

## 1 About These Terms & Conditions

- 1.1 These Terms and Conditions govern all products and services supplied by IZR Solutions Ltd. ("IZR" and "The Company"), its authorised agents and subcontractors.
- 1.2 The Clause and Schedule headings are for convenience only and shall not affect the interpretation of these Terms and Conditions.
- 1.3 References to the singular include the plural and vice versa, and references to one gender shall include the other gender.
- 1.4 Any phrase introduced by the expressions "including", "such as", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.
- 1.5 Any reference to a statute, statutory provision or subordinate legislation (together "legislation") shall (except where the context otherwise requires) (i) be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation and (iii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.
- 1.6 Unless specifically provided to the contrary all notices under these Terms and Conditions shall be in writing, and shall hold no force unless signed by an authorised representative of both parties.

## 2 Definitions

- 2.1 In these Terms and Conditions the following expressions shall have the following meanings unless the context otherwise requires:
  - 2.1.1 **"the Act"** means the Communications Act 2003;
  - 2.1.2 **"Additional User"** means any party other than the Customer or User who makes use of a facility or service derived from the Services including without limitation any party to which the User resells and any End User;
  - 2.1.3 **"Acceptance"** means IZR's acceptance of any given Service Order in accordance with Clause 4;
  - 2.1.4 **"the Agreement"** means the composite of these Terms and Conditions, Service Orders received and accepted by IZR, and any other written commercial agreement between IZR and the Customer;

- 2.1.5 **"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday in England and Wales;
- 2.1.6 **"Cancellation Charges"** means the Charges in respect of the Customer's termination of any Service Order or any individual line prior to the expiry of the Minimum Service Order Length;
- 2.1.7 **"Carrier Network"** means the system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electromechanical energy of (i) speech, music and other sounds, (ii) visual images signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images or (iii) signals serving for the actuation or control of machinery or apparatus which IZR or the Carrier operates;
- 2.1.8 **"Charges"** means the monetary payments due to IZR by the Customer as specified in the applicable Commercial Agreement and/or Service Order and payable in accordance with Clause 7;
- 2.1.9 **"Credit Checks"** means the Credit Checks carried out by IZR pursuant to Clause 8 of these Terms and Conditions;
- 2.1.10 **"Credit Limit"** means the financial limit placed on the Customer's use of the Service in accordance with Clause 8;
- 2.1.11 **"Customer Equipment"** means equipment, systems, cabling and facilities provided by the Customer (or any third party to which the Customer resells the Service);
- 2.1.12 **"Email"** means electronic mail sent to a recipient via the Internet;
- 2.1.13 **"End User"** means the ultimate end user of the Services;
- 2.1.14 **"Group"** means, in relation to any company, that company and the following for the time being: its subsidiaries, and its holding companies and their subsidiaries ("holding company" and "subsidiary" as defined in section 736 and 736A of the Companies Act 1995);
- 2.1.15 **"Intellectual Property Rights"** means (i) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how and confidential information; (ii) all other intellectual property rights and similar or equivalent rights in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights;

- 2.1.16 **"Initial Fees"** means with respect to the sums due under any Commercial Agreement or Service Order the (1) Installation Charge (as specified in the applicable Service Schedule) and (2) a pro rata amount of Monthly Recurring Charge (as specified in the applicable Service Schedule) for the period between the RFS Date and the following IZR invoice;
- 2.1.17 **"IZR Equipment"** means the equipment, systems, cabling and facilities used by IZR to provide the Services pursuant to the Agreement. The IZR Equipment shall not include the carrier Network;
- 2.1.18 **"IZR Network"** means the technical infrastructure belonging to IZR which provides data connections to the Carrier Networks and the Internet, and otherwise supports the Services;
- 2.1.19 **"Minimum Service Order Length (MSOL)"** means the minimum term for any Service Order and/ or any individual circuit provision under it;
- 2.1.20 **"Provisioning Procedure"** means the procedure set out in applicable Service Schedule for the issuing of a Service Order and delivery of the applicable Services;
- 2.1.21 **"RFS Date"** means the Ready-For-Service date on which the individual service requested under a Service Order is ready for use by the Customer or User;
- 2.1.22 **"Service Level Agreement"** means the service levels for the applicable Service(s) as set in the applicable Service Level Schedule;
- 2.1.23 **"Service Order"** means any request for Services by the Customer made in accordance with Clause 3;
- 2.1.24 **"Services"** means the services, including but not limited to provision of data transmission networks; access to the internet; access to the public telephone network; supply, installation and maintenance of hardware; and other related services provided by IZR to the Customer in return for financial compensation;
- 2.1.25 **"Site(s)"** means the locations(s) at which the Service(s) is/are to be provided as set out in the Service Order(s);
- 2.1.26 **"Software"** means the software which controls the operation of hardware supplied by IZR or IZR Equipment, or any operational systems to which IZR grants the Customer access from time to time;
- 2.1.27 **"Solution"** means the installation of more than one circuit in such a manner as to achieve data connections between those circuits
- 2.1.28 **"Transmission"** means a signal transmitted over the Carrier Network;

- 2.1.29 **"User"** means an individual who makes use of the Services with the permission of the Customer, or a third party to whom the Customer resells the Services from time to time in accordance with these Terms and Conditions; and
- 2.1.30 **"VAT"** means value added tax as defined in the Value Added Tax Act 1994 and including any other tax from time to time replacing it or of a similar fiscal nature.

### 3 The Services

- 3.1 Subject to these Terms and Conditions, IZR will, from the RFS Date, provide the Services to the Customer.
- 3.2 The parties acknowledge that all projected or planned RFS dates are estimates and neither party shall have any liability for variations in those dates.
- 3.3 IZR shall perform the Services in accordance with the standards set out in the Service Level Schedules. In the absence of an explicit Service Level Schedule, IZR shall use reasonable endeavours to provide the Services in a professional and workmanlike manner.
- 3.4 Without prejudice to the other terms and conditions of these Terms and Conditions, the Customer shall use the Services strictly in accordance with any reasonable operating instructions issued by IZR from time to time.
- 3.5 The Services to be provided by IZR do not include:
  - 3.5.1 Electrical work external to the equipment or the maintenance of accessories, attachments, machines or other devices not supplied by IZR;
  - 3.5.2 The repair of damage resulting from accident, transport, theft, fire, water damage, neglect, misuse or Act of God;
  - 3.5.3 The repair of damage caused by Customer or any 3<sup>rd</sup> party;
  - 3.5.4 Repairs, labour or materials required as a result of Customer's failure to maintain the recommended installation environment;
  - 3.5.5 The repair of damage caused directly or indirectly as a result of Customer or his representatives connecting equipment by mechanical or electrical means to another installation, piece of equipment or device;
  - 3.5.6 The supply of consumable accessories, including but not limited to tapes, disks, ribbons etc.;
  - 3.5.7 Painting or re-finishing equipment;
  - 3.5.8 The making of specification changes and services in connection with re-location of Customer Equipment;
  - 3.5.9 The addition or removal of attachments, accessories or other devices;
  - 3.5.10 Servicing which in the opinion of IZR is not practical to render owing to alterations which have been made to the equipment;
  - 3.5.11 The exchange of equipment which is subject to known "software bugs" where such "software bugs" do not prohibit the equipment from performing to the manufacturer's specification;

- 3.5.12 The installation, configuration, operation and maintenance of equipment provided by a 3<sup>rd</sup> Party (even if Customer or IZR relies on such equipment to make use of the Services)
- 3.6 If Customer requires any work, service or repair to be carried out which is not explicitly included in the scope of Services, IZR will quote its time and materials rates prevailing at the time. Any such quote, once accepted, will be subject to IZR's then prevailing Terms and Conditions of Trade.

## 4 Acceptance of Service Orders and Line Cancellation

- 4.1 Subject to Clause 4.1.1 and 4.1.2, each Service Order shall be binding on both Parties only after IZR's acceptance of the Service Order.
- 4.1.1 Prior to RFS Date, IZR reserves the right to revoke its acceptance of any Service Order where the Services cannot be reasonably delivered to the Site in question having due regard to the any geographic, practical or technical issues arising.
- 4.1.2 If after acceptance, the Customer cancels or amends any Service Order prior to the RFS date IZR will be entitled to pass on to the Customer any cancellation charges for the installation or provisioning of that Service Order levied on IZR by the Carrier Network, plus a 15% premium in respect of IZR's administration costs.
- 4.2 All Service Orders shall be for the period of the Minimum Service Order Length (MSOL) or as otherwise agreed by the Parties in writing. In the absence of an explicitly stated MSOL, then the MSOL will be deemed to be 1 (one) calendar year.
- 4.3 IZR shall be entitled to reject any Service Order where:
- 4.3.1 the Customer fails the Credit Checks;
- 4.3.2 the Customer has provided IZR with incorrect or incomplete information necessary for registration as part of the Provisioning Process; and
- 4.3.3 the Services cannot be reasonably delivered to the Site in question having due regard to any geographic, practical or technical issues arising.
- 4.4 Prior to the RFS date, Customer may attempt to cancel any Service Order by notifying IZR in writing (in accordance with IZR procedures as amended from time to time) and providing the notice period which will depend on the nature of the circuit being cancelled and the Carrier policy in force at the time. IZR will use reasonable endeavours to halt the provision of the Service in question. Cancellation charges may be applied by the Carrier Network; any such cancellation charges will be passed on to Customer with a 15% premium added in compensation for IZR's administration costs. For the avoidance of doubt, if the Customer cancels any Service Order or individual line during the period of the Minimum Service Order Length (MSOL), or the Service Order has progressed beyond a point where the Carrier Network is prepared to cancel the order, 100% of the Charges up to the end of the MSOL will fall due.
- 4.5 Depending on the nature of the Service being provided, there may be additional conditions or restrictions which will be stated on the Service Order, and which shall be in addition to, not instead of, these Terms and Conditions.

## 5 Customer Obligations and Prohibitions

- 5.1 The Customer shall not itself or knowingly permit any User or Additional User to use the carrier Network to do any of the following:
- 5.1.1 publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
  - 5.1.2 threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
  - 5.1.3 engage in illegal or unlawful activities through the Carrier Network;
  - 5.1.4 knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer or the User (as appropriate);
  - 5.1.5 knowingly make available or upload files that contain a virus or corrupt data;
  - 5.1.6 falsify the true ownership of software or other material or information contained in a file that the Customer or any User makes available via the Carrier Network;
  - 5.1.7 "spam" or otherwise deliberately abuse any part of the Carrier Network;
  - 5.1.8 obtain access, through whatever means, to notified restricted areas of The Carrier network.
- 5.2 If the Customer becomes aware that any User or Additional User is using the Carrier Network to perform any of the activities listed in Clause 5.1 it shall enforce the applicable terms in its agreement with Users and shall use all best endeavours to stop such User or Additional User from doing so. In the event that IZR becomes aware that a User or Additional User is performing any of the activities listed in Clause 5.1, IZR shall promptly bring the breach to the attention of the Customer. If IZR has not received, within five (5) Business Days of receipt of such a notice, a satisfactory response from the Customer detailing the actions that have been taken to stop a User or Additional User performing in this way, which actions may include restricting the access of the User to the Carrier Network or disconnecting the User from the Carrier Network, then IZR shall have the right to restrict the access of and/or disconnect the User(s) or Additional Users in question, and if necessary the entire Service, from the carrier Network. If IZR exercises its rights to disconnect a User or Additional User set out in this Clause 5.2 it will notify the Customer as soon as reasonably practicable in the circumstances and shall consult with the Customer about the possibility of re connecting the User or Additional User in due course, but for the avoidance of doubt IZR shall not be under any obligation to reconnect any offending User or Additional User. The Customer acknowledges and accepts that re-connection will incur charges determined by the pricing schedules at the time in force.

- 5.3 Clause 5.2 notwithstanding, IZR may at IZR's sole discretion immediately disconnect any User, Additional User, or Service if in IZR's reasonable opinion it is necessary to do so in order to protect the integrity, security or performance of the IZR Network or the Carrier Network. Customer must pay the Charges up to the expiry of the MSOL or Additional Period (whichever is the later) throughout any period of disconnection.

## 6 Equipment

- 6.1 The provisions of this Clause 6 shall only apply where the Services include IZR Equipment or require IZR to modify the Customer Equipment and all references to IZR shall include its authorised agents and sub-contractors.
- 6.2 The Customer shall grant or shall procure the grant to IZR such rights of access to each Site and shall provide to IZR such facilities and information as IZR may reasonably require enabling it to perform its obligations or exercise its rights under the Agreement.
- 6.3 The Customer shall notify IZR of any existing technical or other facilities including, but not limited to, water and gas which could be damaged during installation of the IZR Equipment and/or the Customer Equipment.
- 6.4 The Customer warrants that it holds and shall continue to hold such licences and/or other authorisations as are required under or by any relevant legislation, regulation or other administrative order to run and connect the Customer Equipment to the Carrier Network and IZR Equipment.
- 6.5 The Customer shall at its own expense comply with IZR's reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Services.
- 6.6 The Customer hereby grants and/or shall procure the grant to IZR of all licences, waivers, consents or registrations as may be required to deliver, install and keep installed at the Site(s) the IZR Equipment. IZR may in this regard notify the Customer of requirements and the date by which they are required.
- 6.7 The Customer warrants and undertakes that it shall:
- 6.7.1 house the IZR Equipment required to be housed on the Site(s) in accordance with IZR's reasonable instructions as may be given from time to time;
  - 6.7.2 not move, modify, relocate, or in any way interfere with the IZR Equipment or the Carrier Network;
  - 6.7.3 not cause the IZR Equipment to be repaired, serviced or otherwise attended to except by an authorised representative of IZR;
  - 6.7.4 not remove or tamper with any words or labels on the IZR Equipment;

- 6.7.5 not create or allow any charges, liens, pledges or other encumbrances whatsoever to be created over the IZR Equipment. Title to the IZR Equipment shall at all times belong and remain with IZR unless otherwise stated in the original quotation and Commercial Agreement;
- 6.7.6 use the IZR Equipment only for the purpose of receiving the Services from IZR;
- 6.7.7 permit IZR to inspect or test the IZR Equipment at all reasonable times;
- 6.7.8 upon the Termination of a Service, allow IZR to access each Site to remove the IZR Equipment.

## 7 Payment

- 7.1 The Customer shall pay to IZR the Initial Fees and the Charges in respect of the Services provided.
- 7.2 All Charges due to IZR by the Customer shall be payable in British Pounds Sterling in immediately available funds within thirty (30) calendar days of the date of invoice and no later. IZR will apply an administration fee of no less than GBP20.00 in respect of late payments, cheques that are returned unpaid, failed credit card payments or failed direct debit collections.
- 7.3 The Charges are exclusive of all applicable taxes, including value added tax, sales taxes and duties of levies imposed by any authority, government department, all of which, if any, shall be assumed and paid promptly when due by the Customer.
- 7.4 In the event of non-payment of any invoice which is not the subject of a bona fide dispute (or non-payment of the undisputed balance of the invoice in the event of a bona fide dispute being provided in writing to IZR) IZR reserves the right to charge daily interest on any outstanding amounts until payment is received in full rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 as current from time to time whether before or after judgment until the date actual payment is received together with all external costs reasonably and necessarily incurred IZR in securing such payment and/or obtaining such judgment, as the case may be.
- 7.5 After expiry of the MSOL of a circuit, IZR may amend the Charges for that circuit upon prior written notice to the Customer. For the avoidance of doubt, any sums invoiced by IZR, or paid by Customer, in advance in respect of a circuit or service beyond its MSOL shall not be construed as a committed price for that period.
- 7.6 The parties acknowledge that in certain cases, IZR may be subject to reasonable wholesale price increases applied to circuits before the expiry of the MSOL. IZR will use reasonable endeavours to make Customer aware of any such possible increases at point of order, but cannot guarantee to do so. In the event that such price increases are applied by the operator of the Carrier Network, IZR shall be entitled to pass on such increases to Customer on a pro-rata basis.
- 7.7 IZR may, at IZR's discretion, require that payments be made prior to shipping Hardware or providing Services.
- 7.8 In the event that a quotation for hardware or Services expires before payments have been received, IZR shall be entitled to invoice Customer for the difference between the original (expired) quotation and the revised quotation.

- 7.9 Until full payment has been received in respect of hardware, all rights and title to such hardware are retained exclusively by IZR and Customer warrants that no 3<sup>rd</sup> party has any claim on title to the hardware and indemnifies IZR against any such claim. To the extent, if any, that ownership of the hardware does not automatically vest in IZR by virtue of the Agreement or otherwise, Customer hereby (i) transfers and assigns to IZR all right, title and interest in and to the hardware without further consideration and (ii) waives all moral rights in and to the hardware.
- 7.10 Upon expiry of the MSOL, the contracted period for a Service will automatically renew of a period of one (1) calendar year, unless the Service has been terminated in accordance with Section 18 (Termination) of these Terms and Conditions. Service contracts will automatically renew for a period on one (1) calendar year every year thereafter, unless terminated in accordance with Section 18 (Termination).
- 7.11 Payment of the Charges is by Direct Debit. IZR may, at IZR's sole discretion, accept alternative methods of payment. IZR's acceptance of an alternative payment shall not be deemed to be a permanent waiver of this clause 7.11 and IZR shall be entitled to instate payment by Direct Debit at any time.
- 7.12 Upon confirmation of the Customer's order, IZR shall raise an invoice for the sale and shall effect processing of the order upon receipt of payment in full. Customers may apply to the Company for the establishment of a Trade Account which shall be at the discretion of the Company to so do.
- 7.13 Upon expiry of the MSOL, IZR undertakes to continue to provide the Services. Any sums invoiced by, and/or paid to, IZR in respect of yet-to-be-used Services will be treated as pre-payments on account and will under no circumstances be construed to represent a commitment by IZR to hold prices unchanged for any period of time after expiry of the MSOL.
- 7.14 IZR will charge the Customer according to its pricing schedule as amended from time to time for the time taken to diagnose and troubleshoot faults reported by Customer to IZR which, after investigation, are discovered to be either incorrectly reported (No Fault Exists) or not associated with either the Carrier Network, the IZR Network or the IZR Equipment. By reporting a suspected fault to IZR, Customer warrants that it has already taken reasonable measures to establish that the fault is not associated with Customer Equipment and explicitly accepts this clause 7.14. By reporting a suspected fault to IZR, the Customer accepts this clause 7.14.
- 7.15 In the case of a Solution being supplied by IZR, Customer acknowledges and accepts that Charges will be applied in respect of each service component independently of other components of the Solution. Customer agrees to pay the Charges for each circuit from each circuit's RFS date.

## 8 Credit Limit

- 8.1 At IZR's sole discretion and at any time, IZR shall be entitled to set a Credit Limit upon the Initial Fees and Charges. IZR may review this Credit Limit on an ongoing basis and, where IZR believes it reasonable, the Credit Limit will be revised accordingly. IZR will notify the Customer of any changes to the Credit Limit in advance.
- 8.2 IZR shall not be obliged to accept any Service Order if the Credit Limit is exceeded and may suspend provision of the Services under Clause 18.6.4.
- 8.3 IZR shall use reasonable endeavours to notify the Customer if it appears to IZR that the Customer will imminently exceed its Credit Limit. If the Customer exceeds the Credit Limit, IZR may require that the Customer immediately make a payment (in a form which IZR shall reasonably require) of any amount that IZR shall require in order to reduce the Customer's aggregate liability to IZR to an amount which is less than the Credit Limit and to ensure that the Credit Limit shall not be exceeded until the following month's Charges are settled.
- 8.4 IZR may require the Customer to issue a cash deposit, irrevocable letter of credit or other form of security acceptable to IZR if the Customer's financial circumstances or payment history is or becomes unacceptable (in the reasonable opinion of IZR).

## 9 Shipping and Returns

- 9.1 In the event of non-delivery of equipment resulting from an act or omission by the Customer, IZR will invoice customer the costs of re-delivery.
- 9.2 Customer will bear the costs of carriage and insurance in respect of shipping hardware from Customer's premises.
- 9.3 Customer will assume full risk in respect of equipment upon delivery at Customer's premises, even if title to the equipment remains vested in IZR.
- 9.4 IZR will assume full risk in respect of equipment upon delivery at IZR's premises or other agreed point of return.

## 10 Warranties

- 10.1 Each Party warrants to the other that it has the authority and legal capacity to enter into the Agreement;
- 10.2 IZR undertakes to the Customer that:
  - 10.2.1 in performing its obligations under the Agreement it shall at all time exercise the reasonable skill and care of a competent public telecommunications operator;

- 10.2.2 the provision of the Services and/or the use of the IZR Equipment shall not infringe the Intellectual Property Rights of third parties.
- 10.3 except as expressly set forth in these Terms and Conditions all other warranties, representations or agreements, with respect to the provision of the Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law.
- 10.4 Customer agrees not to disassemble, decompile or otherwise reverse engineer any Customer Equipment, IZR Equipment or Software, or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the Customer Equipment, IZR Equipment or Software
- 10.5 Customer agrees not to copy or modify the Customer Equipment, IZR Equipment or Software.
- 10.6 Customer agrees not to remove any names, designations or notices from any IZR Equipment.
- 10.7 Customer agrees not to publish or provide to any 3<sup>rd</sup> party results of any benchmark or comparison tests of the IZR Equipment.
- 10.8 Customer agrees not to allow others to do any of the foregoing.
- 10.9 Customer acknowledges that any Software incorporated into or provided for use with any hardware (whether initially, as part of maintenance and support, or otherwise) ("Software") is not sold, but rather licensed (without rights to sublicense) solely for Customer's own internal use only as installed in that hardware and strictly in accordance with the documentation and any other use restrictions applicable for that hardware.
- 10.10 IZR warrants to Customer that only the hardware portion of the Customer Equipment will be free from material defects for a period of 12 (twelve) months from the original date of shipment by IZR. For the software portion of the Customer Equipment, IZR warrants to Customer only that such software will perform substantially in accordance with the applicable published specifications for such software for a period of 90 (ninety) days from the date of original shipment by IZR.

- 10.11 Customer Equipment that is returned to IZR that does not comply with the warranty and is returned by Customer to IZR during the warranty period will be repaired or replaced at IZR's option, provided that Customer bears the cost of freight and insurance to the point of return. If IZR cannot, or determines that it is not practical to, repair or replace the returned Customer Equipment then IZR will refund the price paid for the Customer Equipment to the Customer. IZR MAKES NO OTHER WARRANTIES WITH RESPECT TO THE IZR EQUIPMENT OR SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IZR ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS.
- 10.12 IZR shall not be liable for any failure or delay in performance hereunder to the extent that any such failure or delay is due to a cause beyond its control.

## 11 Indemnities

- 11.1 The Customer shall fully indemnify and hold harmless IZR and keep it fully indemnified at all times against all losses, liabilities, costs, including legal costs (on a solicitor and Customer basis) and expenses arising from or in connection with any of the following:
- 11.1.1 claims or proceedings brought by third parties, Users or Additional Users against IZR or its Group in respect of, or arising directly or indirectly from the resale of the Service(s) by the Customer; or
  - 11.1.2 any breach by the Customer, any User or any Additional Users of Clause 5.1; and
  - 11.1.3 damage to the IZR Equipment or the Carrier Network which is caused by (i) the act or omission of the Customer, its Users or Additional Users; (ii) the Customer's breach of the Agreement; or (iii) malfunction or failure of any equipment or facility provided by the Customer or its agents, employees or suppliers, including but not limited the Customer Equipment.
- 11.2 IZR shall fully indemnify and hold harmless the Customer and keep it fully indemnified at all times against all losses, liabilities, costs, including legal costs (on a solicitor and Customer basis) and expenses arising from or in connection with any claim by any third party that the Services and/or the use of the Equipment infringes that third party's Intellectual Property Rights provided that the Customer shall promptly notify IZR of such a claim and give to IZR, at IZR's sole expense, sole conduct of the defence of such claim and that the Customer shall provide to IZR any assistance in defence of such claim that IZR reasonably requests.

## 12 Limitation of Liability

- 12.1 Except where the Customer terminates for IZR's material breach in accordance with Clause 18.5.3, IZR's sole liability to the Customer in respect of a failure of the Services shall be the Service Credits set out in the Service Level Agreement.
- 12.2 Without prejudice to Clause 12.4, neither Party shall be liable to the other under or in connection with the Agreement, whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise for:
- 12.2.1 any loss of anticipated savings or goodwill;
  - 12.2.2 any loss of contracts, business, revenue or profits;
  - 12.2.3 any loss or corruption of data; and/or

- 12.2.4 any indirect or consequential loss whatsoever incurred by either party, whether or not the party relying on this Clause 12.2 was advised in advance of the possibility of any such loss.
- 12.3 Subject to 12.4, except in the case of the Customer's non-payment of the Charges or Initial Fees, the total aggregate liability of either party to the other under or in connection with the Agreement shall not exceed fifty thousand pounds (£50,000) for any one event or series events.
- 12.4 Nothing in these Terms and Conditions shall exclude or limit either Party's liability for fraud or for death or personal injury due to its negligence to the extent that the exclusion of liability is prohibited by or unenforceable under English law.
- 12.5 IZR shall have no liability to the Customer connection with the Agreement, whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise as result of any suspension made by IZR under Clause 18.6 save where the suspension is directly and wholly attributable to the negligence of IZR.
- 12.6 NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS AND CONDITIONS OR OTHERWISE, IZR WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT, TORT OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS THAT ARE IN EXCESS OF 20% OF THE AGGREGATE AMOUNTS PAID TO IZR HEREUNDER DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES OR (IV) LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE. IZR SHALL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF HARDWARE BETWEEN ITS CUSTOMERS IN THE EVENT OF A SHORTAGE. CUSTOMER ACKNOWLEDGES THAT SERVICE PRICES ARE DETERMINED ON THE BASIS OF THIS LIMITED LIABILITY AND THAT THIS LIMITED LIABILITY IS AN ESSENTIAL PART OF THE AGREEMENT.

## 13 Confidential Information

- 13.1 Each Party shall keep confidential all information and documentation, including without limitation information concerning the business or trade secrets, processes, know-how or methods used by the other Party in carrying on business (the "Confidential Information"), obtained from the other Party pursuant to the Agreement. In order to protect IZR's rights and interests hereunder, the Customer may only disclose Confidential Information regarding IZR to those of its personnel who require such Confidential Information for the purpose of the Agreement. In order to protect the Customer's rights and interests hereunder, IZR may only disclose Confidential Information regarding the Customer to those of its personnel and professional advisors who require such Confidential Information for the purpose of the Agreement. Each Party shall take the same care to avoid disclosing Confidential Information of the other Party to any third party as the receiving party takes with similar information of its own which it does not wish to disclose.
- 13.2 Each Party agrees that it shall not use any Confidential Information regarding the other Party for any purpose other than the performance of its respective obligations or enforcing its rights under the Agreement or as otherwise permitted hereunder, no copy or disclose any such Confidential Information to any third party without the written consent of the other Party's authorised representative. However, either Party shall be permitted to disclose these Terms and Conditions to their professional advisers, agents or representatives subject to appropriate confidentiality obligations.
- 13.3 This Clause 13 shall not apply to Confidential Information which the recipient can show to the disclosing Party's reasonable satisfaction:
- 13.3.1 was known to the recipient (without obligation to keep the same confidential) at the date of the disclosure;
  - 13.3.2 is after the date of disclosure lawfully acquired by the recipient in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such Confidential Information;
  - 13.3.3 in its entirety was at the time of disclosure or has become public knowledge otherwise than by reason of the recipient's neglect or breach of the restrictions set out in this or any other agreement; or
  - 13.3.4 is independently developed by the recipient without access to any or all of the Confidential Information.
- 13.4 IZR shall be entitled to use the Customer's name and details and the fact of the existence of the Agreement in the normal course of its business after the Service Commencement Date. IZR shall not use the Customer's name and details for promotional activities without the Customer's prior written consent, such consent not be unreasonably withheld.

## 14 Maintenance & Technical Support

- 14.1 IZR undertakes to consult with the Customer, as appropriate in the circumstances, by means of email as to the time periods for conducting routine maintenance or upgrading works to the IZR Equipment and/or the Network. IZR shall use its best endeavours to carry out such routine maintenance or upgrading during such times as the User traffic over the Internet or private network (if applicable) is at its lowest.
- 14.2 Notwithstanding Clause 14.1, IZR shall be free to carry out emergency or urgent maintenance to the IZR Equipment and/or the IZR Network at any time to ensure the Services are continued to be supplied. Wherever reasonably possible, any emergency or urgent maintenance will be carried out during such times as the traffic over the Internet (if applicable) is at its lowest. IZR shall advise the Customer if practicable prior to the conducting of any such emergency or urgent maintenance, or at least as soon as practicable after the completion of the emergency or urgent maintenance.
- 14.3 IZR shall provide, at no extra cost to the Customer, a telephone technical help desk facility for the Customer's use. For the avoidance of doubt, this technical help desk shall not be available to Additional Users and the Customer shall not refer any Additional Users to it.
- 14.4 IZR's liability to Users or the Customer in respect of any advice given pursuant to this Clause 14 is subject to the provisions of Clause 12.
- 14.5 The hours of operation of IZR's technical helpdesk depend on the nature of the services provided. In the absence of any additional availability agreed between IZR and the Customer, the hours of operation will be 9am to 5pm, excluding weekends and UK public holidays.
- 14.6 Technical Support is provided by IZR on an "as is" basis without warranties. IZR may, at IZR's sole discretion, provide advice to Customer regarding Customer Equipment. Such advice will be provided on an "as is" basis without warranties of any kind, and Customer acknowledges that such advice is provided in good faith but must not be interpreted as authoritative. Customer agrees to hold IZR harmless in the event of any unforeseen consequences resulting from IZR's technical advice in respect of Customer Equipment.

## 15 Fault Procedure

- 15.1 In the event that the Customer detects any fault which affects the Services being provided by IZR, the Customer shall report the fault to IZR as soon as reasonably practicable after detecting the same and provide IZR with the fault in sufficient detail.

- 15.2 Before reporting any suspected fault to IZR, Customer shall take reasonable steps to establish that the fault is located in the IZR Equipment, the IZR Network or the Carrier Network. Clause 7.14 shall apply if Customer reports a suspected fault which is not attributable to a failure of the IZR Network, IZR Equipment or Carrier Network.
- 15.3 In the event that IZR detects a fault which affects its provision of the Services it will alert the Customer Contact as soon as reasonably practicable upon detecting the same.
- 15.4 In the event of a fault being reported pursuant to either Clause 15.1 or Clause 15.3 IZR undertakes to:
- 15.4.1 keep a record of all such reported faults; and
  - 15.4.2 use reasonable endeavours to remedy such reported fault within a reasonable time of said fault being so reported according to the Service Level Agreement if applicable.
- 15.5 The Customer will be responsible for charges incurred where the Customer has requested an engineer to visit any Site to carry out remedial works which in the event are substantially attributable to the act or omission of the Customer, the User or the Additional User and not to the supplier provided always that IZR shall be responsible for the charges and expenses where the fault is substantially attributable to IZR's act or omission.

## 16 Force Majeure

- 16.1 If the performance of either Party of any of its obligations is prevented, hindered or delayed by any circumstances beyond its reasonable control, including without limitation, any act of God, sickness epidemic or pandemic, tempest, failure or shortages of power supplies, flood, lightning or fire, the act or omission of Government and regulators, highways authorities, third party telecommunications suppliers or other competent authority, military operations or riot (herein referred to as a "Force Majeure Event"), the party claiming to be affected by the Force Majeure Event shall take all reasonable steps to avoid the impact of the Force Majeure Event and shall promptly notify and advise the other Party and the Parties shall forthwith meet to consider the most appropriate course of action required to be taken in the circumstances. Having done so, such party shall be excused from the performance of its obligations to the extent only that it is prevented, hindered or delayed by such circumstances and for so long as they continue. Where the Force Majeure event continues for a period of thirty (30) calendar days, the party not claiming the Force Majeure event may immediately give written notice to the other party and terminate the Agreement forthwith.

16.2 If appropriate in the circumstances, IZR will declare a Force Majeure Event by placing a posting as such in a prominent position on the "SUPPORT" section of its website.

## 17 Service Levels

17.1 IZR will aim to provide a monthly average overall network availability of not less than 99.7% for all Digital Subscriber Line and Leased Line Access Multiplexers connected to the Carrier Network.

17.2 Planned Maintenance will not exceed 4 hours in total in any calendar month

17.3 IZR will endeavour to provide the Customer with 48 hours notice of Planned Maintenance

17.4 IZR will maintain a fault management database suitable for ensuring that suspected faults reported by Customer are managed through to resolution in a professional and predictable manner

17.5 Additional Service Levels may apply for particular types of data circuit. If so, these will accompany the corresponding Service Order.

## 18 Duration, Termination and Suspension

18.1 The Agreement will commence upon IZR's first acceptance of a Service Order from the Customer, and will continue until all Services have been terminated in accordance with this clause 18.

18.2 Subject to 18.3, upon expiry of its MSOL, each Service will automatically renew for a period of 1 (one) calendar year (the "Additional Period"). The same shall apply on each subsequent anniversary of a Service.

18.3 At any time after expiry of the MSOL, IZR may, at IZR's sole discretion, adjust the Charges by giving at least 30 calendar days written notice to Customer. In the event that IZR adjusts the Charges, customer may cancel the Service(s) corresponding to the proposed increase(s) by giving at least 30 calendar days written notice.

18.4 Customer must provide IZR with written notice to terminate a Service at least thirty (30) calendar days prior to the expiry of the MSOL or Additional Period at the time in force. If such written notice is not received by IZR, then an extra Additional Period will be enforced.

18.5 Notwithstanding any other rights under the Agreement, either Party may terminate the Agreement forthwith in the event that: -

- 18.5.1 if the other holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986); has a receiver, administrator, or other encumbrancer take possession of or appointed over or has any distress, execution or other process levied or enforced (and not discharged within seven (7) calendar days) upon the whole or substantially all of its assets; ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 18.5.2 IZR's authorisation under the Telecommunications Act 2003 is revoked for any reason;
- 18.5.3 if either party commits a material breach of the Agreement and which, in the case of a breach capable of being remedied, shall not have been remedied within thirty (30) calendar days of a written request by the other party to remedy the same.
- 18.6 IZR may, at its sole discretion and without prejudice to any right which it might have under the Agreement, elect EITHER to suspend the provision of any or all Services until further notice, OR to permanently cease provision of any or all Services in the event that:
- 18.6.1 IZR is entitled to terminate under 18.5;
- 18.6.2 IZR has reasonable grounds to believe that the Service is being used fraudulently or illegally;
- 18.6.3 IZR has reasonable grounds to believe that the Customer will not or is unable to, make any payment which is due or is to fall due to IZR under the Agreement;
- 18.6.4 the Customer exceeds the Credit Limit under Clause 9;
- 18.6.5 the Customer does not settle invoices as they fall due.
- 18.7 In the event that any Service is suspended under Clause 18.6 as a consequence of the breach, fault, act or omission of the Customer or a User or and Additional User, the Customer shall pay to IZR all reasonable costs and expenses incurred by recommencement of the provision of Services. Customer shall also pay IZR 100% of the Charges during the period of suspension.
- 18.8 For the avoidance of doubt, if a Service is ceased pursuant to Clause 18.5, 100% of the Charges, up to expiry of the MSOL or Additional Period as applicable, of each ceased Service shall become payable in full.
- 18.9 IZR shall have no liability to Customer whatsoever for any adverse or damaging consequence of suspension or termination of services pursuant to this clause 18, even if IZR had been made aware of possible consequences of suspension or termination in advance.

## 19 Consequences of Termination

- 19.1 In the event of the termination of the Agreement for whatever reason:
- 19.1.1 the Customer shall cease forthwith to use the Service(s);
  - 19.1.2 IZR shall cease to provide the Services;
  - 19.1.3 IZR and the Customer shall immediately cease to use and shall delete all Confidential Information.
- 19.2 Notwithstanding Clause 8, upon termination all accrued Charges not yet invoiced shall become due immediately on receipt of an invoice or invoices.
- 19.3 Upon the termination of the Agreement for whatever reason, IZR shall be entitled to set off any amounts due to the Customer or its Group under any other agreement or arrangement from the sums due to IZR under the Agreement.
- 19.4 Termination of the Agreement will not affect any accrued rights or obligations of the Parties as at the date of termination.
- 19.5 Notwithstanding the termination of the Agreement, Clauses 7, 8, 11, 12, 13, 21 and 22 and any provision necessary for the interpretation or enforcement of these Terms and Conditions shall continue in full force.
- 19.6 In the event of termination prior to expiry of the MSOL, the remaining Service fees become due in full. Any outstanding fees for hardware, pre-configuration or installation become payable in full in the event of termination prior to expiry of the MSOL.
- 19.7 Upon termination, IZR will cease providing the Services to Customer.
- 19.8 Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of any Service(s), whether or not such party was aware of any such damage, loss or expense being a possible consequence.
- 19.9 CUSTOMER ACKNOWLEDGES THAT IZR PROVIDES THE SERVICES ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTIES OTHER THAN THOSE SET OUT IN THE RELEVANT SERVICE LEVEL AGREEMENTS AND IN SECTION 10 (WARRANTIES) OF THESE TERMS AND CONDITIONS, AND THAT THE SERVICES ARE PRICED ON THAT BASIS. CUSTOMER THEREFORE WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS AS A RESULT OF TERMINATION OR EXPIRATION OF THE AGREEMENT UNDER THE LAW OF ENGLAND OR ANY OTHER JURISDICTION.



## 20 Intellectual Property

- 20.1 All Intellectual Property Rights in the Services and the IZR Equipment shall be owned by IZR or its Group save to the extent that any of the same contain Intellectual Property Rights owned by third parties.
- 20.2 IZR grants to the Customer a non-exclusive, royalty-free licence to use IZR's Intellectual Property Rights within the United Kingdom, for the sole purpose of receiving the Services in accordance with these Terms and Conditions and any usage guidelines that IZR may provide from time to time.
- 20.3 The Customer grants to IZR and its Group a non-exclusive, royalty free, licence to use, copy and interface with any Intellectual Property Rights within the United Kingdom in any Customer Equipment and the information and data in the Services for the purpose of performing IZR's obligations under the Agreement.
- 20.4 Notwithstanding Clause 20.2, the Customer shall not be entitled to use the name, trade mark, trade name, or other proprietary identifying marks or symbols of IZR or its Group without IZR's written consent.
- 20.5 In the event that the Customer Equipment contains Intellectual Property Rights owned by third parties which the Customer is not entitled to sub-licence to IZR, the Customer will assist IZR in obtaining a licence to use those Intellectual Property Rights owned by third parties on terms that are acceptable to the Customer.
- 20.6 The Customer shall not, and shall procure that its personnel and, where used, its subcontractors and their personnel do not, do anything (whether by omission or commission) during the term of the Agreement or at any time thereafter to affect or imperil the validity of any Intellectual Property Rights belonging to IZR.
- 20.7 The Customer shall not obtain any rights in respect of any of IZR's Intellectual Property Rights by virtue of the Agreement.

## 21 Notices

- 21.1 All notices, requests, or other communications hereunder shall be in writing.
- 21.2 Notices mailed by registered or certified mail shall be conclusively deemed to have been received by the addressee when delivered. Notices sent by telex or fax shall be conclusively deemed to have been received by the addressee upon confirmation of receipt.
- 21.3 If either Party wishes to alter the recipient or address to which communications to it are sent, it may do so by providing the name of the new recipient or a new address, in writing, to the other Party.

## 22 General Provisions

- 22.1 Nothing in the Agreement shall be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose between the Parties.
- 22.2 These Terms and Conditions (together with the Schedules and other documents incorporated within the Agreement) constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings or statements of any nature made by the Parties, whether oral or written, with respect to such subject matter.
- 22.3 Each party acknowledges that it has not relied on any statements, warranties or representations given or made by any other party under or in connection with the Agreement. Each party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under these Terms and Conditions.
- 22.4 Nothing in these Terms and Conditions excludes or restricts the liability of either party for fraud or fraudulent misrepresentation.
- 22.5 No waiver by either Party of any breach of any provision of these Terms and Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.6 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions of these Terms and Conditions, and the remainder of the provision in question, shall not be affected.
- 22.7 These Terms and Conditions shall be governed by English law and both Parties agree to submit to the exclusive jurisdiction of the English courts.
- 22.8 The Customer shall not approach any IZR employee regarding employment, or employ any IZR employee, during the period of the Agreement, or for 12 months after the Agreement is terminated, without the prior written consent of IZR. In the event that Customer employs an IZR employee within 12 months of said employee's employment terminating with IZR, Customer shall pay to IZR 50% of that employee's final gross annual salary in recognition of IZR's replacement and training costs.
- 22.9 No third party or other person who is not a Party to the Agreement may enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except to the extent stated expressly to the contrary in these Terms and Conditions.
- 22.10 IZR may alter the terms of these Terms and Conditions by giving written notice to the Customer, provided that such alterations are reasonable
- 22.11 IZR may, at IZR's sole discretion, assign or sub-contract its rights and obligations under the Agreement either in whole or in part

- 22.12 Customer may not assign or sub-contract its rights and obligations under the Agreement without the prior written consent of IZR, such consent not to be unreasonably withheld.
- 22.13 Any terms and conditions of any purchase order or other instrument issued by Customer in connection with these Terms and Conditions shall not be binding on IZR and shall not apply to the Agreement.