

Communications Solutions UK Limited **Giacom Master Services Agreement**

Communications Solutions UK Limited (CSUK) supply the Services provided by Giacom (Communications) Limited (Giacom) under a reseller contract that has service specific terms and generic terms. The User is agreeing to be bound by these terms.

CSUK will place orders and handle communications with Giacom on your behalf. You will make payment by Direct Debit to CSUK.

In order to provide the service, Giacom will hold certain information about you. Their data security policy is also on their website at: [Privacy notice and cookies policy - Giacom](#)

MASTER SERVICES AGREEMENT

BACKGROUND

- (A) GIACOM is a wholesale communications services provider utilising the network capacity and services of a number of UK based communications network providers.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Agreement, the Service Schedules and Orders, the following terms shall have the following meanings:

Abortive Visit Charge	a charge to reflect costs incurred by GIACOM (or anyone acting on GIACOM's behalf) or any Service Provider of an abortive visit referred to in clause 6, including any specific Charges (identified as such in the applicable Service Schedule (including any supporting price list or service handbook relating to such Service Schedule))
Acceptable Use Policy	GIACOM's acceptable use policy applicable to the Services which is available at www.giacom.com (or such other URL as may be notified by GIACOM from time to time) as may be updated from time to time.
Act	the Communications Act 2003
Agreement	this master services agreement
Anti-Bribery Laws	as defined in clause 17.1.1
Bond	means a cash deposit with GIACOM, and/or a bank guarantee completed by a recognised UK clearing bank, in each case in such amount as notified from time to time by GIACOM to the user to protect GIACOM from any financial risks associated with this Agreement and/or any Service Schedule and/or Orders.

Bribery Act	the Bribery Act 2010
Business Day	a day (not being a Saturday or Sunday) when clearing banks are open for business in the City of London for the transaction of normal banking business
Business Hours	between 9.00am and 5.30pm on Business Days
Cancellation Charge	the Charges levied against the Reseller for cancelling an Order prior to its Go-Live Date as set out in the applicable Service Schedule (including any supporting rate card relating to such Service Schedule)
Charges	Recurring Charges, Non-Recurring Charges and any other charges payable by the Reseller pursuant to this Agreement, a Service Schedule and/or an Order
Code	means the code of practice (as amended, superseded or replaced from time to time) and any other guidance in relation to the operation of premium rate telephone call lines and any similar services issued by the Phone-paid Services Authority, a copy of which is available at www.psauthority.org.uk (and any successor website to the same), or on written request from GIACOM
Commencement Date	means the latest date of signature by both parties to a Service Schedule

Confidential Information	all information of any kind whatsoever concerning the customers or business affairs or trade secrets of GIACOM (including in particular wholesale or retail pricing information, lists or details of suppliers of or customers of GIACOM (both current and those who were suppliers or customers during the previous two years), which is disclosed by GIACOM, or which otherwise is acquired by the Reseller prior to, or after the date of this Agreement in whatever form including, but not limited to, oral, written, graphic or electronic form and which may reasonably be considered as confidential information of GIACOM
Connection	each single connection of a User to a Service
Control	has the meaning given to it in Sections 450 and 451 Corporation Tax Act 2010
CPE	customer premises equipment, being any equipment which facilitates a connection from the Reseller or User's network to any Network Terminating Equipment.
CSP	GIACOM' customer service plan applicable to the Services (if any), as the same may be updated from time to time by GIACOM in its sole and absolute discretion
GIACOM Network	the communications network operated by GIACOM and/or a Service Provider which is used to provide the applicable Services
GIACOM Trademarks	all trade names, trademarks and service marks (whether registered or unregistered) belonging to GIACOM as are used by GIACOM in connection with its business as a communications service provider
Data Client	means, in relation to any Protected Data, GIACOM and/or the applicable member of GIACOM' Group
Data Protection Laws	all applicable laws relating to data protection, the processing of personal data and privacy, including without limitation:

- (a) the Data Protection Act 2018;
- (b) the General Data Protection Regulation (EU) 2016/679; and
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);

and references to **Controller, Processor, Data Subjects, Personal Data, Process, Processed, Processing, Processor** and **Supervisory Authority** have the meanings set out in, and will be interpreted in accordance with, such Data Protection Laws

Early Termination Charge

the termination charge payable by the Reseller in the event that a Service is terminated after the Go-Live Date but prior to the end of the applicable Service Minimum Period, as set out in the applicable Service Schedule (including any supporting rate card) and/or any Order or if none, the charges which would have been payable to the expiry of the Service Minimum Period had the applicable Service not been terminated

Effective Date

the date on which the last party to this Agreement signs it.

Employment Regulations

any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time

Force Majeure Event

has the meaning given to it in clause 27.1

General Condition(s)

the general conditions of entitlement set by OFCOM, in accordance with section 45 of the

	<p>Act, as may be amended, modified or replaced from time to time.</p>
Go-Live Date	<p>the date when GIACOM notifies the Reseller or any User that a Service is ready for use by the Reseller or User, or if earlier the date when the Reseller or User starts to use the Service;</p>
Group	<p>together either party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time.</p>
Insolvency Event	<p>the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ul style="list-style-type: none">i. the entity passing a resolution for its winding-up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;ii. the filing of a notice of intention to appoint an administrator of or, the filing of a notice of appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or levying distress over, or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;iii. the entity proposing to enter into, or entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;iv. the entity being unable to pay its debts or being deemed unable to pay its debts

within the meaning of section 123 of the
Insolvency Act 1986

Intellectual Property Rights

means all intellectual property rights, including patents, rights to inventions, trademarks, trade names, domain names, copyright and related rights, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, data, database rights and rights in confidential information (including know-how, and Confidential Information) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewal or extension of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Legislation

any applicable legislation, authorisations, permissions, rules, regulations, standards, codes of practice, orders and guidelines relating to the provision, marketing or use of the Services, including the General Conditions, the Code and any directives or other requirements issued by OFCOM and/or Phone-paid Services Authority from time to time

Losses

all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including without limitation legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties

Non-Recurring Charges

non-recurring usage based charges such as call charges and data usage

Notice

has the meaning given to it in clause 13.7

Notice Date

has the meaning given to it in clause 13.7

NTE or Network Terminating Equipment

any apparatus and software embodied therein, systems, cabling, site documentation and associated facilities provided by or utilised by

	GIACOM and/or a Service Provider at the end of the communication path to a Site to provide a connection from any CPE to the GIACOM Network
OFCOM	the communications regulator in the United Kingdom (and/or any successor body)
Order	an order for a Service or equipment together with any other ancillary products or services which is made pursuant to this Agreement and a Service Schedule
Parent Undertaking	has the meaning given to it in section 1162 of the Companies Act 2006
Phone-paid Services Authority	the regulatory agency for PRS or any similar body which may be appointed in addition to or in substitution the Phone-paid Services Authority by any competent authority
Protected Data	Personal Data which is to be Processed under this Agreement and/or the applicable Service Schedule and/or the applicable Order
PRS	any premium rate service which is regulated by the Phone-paid Services Authority
Recurring Charges	recurring periodic (non-usage based) charges for the Services such as line rental and circuit charges.
Relevant Policies	as defined in clause 17.1.3
Service Failure	any failure, error or defect in the provision of a Service

Service Levels	the service levels applicable to the Services (if any), as specified in the applicable Service Schedule
Service Minimum Period	the minimum contractual term applicable to a Service, as detailed in the applicable Service Schedule and/or Order
Service Provider	the operator of any electronic communications network or system over which GIACOM may provide all or part of the Services
Services	the services to be supplied as detailed in the applicable Service Schedule and Order(s)
Service Schedule	a service schedule which sets out terms and conditions which are specific to each Service signed by duly authorised representatives of both parties which is entered into pursuant to the terms of this Agreement and which expressly incorporates the terms of this Agreement
Set-up Charges	those charges that are applied for initiating a Service (including without limitation connection charges, access charges and/or installation charges)
Site	each site to which a Service is to be provided as set out in the applicable Order.
Software	any software provided by GIACOM to the Reseller to make use of the Services.
Subsidiary Undertaking	has the meaning set out in section 1162 of the Companies Act 2006
User	(i) a person to whom the Services are resold by the Reseller and/or (ii) a person to whom the Services are subsequently resold; and/or (iii) a person who uses and/or accesses the Services

1.2 Any reference in this Agreement and/or any Service Schedule and/or any Order to any statute or provision of a statute shall be construed as a reference to that statute or provision as

amended, re-enacted or extended from time to time whether before or after the date of this Agreement and/or Services Schedule and/or Order (as applicable).

- 1.3 The headings in this Agreement and each Service Schedule are for convenience only and shall not affect its interpretation.
- 1.4 Except where the context otherwise requires words denoting the singular include the plural and vice versa, and words denoting any gender include all genders.
- 1.5 Not applicable
- 1.6 Not applicable
- 1.7 References to a “clause” are to a clause in the Agreement, references to “paragraph” are a reference to a paragraph in the applicable Service Schedule.
- 1.8 References to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 1.9 References to a “party” or to the “parties” shall mean GIACOM and/or the Reseller or User as the context requires (including its or their successors and (to the extent applicable) permitted assigns) and references to a third party shall mean any person other than the parties.
- 1.10 Any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.
- 1.11 Any reference to:
 - 1.11.1 time of day is the time in London, England; and
 - 1.11.2 a day is to a period of 24 hours running from midnight to midnight.
- 1.12 Unless expressly stated otherwise, any reference to “in writing” or “written” shall not include fax and/or email.
- 1.13 Not applicable
- 1.14 Not applicable
- 1.15 An obligation on a party to procure or ensure the performance or standing of another person shall be construed as a primary obligation of that party.
- 1.16 Any undertaking by the Reseller not to do any act or thing shall be deemed to include an undertaking that each User shall not do such act or thing.

2. **TERM AND APPOINTMENT**

- 2.1 Not used;

3. SERVICES, SERVICE ORDERS AND SERVICE LEVELS

- 3.1 Not used.
- 3.2 Not used.
- 3.3 GIACOM may at its sole discretion accept any Order. If GIACOM requires additional information in order to accept an Order it shall notify the Reseller accordingly, and the Reseller shall provide such information.
- 3.4 Acceptance of an Order must be given in writing by an authorised representative of GIACOM (notwithstanding clause 1.12, this may include by email).
- 3.5 GIACOM shall be entitled to cancel and/or reject any Order at any time prior to the Go-Live Date of the Service without any liability to the Reseller whatsoever.
- 3.6 Without prejudice to any other right or remedy of GIACOM, where the User cancels or terminates any Order or Service Schedule:
 - 3.6.1 prior to the Go-Live Date, it shall be liable for the applicable Cancellation Charges; or
 - 3.6.2 after the Go-Live Date and prior to the expiry of the applicable Service Minimum Period, it shall be liable for the applicable Early Termination Charges.
- 3.7 In performing its obligations under this Agreement and each applicable Service Schedule and associated Orders, GIACOM warrants that it shall use such skill and care as may reasonably be expected of a reasonably competent supplier of similar services and shall use reasonable endeavours to comply with the Service Levels.
- 3.8 Time shall not be of the essence in relation to the performance by GIACOM of any obligation under the Agreement, a Service Schedule, an Order and/or any documents incorporated therein. Without prejudice to the generality of the foregoing, any lead times for the installation, commencement and/or recommencement of the Services are indicative only and not guaranteed.
- 3.9 The User must report any actual or potential Service Failure as soon as reasonably practicable via the Service Helpdesk, providing such information as GIACOM may reasonably require to investigate the problem. GIACOM will log the time of receipt of all such reports and shall use reasonable endeavours to investigate and respond to any issues reported to it in accordance with the applicable Service Levels.
- 3.10 The User shall pay all costs, charges and expenses (which shall be considered Charges for the purposes of this Agreement), which GIACOM incurs in investigating a fault (whether on Site or remotely) which the Reseller has reported, but which GIACOM determines is either:
 - 3.10.1 not a Service Failure; or
 - 3.10.2 a Service Failure for which GIACOM is not liable under the terms of this Agreement, a Service Schedule or Order.

- 3.11 The User shall be responsible for claiming any Service Credits in accordance with the applicable Service Schedule. Where a valid claim is made GIACOM shall issue a credit note for an amount equal to the applicable Service Credit.
- 3.12 In order to receive an available Service Credit, the User must give written notice to GIACOM, within 30 days of the end of the calendar month for which the Service Credit is claimed. If the User fails to claim the Service Credit to which it is entitled, they shall be deemed to have waived its right to claim the Service Credit.
- 3.13 GIACOM shall not be liable for (and in particular, Service Credits will not accrue in respect of) a Service Failure which is caused by:
- 3.13.1 an act, fault or omission by the Reseller, User, or any of their representatives, employees, agents or sub-contractors;
 - 3.13.2 an act or omission of a Service Provider or a third party (including any failure of a Service Provider or third party to provide (either at all, or to the necessary standard) any equipment, software, materials or information);
 - 3.13.3 any fault arising outside of the GIACOM Network;
 - 3.13.4 any equipment or service not supplied by GIACOM;
 - 3.13.5 any Force Majeure Event;
 - 3.13.6 any failure by the Reseller or User to act on GIACOM's reasonable instructions;
 - 3.13.7 any suspension of the Services under clause 4; or
 - 3.13.8 any other event specified in the applicable Service Schedule as being an event for which GIACOM is not liable.
- 3.14 The duration of any Service Failure, for the purposes of measuring the Service Levels, will be measured from the time the fault report is logged by the Service Helpdesk to the time (subject to any caveats, exclusions and/or limitations contained in this Agreement and/or the applicable Service Schedule) the Service has been restored to the standards set out in the applicable Service Schedule.
- 3.15 GIACOM may, at any time, notwithstanding any other provision of the Agreement and/or a Service Schedule, at its sole discretion, conduct a review of any Services then currently provided. The purpose of this review shall be to identify any significant changes required relating to the technology and processes used to provide and maintain any Services to (which may for example, arise due to the proposed withdrawal of supporting products provided by a Service Provider). Following this review GIACOM may withdraw, replace or amend one or more Services and adjust accordingly any Charges remaining payable in respect of the affected Services, without the consent of the User.
- 3.16 Pursuant to clause 3.15, where a change to, or withdrawal of, a Service arises:

- 3.16.1 solely due to GIACOM's business requirements, GIACOM will give at least three months' written notice; or
 - 3.16.2 as a result of changing arrangements with a third party or for legal or regulatory reasons, GIACOM will give as much written notice to the Reseller as GIACOM considers reasonably practicable in the circumstances.
- 3.17 Upon expiry of any such notice period set out in clause 3.16:
- 3.17.1 GIACOM will not accept any new orders for the relevant Service; and
 - 3.17.2 at GIACOM's discretion any Orders which have not achieved a Go Live Date will either be:
 - 3.17.2.1 terminated by GIACOM; or
 - 3.17.2.2 allowed to progress through to completion; or
 - 3.17.3 If GIACOM terminates an Order under clause 3.17.2.1, the User will be offered a new service for acceptance.
- 3.18 GIACOM may amend the Services provided (including without limitation the technical specification of the Services and/or the manner of delivery of them), without the consent of (but upon written notice to) for any reason (including but not limited to increasing security, improvements to infrastructure, capacity management, cost reduction or mitigation of a known fault) provided that GIACOM shall endeavour to ensure that any such amendment does not have a materially detrimental impact on the Services.

4. OBLIGATIONS OF THE USER

- 4.1 It is a condition of this Agreement and each Service Schedule and each Order that whilst the terms of this Agreement remain in force, the User shall:
- 4.1.1 act fairly and reasonably in all dealings;
 - 4.1.2 comply promptly with all reasonable orders and instructions of GIACOM and the Reseller from time to time in relation to the Services;
 - 4.1.3 take all such steps as are reasonably necessary to co-operate with and assist GIACOM in providing the Services;
 - 4.1.4 comply with all applicable Legislation and not cause GIACOM to contravene any Legislation;
 - 4.1.5 comply with the terms of this Agreement each Service Schedule, and each Order;
 - 4.1.6 not act in such a way as to cause a degradation of service to any of GIACOM's other customers (including, without prejudice to the requirements to provide traffic forecasts in any Service Schedule, notifying GIACOM at least five (5) Business

Days before any significant increase in traffic across the GIACOM Network arising as a result of the use of Services by the Reseller or its Users which they were aware of or ought reasonably to have been aware of);

- 4.1.7 not lose or cause GIACOM and/or any company within the GIACOM Group to lose or breach its authorisation to act as a public communications provider;
 - 4.1.8 Not used;
 - 4.1.9 Not used;
 - 4.1.10 promptly provide GIACOM and the Reseller with such assistance and information as it may reasonably require from time to time to comply with its obligations under this Agreement, any Service Schedule and/or each Order;
 - 4.1.11 Not used;
 - 4.1.12 take all reasonable steps to prevent the misuse of the GIACOM Network including sending, storing, uploading, downloading, reproducing or knowingly receiving using or re-using any offensive, obscene, menacing, abusive, defamatory or illegal material or in a manner which is either fraudulent or infringes the rights of any person;
 - 4.1.13 take all reasonable steps to prevent unlawful intrusion into any equipment, software or systems connected with the Services;
 - 4.1.14 comply with the Acceptable Use Policy applicable to the Services, a copy of which will be made available as soon as is reasonably practical following a request for the same. The User acknowledges that GIACOM may amend its Acceptable Use Policy from time to time (with or without notice);
 - 4.1.15 comply with and procure that the Users comply with the CSP; and
 - 4.1.16 procure that the User shall not knowingly permit or allow any User to act, or fail to act, in a way which would cause the User to breach its obligations under this Agreement and/or any Service Schedule and/or any Order.
- 4.2 If the User uses a Service in breach of clause 4.1, GIACOM may on notice to the User suspend the relevant Service in respect of the offending User, without prejudice to GIACOM's other rights arising out of or in connection with the Agreement, any Service Schedule and/or any Order. If GIACOM is unable to suspend a Service to a User, the Reseller shall affect such suspension on GIACOM's behalf.
- 4.3 If GIACOM disconnects or suspends the Service in accordance with clause 4.2, then (without prejudice to GIACOM's other rights arising out of or in connection with the Agreement, any Service Schedule and/or any Order) GIACOM shall reconnect the Service as soon as reasonably practicable once it is satisfied that the breach in question has been remedied (unless the breach in question cannot be remedied) by the Reseller or the User. If the breach in question cannot be remedied, GIACOM may terminate this Agreement and/or any Service

Schedule and/or any Order(s) in accordance with clause 12.4. All Charges shall remain payable during any period of suspension and GIACOM shall also be entitled to invoice the Reseller, and the Reseller the User, for the Charges associated with such reconnection and the same shall be payable in accordance with clause 5.

5. CHARGES, INVOICING, TERMS OF PAYMENT AND SECURITY

5.1 GIACOM shall be entitled to issue invoices which the Reseller shall onward bill to the User for:

5.1.1 Recurring Charges monthly in advance (save for any Recurring Charges accruing for part of a month (owing to a new installation or cancellation) for which GIACOM shall issue an invoice in arrears);

5.1.2 Non-Recurring Charges, monthly in arrears;

5.1.3 Set-up Charges, at any time after the applicable Order is placed; and

5.1.4 all other Charges, as and when applicable.

5.2 All Charges shall be calculated by reference to data recorded or logged by GIACOM and not to data recorded or logged by the User (save in the case of a material and demonstrable error by GIACOM).

5.3 Not used.

5.4 The User shall make all payments by Direct Debit. If the User cancels its Direct Debit or fails to pay by Direct Debit for any reason, GIACOM may charge an administration fee of one percent (1%) of the invoice value or £100 (in each case excluding VAT) whichever is the greater.

5.5 GIACOM may change the rates upon which the Charges are calculated at any time by providing the User with at least one month's written notice of the same, save that GIACOM may not change such rates being charged during a Service Minimum Period, unless the change results from a change in Legislation.

5.6 Any delay by GIACOM in invoicing for the Charges shall not prohibit GIACOM from raising an invoice at a later date in respect of the same, nor shall it relieve the User of its liability to pay for the same.

5.7 In the event that the User (acting reasonably and in good faith) wishes to dispute an invoice, or any part of an invoice issued by the Reseller and GIACOM, it must do so within 12 days of the date of the invoice, providing full details of the dispute to allow the Reseller and GIACOM to investigate it. Where an invoice is disputed in part, payment of the undisputed part must be made in accordance with clause 5.4. The User shall be deemed to have accepted any invoice not disputed in accordance with this clause 5.7.

5.8 Subject to clause 5.7, all payments must be made by the User without any set-off, counterclaim, withholding and/or any deduction whatsoever.

5.9 Not used.

- 5.10 Interest on all undisputed amounts overdue to GIACOM from time to time will accrue on a daily basis at an annual rate of the greater of (i) 3% above the base rate of the Royal Bank of Scotland plc at the time of calculation; and (ii) interest payable pursuant to the Late Payments of Commercial Debts (Interest) Act 1998, to run from the due date of payment until receipt by GIACOM of the full amount (including any accrued interest) in cleared funds whether before or after judgment in respect of the overdue amount.
- 5.11 Within seven (7) days of a request by GIACOM and the Reseller, the User shall provide a Bond in an amount notified by GIACOM, and in a form satisfactory to GIACOM. The User shall ensure that the Bond is maintained continuously from the date on which such Bond is required by GIACOM until the date that the User satisfies the last of its obligations to GIACOM pursuant to this Agreement and all Service Schedules and associated Orders. The User shall not revoke, amend or otherwise change the Bond without GIACOM's prior written consent.
- 5.12 If the User fails to maintain the Bond as required by clause 5.11, this shall be deemed an irremediable breach of this Agreement and terminate this Agreement, and/or any and all Service Schedules and/or Orders in accordance with clause 12.4
- 5.13 If GIACOM determines that it would be commercially prudent to do so, GIACOM and the Reseller may (in its absolute discretion) require the User to:
- 5.13.1 provide increased or additional financial security; or
 - 5.13.2 amend the form of the financial security,
- as a condition of the continued provision by GIACOM of the Services. Additional financial security may include, without limitation, guarantees by third parties (including banks and/or a parent company) against the failure of the User to perform any of its obligations under this Agreement and/or any Service Schedule and associated Orders as GIACOM deems appropriate in its absolute discretion.
- 5.14 Failure to provide such increased security within ten (10) Business Days of a request to do so shall be deemed to be an irremediable material breach of the User's obligations under this Agreement, the Service Schedules and Orders.
- 5.15 In addition to, and notwithstanding, any other rights GIACOM and the Reseller has under this clause 5, GIACOM may carry out a credit check on the User during the Term of this Agreement, and subsequent to the carrying out of such credit check, may set a credit limit at a level GIACOM considers reasonable.

6. ACCESS TO SITES

- 6.1 Where it is necessary for GIACOM to carry out its obligations under this Agreement and/or any Service Schedule and/or any Order, the User shall procure permission for GIACOM or anyone acting on GIACOM's behalf, with access to each Site and any other premises at all reasonable times on reasonable notice. Where GIACOM or anyone acting on its behalf is unable to attend a Site as a result of the User failing to procure access to a Site then GIACOM shall be relieved from any liability to provide the Services or to meet the Service Levels and may charge an

Abortive Visit Charge, for which the User shall be liable.

- 6.2 Abortive Visit Charges may also apply if access is provided to a Site, but work is not possible due to the Site being a health and safety risk to the person attending the Site or if the operation or security of any GIACOM equipment to be installed on Site may be compromised.
- 6.3 GIACOM's employees or anyone acting on GIACOM's behalf will use reasonable endeavours to observe any reasonable regulations affecting a Site of which GIACOM has been given notice.
- 6.4 The User shall procure a suitable and safe working environment for GIACOM's employees or anyone acting on GIACOM's behalf in relation to work carried out at a Site.
- 6.5 In normal circumstances, access to each Site will only be required during Business Hours. If GIACOM requires access at other times, the User will procure permission for GIACOM or anybody acting on its behalf to have access to the relevant Site unless the User reasonably refuses access at such times (and GIACOM shall not be liable for any failure to comply with the applicable Service Levels where such access is denied).
- 6.6 Any request by the User that GIACOM carries out work outside of Business Hours may be refused by GIACOM, but if accepted such work will be charged to the User at GIACOM's prevailing out-of-hours rates for the applicable Service together with any other applicable third-party charges.
- 6.7 If GIACOM needs to contact a User for the purposes of carrying out its obligations under this Agreement or any Service Schedule or any Order, the User shall give to GIACOM reasonable assistance including by providing the User's contact information to GIACOM and obtaining the User's consent for GIACOM to contact the User directly.

7. **EQUIPMENT**

- 7.1 GIACOM shall provide the necessary Network Terminating Equipment required to provide the Services. Title in the Network Terminating Equipment will at all times remain vested in GIACOM and/or the applicable Service Provider.
- 7.2 The User shall be liable to GIACOM for any loss of, or damage to, any Network Terminating Equipment, except where such loss or damage is due to fair wear and tear or is caused by anyone acting on GIACOM's behalf. The User shall keep Network Terminating Equipment fully insured to its replacement value and shall ensure that GIACOM's interest is named on the relevant policy/ies.
- 7.3 The User shall provide suitable secure accommodation, facilities, assistance and environmental conditions, connection points and electricity for any Network Terminating Equipment. The User shall procure that all necessary power supply, electrical and other fittings are in place and in working order and comply with GIACOM's requirements. GIACOM will not be held responsible for any interruption or failure of any Service caused by a power supply failure at a Site, except to the extent such failure is directly caused by the negligence of GIACOM, its employees or contractors.

- 7.4 The User shall not:
- 7.4.1 remove any markings or legends displayed on the Network Terminating Equipment;
or
 - 7.4.2 sell, charge, otherwise encumber or assign the Network Termination Equipment.
- 7.5 Unless provided otherwise in a Service Schedule and/or the applicable Order, the Reseller shall source, configure and maintain the CPE (or ensure the User has a suitable alternative).
- 7.6 The Reseller shall ensure any CPE connected to any Service is:
- 7.6.1 technically compatible with the applicable Service and shall not harm the GIACOM Network, the Service or the Network Terminating Equipment or another party's network or equipment;
 - 7.6.2 connected and used in accordance with relevant Legislation; and
 - 7.6.3 connected and used in accordance with any relevant standards including any standards detailed in the Service Schedule and/or Order. In the event any conflict or inconsistency between such standards, the descending order of precedence set out below shall apply:
 - 7.6.3.1 any applicable legal requirements including requirements arising from the General Conditions;
 - 7.6.3.2 any relevant specification notified by OFCOM in implementation of the recommendations of the Network Interoperability Consultative Committee;
 - 7.6.3.3 any relevant recommendations by the Telecommunications Standards Bureau of the International Telecommunication Union; and
 - 7.6.3.4 any other standards referred to in a Service Schedule or an Order.
- 7.7 Where any CPE does not comply with the terms of clause 7.6, the Reseller shall procure that such CPE is immediately disconnected. If the Reseller fails to disconnect the CPE, GIACOM may do so.
- 7.8 GIACOM will not be liable for failure to meet any Service Level or other obligations under the Agreement and/or a Service Schedule and/or any Order if the CPE in connection with such failure is found to be connected or operated otherwise than in accordance with this clause 7.
- 7.9 Where GIACOM agrees to provide CPE pursuant to the terms of a Service Schedule and/or an Order then (in addition to clauses 7.6 to clause 7.7 (inclusive)) the provisions of this clause 7.9 to clause 7.13 (inclusive) shall apply to such CPE:
- 7.9.1 risk of loss or damage to such CPE shall pass to the User upon delivery to the Site;
and

- 7.9.2 title to such CPE shall pass (provided GIACOM has agreed to transfer title to the same in a Service Schedule and/or an Order) upon receipt by GIACOM (in cleared funds) of all applicable Charges for such CPE.
- 7.10 Until title in the CPE has passed to the User shall:
 - 7.10.1 hold the CPE on a fiduciary basis as GIACOM's bailee;
 - 7.10.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the CPE; and
 - 7.10.3 maintain the CPE in satisfactory condition and insured on GIACOM's behalf for its full price against all risks to the reasonable satisfaction of GIACOM.
- 7.11 Not used
- 7.12 Not used
- 7.13 The User grants to GIACOM and the Reseller and their agents and employees an irrevocable licence at any reasonable time to enter any premises where the CPE or Network Terminating Equipment is or may be stored in order to inspect, or, where the Reseller's and/or any User's right to possession has terminated, to recover the CPE or Network Terminating Equipment which is still owned by GIACOM.
- 7.14 The User will not permit any lien, charge or other like restriction to be placed on:
 - 7.14.1 the Network Terminating Equipment;
 - 7.14.2 the CPE (unless and until such time as title transfers in respect of the same in accordance with clause 7.9.2); or
 - 7.14.3 any other equipment provided by GIACOM which is provided as part of and/or which is ancillary to the Services.

8. SECURITY

- 8.1 Not Used.
- 8.2 Not Used.

8.3 *Unauthorised Usage*

- 8.3.1 Notwithstanding any other provision of this Agreement, any Service Schedule or any Order, the User shall be liable for all charges incurred for the use of the Services, irrespective of whether the Services have been used by the User, its employees, agents or representatives or by any third party (including if unauthorised or fraudulently).
- 8.3.2 The User shall be responsible for:

- 8.3.2.1 preventing unauthorised and fraudulent use of the Services;
 - 8.3.2.2 maintaining the security of all systems, network elements and equipment within its (or its employees', agents' or contractors') and the Users' control;
 - 8.3.2.3 maintaining (and ensuring that each of User maintains) the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or equipment; and
 - 8.3.2.4 ensuring that neither it nor its Users attempt to change any username or password without GIACOM's prior written consent.
- 8.3.3 Without limiting clause 8.3.2.3, the User shall (or shall procure that appropriately qualified third parties shall), put in place and shall comply at all times with:
- 8.3.3.1 ensuring passwords used to access any part of the Services or the GIACOM Network shall include letters, numbers and symbols;
 - 8.3.3.2 ensuring such passwords are changed on a frequent (at least monthly basis);
 - 8.3.3.3 ensuring that only authorised personnel with a need to know any usernames, passwords and similar access information are given such information; and
 - 8.3.3.4 ensuring that each User follows any other reasonable security instructions or directions from GIACOM and the Reseller.
- 8.3.4 GIACOM shall not be obliged to monitor the usage of the Services by the Users. In the event that GIACOM does carry out any such monitoring, GIACOM shall not be liable for detecting, preventing or failing to detect or prevent any unauthorised or fraudulent use of the Services.
- 8.3.5 The User shall notify the Reseller and GIACOM immediately of any illegal, fraudulent or unauthorised use of the Services. On receipt of such a notice, GIACOM shall use reasonable efforts to suspend or prevent such use.
- 8.3.6 GIACOM shall be entitled to suspend or terminate the provision of the Services upon receiving notice under clause 8.3.5. In the event of such suspension or termination, the User shall ensure (if applicable) that it has (and its Users have) a form of access to the emergency services through a primary telephone line. GIACOM will lift its suspension or recommence its provision of the Services within a reasonable timescale after the User demonstrates to GIACOM's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised or fraudulent use of the Services. The User shall remain liable for the payment of the Charges for the Services whilst the Service is suspended or terminated in accordance with this clause 8.

8.3.7 Where GIACOM has the right to suspend or terminate the Services under clause 8.3.6 and the conditions in which GIACOM is required to lift its suspension or recommence its provision of the Services under that clause have not been met within thirty (30) days' of the date on which GIACOM has received the relevant notice under clause 8.3.6, GIACOM shall be entitled to terminate this Agreement and/or any Service Schedule and/or any Order immediately or on such other notice as GIACOM may consider appropriate in the circumstances.

9. CONFIDENTIAL INFORMATION, DATA PROTECTION AND PUBLICITY

9.1 Confidential Information disclosed by GIACOM and the Reseller to the User shall be treated as confidential and safeguarded by the User in accordance with this clause 9 during the Term and for a period of two years from the date of termination or expiry of the last Order placed pursuant to a Service Schedule under this Agreement. The provisions of this clause shall survive any termination (however caused) or expiry of the Agreement and any Service Schedule and any Order.

9.2 The User warrants, represents and undertakes that it shall:

9.2.1 keep in strict confidence and in safe custody any Confidential Information disclosed to it, or which it otherwise acquires;

9.2.2 not use, or divulge to any third party, any Confidential Information other than for the purpose of this Agreement and/or any Service Schedule or as permitted by clause 9.2.4;

9.2.3 not copy or reproduce or publish any or all of the Confidential Information except as is reasonably necessary for the purposes of this Agreement and/or any Service Schedule;

9.2.4 only disclose Confidential Information to its Representatives who have a need to know such Confidential Information for the purposes of this Agreement provided that it shall inform each such Representative of the restrictions as to confidentiality, use and disclosure of such Confidential Information contained in this Agreement and impose upon each such Representative obligations of confidentiality at least equivalent to those set out in this Agreement.

9.3 The provisions of this clause 9 shall not apply to information which the User can show to GIACOM's reasonable satisfaction:

9.3.1 was known to the user (without obligation to keep the same confidential) at the date of disclosure or acquisition of the Confidential Information;

9.3.2 in its entirety was at the time of disclosure or has become public knowledge otherwise than by reason of the User's breach of the restrictions in this Agreement and/or any Service Schedule;

9.3.3 has been independently developed by the Reseller without access to any Confidential Information; or

- 9.3.4 is required by law, judicial action, a recognised stock exchange, governmental department or agency or other regulatory authority to be disclosed, in which event the User shall take all reasonable steps to consult and take into account the reasonable requirements of GIACOM in relation to such disclosure.
- 9.4 The User agrees that damages alone would not be an adequate remedy for the breach of any of the provisions of this clause 9 and accordingly that, without prejudice to any other rights and remedies available, GIACOM and the Reseller shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this clause 9.
- 9.5 Each party shall take all reasonable care to avoid any act which may reflect adversely on or be harmful to the business, reputation of the other party to this Agreement, and without limitation, agree that (save as required by law or the rules of the London Stock Exchange or any other recognised stock exchange) they shall not make any press or other public announcements in respect of the subject matter or terms of this Agreement and/or any Service Schedule and/or Order without the text of such announcement receiving the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
- 9.6 To the extent that the User acts as a Controller in respect of any Personal Data shared with GIACOM or the relevant Data Client or generated in the performance of the Services or other obligations under this Agreement and/or any Service Schedule and/or any Order (**Reseller Controller Data**), the User shall:
- 9.6.1 ensure it is not subject to any prohibition or restriction which would;
 - 9.6.1.1 prevent or restrict it from disclosing or transferring the Personal Data to GIACOM or the relevant Data Client, as required under this Agreement and/or any Service Schedule and/or any Order; or
 - 9.6.1.2 prevent or restrict GIACOM or the relevant Data Client from Processing the Personal Data as contemplated under this Agreement and/or any Service Schedule and/or any Order;
 - 9.6.2 in relation to Personal Data which the User has collected and subsequently transferred to GIACOM or the relevant Data Client, ensure that all fair processing notices have been given (and/or as applicable, consents obtained from Data Subjects) and are sufficient in scope to enable GIACOM or the relevant Data Client to Process the Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement and/or any Service Schedule and/or any Order in accordance with the Data Protection Laws;
 - 9.6.3 only send Personal Data which is required by GIACOM or the relevant Data Client under this Agreement and/or any Service Schedule and/or any Order;
 - 9.6.4 ensure that any Personal Data transferred to GIACOM or the relevant Data Client is accurate in all respects;
 - 9.6.5 only provide Personal Data to GIACOM or the relevant Data Client by using secure methods;

- 9.6.6 comply with its obligations to report a Data Security Incident to the appropriate Supervisory Authority and (where applicable) Data Subjects under Article 33 of the GDPR and shall inform GIACOM or the relevant Data Client of any Data Security Incident irrespective of whether there is a requirement to notify any Supervisory Authority or any Data Subjects;
- 9.6.7 not cause GIACOM or the relevant Data Client to breach any Data Protection Laws;
- 9.6.8 provide all such assistance to GIACOM or the relevant Data Client as is required to enable GIACOM or the relevant Data Client to comply with requests from Data Subjects to exercise their rights under the Data Protection Laws or in relation to any Data Security Incident within the time limits imposed by the Data Protection Laws;
- 9.6.9 implement and maintain, at its cost and expense, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
- 9.6.10 not used
- 9.6.11 undertake any privacy impact assessments that are required by the Data Protection Laws (and, where required by the Data Protection Laws, it shall consult with the ICO in respect of any such privacy impact assessments).

10. **INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Save as set out in this clause 10, nothing in this Agreement, any Service Schedule or any Order shall affect, grant any licence to, or transfer any Intellectual Property Rights of either party which exist as at the Effective Date.
- 10.2 Any IPR which are generated, developed or arise out of the performance of the Services shall vest in GIACOM.
- 10.3 The User shall not copy, decompile, reverse engineer, or modify any Software without GIACOM's prior written consent (except as permitted by law) and will not distribute or disclose any Software to any third party.

10.4 The User shall not use GIACOM's Intellectual Property Rights except as expressly permitted in writing by GIACOM and then only to the extent necessary and for the sole purpose of fulfilling its obligations under this Agreement and any Service Schedules.

10.5 The User shall not do anything which may impair GIACOM's (or its licensors) rights, title and interest in and to the GIACOM IPR or which might prejudice their distinctiveness or validity, or the goodwill in relation thereto accruing to GIACOM and/or its licensors.

11. **SUSPENSION**

11.1 Without prejudice to any of its other rights or obligations under this Agreement or any Service Schedule or any Order, GIACOM may upon giving notice in accordance with clause 11.2 suspend the provision of any Service (whether in whole or in part) without liability (subject to clause 15.1) if:

11.1.1 it is necessary for operational reasons such as upgrades to any of the Services or regular maintenance; or

11.1.2 it is necessary for emergency maintenance; or

11.1.3 a Service has been affected by a Force Majeure Event; or

11.1.4 GIACOM or any Service Provider is required to so do in order to comply with any law, regulation, court order, or request, order, direction, determination or consent by or of a governmental or regulatory body (including without limit OFCOM) or authority;

11.1.5 it is entitled to (whether or not GIACOM elects to) terminate the Agreement and/or any Service Schedule and/or any Order pursuant to clause 12.4 and/or clause 12.5; or

11.1.6 the User fails to pay any invoice in accordance with clause 5.4.

11.2 For any suspension pursuant to clause 11.1.1, GIACOM will use reasonable efforts to give the User two (2) Business Days' notice of its intention to suspend any of the Services and subsequently shall restore the Services as soon as it is reasonably able to do so. GIACOM shall use reasonable efforts to carry out any required maintenance (referred to in clause 11.1.1) between midnight and 6:00 am. For any suspension pursuant to clauses 11.1.2, 11.1.3 or 11.1.4. GIACOM will endeavour to give as much notice as reasonably practicable of its intention to suspend any of the Services and subsequently shall endeavour to restore the Services as soon as it is reasonably able to do so. For any suspension pursuant to clause 11.1.5 or 11.1.6 GIACOM may suspend the applicable Service upon immediate notice.

11.3 The User shall continue to pay the Charges for the Services during the period of the suspension.

11.4 Any exercise by GIACOM of its rights of suspension in accordance with this Agreement and/or any Service Schedule and/or any Order shall not exclude GIACOM's right subsequently to terminate this Agreement and/or any Service Schedule and/or any Order.

11.5 In the event a suspension is implemented under clause 11.1.5 or 11.1.6, the User shall reimburse GIACOM for all costs and expenses incurred by the Reseller in the implementation of such suspension and/or the recommencement or the provision of the Services as appropriate.

12. **TERMINATION**

12.1 The Agreement may be terminated at any time by either party serving no less than ninety (90) days' written notice on the other, providing always that such termination shall not be effective prior to the expiry of the Minimum Term. The terms and conditions of this Agreement shall survive to the extent necessary to give effect to such extant Orders and Service Schedules.

12.2 Any Order or Service Schedule may be terminated upon giving no less than ninety (90) days' written notice to GIACOM provided that such notice may not expire any earlier than the Service Minimum Period in the relevant Order or Service Schedule.

12.3 GIACOM may terminate any Order or Service Schedule at any time upon thirty (30) days' written notice.

12.4 Without prejudice to any party's other rights under this Agreement and/or any Service Schedule and/or Order, either party may terminate this Agreement, and/or any Service Schedule and/or any Order with immediate effect by written notice in the event that:

12.4.1 the other party is in material breach of this Agreement and/or any Service Schedule and that breach cannot be remedied;

12.4.2 the other party is in material breach of this Agreement and/or any Service Schedule and where such breach is capable of remedy, the defaulting party fails to rectify such breach within thirty (30) days commencing on the date of the notice from the innocent party specifying the material breach; or

12.4.3 the other party is the subject of an Insolvency Event.

12.5 GIACOM may also terminate this Agreement, and/or any or all Service Schedules and/or any or all Orders with immediate effect by notice in writing in the event that:

12.5.1 GIACOM reasonably considers that an act, omission or default of the Reseller or a User will result in (or has resulted in) a failure by the User or GIACOM to comply with any applicable Legislation or constitutes fraud or other unlawful activity, or may place any of GIACOM or its Group in breach of any agreement with a Service Provider;

- 12.5.2 GIACOM is required to do so by any governmental or regulatory authority (including without limit, OFCOM) or to comply with Legislation;
- 12.5.3 any Charges or other sums due under this Agreement or an Order remain unpaid for more than seven (7) days after the due date for payment;
- 12.5.4 use of the GIACOM Network or any Service is, or is likely to cause damage to, interrupt or otherwise prevent GIACOM from supplying services to other customers or complying with obligations owed to other customers;
- 12.5.5 the User exceeds any credit limit stipulated by GIACOM under clause 5.15 and has not paid the difference between the credit limit and the current outstanding Charges within 3 Business Days of written notice to do so;
- 12.5.6 there is a change of Control of the User;
- 12.5.7 a Bond is not provided or maintained in accordance with clause 5;
- 12.5.8 an application is made to strike the User off the register of Companies for England and Wales; or
- 12.5.9 any of the User, its Group, or their respective officers or employees are prosecuted for a criminal offence relating to the Services or a service provided by any Service Provider (or analogous provider).

13. CONSEQUENCES OF TERMINATION

- 13.1 Upon termination of a Service Schedule or Order for any reason, GIACOM shall no longer be obliged to provide any Services thereunder, notwithstanding that the applicable Service Minimum Period/s for Service/s provided thereunder may not have expired.
- 13.2 Where a Service Schedule or Order is terminated in accordance with this Agreement, then save in respect of termination by GIACOM in accordance with clause 12.3 or the User in accordance with clause 12.4, without prejudice to any other right or remedy of GIACOM, the User shall pay to GIACOM, within seven (7) days of the effective date of termination:
 - 13.2.1 any Early Termination Charges associated with the termination of Services prior to the expiry of the applicable Service Minimum Period; and
 - 13.2.2 any Cancellation Charges associated with any Service which has not commenced its Service Minimum Period.
- 13.3 In the event of termination of this Agreement or a Service Schedule or an Order by GIACOM pursuant to clause 12.4 or clause 12.5, the User will forfeit any Charges paid in advance.
- 13.4 Not used
- 13.5 Upon termination of this Agreement and/or a Service Schedule(s) and/or an Order (as

applicable):

- 13.5.1 the User shall discontinue the use of and (if and to the extent required by GIACOM) subject to compliance with any regulatory and legislative obligations, destroy or deliver up to GIACOM (at GIACOM's option) all documentation containing Confidential Information and erase from any computer under its control any documents or files containing or reflecting Confidential Information in a manner that makes the erased data irrecoverable;
- 13.6 Not used
- 13.7 Not used
- 13.8 Without prejudice to clause 12.1, the following provisions of this Agreement shall survive and shall continue to be enforceable notwithstanding termination:
 - 13.8.1 clause 1 (Definitions & Interpretation)
 - 13.8.2 clause 5 (Charges, Invoicing, Terms of Payment and Security)
 - 13.8.3 clause 7.2 (Equipment)
 - 13.8.4 clause 8.3.1 and 8.3.2 (Security)
 - 13.8.5 clause 9 (Confidential Information, Data Protection and Publicity)
 - 13.8.6 clause 10 (Intellectual Property Rights)
 - 13.8.7 clause 11 (Suspension)
 - 13.8.8 clause 13 (Consequences of Termination)
 - 13.8.9 clause 14 (Non-Solicitation)
 - 13.8.10 clause 15 (Limitation of Liability)
 - 13.8.11 clause 16 (VAT)
 - 13.8.12 clause 17 (Anti-Bribery)
 - 13.8.13 clause 18 (TUPE)
 - 13.8.14 clauses 19 to clause 30 (inclusive); and
 - 13.8.15 any provision containing an indemnity, together with any other provisions cross-referenced in that indemnity.

together with any other provisions of the Agreement and/or any Service Schedule and/or any Order (including without limit any Charges and methods for calculating Charges and any Service and/or Service Level limitations and/or exclusions) which are impliedly or expressly to

survive termination.

- 13.9 As and from the effective date of termination, (save as set out in clause 13.8) all rights, obligations and liabilities of either party will cease, without prejudice to either parties' accrued rights or obligations up to the effective date of termination.

14. **NON-SOLICITATION**

- 14.1.1 The User undertakes to GIACOM that (except with the prior written consent of GIACOM) both during the continuance of this Agreement and for the period of 12 months after the lawful termination of this Agreement it will not directly or indirectly whether by itself, its employees or agents or otherwise howsoever and whether on its own behalf or for any other person, firm, company or business: directly or indirectly solicit, approach or entice or endeavour to entice away from GIACOM any employee of GIACOM and with whom the Reseller had dealings arising out of this Agreement;
- 14.1.2 directly or indirectly solicit, approach, or entice or endeavour to entice away from GIACOM any consultant of GIACOM, or any other reseller.
- 14.2 The parties acknowledge to each other that they consider the restrictions in clause 14.1 to be reasonable, but if a Court of competent jurisdiction finds any of them to be unenforceable the parties agree to accept any modifications to the extent or duration of the restriction concerned which the Court sees fit to impose or, if it does not see fit, which is reasonably necessary to render the restriction enforceable;
- 14.3 Each of the restrictions in clause 14.1 are agreed to be a separate obligation and shall be severally enforceable as such. In the event of any restriction being determined as being unenforceable in whole or in part for any reason, such unenforceability shall not affect the enforceability of the remaining restrictions, or, in the case of part of a restriction being unenforceable, the remainder of that restriction.

15. **LIMITATION OF LIABILITY**

- 15.1 Nothing in this Agreement and/or any Service Schedule and/or any Order shall limit or exclude the liability of either party for:
- 15.1.1 death or personal injury resulting from that party's negligence or by the negligence of a person for whom it is vicariously liable;
- 15.1.2 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 15.1.3 for breach of its obligations arising under section 12 of the Sale of Goods Act 1979;
- 15.1.4 for breach of its obligations arising under Section 2 Supply of Goods and Services

Act 1982; or

- 15.1.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 15.2 Nothing in this Agreement and/or any Service Schedule and/or any Order seeks to and/or has the effect of limiting or excluding the liability of the Reseller:
 - 15.2.1 to pay any Charges due in accordance with the Agreement and/or any Service Schedule;
 - 15.2.2 under any indemnity in this Agreement and/or any Service Schedule;
 - 15.2.3 for breach of clause 9 (Confidential Information, Data Protection and Publicity)
 - 15.2.4 for breach of clause 10 (IPR);
 - 15.2.5 for breach of clause 13 (Consequences of Termination); or
 - 15.2.6 for breach of clause 17 (Anti-Bribery).
- 15.3 Subject to clause 15.1, GIACOM's maximum aggregate liability arising out of or in connection with this Agreement, all Service Schedules and all Orders, whether in contract, tort (including without limitation negligence), misrepresentation, under statute or otherwise and howsoever arising shall be limited to £100,000.
- 15.4 Subject to clause 15.1, GIACOM's maximum aggregate liability under a Service Schedule in respect of any Service Credits payable thereunder shall not exceed, in any calendar month, 10% of the total Charges paid by the User for Services rendered under that Service Schedule in the applicable calendar month. For the avoidance of doubt, any Service Credits paid by GIACOM shall be taken into account when calculating whether the cap in clause 15.3 has been reached.
- 15.5 Subject to clauses 15.1 and 15.2, the Reseller's maximum aggregate liability arising out of or in connection with the Agreement, whether in contract, tort (including without limitation negligence), misrepresentation, under statute or otherwise, howsoever arising in any 12 month period shall be limited to the greater of; (i) the value of the Charges paid or payable during the relevant twelve (12) month period; or (ii) £100,000.
- 15.5 Subject to clause 15.1, GIACOM and the Reseller shall not in any circumstances be liable to the User whether in contract, tort (including without limitation negligence), misrepresentation, under statute or otherwise, howsoever arising and whether under this Agreement, any Service Schedule or any Order for any loss (whether direct, indirect or consequential) of:
 - 15.5.1 business;
 - 15.5.2 revenue;

- 15.5.3 profit;
- 15.5.4 contracts;
- 15.5.5 anticipated savings;
- 15.5.6 operation time;
- 15.5.7 reputation; or
- 15.5.8 data or equipment (including any corruption thereof),

nor shall GIACOM have any liability to the User for any indirect, special and/or consequential loss whatsoever.

- 15.6 Not used;
- 15.7 The User shall indemnify, keep indemnified and hold harmless GIACOM and each GIACOM Group company (and their respective successors and assigns) who shall have no duty to mitigate their loss in respect of any and all Losses (whether or not such Losses were foreseeable at the date of entering this Agreement and/or any Service Schedule) incurred or suffered by or made against any of them and whether, wholly or in part, resulting directly or indirectly from, or connected in any way with any breach by the User (or any of its Representatives) of clause 4.1 or any parts thereof.
- 15.8 Except as otherwise stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise in relation to the provision of the Services are hereby excluded to the fullest extent permitted by law.
- 15.9 Service Credits shall be the User's sole and exclusive right and remedy for any failure by GIACOM to comply with the Service Levels.
- 15.10 Subject to clause 15.1, the User agrees that any cause of action that it may have against GIACOM and/or any members of its Group (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose, otherwise, the Reseller's cause of action is permanently barred.

16. VAT

- 16.1 All Charges for Services are exclusive of Value Added Tax (**VAT**) or any similar sales taxes, which may be applicable. If any VAT or similar sales tax is chargeable by the Reseller, this will be added to the charges shown on each invoice and shall be paid in addition by the User.
- 16.2 Not Used
- 16.3 Not Used
- 16.4 Not Used

17. ANTI-BRIBERY

17.1 The User shall, and shall procure that its staff, employees, agents and any other persons who perform its obligations under the Agreement (or otherwise carries out activities in relation to it) for and on behalf of it in connection with the Agreement shall:

17.1.1 comply with all applicable statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to the anti-bribery and/or anti-corruption, including the Bribery Act 2010 (**Anti-Bribery Laws**);

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

17.1.3 Not used;

17.1.4 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;

17.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;

17.1.6 not do or omit to do any act or thing which causes or may cause GIACOM or any GIACOM Group member to be in breach of and/or commit an offence under any Anti-Bribery Laws;

17.1.7 without prejudice to clause 17.1.6, not do or omit to do any act or thing which causes or may cause GIACOM or any GIACOM Group member to be guilty of an offence under section 7 of the Bribery Act 2010 (or would or may do so if GIACOM was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and

17.1.8 provide GIACOM or any GIACOM Group member (at the User's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

17.2 The User shall:

17.2.1 promptly report to the Reseller, GIACOM or any GIACOM Group member any request or demand for any financial or other advantage of any kind received in connection with the performance of the agreement by it or by its employees, agents or any other person who performs the Agreement (or otherwise carries out activities in relation to it) for or on behalf of it in connection with the agreement; and upon request, certify in writing that the User has complied with all of its obligations under this clause 17. The User shall provide such supporting evidence of compliance as

GIACOM or any member of the GIACOM Group may reasonably request.

17.3 The User warrants to GIACOM and all members of the GIACOM Group that it has not, and its staff, employees, agents and any other persons who perform the Agreement (or otherwise carries out activities in relation to it) for or on behalf of it in connection with the Agreement have not breached any applicable Anti-Bribery Laws; been convicted of any offence involving bribery, corruption, fraud or dishonesty; offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act; done or omitted to do any act or thing which constitutes or may constitute an offence under the Anti-Bribery Laws; done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or commit an offence under any Anti-Bribery Law; done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 of the Bribery Act; or given any financial or other advantage, inducement or reward to any person in connection with the awarding or continuation in force of this Agreement.

17.4 GIACOM and/or any GIACOM Group member may terminate the Agreement immediately if the User is in breach of any of its obligations under this clause 17 or if GIACOM or any GIACOM Group member has reasonable cause to believe that such a breach has occurred or may occur.

18. TUPE

18.1 The parties do not envisage that the provisions of any of the Employment Regulations will apply to the Agreement and/or any Service Schedule and/or any Order. However, the User shall:

18.1.1 provide to GIACOM (and/or any member of the GIACOM Group) any information which GIACOM (and/or any member of the GIACOM Group) may reasonably require from time to time in relation to employees including the time they spend individually in the performance of this Agreement and/or any Service Schedule; and

18.1.2 indemnify, keep indemnified and hold harmless GIACOM and each GIACOM Group company (and their respective successors and assigns) (who shall have no duty to mitigate their loss) in respect of any and all Losses (whether or not such Losses were foreseeable at the date of entering this Agreement and/or any Service Schedule) incurred or suffered by or made against any of them and whether, wholly or in part, resulting directly or indirectly from, or connected in any way with the employment and/or termination of employment of any persons arising out of the application of the Employment Regulations in connection with the Agreement and/or any Service Schedule.

19. NOTICES

19.1 All written notices served under this Agreement and/or any Service Schedule must be marked for the attention of the Reseller Managing Director /Giacom Finance Director and must be sent by a service that is registered or signed for.

20. ENTIRE AGREEMENT

The Agreement and the Service Schedules and the Orders constitute the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither party has entered into the Agreement and/or any Service Schedule in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Agreement and/or any Service Schedule. The only remedies available for breach of any representation or statement which was made prior to entry into the Agreement and/or a Service Schedule and which is expressly set out in the Agreement and/or a Service Schedule shall be for breach of contract. Nothing in this clause 20 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

21. FURTHER ASSURANCE

21.1 Not Used.

22. RECORD KEEPING AND AUDITS

22.1 Not Used

23. SEVERABILITY

The various provisions of this Agreement are severable and if any provisions hereof are held to be invalid or enforceable by any Court of competent jurisdiction, then such invalidity or enforceability shall not affect the remaining provisions of this Agreement.

24. ASSIGNMENT

24.1 GIACOM shall have the right to assign or otherwise delegate all or any of its rights and obligations under this Agreement and/or any Service Schedule and/or any Order to any of its Group companies or to any other person without prior notification.

24.2 Without prejudice to clause 13.7, the User shall not assign, sub-contract, delegate or otherwise deal with all or any of its rights and obligations under this Agreement and/or any Service Schedule without GIACOM's absolute prior written consent.

25. AMENDMENTS

25.1 This Agreement and/or any Service Schedule and/or any Order may only be amended by the agreement in writing of a duly authorised officer of each party except that:

25.1.1 the technical specifications of the Services may be amended unilaterally and/or the Services withdrawn by GIACOM in accordance with clause 3.18;

25.1.2 the Charges may be amended by GIACOM in accordance with clause 5.5;

25.1.3 where the amendment is necessary to comply with any directive or regulation imposed by OFCOM or such other regulatory body.

25.1.4 where in GIACOM's opinion an amendment is necessary for compliance purposes with any voluntary or statutory code of practice.

26. **WAIVER**

26.1 The failure on the part of either party to exercise or enforce any right conferred by this Agreement and/or any Service Schedule shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right or of any other right on any later occasion.

27. **FORCE MAJEURE**

27.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Agreement and/or any applicable Service Schedule and/or any Order (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control (**Force Majeure Event**). Circumstances beyond a party's reasonable control include an act of God, theft, war or riot, civil disobedience, national emergency, strikes and other labour disputes (other than solely of the party affected by the Force Majeure Event), fire, flood, act of terrorism, acts of government, regulators (including OFCOM) or other competent authority, breakdown of any equipment not supplied by GIACOM, power failures, failures by Service Providers or other public telecommunications operators and/or non-availability of any third party communication services and/or the internet.

27.2 In the event that a Force Majeure Event continues for a period of sixty (60) days, either party shall have the right to terminate the Agreement and/or the applicable Service Schedule and/or the applicable Order on written notice to the other party.

28. **THIRD PARTY RIGHTS**

28.1 Subject to clause 28.2, a person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

28.2 Any GIACOM Group company shall have the right to enforce any term of this Agreement and/or any Service Schedule and/or any Order as if it were GIACOM.

29. **LAW AND JURISDICTION**

This Agreement and all Service Schedules and all Orders (including all non-contractual

disputes arising out of them) shall be governed by and construed in accordance with the laws of England, and each party agrees to submit to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes), (save for the obtaining or enforcing of any interim or final judgment or order).

30. **COUNTERPARTS**

This Agreement, each Service Schedule and each Order may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered will be an original, but all the counterparts together will constitute one and the same agreement.