of the resolution of an incident is outside of the control of IDE.

## TELEPHONY SERVICE SCHEDULE

### **1. Preamble**

1.1 These Telephony Service Terms & Conditions provide the agreed conditions of the Customer utilising the Telephony Services. These Telephony Service Terms & Conditions apply solely to the Telephony Services and are governed by the IDE T&C's. Upon an Order being agreed between the Parties, these Telephony Service Terms & Conditions shall be incorporated into the Agreement.

### **2. Telephony Definitions**

2.1 In these Service Terms & Conditions the following terms and phrases shall have the following meanings:

2.2 "Alias" means a DID which is associated to SIP Trunk where all settings are mirrored to the SIP Trunk;

"Average Traffic" means our reasonable assessment of common traffic patterns seen on the Network and as assessed by IDE;

"Telephony AUP" means the acceptable usage policy for Telephony Services as defined in Annex B of these Telephony Service Terms & Conditions;

"DID" means a direct inward dialling number;

"PBX" means private branch exchange;

"PSTN" means public switching telephone network;

"Rates" means the chargeable amount to the Customer for minutes used in respect of the VoIP Service as advised by IDE from time to time during the Service Term;

"SIP Trunk" means a session initiation protocol connection that connects the Customer's DID number or IP address to allow the use of inbound and outbound calls dependant on the Customer's user;

"Telephony" means any VoIP related Services that are provided under these Telephony Service Terms & Conditions as may be advised to the Customer from time to time;

"VoIP" means voice over internet protocol.

### **3. Telephony Service Provisions**

3.1 The following Service provisions are agreed between IDE and the Customer;

3.1.1 Calls from IDE SIP Trunk (including Alias') to other IDE SIP Trunk (including Alias') are free of charge.

3.1.2 The Customer agrees that IDE Telephony Services are strictly prepaid unless the Parties agree otherwise in writing.

3.1.3 All of IDE plans can include a DID number or IP address/SIP Trunk that allows the Customer or its users to receive calls from the PSTN outside of the IDE network. DID Numbers assigned to an account are classified as SIP Trunks and have a Service Charge attached to them that is specified on the Website and is subject to change from time to time.

3.2 The Customer is responsible for all Charges incurred prior to IDE confirming termination of the Telephony Service.

3.3 The Customer is responsible for ensuring that the Customer account is secure by ensuring a secure password is applied to each SIP Trunk. In the event that any Charges are incurred on the Customer account as a result of the Customer's failure to implement suitable security measures (including without limitation, hacking of the Customer account), the Customer shall be solely liable for such Charges.

### **4. Service Fees**

4.1 All Fees in relation to Rates are subject to change from time to time as posted at [portal.telecom.IDE.co.uk](http://portal.telecom.IDE.co.uk). Revised Rates shall become applicable to the Customer account 5 days after such revision being posted on at [portal.telecom.IDE.co.uk](http://portal.telecom.IDE.co.uk). The Customer is solely responsible for ensuring it monitors the Rates in relation to VoIP use.

4.2 All Support Services shall be charged at the Fees stated in paragraph 12 below, unless stated otherwise in an Order.

4.3 All charges for shipping and storage shall be payable by the Customer.

4.4 IDE reserves the right to review Average Traffic. In the event that the traffic average is abnormal to the Average Traffic, IDE reserves the right to adjust the Rates specified on at [portal.telecom.IDE.co.uk](http://portal.telecom.IDE.co.uk).

4.5 IDE's rates are based upon a standard profile of the distribution of traffic for retail Customers. If access costs for a Customer's traffic are higher than IDE's average cost based upon a standard traffic profile, we may increase the Rates for the Customer's service upon reasonable written notice. IDE's average access cost will be calculated on the same period used to analyse the Customer's traffic.



4.6 Upon review of Customer traffic IDE reserves the right to amend specific Customer rates should the average call duration of the Customer fall below one 1 minute. Such revision of rates shall be advised to the Customer in writing and then take immediate effect.

4.7 In the event that the Customer requires multiple Alias' under a SIP Truck, each Alias shall be charged as an independent connect of the SIP Truck.

## **5. Credit Facilities**

5.1 At IDE's sole discretion, it may offer to the Customer a credit facility in relation to Telephony Services. In such circumstance the Customer shall ensure timely payment of any properly due invoices. IDE reserves the right to revoke any credit facility provided to the Customer at any point and without notice if, acting in good faith, IDE has reason to believe that the Customer;

5.1.1 does not intend to make payment for Services utilised on the Customer's account; or

5.1.2 is financially unstable or is not financially capable to make payment for Services utilised on the Customer's account.

5.2 In the event that IDE revokes a credit facility pursuant of this paragraph 5, the Customer shall make immediate payment to IDE for any outstanding amounts on the Customer account.

5.3 It is agreed by the Parties that in the event that IDE revokes a credit facility from a Customer's account, under no circumstance shall IDE be liable for any repercussions arising from such actions being taken.

## **6. Telephony Services Outages**

6.1 For the avoidance of doubt, IDE does not offer Service Credits in relation to Telephony Services.

## **7. Termination of Telephony Services**

7.1 If neither Party provides notice to the other of its intent to terminate a Telephony Service it shall be accepted as a tacit response on behalf of both Parties of their intent to extend the Service Term by a minimum of the Subsequent Term.

7.2 Upon notice of termination of the Telephony Service IDE shall issue to the Customer a final invoice for all outstanding amounts. The Customer shall make immediate payment of the invoice.

## **8. Customer Responsibilities**

8.1 The Customer agrees;

8.1.1 to provide equipment and facilities required to support the Services' configurations and delivery; and

8.1.2 to use Services only in accordance with the terms of this Agreement; and

8.1.3 to obtain any and all required licenses and permits relating to the Customer's use or resale (if permitted) of the Services.

## **9. Miscellaneous**

9.1 In the event that the customer resells the telephony services provided, to a third party, the customer shall be solely responsible for ensuring that any end users of the service are able to access emergency calls in line with the Ofcom general condition 4 (emergency calls) of the general conditions of entitlement. To the extent that it is technically feasible, the customer must ensure that location information is provided by the customer's end users. Such information must indicate the geographical location of the terminal equipment of the person who is initiating the call. Further to the requirements of providing access to emergency calls and the provision of locational information, the customer shall be solely responsible and accepts all liability for ensuring that the information of their users is accurate and up to date. From the 25th may 2011 Ofcom may enforce a penalty of 10% of the of the communications providers turnover plus and additional £20,000.00 for each day that the non-compliance to this regulation continues. For the avoidance of doubt, the customer is the communications provider to their customers and shall be solely responsible for to this respect. The customer agrees to indemnify, defend and hold IDE harmless against and assumes all liability for all actions, demands, damages or claims of any nature arising as a result of the failure of the customer to adhere to this paragraph.

9.2 The customer acknowledges and accepts that VoIP equipment relies on a constant power supply to continue working. If power is interrupted, (for example during a power cut) VoIP equipment will no longer continue to function (this includes without limitation access to emergency calls and the ability to make telephone calls as a whole). IDE strongly recommends that the customer always ensures that any user of the telephony services keeps a secondary method for communication in case of

emergency situations. The customer hereby indemnifies and holds harmless IDE against any claim or action taken against IDE as a result of the customer inability to access the telephony service.

9.3 IDE will endeavour to connect calls to the emergency services however due to circumstances out of the control of IDE, IDE cannot guarantee that it can connect any calls at any times. Furthermore when calls are connected we cannot guarantee passing of the user's geographical location.

## 10. Installation Lead Times

10.1 IDE use all reasonable endeavours to install Services within the following lead times;

Installation Type	Lead Time in working days
Single Line	7
Single Lines with greater than 10 lines porting at installation/time	17
PBX 10 lines or less	10
PBX 11lines or greater (or a Centrex site)	20
Simple DDI	20
Complex DDI (or multi-site full/partial VPN)	25
ISDN 10 lines or less	10
ISDN 11 lines or greater	20

## 11. Telephony AUP

11.1 The examples named below are not exhaustive or limited to that which stated. The examples below are provided solely for guidance to the Customer. The Customer may not use IDE's Telephony Service in a manner which;

- 11.1.1 infringes on the intellectual property rights of us; or
- 11.1.2 involves deceptive online marketing practices including, without limitation, practices that violate the United Kingdom's Advertising Standards Agency guidelines for proper online marketing schemes; or
- 11.1.3 violates any specific instructions given by us for reasons of health, safety or quality of any other telecommunications services provided by us or by reason of the need for technical compatibility of equipment attached to our Network; or
- 11.1.4 materially affects the quality of any telecommunications services provided by us.
- 11.1.5 Prohibited activities also include, but are not limited to, the following: or
- 11.1.6 unauthorised use (or attempted unauthorised use) or sabotage of any computers, machines or networks; attempting to interfere with or denying service to any user or host (e.g. denial of service attacks and/or DNS spoofing attacks); or
- 11.1.7 "Phreaking" the act of using various audio frequencies to manipulate a third party's systems without the permission of the third party.
- 11.1.8 using any program/script/command, or sending messages of any kind, designed to interfere with a third party customer terminal session, via any means, locally or via the Internet; or
- 11.1.9 "phishing", that is simulating communications from and/or the website or other service of another entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service; or
- 11.1.10 "pharming", that is using malware, DNS cache poisoning or other means to redirect a user to a website or other service that simulates a service offered by a legitimate entity in order to collect identity information, authentication credentials, or other information from the legitimate users of that entity's service transmitting or receiving, uploading,

using or reusing material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or similar third party rights.

**12. Telephony Support Services**

12.1 Support Services relating to IDE’s Telephony Services are subject to quotation and availability as advised to the Customer by IDE from time to time.

	Set-Up	Monthly Recurring
Retail Account	£20	£0
Numbers	£0	£1.00
IVR	£0	£10.00
Call Barring	£0	£5.00
Voicemail	£0	£0.00
Fax to Email	£0	£2.00

## **VIRTUAL SERVICE SCHEDULE**

### **1. Preamble**

- 1.1 These Virtual Services Terms & Conditions form part of the Agreement between IDE and the Customer for provision of IDE's Virtual Services on a business to business basis. This agreement does not include Third Parties. This Agreement takes effect from earliest of the following situations;
- 1.1.1 The Customer utilises any of IDE's Virtual Services; or
- 1.1.2 The Customer accepts the Agreement through the Virtual Services Portal

### **2. Virtual Service Definitions**

- 2.1 In these Virtual Services Terms & Conditions the following terms and phrases shall have the following meanings:
- "API" means the Application Program Interface;
- "VDC" means IDE's Virtual Data Centre service;
- "Virtualisation AUP" means the Acceptable Usage Policy for the Virtual Service as defined in Annex B of these Virtual Service Terms & Conditions;
- "Virtual Services" means any of the virtual products provided as a Service to the Customer by IDE (including but not limited to VPS and VDC services) and may be advised from time to time; and
- "VPS" means IDE's Virtual Private Server Service.

### **3. Service Fees**

- 3.1 Any Excess Usage shall be charged at the Fees stated in Annex C unless stated otherwise in an Order. All Excess Usage Fees shall be invoiced in arrears on 30 days terms.
- 3.2 IP transit is measured in 1Mbps increments. Should the Customer exceed the increment by 1 decimal position the Customer shall be charged for the next whole increment of usage. An example of this is 1.1Mbps shall be charged at 2Mbps. If a dispute is raised against an Excess Usage charge, IDE shall provide all relative data to the Customer as to how the Excess Usage charge was established. Such data shall be deemed to be correct unless agreed otherwise by IDE or proven to the contrary by an agreed independent third party with suitable industry knowledge.
- 3.3 All Support Services shall be charged at the Fees stated in paragraph 9 below, unless stated otherwise in an Order.

### **4. Virtual Service Provision**

- 4.1 The Virtual Services provided under this agreement do not include any software, consultancy service (provided by IDE or any third party) or and product or services that are not provided by IDE.
- 4.2 IDE provides Virtual Services as an independent Service and does not provide any warranty nor accepts any liability in relation as to how the Virtual Services integrates with third party products or services.
- 4.3 Under the proviso that the Customer strictly adheres to the terms and conditions of this Agreement IDE grants a non-exclusive licence to the Customer during the Service Term for the use of IDE Virtual Services. Issue of such licence is conditional upon the following;
- 4.3.1 The Customer does not reproduce or use the API for any other purpose other than for the purpose of receiving Virtual Services and utilising them as the service is intended.
- 4.3.2 The Customer strictly adheres to the terms and conditions of this Agreement.
- 4.3.3 IDE retains all rights over any IP rights of the Virtual Services and the API.

### **5. Virtual Service Suspension**

- 5.1 IDE reserves the right to and the Customer irrevocably authorises IDE to delete any contents of data held on a Customer's Virtual Service should the Customer account become more than 30 days overdue for payment. For the avoidance of doubt, the customer hereby agrees that IDE shall not in any way be liable for any loss of data or electronic content stored on the Virtual Service which is incurred by the Customer pursuant of this paragraph 5.1

5.2 The Customer shall strictly adhere to both the Master AUP and the Virtualisation AUP. Failure to adhere to this paragraph 5.2 shall result in a suspension of Service.

## 6. Termination of Virtual Services

6.1 If neither Party provides notice to the other of its intent to terminate the Virtual Service, it shall be accepted as a tacit response on behalf of both Parties of their intent to extend the Service Term by a minimum of the Subsequent Term.

6.2 Upon termination of a Virtual Service, the Customer shall ensure that it has removed all content and data from the Virtual Service prior to the termination date of the Service. For the avoidance of doubt, IDE shall delete any content remain on the Virtual Service upon termination of the Service within a reasonable period of time.

## 7. Virtual Services SLA

7.1 IDE provides an SLA to cover the following aspect of Virtual Service delivery;

- Server Uptime
- IDE network availability

7.2 For the avoidance of doubt IDE does not provide an SLA for any other aspects of the Virtual Services.

Service availability for Virtual Services	
Network Availability to the Platform	98.89%
DRaaS Protected Virtual Machines	99.95%
Unprotected Virtual Machines	99.9%

7.3 Service Availability is measured across a calendar month using the following formula...

7.4  $\text{Monthly Uptime \%} = (\text{Maximum Uptime} - \text{Downtime}) / \text{Maximum Uptime} \times 100$

7.5 Where for Network Connectivity...

7.5.1 Maximum Uptime – The time (in minutes) that a network connectivity is expected to be available for. This excludes any time when the network connectivity was unavailable due to a customer activity or request, or component activity for which a customer is responsible, and excludes any notified maintenance period. Network connectivity is considered available if bi-directional network traffic can flow with no greater than 5% packet loss.

7.5.2 Downtime – The time (in minutes) for which no network connectivity is available.

7.6 Where for Virtual Machines...

7.6.1 Maximum Uptime – The time (in minutes) that a virtual machine is expected to be available for. This excludes any time when the VM was unavailable due to a customer activity or request, or component activity for which a customer is responsible, and excludes any notified maintenance period. A virtual machine is considered available if it can participate in bi-directional network traffic.

7.6.2 Downtime – The time (in minutes) for which no virtual machine connectivity is available.

## 8. Virtual Services AUP

8.1 Excessive Use of Services & Service Equipment

8.1.1 The Customer shall use Virtual Services within the parameters that are defined under the relevant Order. Should the Customer exceed the parameters of the Service as defined in the relevant Order, the excessive use may have detrimental effects on the Service or other Customers using the Service. IDE may, acting in good faith, advise the Customer to amend their excessive use of the Service and the Customer shall strictly adhere to the request within a reasonable period of time.

8.1.2 IDE reserves the right to throttle Excess Usage in the event that it deems Excess Usage detrimental to other Customers use of the .

**9. Virtual Support Services & Excess Usage Pricing**

Unless stated to the contrary in the Order for the Service, Annex C provides the pricing model for Support Services and Excess Usage in relation to the Virtual Service.

Support Services are subject to availability and confirmation by IDE.

9.1 Support Service & Excess Usage

Support Services	Period	Fee
Excess Transfer (per GB)	Per month	50p
Remote hands*	Per hour	£150

## SHARED DESK SERVICE SCHEDULE

### 1. Responses Times

IDE shall use all reasonable endeavours to respond to Customer tickets raised via the IDE Portal within the SLA set out below:

	Response Time	
	08:00 – 18:00 on Business Days	Outside Standard Hours
P1 Incident	15 mins	2 hours
P2 Incident	30 mins	2 hours
P3 Incident	1 hour	N/A
P4 Incident	4 hours	N/A
P5 Incident	24 hours	N/A

In the event that a Customer raises a ticket erroneously IDE reserves the right to charge the Customer in accordance to remote hand charges.

### 2. Priority Calculation

IDE shall use the below urgency/impact matrix to calculate the priority of the incident. The priority of the incident in in the Service Providers discretion only.

Impact/ Urgency	High	Medium	Low
High	Priority 1	Priority2	Priority 3
Medium	Priority 2	Priority 3	Priority 4
Low	Priority 3	Priority 4	Priority 5

### 3. Service Outages

Where reasonably practicable, IDE shall endeavour to place a notification of a Service Outage on the IDE NOC website within 30 minutes of a Service Outage occurring.

In the event of a Service Outage, IDE shall use all reasonable endeavours to resume Service with the minimum delay.