

HOSTED SERVICES AGREEMENT

- 1 **(Company Name)** a Company registered in England under number NNNNNNNN whose office is at XXXXXXXX (hereinafter known as the "Company"); and
- 2 **Clear Connections Europe Limited** a company registered in England and Wales under number 09301418 whose office is at 3rd Floor, 207 Regent Street, London W1B 3HH (hereinafter known as the "Supplier").

WHEREAS:

- A. The Supplier is engaged in the business of providing Hosted Services in relation to telephony and contact centre solutions and has reasonable skill, knowledge and experience in these fields.
- B. In reliance upon that skill, knowledge, and experience the Company wishes to engage the Supplier to provide certain services and the Supplier has agreed to accept the engagement on the terms and conditions of this Agreement.

Pre-contractual notices

- A) This agreement is an on-line agreement. You are therefore not required to sign and return it in order to be bound by its content. You are not obliged to accept this agreement. However, your attention is brought to Clause 7 below, which clearly defines the conditions under which this agreement between you and us shall commence and the duration of its term. If you have any queries relating to this agreement, then please contact us. Our contact details can be found on the web page www.clearconnections.ie/contact.html.
- B) We will inform you whenever changes occur via a notification on our monthly invoice to you, and if you do not write to us within Fourteen days of our notification, clearly stating which changes you do not accept. It will be assumed that you have seen our notification to you of the change(s) in our terms and conditions, read the latest version of them and, found them to be acceptable.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Agreement where the context admits:

- "Effective Date"** means the date the Services will commence and the User Licences and Site Licences are chargeable pursuant to Clause 6 below.
- "Company Materials"** means any information, specifications, documents or other materials provided by the Company to the Supplier
- "Confidential Information"** means information which is secret or confidential relating to any person, firm or Company or to the business or personal affairs of any person firm or Company and includes without limitation information relating to the costs of operation or production costs or sales pieces or purchase costs of any goods or services (other than information about costs or prices contained in any published price list), sales volumes, names and addresses of all former and existing customers, and any trade secrets;
- "Intellectual Property"** means all copyright and related rights, trademarks, service marks, trade, business and domain names, goodwill, designs, computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for renewals or extensions of such rights, in any part of the world;
- "Premises"** means the Premises referred to in Sub-Clause 2.4 below or such other Premises as may be notified from time to time by the Company to the Supplier and accepted by the Supplier;

- "Services"** means the services to be provided by the Supplier to the Company as set out in the Service Schedule;
- "Service Installation"** means project set-up, including but not limited to Professional Services and hardware and software installation, required to install and configure the Services;
- "Service Schedule"** means Appendix A;
- "Software"** means the computer programs listed in Appendix A (Service Schedule) and all user documentation in respect of such programs and any modification which is acquired by the Company during the subsistence of this Agreement;
- "Initial Order"** means the purchase order or orders from the Company to the Supplier for the Services and Service Installation;
- "Period Service Fee"** Means the charges for the Services set out in the Service Schedule. The standard Period refers to one quarter, (three months).
- "TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended from time to time).

- 1.2 Unless the context otherwise requires, each reference in this Agreement to: -
 - 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic mail, facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules, as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and

- 1.2.5 a clause or paragraph is a reference to a Clause of this Agreement or a paragraph of the relevant Schedule
- 1.3 In this Agreement: -
- 1.3.1 any reference to the parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees;
- 1.3.2 any reference to a person includes any body corporate, unincorporated association, partnership or any other legal entity;
- 1.3.3 words importing the singular number include the plural and vice versa; and
- 1.3.4 words importing any gender include any other gender.
- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. Provision of the Services

- 2.1 The Supplier shall from the Effective Date throughout the continuance of this Agreement provide the Services to the Company, in accordance with the Software Specification and Services Specification.
- 2.2 The Services supplied under the Agreement shall continue to be supplied until the completion of those Services unless the Contract is lawfully terminated.
- 2.3 The Company shall promptly obtain, maintain and make available all necessary assets, equipment, premises, vehicles, personnel, capital and other facilities required for the provision of Services.
- 2.4 The Supplier shall provide the Services described in the Service Schedule remotely via the web or as otherwise agreed in writing by the parties.
- 2.5 The Supplier shall ensure the Services are available for use to the level defined in the attached Service Level Agreement (SLA) and shall observe the fault categories, response and resolution times, service availability and maintenance terms contained therein.
- 2.6 Subject to clause 7.4, in the event that the Supplier commits any breach of any of the terms and conditions of this Agreement by failing to provide any of the Services or commits any breach which otherwise adversely affects the provision of the Services, the Supplier has the right to remedy such breach within 21 days of notice from the Company.
- 2.7 The Company shall provide the Supplier with such Company Materials as the Company considers reasonably necessary for the Supplier to carry out the Services.
- 2.8 The Supplier will not use the Company Materials or any goods provided to the Supplier for any purposes other than for the performance of the Services.
- 2.9 The Supplier will take good care of any Company Materials and/or any goods provided to the Supplier and protect them from damage so far as is consistent with the performance of the Services.
- 2.10 The Supplier will perform the Services:
- 2.10.1 using reasonable skill and care and in accordance with best industry practice taking into account any standards agreed with Us (the "Acceptable Standard"); and
- 2.10.2 in compliance with applicable laws.

3. Licence to use the Software

- 3.1 In consideration of the Company's obligation to pay the Period Service Fee in accordance with clauses 6.7 and 6.9, the Supplier grants to the Company and its group companies a non-exclusive licence for a term of one (1) year commencing on, and

including, the Effective Date to use the Software for the Company's internal business operations.

4. Company's Obligations

- 4.1 The Company shall allow the Supplier and its personnel access at all reasonable times to the Premises for the purpose of providing the Services.
- 4.2 The Company shall provide the Supplier with such technical advice in connection with the performance of the Services as the Supplier may from time to time reasonably require.
- 4.3 The Company shall provide the Supplier with any information reasonably required before the commencement of the services.
- 4.4 The Company and the Supplier shall each use reasonable endeavours to keep each other informed of any special requirements (including statutes and codes of good practice) applicable to the carrying out of the Services. To the extent necessary and appropriate the Supplier shall promptly take steps to comply with such special requirements. These steps shall not give rise to any increase in the fees payable pursuant to the Service unless agreed in writing between the parties.
- 4.5 The Company shall comply with all relevant legislation and codes of practice including but not limited to OFCOM pertaining to the use of the Services and shall indemnify the Supplier against all liability for misuse of Services in contravention thereof.
- 4.6 In the event that the Company or any third party, not being a subcontractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under the Agreement, then the supplier shall notify the Company as soon as possible and the Supplier will have no liability in respect to any delay in the provision of the service.
- 4.7 The Company will provide on-site support staff or third party staff who will diagnose faults and service issues prior to these being raised to the Supplier as a Service Call. The Company shall nominate a Point of Contact for all service related issues.
- 4.8 The Supplier shall make best endeavours to provide the Company and its subcontractors with relevant technical information in respect of the Services so the Company can perform its obligations effectively pursuant to clause 4.7. The Supplier shall accept no Liability pursuant to clause 4.7 if the Company or its subcontractors fails to diagnose or prevent a fault as a consequence, alleged or otherwise, of the Company failing to provide the necessary technical information.
- 4.9 The Company will ensure that specific people within their premises are identified as authorised to make Service Calls to the Supplier and provide the Supplier with a list of these authorised people.
- 4.10 The Company shall notify the Supplier either orally or in writing as soon as practicable of any fault in the Equipment or any work or maintenance that may be necessary.
- 4.11 The Company shall at all times comply with all reasonable instructions, requests and advice, given by the Supplier during the resolution of faults.
- 4.12 The Company shall maintain all network and computing equipment within their demarcation (defined in the Service Schedule) to a minimum level capable of supporting the Service. This includes, but is not limited to, repairs, servicing, upgrades and software.
- 4.13 The Company shall not allow any equipment provided by the Supplier to be moved, interfered with or tampered with without first notifying the Supplier in writing and shall at all times comply with all reasonable advice given by the Supplier in relation to the operation and care of said equipment.

- 4.14 The Company shall obtain and pay for any licenses, way-leaves, suitable private wires, jack sockets or any other items reasonably necessary for the operation of Supplier provided equipment and as specified in relevant Service installation documentation agreed by the parties
- 4.15 The Company shall maintain an environment and clean electrical supply suitable to support efficient operation of all equipment provided by the Supplier on the Company's premises, and shall comply with the reasonable directions of the Supplier relating to said equipment's positioning, installation, care and use.
- 4.16 Where the Company uses the Supplier's services to access the Internet, the Company shall ensure that it does not use said services to engage in:
- 4.16.1 Unlawful, fraudulent, criminal or otherwise illegal activities
 - 4.16.2 Sending, receiving, publishing, posting, distributing, disseminating, encouraging the receipt of, uploading, downloading, recording, reviewing, streaming or using any material which is offensive, abusive, defamatory, indecent, obscene, unlawful, harassing or menacing or a breach of the copyright, trademark, intellectual property, confidence, privacy or any other rights of any person.
 - 4.16.3 Sending or uploading unsolicited emails except in accordance with the Privacy and Electronic Communications Regulations 2003.
 - 4.16.4 Knowingly or negligently transmitting or uploading any electronic material (including, without limit, files that contain viruses, corrupted files, or any other similar software or programs) which is known or likely to cause, interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment owned by the Supplier or any other Internet user or person.
 - 4.16.5 Activities that invade another's privacy, cause annoyance, inconvenience or needless anxiety to any person.
 - 4.16.6 Activities that are in breach of any other third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software or other material
 - 4.16.7 Anything that may disrupt or interfere with the Supplier's network or services or cause a host or the network to crash.
 - 4.16.8 Launching "denial of service" attacks; "mail bombing" attacks; or "flooding" attacks against a host or network.
 - 4.16.9 Making excessive use of, or placing unusual burdens on, the network, for example by sending or receiving large volumes of email or excessively large email attachments.
 - 4.16.10 Circumventing the user authentication or security process of a host or network.
 - 4.16.11 Creating, transmitting, storing or publishing any virus, Trojan, corrupting programme or corrupted data.
 - 4.16.12 Collecting, streaming, distributing or accessing any material that the Company knows, or reasonably

should know, cannot be legally collected, streamed, distributed or accessed.

5. Supplier warranties

- 5.1 The Supplier warrants that:
- 5.1.1 it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement;
 - 5.1.2 the Services and anything created or provided by the Supplier in the course of or in connection with the Services will not infringe the Intellectual Property rights or otherwise be in breach of the rights of any third party; and
 - 5.1.3 it shall perform the Services (i) in accordance with law; (ii) with reasonable skill and care and in a professional manner and in accordance with best industry practice; and (iii) using suitably qualified personnel with appropriate skills and experience.
- 5.2 The Supplier will indemnify the Company from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Company as a result of or in connection with any breach of clauses 5 (Warranties) and 17 (Data Protection).

6. Payment

- 6.1 The Company shall pay the Supplier for the Service Installation within 30 days' net of the date of receipt of an undisputed invoice, unless agreed in writing by the Supplier. All Service Installation charges must be paid in full before the Effective Date
- 6.2 In consideration of the Supplier providing the Services in accordance with the Agreement, the Company shall pay a deposit equivalent to the Period Service Fee (the "Deposit").
- 6.3 The Deposit shall be payable in full prior to the Effective Date. In any event payment of the Deposit shall be no later than 45 days following the date of the Initial Order or the date of this Agreement, whichever is the earlier date, unless agreed in writing by the Supplier.
- 6.4 In the event that this agreement is terminated pursuant to Clause 7.3, the Deposit shall be credited against the Company's account for payment of Services during the Notice Period.
- 6.5 In the event this agreement is extended pursuant to Clause 7.2, the Deposit shall remain with the Supplier until this agreement is terminated under Clause 7.3.
- 6.6 The first period payment period shall start the first day of the calendar month following the Effective Date unless the Effective Date falls on the first day of a calendar month when the first period payment period shall start on the same day.
- 6.7 The Company shall pay the first Period Service Fee prior to the Effective Date no later than 45 days following the date of the Initial Order or the date of this Agreement, whichever is the earlier date, unless agreed in writing by the Supplier.
- 6.8 The first Period Service Fee may include a part payment calculated at the rate of:
- 6.8.1 one ninetieth of the Period Service Fee for each day from the Effective Date to the first day of the first period payment period where the Period Service Fee is quarterly; or
 - 6.8.2 one thirtieth of the Period Service Fee for each day from the Effective Date to the first day of the first period payment period where the Period Service Fee is monthly.

- 6.9 The Company shall pay each subsequent Period Service Fee so that it is received in cleared funds by the Company no later than the first day of each period payment period.
- 6.10 Charges for variable costs, including but not limited to phone call charges, shall be made monthly in arrears and payment made within 30 days' net of the date of receipt of an undisputed invoice, unless agreed in writing by both parties in advance.
- 6.11 If the Company fails to pay any undisputed amount within the 30-day period, the Supplier may charge interest on the overdue amount, from the due date up to the date of actual payment, at the rate of 2% per annum above the Bank of England base rate in force as at the due date.
- 6.12 In addition, the Supplier may, at its sole option and without prejudice to any other remedies it may have, suspend the performance of the Services, at any time after any undisputed payment from the Company to the Supplier shall have become due and payable. Any such suspension shall not constitute, or be deemed to constitute, a breach of the Supplier of its contractual obligations under this Agreement, and shall not entitle the Company to any damages or any other remedies, and shall not relieve the Company from its contractual obligations under this Agreement. The Supplier reserves the right to charge the Company any reasonable costs incurred by it in connection with the reinstatement of the Services following any such suspension.
- 6.13 The non-payment by the Company of any undisputed amount that is due and payable to the Supplier under this Agreement shall constitute a material breach of this Agreement.
- 7. Duration and Termination**
- 7.1 This Agreement shall come into force on the date shown in the Service Schedule and shall continue for the period set out in the Service Schedule, subject to the following provisions.
- 7.2 This Agreement can be extended by mutual written consent of the parties by amendment to the Service Schedule.
- 7.3 Either party may terminate specified Services by giving to the other not less than three months' prior written notice, at any time.
- 7.4 Either party may forthwith terminate this Agreement by giving written notice to the other party if: -
- 7.4.1 that other party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 21 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 7.4.2 the other party repeatedly breaches any of the terms of the Agreement in such a manner that it is reasonable to assume that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; an encumbrancer takes possession, or where that other party is a company, a receiver is appointed, of any of the property or assets of that other party;
- 7.4.3 that other party makes any voluntary arrangement with its creditors or, being a Company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 7.4.4 that other party, being an individual or firm, has a bankruptcy order made against it or, being a Company, goes into liquidation (except for the purposes of amalgamation or re-construction and in such a manner that the Company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
- 7.4.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party;
- 7.4.6 that other party ceases, or threatens to cease, to carry on business;
- 7.4.7 control of that other party is acquired by any person or connected persons not having control of that other party on the date of this Agreement; or
- 7.4.8 that the other party commits a material breach of any of the provisions of this Agreement.
- 7.5 For the purposes of Clauses 7.4.1 and 7.4.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects.
- 7.6 The rights to terminate this Agreement given by this Clause 7 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 8. Effects of Termination**
- 8.1 Upon the termination of this Agreement for any reason: -
- 8.1.1 any sum owing by either party to the other under any of the provisions of this Agreement shall be immediately payable;
- 8.1.2 the Supplier will immediately pay to the Company any monies paid by the Company to the Company in respect of which the benefit of the relevant Services has not been received;
- 8.1.3 all equipment provided by the Supplier to the Company as part of the Service shall be immediately returned to the Supplier at the Company's expense;
- 8.1.4 Equipment not returned within 10 working days shall be invoiced to the Company at full list price which the Company agrees to pay within 7 days;
- 8.1.5 Equipment returned in a damaged or un-serviceable condition shall be invoiced to the Company at full list price which the Company agrees to pay within 7 days;
- 8.1.6 clauses 1, 9, 16 and 17 shall remain in effect;
- 8.1.7 any rights or obligations to which any of the parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect;
- 8.1.8 termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination; and
- 8.1.9 subject as provided in this Clause 8, and except in respect of any accrued rights, neither party shall be under any further obligation to the other.
- 8.2 Each party shall (except to the extent referred to in Clause 9.39.3) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other party any documents in its possession or control which contain or record any Confidential Information;
- 8.3 On termination of the Agreement (however arising), the Supplier shall cease to use any of the Company's Confidential Information, Company Materials and any personal data processed on the Company's behalf and shall permanently erase (and certify such destruction and erasure), all copies of that Confidential Information, Company Materials and personal data in the Supplier's possession or control.

9. Confidentiality

9.1 Each party undertakes that, except as provided by Clause 9.2 or as authorised in writing by the other party, it shall, at all times during the continuance of this Agreement and for 5 years after its termination: -

- 9.1.1 keep strictly confidential all Confidential Information, including all matters relating to the Agreement, any Company Materials the Company provides to the Supplier and every aspect of the Services and the relationship between the Company and the Supplier;
- 9.1.2 not disclose any Confidential Information to any other person;
- 9.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
- 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 9.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of the provisions of sub-clauses 9.1.1 - 9.1.4 above.

9.2 Either party may: -

- 9.2.1 disclose any Confidential Information to: -
- 9.2.2 any sub-contractor or supplier of that party;
- 9.2.3 any governmental or other authority or regulatory body; or
- 9.2.4 any employee or officer of that party or of any of the aforementioned persons;
- 9.2.5 to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in 9.2.3 above or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 9.2.6 use any Confidential Information for any purpose, or disclosure it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that party, provided that in doing so that party does not disclose any part of that Confidential Information which is not public knowledge.

9.3 The provisions of this Clause shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

10. Force Majeure

10.1 For the purposes of this Agreement "Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other form of industrial action).

10.2 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

10.3 Neither party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to other, by reason of any delay in performance, or the non-performance, of any of

its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be, by agreement of the parties, reasonably extended accordingly.

10.4 If the performance by either party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of 10 days, the parties shall enter into discussions with a view to agreeing upon such alternative arrangements as may be fair and reasonable or the other party shall be entitled to terminate this Agreement immediately by giving written notice to the party so affected.

11. Nature of the Agreement

11.1 Each party shall be entitled to perform any of the obligations undertaken by it and to exercise any rights granted to it under this Agreement through any other member of its group, subject to the approval of the other party to this Agreement (such approval not to be unreasonably withheld) and provided that any act or omission of that other member shall, for all the purposes of this Agreement, be deemed to be the act or omission of the party in question.

11.2 Subject to Clause 11.1, this Agreement is personal to the parties and neither party may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other party.

11.3 This Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

11.4 Each party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.5 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

11.6 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

12. Costs

12.1 Subject to any provisions to the contrary each party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

12.2 The Supplier reserves the right to recover costs reasonably incurred in collecting payment for Services in the event of a breach of the payment terms in Clause 6 by the Company.

13. Notices and Service

13.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by: -

- 13.1.1 sending it by pre-paid registered post; or
- 13.1.2 sending it by e-mail, facsimile transmission or comparable means of communication;
- 13.1.3 to the other party at the address given in Clause 13.5

13.2 Any notice or information given by post in the manner provided by Clause 13.1.1 which is not returned to the sender as

undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

13.3 Any notice or information sent by e-mail, telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy of it is sent as provided in Clause 13.1.1 to the other party at the address given in Clause 13.4 within 24 hours after transmission.

13.4 Each of the parties hereto covenants with the other that for the period of this Contract and for 12 calendar months following its termination it will not directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of the Service or otherwise been involved in connection with this Contract to leave the employment of that other party. This paragraph shall not prohibit the employment of any person recruited through an employment agency, if neither party nor any person connected with them has encouraged that agency to approach the relevant individual, or the placing of a public advertisement for a post available to members of the public generally or the employment of any person who answers such an advertisement. The Company estimates the impact that a breach would have upon its business which is herein specified as liquidated damages in the amount of one times the current gross annual salary of the personnel concerned. The Supplier accepts that this is a reasonable estimate of the loss and agrees to pay the same upon demand in the event of its breach. The Supplier may demand and the Company may pay similar damages in the event of the Company's breach. Nothing in this Clause 13.4 shall prejudice the right of the non-breaching party to seek injunctive relief.

13.5 Service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing it to be delivered to the other party at its registered or principal office, or to such other address as may be notified to it by the other party in writing from time to time.

14. Time

14.1 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any Services save for provisions in the Service Level Agreement Schedule (Appendix B).

14.2 The Supplier will promptly notify the Company of any delay which might result in the Supplier's failure to meet any deadline. The Supplier's notification will contain an explanation and new proposed deadline. The Company may accept the Supplier's proposal, terminate the Agreement with immediate effect in accordance with Clause 7.3 above or make other proposals.

15. Relationship of the Parties

15.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other party for any purpose.

15.2 Subject to any express provisions to the contrary in this Agreement, the Supplier shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume

any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.

15.3 The Supplier and the Company acknowledge and agree that the provision of or cessation of all or part of the Services at any time and any arrangements contemplated by this Agreement are not intended to constitute a relevant transfer for the purposes of the TUPE Regulations.

16. Intellectual Property

16.1 The Supplier is the beneficial owner of all Intellectual Property in the Software.

16.2 Subject to all payments due under this Agreement having been paid, to the Supplier, the Company shall have an irrevocable, royalty free, non-exclusive licence to use the Software, in connection with the provision of the Services to the Company during the term of this Agreement.

16.3 The Supplier will indemnify the Company from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Company as a result of or in connection with any alleged or actual infringement of any third party's Intellectual Property rights or other rights arising out of the use or supply of the Services.

17. Data Protection

17.1 For the avoidance of doubt, this clause 17 shall apply to any processing of personal data by the Supplier.

17.2 If the Supplier processes personal data on the Company's behalf, the Supplier must:

17.2.1 do so only for the purposes of the Services, only

17.2.2 in accordance with the Data Protection Act 1998 (and all other applicable Laws relating to privacy including the Privacy and Electronic Communications (EC Directive) Regulations 2003) and only in accordance with the Company's instructions from time to time;

17.2.3 take all appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage (together "Unauthorised Acts");

17.2.4 immediately notify the Company (i) on the occurrence of any Unauthorised Act; or (ii) if the Supplier receives any complaint, notice or communication in relation to the Supplier's processing of the personal data;

17.2.5 provide the Company with access to the Supplier's sites and facilities, on reasonable notice, to review the Supplier's data protection policies and procedures and compliance with this clause 17; and

17.2.6 not without the Company's prior written consent (i) transfer personal data outside the European Economic Area; or (ii) disclose personal data to third parties.

18. Liability

18.1 Any act or omission of any subsidiary, employee, contractor, representative or agent of the Company involved in the performance of this Agreement shall be considered in relation to this Agreement as an act or omission of the Company.

18.2 In this clause, "Liability" means any and all liability of the Supplier in contract, tort (including, without limitation, negligence) or otherwise whether arising out of, in connection with or in relation to the Services or the supply or non-supply of the Services or otherwise under or in connection with this Agreement.

- 18.3 Nothing in this Agreement shall limit the Supplier's Liability for (i) personal injury or death caused by its negligence; or (ii) fraudulent misrepresentation.
- 18.4 Subject to 18.3 above, the Supplier shall have no Liability for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise):
- 18.4.1 loss of revenue, loss of actual or anticipated profits (including for loss of profits on contracts), loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of goodwill or loss of reputation; or
- 18.4.2 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, whether or not such loss or damage is of a type specified in 18.4.1 above).
- 18.5 The Supplier shall have no Liability to the Company for any loss or damage arising from any failure by the Company to comply with its obligations under this Agreement, including without limitation the provisions of Clause 4.
- 18.6 Without prejudice to the other sub-clauses of Clause 18, where the provision of Services involves the Supplier being appointed as part of a project team, liability for loss and/or damage arising under or in connection with the provision of Services shall be limited to that proportion of the Company's loss and/or damage which it would be just and equitable to require the Supplier to pay having regard to the extent of the Supplier's responsibility for the same and on the basis that all other relevant consultants and contractors shall be deemed to have provided contractual undertakings on terms no less onerous than this Clause 18.6 to the Company in respect of the performance of their services in connection with the project and that there are no exclusions of or limitation of liability nor joint insurance or co-insurance provisions between the Company and any other party referred to above and on the basis they shall be deemed to have paid to the Company such proportion which would be just and equitable for them to pay having regard to the extent of their responsibility.
- 18.7 Except for any liabilities arising under clause 17 (Data Protection), the total liability of either party to the other arising under or in connection with this Agreement shall not exceed in aggregate one hundred and fifty per cent (150%) of the Period Service Fees payable for the term of this Agreement.
- 18.8 The Company shall on demand indemnify the Supplier from and against all losses incurred by the Supplier as a result of any breach by or on behalf of the Company of the terms of this Agreement.

19. Sub-Contracting

Either party may sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the other party. Where either party sub-contracts the performance of any of its obligation under this Agreement to any person, that party shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of the party itself.

20. Set Off

- 20.1 The Company may not withhold payment of, or make any deduction from, any invoice or other amount due to the Supplier by reason of any right of set-off or counterclaim which the Company may have or allege to have or for any reason whatsoever.
- 20.2 The Supplier retains the right throughout the term of this Agreement to set-off the Company's debt against the Deposit or any other monies held on account from the Company. The Supplier is under no obligation to use its right of set-off as a

remedy for late payment pursuant to Clause 6 except as specified in Clause 6.4.

21. Applicable Law and Jurisdiction

- 21.1 This Agreement shall be governed by, and construed in accordance with English Law.
- 21.2 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement ("proceedings") each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or in the grounds that the proceedings have been brought in an inconvenient forum.

22. General

22.1 Waiver and Remedies:

- 22.1.1 A waiver of any right or remedy under the Agreement is effective only if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy. A waiver of a breach of the Agreement will not constitute a waiver of any other breach (whether of the same term or any other term) and will not affect the other terms of the Agreement.
- 22.1.2 Unless specifically provided otherwise, rights and remedies arising under the Agreement are cumulative and do not exclude rights and remedies provided by law.
- 22.2 Severance: If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 22.3 Supply of services: The Company's rights under the Agreement are in addition to the statutory terms implied in the Company's favour by the Supply of Goods and Services Act 1982 and any other statute.
- 22.4 Relationship: No partnership or joint venture is intended or created by the Agreement and neither party shall have authority to act as agent for, or to bind, the other party.
- 22.5 Rights of third parties: A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- 22.6 Notices: Any notice or other communication required to be given under the Agreement in writing may be sent by email or by first class pre-paid post to the other party at the address specified above (in the case of the Company, for the attention of Head of Legal). Any notice sent by first class post shall be deemed received two working days after the date of posting. Any notice sent by e-mail shall be deemed received on the next business day after the date of delivery.
- 22.7 Further assurance: The Supplier will, at the Supplier's own expense, do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the Agreement.
- 22.8 Signature: The Agreement may be executed in any number of copies, each of which shall, when signed, be an original and all copies shall together constitute one and the same agreement.
- 22.9 Insurance: The Supplier will maintain at its own expense with a reputable insurance company insurance cover sufficient to cover its liabilities under the Agreement, including the following insurance policies:

22.9.1 professional indemnity insurance; and
22.9.2 employers' liability insurance.
Each policy will be for a cover amount of not less than £2 million in respect of any one occurrence.

22.10 Bribery Act: The Supplier will:

- 22.10.1 comply with all laws relating to anti-bribery and anti-corruption including the UK Bribery Act 2010 (the "Bribery Act");
- 22.10.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK; and
- 22.10.3 have, maintain and enforce throughout the term of the Agreement its own policies and procedures including adequate procedures under the Bribery Act to ensure compliance with the requirements of the Bribery Act and this clause 22.10.
- 22.10.4 Breach of this clause 22.10 shall constitute a material breach of the Agreement.

22.11 Publicity: The Supplier must not make or send a public announcement, communication or circular concerning this Agreement or its relationship with the Company unless the Supplier has first obtained the Company's prior written consent.

23. Non solicitation of employees

- 23.1 Each of the parties hereto covenants with the other that for the period of this Contract and for 12 calendar months following its termination it will not directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of the Support or otherwise been involved in connection with this Contract to leave the employment of that other party.
- 23.2 The Company estimates the impact that a breach of Clause 23.1 would have upon its business which is herein specified as liquidated damages in the amount of one times the current gross annual salary of the personnel concerned. The Customer accepts that this is a reasonable estimate of the loss and agrees to pay the same upon demand in the event of its breach of Clause 23.1.
- 23.3 The Customer may demand and the Company may pay similar damages in the event of the Company's breach of Clause 23.1
- 23.4 Nothing in this Clause 23 shall prejudice the right of the non breaching party to seek injunctive relief.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written.

Signed by (**Authorised Signatory**)

On behalf of (Company Name)

Signed by **Steve Walker**

On behalf of Clear Connections Europe Limited

Appendix A: Service Schedule

The Services supplied by the Supplier to the Company are as set out below.

Services which are procured by the Company, provided to the Company and accepted by the Company subsequent to the preparation of this Services Schedule shall form part of this Schedule and be covered by the terms of this Agreement whether or not they are written hereunder.

Clear Connections Europe Reference or CUC reference	Service Description	Qty	Period Service Fee (per Service)	Start Date	End Date
Period Service Fee (Total Per Period)					

All prices are shown in GBPE (pounds Sterling), exclusive of sales taxes at the prevailing rate.

Where additional services are supplied to the Company this Schedule will be revised and a Start Date and End Date for those additional services shall be applied to the Schedule.

Schedule Approved by **(Authorised Signatory)**

On behalf of (Company Name)

Schedule Approved by **Steve Walker**

On behalf of Clear Connections Europe Limited

Appendix B: Service Level Agreement (SLA)

SLA Operational Support	
Name	Working Hours
Standard Hours	0900 – 1700 hrs (GMT) Mon to Fri excluding UK public holidays
Extended Hours	0800 – 2200 hrs (GMT) Mon to Sun excluding 25-Dec and 01-Jan
24 x 7	0000 – 2359 hrs (GMT) Mon to Sun excluding 25-Dec and 01-Jan

Note that all times are subject to daylight saving adjustment to BST

Service Support Rates

SLA Operational Support	
Name	Rate
Standard	Included in Monthly rental charges
Extended	£900p.m. or 12% of monthly rental, whichever is the greater
24 x 7	POA

Extended and 24x7 Service support is charged quarterly in advance. It is adjusted pro-rata during the quarter when services are added or upgraded by the client.

1. Service Issue Categories and Escalation

The categories of incident are detailed in the following tables. The service desks and people nominated as contact points may be varied by the Supplier from time to time providing that the Company has been adequately notified.

Note that "Time to Resolution" elapsed times indicated below assumes dual L3VPN MPLS private circuits to Company premises, one of which is business grade Ethernet.

Where MPLS connectivity or routing is implicated in the fault, the SLA "Time to Resolution" is automatically extended to the ISP's service level on the specific type of circuit. Typically, this is 8 hours.

DSL lines, where implicated in the fault, are excluded and failure to resolve the fault within the SLA times does not constitute a breach of the SLA.

Services delivered across public internet, or by VPN across the public internet, are supported on best endeavours only and not subject to SLA terms

In the event of a circuit or routing failure, the Supplier will use best endeavours to provide a workaround within the SLA.

Incident Priorities

CATEGORY 1: Greater than 25% of overall solution is unavailable. Voice and/or data systems are not available, causing a critical impact to business operation.	
Time to engineer communication / first response: 1 hour (working hours)	
Time to Resolution: 8 working hours (elapsed time from reporting)	
1 st	Support
2 nd	Account Manager
3 rd	Senior Management

CATEGORY 2: Operation of the voice and/or data systems is degraded i.e. system is operational but with failures occurring. Less than 25% but more than individual devices are being affected.

Time to engineer communication / first response: 1 working hour

Time to Resolution: 16 working hours (elapsed time from reporting)

1 st	Support	
2 nd	Account Manager	
3 rd	Senior Management	

CATEGORY 3: Operational performance of the voice and/or data systems is impaired, although most business operations remain functional.

Time to engineer communication / first response: 1 hr 0900 – 1700 hrs (GMT) Mon to Fri excluding public holidays

Time to resolution: 2 days Mon to Fri excluding public holidays

1 st	Support	
2 nd	Account Manager	

Information Request: Request for documentation or advice on service operation.

Time to engineer communication / first response: 4 hrs 0900 – 1700 hrs (GMT) Mon to Fri excluding public holidays

Time to resolution: 5 days Mon to Fri excluding public holidays (depending on complexity)

1 st	<<Appointed person within Company>>	
2 nd	Account Manager	

TCR (Technical Change Request): Change to the configuration of voice, data, software, reporting or networking systems without the requirement for additional licensed services

Time to engineer communication / first response: 8 hrs 0900 – 1700 hrs (GMT) Mon to Fri excluding public holidays

Time to resolution: 5 days Mon to Fri excluding public holidays (depending on complexity)

1 st	<<Appointed person within Company>>	
2 nd	Account Manager	

1.1 Example TCR in Agent Campaigns

TCRs, in the context of contact centre campaigns, are limited. They are changes which do not affect the behaviour of the agents' screens or provide any additional functionality. Typically, they will be amendments to routing. Our objective is that the client should be trained make most operational changes themselves.

They include:

- adding DNIS entries for inbound call routing
- adding new CLIs for outbound calling

NSR (New Service Request): Change or addition to the configuration of voice, data, software, reporting or networking systems which requires additional licensed services and/or professional services.

Time to engineer communication / first response: 1day 0900 – 1700 hrs (GMT) Mon to Fri excluding public holidays

Time to resolution: 10 days Mon to Fri excluding public holidays (depending on complexity)

1st <<Appointed person within Company>>

2nd Account Manager

1.2 Example NSR in for Contact Centres

A new service request is clearly identifiable, in that a recurring service charge (Licence) would be applicable. For example: new agents; additional media channels; additional recording licenses.

Professional Services are applicable for amendments to a campaign, IVR or routing script beyond its original specification. These might be minor, such as an additional question being prompted, or significant such as auto-introduction prompts to be played for the agents on intelligent routing. Changes requiring PS do not necessarily require a new service, though some might; e.g. accepting inbound email might be PS for script and routing amendments, as well as a service charge for the additional media channel.

2. Service Availability and Service Credits

2.1 The Supplier shall provide the Services to the service level specified in this paragraph 2, subject to the terms of this Agreement. The Company shall notify the Supplier in writing of any Category 1 fault or material period in which the Company becomes aware that the Services are unavailable to the Company and the Supplier shall be entitled to investigate and verify such non-availability.

2.2 The Supplier warrants that the Services will (excluding any period of Force Majeure and Maintenance) have an Uptime Percentage (as defined below) of not less than 99.5% of Business Hours every calendar month. The Uptime Percentage will be calculated in accordance with the following formula:

$$U\% = \frac{S-D}{S} \times 100$$

where:

“U%” = Uptime Percentage;

“S” = the number of hours (not limited to Business Hours) in a relevant calendar month;

“D” = the number of hours in the relevant calendar month during which the Services were down and not available to the Company (excluding any period of Force Majeure and Maintenance or Effective Work-Around); and

“Business Hours” = 8am-6pm on any day other than a Saturday, Sunday or a public holiday in England, or those days between Christmas Day and New Year’s Day deemed by the Supplier as days when service is unlikely to be required.

2.3 If the warranty in this paragraph is breached in any calendar month during the term of the Agreement, the Supplier agrees by way of liquidated damages to pay an amount equal to the percentage reduction in the Period Service Fee calculated in accordance with Clause 2.2 and Clause 2.4 within 21 days of notification.

2.4 The reduction in the preceding sub-paragraph will be calculated in accordance with the following table:

<u>Services availability during the relevant calendar month</u>	<u>Reduction in calendar month's Period Service Fee</u>
Where U% is greater than 98% but less than 99%	10%
Where U% is equal to or greater than 97% and less than or equal to 98%	15%
Where U% is equal to or greater than 96% and less than 97%	20%
Where U% is equal to or greater than 95% and less than 96%	25%
Where U% is equal to or greater than 94% and less than 95%	30%
Where U% is less than 94%	35%

2.5 The Supplier shall not be responsible for failure or delay in providing the Services if arising from one or more of the following reasons:

- (a) the Company being in material breach of its obligations under this Agreement; or
- (b) the Company’s system administrator(s) being unavailable when reasonably required by the Supplier to assist in the rectification of the Category 1 fault or material period of downtime;
- (c) unreasonable delay by the Company in notifying a failure to the Supplier or in submitting instructions unless the Supplier was aware of the Category 1 fault or material period of downtime, or ought reasonably to have been aware of it.

2.6 Maintenance to the Services for the purpose of, without limitation, performing server maintenance, security or emergency works, together with interruptions to access them due to Force Majeure, shall not constitute downtime. The Supplier shall use all reasonable endeavours to perform such works outside of peak usage hours and in such a way as to minimise the potential impact on the Company. Except for Emergency Maintenance, the Supplier will provide the Company with at least 2 (two) business days’ prior written notification of such works. However, there may be occasions where the nature of the work is such that this notice period cannot be observed or exceptionally that no notice can be given. For the avoidance of doubt, all server maintenance, security or emergency works shall be classified as Maintenance.

2.7 The inability of one or more Company users to access the Services shall not constitute downtime if other users are simultaneously able to gain access or if the Supplier can demonstrably secure such access over a standard browser (as this demonstrates the fault lies with the Company and not with the Services).

2.8 For the purpose of this Schedule, the following definitions shall apply:

“Effective Work-Around” means:

invocation of a “disaster recovery” or “business continuity plan” as agreed between the Supplier and the Company. This includes, but is not limited to, re-routing calls at the PSTN carrier level to an alternative destination; or any other solution employed by the Supplier which restores service to a sufficient degree so that the incident can no longer be reasonably classified as Category 1.

“Maintenance” means:

(i) “Scheduled Maintenance” on all or part of its network and servers for up to 12 hours in any calendar month between the hours 22:00 and 08:00 GMT, providing the client is given 48 hours’ notice. Such Scheduled Maintenance may be service affecting.

(ii) “Scheduled Maintenance” on all or part of its network and servers for up to 4 hours in any calendar month between the hours 08:00 and 22:00 GMT, providing the client is given 48 hours’ notice and that any single episode of maintenance does not exceed 1 hour. Such Scheduled Maintenance may be service affecting.

(iii) “Emergency Maintenance” on all or part of its network and servers for up to 4 hours in any calendar month between the hours 00:00 and 23:59 GMT, providing the client is given 30 minutes’ notice and that any single episode of maintenance does not exceed 30 minutes. Such Emergency Maintenance may be service affecting.

EMERGENCY CALL-OUT RATES

The following rates apply when engineering call-outs are not covered by the SLA

1700 hrs to 2200hrs	£195 per hour or part thereof
2200 hrs to 0800hrs	£325 per hour or part thereof

end