

**COMMERCE BUSINESS SYSTEMS  
TERMS AND CONDITIONS FOR THE SUPPLY OF  
TELECOMS SERVICES**

(VERSION: JANUARY 2024)

These are the Standard Terms that apply to any Service you purchase from CBS. Each Service also has its own Order and may have a Service Schedule with more detailed terms.

**1. INTERPRETATION OF WORDS AND PHRASES**

1.1 Some of the words and phrases in these Standard Terms mean specific things. They are capitalised all the way through and explained in the Defined Terms section at the end of these Standard Terms.

**2. APPLICATION OF THESE TERMS AND ORDER OF DOCUMENTS**

2.1 These Standard Terms, Order and each relevant Service Schedule apply to and form part of the Agreement between us. They take precedence over any terms and conditions of supply previously supplied by us. You acknowledge and agree to each of the sections and documents listed above that form this Agreement. We recommend that you retain a copy of all the documents that make up this Agreement.

2.2 No terms or conditions delivered with or contained in the your purchase conditions, order or other document will form part of the Agreement between us.

2.3 Each Order issued by you shall be an offer to purchase Services subject to these Standard Terms and the relevant Service Schedule.

2.4 Your Order is an offer to us to supply the Services which we may accept or reject at our discretion. When you place your Order, we will acknowledge it by email. This acknowledgement does not, however, mean that your order has been accepted. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:

2.4.1 our written acceptance of the Order; or

2.4.2 our commencement of the performance of the Services or notification to you that they are ready to be performed (as the case may be).

2.5 If there is a conflict between any of the documents listed below, the order of priority, highest first, is:

2.5.1 the Order

2.5.2 the Services Schedule; and

2.5.3 these Standard Terms.

**3. WHEN THE AGREEMENT BEGINS AND HOW LONG IT LASTS**

3.1 The Agreement starts on the Effective Date and will carry on for at least the Minimum Term unless:

3.1.1 one of us end it (in a way that the Agreement allows); or

3.1.2 we are no longer providing you with the Services and there are no outstanding Orders and all our invoices are paid.

**4. GENERAL PRINCIPLES**

4.1 We confirm we are a legal entity, authorised to agree the Agreement and provide the Services.

4.2 You confirm you are legally set up as a business, authorised to agree the Agreement and carry out your responsibilities under it.

**5. THE SERVICES**

5.1 We will:

5.1.1 provide the Services with reasonable skill and care;

5.1.2 use reasonable endeavours to meet dates for performance of the Services; and

5.1.3 comply with Applicable Law applicable to us;

5.1.4 if applicable to the Service, take reasonable steps to stop anyone getting unauthorised access to any part of our and our suppliers' Networks; and

5.1.5 if applicable to the Service, use reasonable endeavours to meet or exceed the Service Levels (unless a Services Schedule says something different).

5.2 We will align our IT, cyber and security operational controls with industry practice and will take reasonable steps to prevent the unauthorised use of or access to IT systems owned by us and used in connection with the provision of the Services.

**6. CONTRACT MANAGEMENT AND CO-OPERATION**

6.1 Each of us shall appoint a representative to act as the main point of contact for the other party in respect of all day-to-day matters relating to the supply of the Services and the Agreement (which, in your case, will be the Customer Contact).

6.2 We both shall ensure that our respective representatives meet at such intervals agreed

between them to discuss the progress being made in relation to the provision of the Services and any issues which may arise.

6.3 The parties acknowledge that we may be required to liaise or interact with your Direct Third-Party Service Providers or other third parties that supply services or products to you in connection with your receipt of the Services.

6.4 We will reasonably co-operate with such Direct Third-Party Service Providers and third parties appointed by you, and you will procure that such Direct Third-Party Service Providers and other third parties co-operate and provide all necessary and timely support, inputs, information and materials that are accurate and reliable, and other assistance to us, that we reasonably require in order to provide the Services to you in accordance with this Agreement.

6.5 You acknowledge and agree that if you make use any Direct Third-Party Service Providers we shall act on any instructions and requests from the Direct Third-Party Service Provider as if they were provided to or given by you and shall be effective as if you provided such instructions or requests, whether or not these were in fact authorised by you.

## **7. WHAT YOU HAVE TO DO**

7.1 You will:

7.1.1 provide us with the names and contact details of the Customer Contact, but we may also accept instructions from a person who we reasonably believe is acting with your authority;

7.1.2 provide us with any information, documents, materials, data or other items reasonably required by us, without undue delay, and you will make sure the same is accurate, up-to-date and complete;

7.1.3 promptly complete any preparation activities that we may request to enable you to receive any Service;

7.1.4 comply with any of your additional or special responsibilities and obligations specified in each Order, each Service Schedule or otherwise agreed between us from time to time;

7.1.5 cooperate with us and comply with any reasonable requests we make to help us provide any Service;

7.1.6 comply with Applicable Law, and make sure that your Representatives do as well;

7.1.7 you shall not do (or permit any person to do) anything that is likely to adversely interfere with our business, systems or operations or those of our suppliers or subcontractors, nor shall you transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware, malware, ransomware or any other harmful programs or similar computer code designed to adversely affect the operation of any of our computer software, hardware or IT networks or systems or those of our supplier or subcontractors;

7.1.8 inform us in a timely manner of any matter which may affect our performance of the Services; and

7.1.9 obtain and maintain all necessary licences, permits and consents required to enable us to perform the Services, including without limitation those required for us:

7.1.9.1 to gain access to any premises, equipment, systems or software not under our control;

7.1.9.2 to install CBS Equipment; and

7.1.9.3 use a Service over your network.

## **8. WHEN WE ARE NOT TO BLAME**

8.1 We will not be liable if we fail to do something under the Agreement (including not carrying out any of our responsibilities, carrying them out late or not meeting any Service Levels), to the extent our failure is due to or contributed to by:

8.1.1 your failure (or any of your Representatives or Direct Third-Party Service Provider to carry out any of your (or their) responsibilities, or you (or they) carrying them out late, in which case you will pay us for any reasonable costs we incur as a result of your (or their) failure;

8.1.2 anyone other than us, our Affiliates or suppliers doing something, or not doing something, they need to do;

8.1.3 a Force Majeure Event; or

8.1.4 restriction or prevention by Applicable Law, a court order, an application for interlocutory relief or injunction.

## 9. CHANGE CONTROL MANAGEMENT

- 9.1 Where you or we see a need to change the Agreement or any of the Services (whether in order to include an additional service, function or responsibility to be performed by either of us, to amend the Services), we may at any time request, and you may at any time recommend, such Change and a Change Request shall be submitted by the one of us requesting/recommending (as applicable) the Change to the other. Such Change shall be agreed only once the Change Request is agreed by both of us. For the avoidance of doubt, if the Change has any impact on volume commitments or otherwise affects the agreed Charges, we may amend the Charges to reflect the Change.
- 9.2 Until such Change is made in accordance with clause 9.1, both of us shall, unless otherwise agreed in writing, continue to perform the Agreement in compliance with its terms prior to such Change.
- 9.3 Any discussions which may take place between us in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either of us.
- 9.4 Notwithstanding clauses 9.1 to 9.3:
- 9.4.1 we may make changes to the Agreement or any Service as set out in the applicable Service Schedule; and
- 9.4.2 we may change the Service without following the Change process in clauses 9.1 to 9.3 so long as the performance of the Service is not materially adversely affected. These sorts of changes might include: introducing or removing features of the Service; or replacing the Service with a materially equivalent Service.

## 10. CHARGES

- 10.1 Our Charges shall be as set out in the Order or, if they are not set out in the Order, they will be calculated in accordance with our scale of charges in force from time to time.
- 10.2 The amounts payable by you under the Agreement are exclusive of VAT. Where it applies, you will pay us VAT (at the prevailing rate when the payment is due to be made by you) on the sums payable under the Agreement. To avoid doubt, we may vary the Charges at any time to take account of any change in VAT and all other taxes during the Term.
- 10.3 In addition to any Charges increase mechanism set out in the Service Schedule, the Order or otherwise agreed between us, we may increase the Charges:

10.3.1 with immediate effect by written notice to you where there is an increase in the costs charged to us by any third party supplier or subcontractor that is involved in the supply of any part of the Services (such as, charges levied on us by a software vendor for your use of their software); and/or

10.3.2 subject to clause 10.4, otherwise at any time after the first 12 months following the Effective Date provided that:

10.3.2.1 the number of Charges increases in any contract year (i.e. a 12 month period from the Effective Date) does not exceed one; and

10.3.2.2 the increase does not exceed 12.5% of the Charges in effect immediately prior to the increase.

10.4 Where any Charges are specified as being calculated in accordance with our 'standard rates', 'rates in force from time to time' or similar reference, we may increase and change those Charges in our discretion at any time.

10.5 You will pay and be responsible for the Charges, whether the Service is used by you or someone else. This includes all Charges resulting from unauthorised or fraudulent use.

10.6 **Service Support** – Our charge for service support is £1.99 monthly per user.

This is calculated on the basis that the total amount of time we spend performing service support and updates in any one month not to exceed 1 hour per system. We will debit all service support (in ¼ hour increments with ¼ minimum support request) against all monthly allowances. Your allowance applies each month. Any unused allowance from previous months shall not be rolled forward. We will raise additional charges at our then standard rates in respect of any additional service support provided that exceed your monthly allowance in any month.

10.7 We will perform the installation services and service support using reasonable skill and care.

## 11. PAYMENT

11.1 Unless otherwise agreed with you:

11.1.1 we will invoice you, and you will pay us, in pounds sterling. We will determine the Charges based on details we record or that are recorded for us; and

- 11.1.2 you will pay each of our invoices:
    - 11.1.2.1 within 14 days of our invoice date;
    - 11.1.2.2 unless we agree otherwise, by direct debit. If any direct debit is cancelled or declined, we may charge you an administration Charge of £25 plus VAT per cancelled or declined transaction; and
    - 11.1.2.3 in full and in clear funds, without deduction, counterclaim or set-off, unless you legally have to do so.
  - 11.2 If you do not pay any of our invoices by the due date, without limiting our other rights, we may:
    - 11.2.1 charge you an administration Charge of £45 plus VAT per invoice wholly or partially unpaid;
    - 11.2.2 charge a late payment charge, as described in the relevant Service Schedule;
    - 11.2.3 charge you interest on the unpaid amount at 4 per cent a year above HSBC PLC's base rate from time to time in force. That interest will compound on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and
    - 11.2.4 restrict or suspend the Services under clause 16.
  - 11.3 You will pay us any costs that we incur when recovering any amount you owe us.
  - 11.4 We may on giving you written notice reduce the number of days you have to pay each invoice:
    - 11.4.1 where:
      - 11.4.1.1 you issue a profit warning; or
      - 11.4.1.2 any credit agency reduces your credit rating; and
    - 11.4.2 we reasonably consider that this will affect your ability to pay our invoices.
  - 11.5 As part of our credit management procedures, we may at any time:
    - 11.5.1 require you to pay a deposit, pay the Charges in advance, or provide a guarantee as security for payment of future invoices by the means requested by us; and
    - 11.5.2 carry out a credit check on you. You will provide us or our agents with any information we or they may reasonably require for this.
  - 11.6 Where applicable, you are liable for any Withholding Taxes on payments to us, so that the net amount we receive is not less than the amount invoiced to you.
  - 11.7 If you do not agree with something in an invoice we send you:
    - 11.7.1 before you have made payment, you will give us written notice within 7 days after the date of the invoice; and
    - 11.7.2 after you have made payment, you will give us written notice of that dispute within two months after the date of the invoice.
  - 11.8 We will both settle an invoice dispute in accordance with clause 20 and you will pay the amount we both finally agree on within five days of both of us agreeing it. You will always pay the undisputed amount of an invoice on the due date for payment.
  - 11.9 We may still charge you the amounts and/or interest in accordance with clause 11.2 for any amount that we both agree is payable under clause 11.8.
  - 11.10 An annual service charge of £50 plus VAT in January of each year;
  - 11.11 A setup administration charge of £100 plus VAT.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 Intellectual Property Rights will carry on being their original owner's property.
  - 12.2 If we provide you with or access to any Software so you can use any Service, we give you a non-transferable, non-sublicensable and non-exclusive licence to use that Software only for the purpose and in the manner set out in the applicable Service Schedule. As well as any terms of the Agreement, you will also comply with any third party terms that we make known to you that apply to the use of the relevant Software or Service. This licence will last as long as we provide you with the relevant Service.
  - 12.3 You will not and will procure each of your Representatives do not copy, decompile, modify or reverse engineer any Software, or let anyone else do that, unless it is allowed by law or we have given you permission in writing.

- 12.4 You will indemnify us for any Claims, losses, costs or liabilities brought against us that results from or is connected with:
- 12.4.1 your use of the Service with equipment, software or another service we have not supplied;
  - 12.4.2 you modifying the Service, without our permission beforehand;
  - 12.4.3 any content, designs or specifications that have not been supplied by us or on our behalf; or
  - 12.4.4 you using any of the Service in a way not permitted by this Agreement.
- 12.5 You will stop any activity that led to the Claim against us as soon as we gives you written notice or you become aware, or should reasonably have become aware, that your activity was causing a Claim against us, and we may ask you to actively defend or settle the Claim.
- 13. PERSONAL DATA**
- 13.1 We will either be a Controller, Processor or both under the Agreement depending on the type of Personal Data Processed and the purpose of the Processing. If we act as Processor, clauses 13.2 to 13.11 shall apply. If we act as a Controller, clause 13.12 shall apply. In all circumstances clauses 13.13 and 13.14 shall apply.
- 13.2 We will process Protected Data in compliance with the obligations placed on us under Data Protection Laws and the terms of the Agreement.
- 13.3 The subject-matter, duration, nature and purpose of the processing, the type of Protected Data and categories of Data Subjects will be set out in the applicable Service Schedule or otherwise agreed between us in writing.
- 13.4 We will:
- 13.4.1 only process (and shall ensure our Personnel only process) the Protected Data in accordance with the Agreement (and not otherwise unless alternative processing instructions are agreed between us in writing) except where otherwise required by Applicable Laws (and we will inform you of that legal requirement before processing, unless Applicable Laws prevent us doing so on important grounds of public interest); and
  - 13.4.2 without prejudice to clause 13.4.1, if we believe that any instruction received by us from you is likely to infringe any Data Protection Laws
- we will inform you and be entitled to cease to provide the relevant Services until we have agreed between us appropriate amended instructions which are not infringing.
- 13.5 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, we will implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the UK GDPR.
- 13.6 We will:
- 13.6.1 not permit any processing of Protected Data by any agent, sub-contractor or other third party without your prior written authorisation. You provide us that permission by entering into the Agreement and acknowledge that in accordance with clause 26.7.2 we may subcontract the performance of the Services (whether wholly or partially) to our suppliers and subcontractors;
  - 13.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 13 that is enforceable by us and ensure each such Sub-Processor complies with all such obligations;
  - 13.6.3 remain liable to you under the Agreement for all the acts and omissions of each Sub-Processor as if they were our own; and
  - 13.6.4 ensure that all persons authorised by us or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 13.7 We shall (at your cost):
- 13.7.1 assist you in ensuring compliance with your obligations pursuant to Articles 32 to 36 of the UK GDPR

- (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to us; and
- 13.7.2 taking into account the nature of the processing, assist you (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of your obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the UKK GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 13.8 We shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the UK or European Economic Area or to any International Organisation unless we have ensured that such transfer is effected by way of a Lawful Safeguard. You hereby authorise us to make such transfers where a Lawful Safeguard is in place.
- 13.9 We will, in accordance with Data Protection Laws, make available to you such information that is in our possession or control as is necessary to demonstrate our compliance with the obligations placed on us under this clause 13 and to demonstrate compliance with the obligations on each of us imposed by Article 28 of the UK GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by you (or another auditor mandated by you) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 13.9), provided:
- 13.9.1 the audit will: not disrupt our business; be conducted during Business Days; not interfere with the interests of our other clients; not cause us to breach our confidentiality obligations with our other clients, suppliers or any other organisation; and not exceed a period of two successive Business Days;
- 13.9.2 you (or your third party auditor) will comply with our relevant security policies and appropriate confidentiality obligations; and
- 13.9.3 you will reimburse our reasonable costs associated with the audit.
- 13.10 On the end of the provision of the Services relating to the processing of Protected Data, at your cost and at your option, we shall either return all of the Protected Data to you or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires us to store such Protected Data.
- 13.11 You agree the Agreement contains your complete instructions to us for the processing of the Protected Data and any additional instructions or changes to the instructions will be incorporated into this Agreement in accordance with clause 13.4.1 to take account of any resulting change in the Charges or the Service.
- 13.12 If we act as a Controller of your Personal Data we will Process the Personal Data in accordance with Data Protection Laws and as set out in the CBS Privacy Policy.
- 13.13 If, in accordance with clause 9, if we propose amendments to the Agreement to reflect changes to our security measures, policies and processes to enable us to comply with the Data Protection Laws, you will act reasonably and in good faith.
- 13.14 You:
- 13.14.1 will comply with applicable Data Protection Laws and will fulfil all the requirements necessary for the provision of the Service by us, including providing any notifications and obtaining any regulatory approvals or consents required when sharing Protected Data with us;
- 13.14.2 will only disclose to us the Personal Data that we require to perform the Service; and
- 13.14.3 confirm all data sourced by you for use in connection with the Services, prior to such data being provided to or accessed by us for the performance of the Services under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include you providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws.
- 14. KEEPING THINGS CONFIDENTIAL**
- 14.1 We will both keep all Confidential Information confidential and neither of us will disclose it, unless one of us needs to do that:
- 14.1.1 to meet its responsibilities or to receive any benefit under the Agreement, and then only to its Affiliates, its Representatives and Representatives of its Affiliates and, for us only, our subcontractors and suppliers, who need to know about the Confidential Information; or

- 14.1.2 because Applicable Law, a government or regulatory authority, or court of competent jurisdiction says it has to and the party disclosing it will give the other as much notice as reasonably possible before any disclosure.
- 14.2 The party receiving the Confidential Information from the disclosing party in accordance with clause 14.1 will ensure that the people it discloses the information to in accordance with clause 14.1 comply with this clause 14.
- 14.3 This clause 14 will continue without limitation of time.
- 15. ANTI-BRIBERY**
- 15.1 The expressions **adequate procedures** and **associated with** shall have the meanings set out in the Bribery Act 2010 and legislation or guidance published under it.
- 15.2 Each of us will comply with the Bribery Act 2010 including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 15.2.1 all of that party's personnel;
- 15.2.2 all others associated with that party; and
- 15.2.3 all of that party's sub-contractors; involved in performing the Agreement also comply.
- 15.3 Without limiting clause 15.2, neither of us shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 15.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 15.
- 16. RESTRICTING OR SUSPENDING A SERVICE**
- 16.1 We may restrict or suspend any Service if:
- 16.1.1 you do not pay us any sums under the Agreement on time and in the way described in clause 11;
- 16.1.2 if you do not pay what you owe us under any other contract that you have entered into with us, as set out in that other contract;
- 16.1.3 if we or any of our suppliers or subcontractors need to do Maintenance;
- 16.1.4 to implement a change under clause 9; or
- 16.1.5 if we or any of our suppliers or subcontractors need to or reasonably believe we or they need to in order to protect the integrity or security of our or their Network or any of the Services.
- 16.2 If we decide to restrict or suspend the Service for any of the reasons in clause 16.1, we will let you as soon as we reasonably can.
- 16.3 If we restrict or suspend the Service because of the reasons in clauses 16.1.1 you will:
- 16.3.1 still have to pay the Charges that are payable for the Service until the Service ends; and
- 16.3.2 may apply a Charge, to start the Service again.
- 17. CANCELING AN ORDER BEFORE THE SERVICE START DATE**
- 17.1 If you want to cancel an Order please contact us with before the Service Start Date. We will then information you whether cancellation of the Order is possible.
- 17.2 If we agree to the cancel an Order in accordance with clause 17.1, then:
- 17.2.1 if the cancellation has any impact on volume commitments or otherwise affects the agreed Charges, we may amend the Charges to reflect this; and
- 17.2.2 you will pay us the Cancellation Charges that are described in the Service Schedule. If there are no Cancellation Charges in the Service Schedule, but we incurred any costs in order to get ready to provide your Service, including cancellation charges from one of our subcontractors or suppliers or other costs payable to a third party, you will pay us those costs in accordance with clause 19.1.4.
- 18. TERMINATING THE AGREEMENT WHEN SOMETHING GOES WRONG**
- 18.1 Either of us may terminate the Agreement in whole or in part immediately by giving the other party written notice if:
- 18.1.1 the other party materially breaches the Agreement and such breach cannot be remedied;
- 18.1.2 the other party materially breaches the Agreement and such breach can be remedied but the other party has not remedied the breach within 30 days after receiving the written notice; or

18.1.3 the other party suffers an Insolvency Event

and we each will have to pay the other the amounts set out in clause 19.1.

18.2 The right of a party to terminate the Agreement pursuant to clause 19.1 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.

18.3 We may terminate the Agreement:

18.3.1 in accordance with our termination rights set out in the Service Schedule;

18.3.2 in whole or in part immediately by giving you written notice to terminate:

18.3.2.1 if you do not pay what you owe us under the Agreement or any other contract that you have entered into with us on due date for payment; or

18.3.2.2 if you undergo a change of Control or if you announce you will undergo a change of Control; or

18.3.3 for convenience at any time on giving you not less than 30 days' written notice.

## **19. WHAT HAPPENS WHEN THE AGREEMENT IS TERMINATED**

19.1 If the Agreement or a Service is terminated or expires, for any reason:

19.1.1 it will not affect any rights that either of us have up to that point;

19.1.2 you shall immediately pay all our outstanding invoices and interest;

19.1.3 we will invoice you for all Services performed but not yet invoiced and payment for such invoices shall be due immediately on receipt by you;

19.1.4 where applicable, we will invoice you for the Cancellation Charges, the Early Termination Charges, and any other charges identified in these Standard Terms and/or the Service Schedule as payable to us on termination and payment for such invoices shall be due immediately on receipt by you;

19.1.5 each of us will return or destroy any of the other's Confidential Information within a reasonable time (except for any Confidential Information which it is necessary for a party to keep in order to comply with Applicable Law); and

19.1.6 any part of the Agreement which expressly or by implication is intended to survive termination or expiry will do so.

## **20. DISPUTE RESOLUTION**

20.1 We will both do what we reasonably can to settle any dispute or claim that occurs under or in relation to this Agreement, and to avoid having to involve the courts or any other authority.

20.2 We will both use the following dispute resolution process:

20.2.1 whichever of us is affected will provide written notice of the complaint that clearly sets out the full facts and includes relevant supporting documents;

20.2.2 we will both use reasonable endeavours to settle the dispute within 14 days of getting the complaint and will make sure to give regular updates to the other during the 14 days; and

20.2.3 if the dispute is not settled after 14 days (or any other period agreed by both of us in writing), the dispute can be escalated to a senior executive of either of us (someone at director level or above).

20.3 Nothing in this clauses 20.1 or 20.2 stops either of us:

20.3.1 seeking interlocutory or other immediate relief if one of us is at risk of imminent harm;

20.3.2 going to a court of competent jurisdiction if either of us considers it reasonable; or

20.3.3 doing anything else this Agreement lets us do.

## **21. HOW FAR WE EACH ARE RESPONSIBLE**

21.1 Nothing in the Agreement excludes or limits the liability of either of us for:

21.1.1 death or personal injury caused by either of us being negligent;

21.1.2 fraud or fraudulent misrepresentation; or



- 21.1.3 any other liability that cannot be excluded or limited by applicable law.
- 21.2 Subject to clause 21.1, we will be not be held liable under or in connection with the Agreement and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, for any of the following losses, no matter if those losses are direct or indirect: loss of profit, revenue or anticipated savings; loss of business or contracts; loss of goodwill; loss from wasted expenditure, wasted time or business interruption; loss, destruction or corruption of data; any liability to third parties unless a clause in the Agreement says something different; and any special, indirect or consequential loss or damage.
- 21.3 Subject to clauses 21.1 and 21.2, our total liability to you under or in connection with the Agreement, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, will be limited to:
- 21.3.1 where the first incident occurs in the first 12 months of the Agreement, the Charges that were paid or payable by you, or would have been paid or payable by you had the incident not occurred, for the first 12 months from the Effective Date; and
- 21.3.2 where the first incident occurs at any other time, the mean of the monthly Charges that were paid or payable by you, from the Effective Date to the date when the first incident occurred, multiplied by 12.
- 21.4 We exclude from the Agreement, as far as the law allows, any warranties, conditions or other terms that might be implied by statute or common law.
- 22. THINGS OUTSIDE OUR CONTROL**
- 22.1 If we are affected by a Force Majeure Event we will:
- 22.1.1 not be liable for failing to do something we should have done, or for not doing it completely or on time to the extent this is caused by the Force Majeure Event; and
- 22.1.2 have a reasonable amount of extra time to perform the obligation that is affected by the Force Majeure Event.
- 23. NOTICES**
- 23.1 If one of us needs to give the other notice, they will do it in writing, in English and:
- 23.1.1 send it by email, in the case of notices from us to you only;
- 23.1.2 deliver it by hand; or
- 23.1.3 send it by first class post, recorded delivery or courier.
- 23.2 Notices need to be sent to:
- 23.2.1 us, at the postal address shown on our invoice or any other address that we tell you to send notices to; or
- 23.2.2 you, at the address that you ask us to send invoices to, your primary email address or your registered office address as of the date of the notice or any other address or email address you tell us to use by giving notice to us.
- 23.3 The recipient of the notice is deemed to have received the notice on the date (or if the date is not a Business Day, then on the next Business Day):
- 23.3.1 of transmission, if it is an email;
- 23.3.2 the notice is left at the address or someone signs for it on behalf of the addressee, if it is delivered by hand or sent by courier; or
- 23.3.3 two days after posting, if it is sent by first-class post or recorded delivery.
- 24. NON-SOLICITATION**
- 24.1 In order to protect our legitimate business interests, during the Restricted Period you shall not, either directly or indirectly, by or through yourself, any of your Affiliates, agents or otherwise, or in conjunction with your any of your Affiliates, agents or otherwise, whether for your own benefit or for the benefit of any other person:
- 24.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of ours with a view to employing or engaging the Restricted Person, or
- 24.1.2 employ or engage, or offer to employ or engage a Restricted Person of ours,
- without our prior written consent beforehand.
- 24.2 Notwithstanding clause 24.1 you may employ or engage a Restricted Person of ours who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by you or via an advertisement placed publicly by you (either in the press, social media, online or in trade and industry publications).

## 25. TUPE

- 25.1 You warrant that, as a result of us providing the Services, there is no person whose contract of employment will have the effect as if it was originally made between that person and us in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) or otherwise.
- 25.2 You will indemnify us and keep us indemnified from and against any TUPE liabilities that we suffer or incur arising from the transfer to us of the contract of employment of any person in breach of the warranty given in clause 25.1 including, without limitation, any TUPE liabilities suffered or incurred in connection with:
- 25.2.1 any employment costs of any such person; or
- 25.2.2 the employment or termination of employment of any such person prior to, on or after the date we commence supply of the Services.

## 26. OTHER GENERAL TERMS

- 26.1 The Agreement is personal to you. To the fullest extent permitted by Applicable Law, if you want to assign, subcontract or transfer your rights and obligations under the Agreement (as applicable), you need to get our written permission beforehand.
- 26.2 Where you place an Order acting for purposes that are related to your trade, business or profession, this is a business to business transaction to which the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 does not apply.
- 26.3 The Standard Terms, the Order, any applicable Service Schedule and any other documents referenced in any of those documents set out the terms agreed between both of us and replace any previous communication between us. Your own terms are not part of the Agreement even if you provided them to us before signing the Order or if you send them to us. By agreeing to the Agreement, each of us acknowledges they have not relied on any representation, warranty, collateral contract or other assurance (made negligently or innocently) except for the ones in the Agreement.
- 26.4 Except as set out otherwise in the Agreement (including any Service Schedule), a person who is not a party to the Agreement will not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any its terms.
- 26.5 Except where the Agreement provides otherwise, the Agreement does not create any partnership, exclusive arrangement or joint venture between us, or authorise either of us

to enter any commitments for, or on the behalf of, the other.

- 26.6 If either of us does not do, or delays doing, something that the Agreement allows, they will not have waived their right to do it.
- 26.7 We may:
- 26.7.1 assign the benefit of the Agreement to another entity or person; and
- 26.7.2 subcontract our responsibilities under the Agreement to another person or entity, but if we do, we will still be responsible to you.
- 26.8 By giving you written notice, we can novate the Agreement, a Service or an Order to another person. If we do, all our rights, responsibilities and liabilities will transfer to that person and you will need to deal with that person instead of us as we will no longer be a party to the Agreement in relation to the relevant Service.
- 26.9 If any court of competent jurisdiction finds that any part of the Agreement is illegal, invalid or unenforceable, that part will be considered removed, but no other part of the Agreement will be affected. If any illegal, invalid or unenforceable part of the Agreement would be legal, valid or enforceable if part of it were removed, we both will negotiate in good faith to change the Agreement so it reflects what we both originally intended as much as possible.
- 26.10 Except where the Agreement provides otherwise, it cannot be varied without both of us agreeing to the variation.
- 26.11 The laws of England and Wales will apply to the Agreement and any disputes or claims in connection with it or our relationship, including non-contractual ones.
- 26.12 We both agree the courts of England and Wales will have exclusive jurisdiction over any disputes or claims connected to the Agreement or our relationship.

## 27. DEFINED TERMS

- 27.1 This document contains definitions which are written with a capital letter. These definitions have the following meanings:

**Affiliates** means any entity that directly or indirectly Controls or is Controlled by, or is under common Control with another entity.

**Agreement** means the agreement between you and us for the supply and purchase of Services incorporating these Standard Terms, any applicable Service Schedule, the Order and any other documents referenced in these Standard Terms, the Order or applicable Service Schedule.

**Applicable Law** means any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of a Service.

**Business Day** means a day other than a Saturday, Sunday or bank or public holiday in England.

**Change** means any change to the Agreement including to any of the Services or to any Orders.

**Change Request** means a written request submitted by one of us to the other to effect a Change.

**Charges** means the fees and charges that you pay us in relation to each Service.

**Claims** means any legal claims, actions or proceedings against one of us, whether threatened or actual, whether by a third party or the other party to this Agreement.

**Cancellation Charges** means any compensatory charges payable by you to us on cancellation of an Order in accordance with clause 17.2 and as set out in a Service Schedule.

**CBS, we, us** and **our** means Commerce Business Systems Limited of Crossley Hall Centre, Thornton Road, Bradford, West Yorkshire, BD8 0HH, registered in England with company number 04595296, except where it is clear from the context that references to "we" or "our" means both of us.

**CBS Equipment** means any equipment and any related Software that we own or that is licensed to us and that we use to provide the Service.

**CBS Privacy Policy** means the policy that we have implemented and may update from time to time on how we Process Personal Data when we act as Data Controller made available by us to you.

**Confidential Information** means any information that is confidential in nature concerning one of us or our Affiliates including, details of either of our businesses, affairs, customers, suppliers, plans, Intellectual Property Rights or strategies, no matter how it is recorded, stored or disclosed, but it does not include:

i) information that is available to the public, or becomes available, unless it is because one of us breaches its obligations of confidentiality;

ii) information that was already available to the one of us receiving the information on a non-confidential basis; or

iii) information we both agree in writing is not confidential information.

**Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls** and **Controlled** shall be interpreted accordingly.

**Controller** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Customer, you** and **your** means the person identified as the customer in the Order.

**Customer Contact** means any individuals authorised to act on your behalf for Service management matters.

**Data Protection Laws** means, as binding on either of us or the Services:

i) the UK GDPR;

ii) the Data Protection Act 2018;

iii) any laws which implement any such laws; and

iv) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

**Direct Third-Party Service** means any services (or elements of such services) that are not provided by us under this Agreement and are instead provided wholly by a third party providers and in respect of which you have entered or will enter into a direct agreement with the relevant third party provider in respect of those services.

**Direct Third-Party Service Provider** means a third party that provides Direct Third-Party Services to you.

**Early Termination Charges** means any compensatory charges payable by you to us: (a) on termination of the Agreement prior to the expiry of the Minimum Term referenced in the Service Schedule or otherwise passed on by us to you from our supplier of the relevant Service related to such termination; and/or (b) which we notify you will be payable if you request the termination of any Service before the expiry of the Minimum Term and we accept such request for early termination.

**Effective Date** means the date we accept your offer to enter into the Agreement (as a provided in clause 2.4)

**Force Majeure Event** means an event or sequence of events beyond our reasonable control.

**GDPR** means the General Data Protection Regulation (EU) 2016/679 and any amendment or replacement to it.

**Insolvency Event** means if a party:

i) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

ii) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986;

iii) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

iv) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

v) has a resolution passed for its winding up;

vi) has a petition presented to any court for its winding up or an application is made for an administration

order, or any winding-up or administration order is made against it;

vii) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced; or

viii) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

ix) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;

x) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006; or

xi) as a freezing order made against it.

**Intellectual Property Rights** means any trademark, service mark, trade and business name, patent, copyright (including software), database right, design right, community design right, registered design, right in Confidential Information, internet domain name, moral right and know-how, or any similar right in any part of the world and any applications for registering any of these rights that can be registered in any part of the world are also included.

**International Organisation** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Lawful Safeguard** means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time.

**Maintenance** means any work on our or any of our supplier's or subcontractor's Network or any Service, including to maintain, repair or improve the performance of our or their Network or Service.

**Minimum Term:** the minimum period for which you commit to receive a particular Service from the Services Start Date as detailed in the Order;

**Network** means any part of a communications network used by us or any of our suppliers or subcontractors to provide any part of the Service.

**Order** means the order for the Services placed by you that is accepted by us for the Service.

**Personal Data** shall have the meaning given to it in applicable Data Protection Laws from time to time.

**Personnel** means all of our employees, officers, staff, other workers, agents and consultants who are engaged in the performance of the Services from time to time.

**Processing** shall have the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly).

**Processor** shall have the meaning given to it in applicable Data Protection Laws from time to time.

**Protected Data** means Personal Data received from or on your behalf in connection with the performance of our obligations under the Agreement.

**Representatives** means employees, officers, representatives or advisers.

**Restricted Period** means the period during which we are providing the Services under our Agreement and a period of six months after that.

**Restricted Persons** means any person employed or engaged by us at any time during the period which we are providing the Services under our Agreement in relation to the provision of the Services who has or had material contact or dealings with you.

**Service** means those services that we have agreed to provide you under the Agreement.

**Service Start Date** means the date we first make the Service available to you.

**Service Schedule** means a schedule that describes the Service and sets out the specific terms that apply to it.

**Service Levels** means the service levels identified and as set out in the Service Schedule or otherwise agreed between us from time to time.

**Software** means any software in object code format only and any related documentation that we provide to you as part of a Service.

**Standard Terms** means our terms and conditions of supply set out in this document.

**Sub-Processor** means any agent, sub-contractor or other third party (excluding its employees) engaged by us for carrying out any processing activities on your behalf in respect of the Protected Data.

**VAT** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

**UK GDPR** means the GDPR as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended), as amended or replaced.

**Withholding Tax** means any tax, deduction, levy or similar payment obligation that is required to be deducted or withheld from a payment under Applicable Law.

27.2 In these Standard Terms, unless the context otherwise requires:

27.2.1 the words 'include', 'including' or 'for example' do not limit something to just the examples that follow;

27.2.2 any reference to a specific law or regulation in these Standard Terms

- includes that law or regulation as amended, replaced or extended;
- 27.2.3 any reference to a 'party' or one of us includes that party's personal representatives, successors and permitted assigns;
- 27.2.4 any reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns; and
- 27.2.5 any headings in these Standard Terms are included for convenience. They will not have any effect on the interpretation of the Agreement.