

4G Connectivity Agreement



TERMS AND CONDITIONS

These terms and conditions govern the relationship between the Parties. No terms of any purchase order, printed or standard conditions, nor other document submitted by the Customer will have contractual effect unless the Parties have agreed in writing to vary this Agreement in accordance with its terms.

1. DEFINITIONS

1.1 In this Agreement:

"Accepted Order" means an Order that Excalibur has accepted in writing (which may be by email);

"Access Fee" means the monthly or other periodic fee payable to Excalibur by the Customer as set out in the Charges Schedule;

"Active Connection" means when the first chargeable mobile originating event occurs on a SIM Card (and "Activated" and "Activation" shall be construed accordingly);

"Agreement" means this master services agreement (including all appendices, schedules and Accepted Orders), as may be amended from time to time in accordance with its terms;

"Excalibur Website" means any Internet worldwide web host controlled or maintained by Excalibur;

"Business Day" means any day which is not a Saturday, Sunday or public holiday in England and Wales;

"Call-off date" means the date agreed by the Parties by which the Committed Volume of SIM Cards will be ordered by the Customer, in respect of which a failure to achieve the Committed Volume by such date shall entitle Excalibur to bill for the same;

"Charges" means the Access Fees, Connection Charges, Software Licence Fees, call fees, administration fees and all other fees payable or due to be payable by the Customer to Excalibur in accordance with the rates set out in the Charges Schedule or if not specified therein, at the rates set out in the Standard List Price;

"Commencement Date" means the date at the top of this Agreement following signature by the Parties;

"Committed Volume" means the minimum number of SIM Cards which the Customer commits to ordering on or before the Call-Off date;

"Connection" means the configuration of a SIM Card to attach to and be recognised by the Network in order for an End User to utilise the Services and which shall include Active Connections and Inactive Connections;

"Connection Charge" means the fee payable by the Customer to Excalibur for configuring a SIM Card and/or connecting the Customer's Equipment to be able to use them on the Systems;

"Customer" means the entity described as such on the first page of this Agreement;

"Customer Equipment" means any device or apparatus which is used by the Customer to obtain the Services and which is used in conjunction with a SIM Card;

"Disconnect" means to permanently terminate a SIM Card such that the Network can no longer be accessed (and "Disconnected" and "Disconnection" shall be construed accordingly);

"End User" means any customer or client of the Customer to whom the Customer is providing a service or equipment;

"GSM Gateway" means any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile-to-mobile call;

"Inactive Connection" means a SIM Card that has been provided to the Customer but has not been Activated;

"Intellectual Property Rights" means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how and trade secrets; (b) applications for

registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction, and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Network" means a public switched telephone network and/or a wireless telegraphy link by means of a cellular radio system operated by a Network Operator;

"Network Operator(s)" means any of, Three (trading also as "3"), O2 Telefónica, Vodafone or Everything Everywhere or such other companies which operate a Network for mobile communication purposes;

"Order" means a request made by the Customer using the Order Form for Excalibur to supply Services or Products, which the Parties agree may be submitted by email;

"Order Acceptance Date" means the date on which an Accepted Order is communicated in writing (which may be by email) to the Customer as being accepted by Excalibur;

"Order Form" means the product specific document in the form supplied by Excalibur or one of the Customer's own layout incorporating the same information (as approved by Excalibur), which the Customer shall use to order Products and Services;

"the Parties" means Excalibur and the Customer;

"Product(s)" means a SIM Card and/or any accessory that is sold ancillary thereto;

"Roaming" means a service which allows the Customer to use a SIM Card on international Networks;

"Security Document" means any document creating or evidencing any financial security (including any guarantee) entered into by the Customer in favour of Excalibur which is intended to secure all or any monies due from the Customer to Excalibur pursuant to this Agreement;

"Services(s)" means those cellular radio, radio or other electronic communication services and any associated services to be provided by Excalibur directly or via or other Mobile Networks, as more particularly described in the Services Schedule;

"SIM Card" means the Subscriber Identity Module containing data, information and Intellectual Property Rights which has been supplied to the Customer by Excalibur;

"Software" means any software made available to the Customer by or on behalf of Excalibur (including any licensors) including software used to access Excalibur portals and virtual private networks in connection with the Services;

"Software Licence" means the terms and conditions that prescribe how the Customer shall use Software which shall set out the rights of the Software owner and the Software user in relation to such Software with which the Customer shall comply;

"Software Licence Fee" means the fee payable by the Customer to Excalibur for the Customer's use of Software;

"Standard List Price(s)" means Excalibur's standard list of charges for services and products in force, as: (1) set out on the Excalibur website; and/or (2) advised to the Customer by Excalibur; and/or (3) as is available on request from Excalibur, as amended by Excalibur from time to time;

"Systems" means any systems of Excalibur or a Network Operator to which Customer has access;

"Suspend" means the de-activation of a SIM Card from accessing Services and the terms "Suspended" and "Suspension" shall be construed accordingly;

"Working Hours" means the hours between 9.00am and 5.00pm, UK on any Business Day.

2. PROVISION OF SERVICES

2.1 Excalibur shall provide the Services to the Customer from the relevant Order Acceptance Date. Excalibur will use all reasonable endeavours to ensure that the Services are made available to the Customer in the locations and for the duration of the periods set out in a proposal but the Customer agrees and acknowledges that the ability to use the Services depends on the availability of suitable Network Operators and the operation of Networks, which are outside of Excalibur's reasonable control.

2.2 Excalibur will use reasonable skill and care to provide the Services but the Customer acknowledges that the Services are not fault free and may be impaired by factors outside of Excalibur's control such as (but not limited to) excessive Network traffic, radio interference, geographical, topographical, atmospheric, or other conditions (including buildings, underpasses and other causes of interference). It is the responsibility of the Customer to ensure that it has appropriate contingency plans in place to address such factors.

2.3 The Services may be used by the Customer to transmit data to databases, web sites and/or networks. Excalibur accepts no responsibility for the nature of any such content.

2.4 The Customer shall not use the Services or allow any third party (including End Users) to use the Services for any immoral, obscene, defamatory, harmful, offensive or otherwise unlawful purpose. If Excalibur becomes aware of such misuse it shall have the right to immediately disconnect the SIM Cards without liability to ensure that such use ceases.

2.5 It shall be the Customer's responsibility to carry out its own investigations as to compatibility of and installation of Customer Equipment for the purpose for which it is required. The Customer agrees that Excalibur shall not be responsible for any faults, errors, interruptions, disruptions or any other problems in relation to the Services that are caused either directly or indirectly as a consequence of the use and/or installation of Customer Equipment.

2.6 Excalibur shall exercise reasonable efforts to ensure the security of the Customer's communications over the Network but Excalibur cannot guarantee that all communications shall be completely secure. The Customer accepts that there is a risk that its communications may be unlawfully

intercepted, hacked or accessed by those other than the intended recipient. It is the Customer's responsibility to take such precautions as it considers appropriate for itself and End-Users to protect data from data breaches, cyber attacks, fraud, viruses and other harmful executables.

2.7 The Customer acknowledges that Excalibur does not make any representations or warranties as to the suitability of the Services or the suitability of the Products for use by the Customer or for the Customer's use vis-à-vis its End-Users. Excalibur shall have no liability or responsibility for the Customer's use of the Products and Services itself or via End Users.

2.8 The Customer shall not use the Products or the Services for Internet phone calls (Voice Over Internet Protocol (VOIP)) unless agreed in writing by Excalibur at its sole discretion.

3. CHARGES AND PAYMENT

3.1 Subject to any express terms set out in the proposal, Excalibur shall be entitled to bill the Customer for the Charges due on a monthly basis in advance. Invoices shall be paid within 14 days of the date of invoice.

3.2 The Charges for the Services will be calculated on the basis set out in the Proposal or Charges Schedule or Standard Price List as applicable. Charges based on data volumes transmitted shall be calculated in one kilobyte increments rounded up to the nearest kilobyte where possible or the Network threshold, whichever is the greater.

3.3 The Customer shall pay the Charges by direct debit (unless Excalibur otherwise agree in writing). If any request for funds under a direct debit is rejected the Customer will pay Excalibur an administration fee of £25, such charge to be added to the next invoice. In the event that Excalibur consents to an alternative payment method Excalibur reserve the right to charge a reasonable administration fee to cover the additional administrative burden that such alternative payment method may create.

3.4 If Excalibur incur additional costs in performing the Services as a result of any failure by the Customer (or an End User) to meet its obligations hereunder Excalibur shall be entitled to recover such additional costs from the Customer.

3.5 Any overdue payment shall accrue daily interest at the rate of 3% above the base rate of HSBC Bank plc from time to time. Interest shall accrue from the date that an invoice becomes due until the date that the overdue amount is paid in full (both dates inclusive). Excalibur reserve its right to claim additional interest under The Late Payment of Commercial Debt (Interest) Act 1998.

3.6 Should the Customer in good faith dispute any of the Charges arising under the terms of this Agreement it must notify Excalibur of such disputed amount at its earliest convenience and in any event within 10 Business Days of the date of the relevant invoice. Pending resolution of a dispute the Customer shall pay the Charges set out in the relevant invoice without deduction or set-off]. The Parties shall discuss such dispute under the Escalation Procedure set out in Clause 15. A failure by the Customer to notify Excalibur of any disputed invoice within 10 Business Days will result in Excalibur not being obliged to consider such a dispute and nor will Excalibur be liable in respect of any disputed amount. Where all or part of a disputed amount is found to have been incorrectly invoiced Excalibur will promptly make any necessary credit to the Customer's account.

3.7 Excalibur may at the Customer's request advise the Customer of its account balance from time to time. The Customer acknowledges this is an estimate based on information provided from the Network Operator and which Excalibur has not verified. Excalibur shall not be bound by and shall not be liable for any estimate that it provides. The Customer shall pay all Charges as they fall due even if they exceed such estimate.

3.8 VAT and any other applicable taxes will be added to the Charges. Without prejudice to its rights in Clause 8.1, Excalibur reserve the right to increase/decrease Charges no more than once per year in accordance with the Consumer Prices Index issued by the UK Office for National Statistics from time to time.

3.9 Credit Assessments: Excalibur shall credit assess the Customer from time to time to assess the Customer's risk profile. Any negative credit assessment shall enable Excalibur to stop Activating SIM Cards until such credit assessment improves.

3.10 Continuing Financial Security: Excalibur may at any time require the Customer to enter into a bank or other guarantee or provide some other form of financial security as security against the Customer's non-compliance with or non observance of any of the provisions hereof (including failure to pay Charges due). Refusal to provide such security within thirty (30) days of the date of request by Excalibur shall be deemed to be a material breach of this Agreement by the Customer which shall entitle Excalibur to terminate.

3.11 The Parties agree that timely payment is of the essence. Failure to make payment under the terms of this Agreement will be treated as a material breach of this Agreement. The Parties agree that timely payment is of the essence.

3.12 Excalibur may set-off Charges under this Agreement or any other agreement in force between the Parties from time to time.

4. PRODUCTS: RISK, TITLE, REPAIRS AND REPLACEMENT

4.1 Once Products have been collected by the Customer or upon the date and time that Products have been despatched, all risk of damage to, or loss of, such Products shall pass to the Customer. Title in, and ownership of, Products shall remain with Excalibur or the Network Operator at all times and no event shall pass to the Customer.



4.2 Subject to Clauses 4.3 and 4.4. where new SIM Cards are provided to the Customer, Excalibur shall pass-through to the extent reasonably possible the benefit of any warranty given to Excalibur by the relevant Network Operator to the Customer. Such warranty being subject to the terms applicable to such warranty.

4.3 Where an Activated SIM Card fails within a warranty period, Excalibur's total liability is limited to the cost of a replacement SIM Card. Excalibur accepts no liability for any defect resulting from fair wear and tear; rain, water or other liquid damage; accidental or wilful damage; failure to follow the manufacturer's instructions or those of the Network Operator (whether oral or in writing); or misuse or alteration or repair of the SIM Cards without the manufacturer's and Network Operator's approval. For the avoidance of doubt where Activated SIM Cards fail outside the warranty period or in respect of Inactive Connections that are not Activated until expiry of the warranty period, Excalibur shall have no liability in respect of such failure.

4.4 The Customer accepts that SIM Cards have a limited life span and may need to be replaced from time to time. Excalibur does not guarantee the lifespan of SIM Cards.

4.5.1 The Customer acknowledges that Excalibur is supplying at the Customer's request, with 4G SIM Cards that are not Standard M2M SIM Cards. 4G Cards do not have the same level of physical and electrical tolerance that M2M SIM Cards have.

4.5.2 You understand that all SIM Cards have a limited life span and may need replacing from time to time. Excalibur cannot guarantee the lifespan, but under normal operational (including reasonable power cycling – turning a SIM Card on and off), M2M SIM card can be expected to have a lifespan of not less than 12 months. Using a 4G SIM Card in an M2M environment increases the chances that it may reach the end of its lifespan sooner than expected.

4.5.3 The Customer understands that Excalibur limits its total liability for a 4G SIM Card which fails within 12 months of connection to the cost of a replacement 4G SIM Card. Excalibur recommends that the Customer avoids unnecessary power cycling of SIM Cards and that the equipment in which the 4G SIM card is installed is built to enable SIM Cards to be accessible by the Supplier, so that they can be easily replaced should this be necessary.

4.5.4 The Customer agrees to indemnify Excalibur and hold Excalibur harmless from any claim, including any direct or indirect claims from a Reseller or End User. We recommend that once EE M2M 4G SIM Cards are available, any installed EE 4G SIM Cards is replaced with an EE M2M 4G SIM Cards, which Excalibur will supply free of charge to the Customer on request.

4.5.5 An order for 4G SIM Card(s) shall be deemed to be the Customer's acceptance of these Terms and Conditions. If the Customer does not agree to these EE 4G SIM Card Terms and Conditions, the Customer must not request connection of the 4G SIM Card.

4.6 The Customer shall only purchase SIM Cards in connection with the Services from Excalibur.

5. SERVICE AVAILABILITY

5.1 Where required for the purposes of upgrade, modification, maintenance, emergency or security some or all of the Services may become temporarily unavailable from time to time. Excalibur will use its reasonable endeavours to keep Services disruption to a minimum. In the event of prolonged or persistent disruption and where practically and reasonably possible to do so, Excalibur will transfer the Customer to another Network.

5.2 The Customer accepts that Roaming relies on networks over which Excalibur has no control. Excalibur do not offer any guarantee about the availability and quality or prices of Roaming services.

5.3 Excalibur may, by giving the Customer reasonable prior notice, Suspend some or all of the Services:

5.3.1 if Excalibur has reasonable grounds to believe that the Customer has not complied with this Agreement;

5.3.2 the Customer fails to pay the Charges when due;

5.3.3 Excalibur has the right to terminate under Clause 9; or

5.3.4 in the event of an emergency, upgrade or maintenance of the Network.

5.4 Suspension of the Services shall not affect this Agreement or the Customer's obligation to pay the Charges which shall continue to be due and payable during any period of any Suspension unless agreed otherwise by the Parties.

5.5 Excalibur may charge the Customer a reasonable administration fee for any reconnection of the Services following a Suspension in accordance with the Standard Price List.

6. CUSTOMER RESPONSIBILITIES

6.1 The Customer agrees to use the Products and Services in accordance with any user guide or other instructions issued by Excalibur or a Network Operator from time to time.

6.2 If the Customer fails to order the Committed Volume by the Call-off date, Excalibur shall be entitled to bill and the Customer be required to pay an amount equal to the shortfall between the Charge for the actual volume of SIM Cards ordered under Accepted Orders and the Charges that are due for the Committed Volume.

6.3 The Customer shall comply with all regulatory requirements and relevant laws in relation to the exercise of its rights and performance of its obligations under this Agreement.

6.4 The Customer shall take adequate precautions to prevent damage to or unauthorised use or theft of the Products and inform Excalibur immediately if a SIM Card is lost, stolen, damaged, destroyed or is being used (or is reasonably likely to be used) in an unauthorised manner.

6.5 If a SIM Card is lost, stolen, damaged, destroyed or used in an unauthorised manner Excalibur may charge the Customer for re-Activating and/or charge a reasonable fee for the replacement of the SIM Card. The Customer is responsible for all Charges that are incurred up until the time and date that the Customer notifies Excalibur that a SIM Card has been lost or stolen.

6.6 The Customer shall co-operate with Excalibur in the conduct of reasonable security checks from time to time.

6.7 The Customer must notify Excalibur not less than 30 days in advance of changing its name, address, contact details or bank account details.

7. GSM GATEWAYS

7.1 The Customer shall not connect or continue connection by itself nor allow any customer or End User to connect or continue connection of any GSM Gateways to the Systems for illegal purposes including without limitation the provision of electronic communication services to a third party.

7.2 The Customer shall not connect or continue connection by itself nor allow any customer or End User to connect or continue connection to the Systems of any GSM Gateways that are permissible according to applicable law and regulation without the prior written consent of Excalibur, which may be withheld at Excalibur's absolute discretion.

7.3 The Customer shall cooperate with Excalibur at all times to ensure that any approved GSM Gateways connected to the Systems are and remain compliant with applicable law and regulation and Excalibur's policy. If the Customer becomes aware that any of its End Users or third parties have established, installed or are using a GSM Gateway in an illegal manner or in breach of Excalibur's policies (as advised to the Customer from time to time), the Customer shall notify Excalibur immediately and shall upon request from Excalibur provide to it all technical details of the GSM Gateway and its use.

7.4 The Customer shall comply with Excalibur's instructions to facilitate the disconnection of any GSM Gateway that breaches this Clause 7. Excalibur may require the Customer to repay to Excalibur any payments or bonuses paid to it in connection with GSM Gateways that are discontinued subject this Clause 7.

7.5 Excalibur may alter or amend the contractual terms or commercial policy relating to GSM Gateways at Excalibur's discretion by giving no less than 20 Business Days notice.

8. CHANGES TO THE SERVICES & REGULATORY CHANGES

8.1 Excalibur reserve the right to:

8.1.1 vary the Charges; or

8.1.2 make any amendments to this Agreement that are required as a direct result of any legislation, statutory instrument, government regulation or authorisation; or

8.1.3 withdraw any promotional tariffs and offers by giving the Customer not less than 15 Business Days notice;

and if the Customer fails to exercise its right to terminate this Agreement pursuant to Clause 9 within 15 Business Days of being given notice of the change then the Customer will be deemed to have accepted the change.

9. DURATION AND TERMINATION

9.1 This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term unless terminated earlier in accordance with this Clause 9.

9.2 Termination at will: The Customer and Excalibur may terminate this Agreement by giving at least 3 months notice in writing to the other Party at any time. In the event of termination by the Customer under this Clause 9.2 the Customer shall immediately pay to Excalibur: (i) all Charges in respect of the Committed Volume and that have not yet been paid for by the Customer and (ii) all Access Fees due for the remainder of the Minimum Term.

9.3 Termination by Excalibur: Excalibur shall have the right to immediately terminate this Agreement in whole or in part and without liability, by notice in writing to the Customer if:

9.3.1 there is a change in the control of the Customer or of any party who has control of the Customer whether by a change in the ownership of shares or otherwise and for these purposes "control" shall have the meaning attributed to it in Section 840 of the Income and Corporation Taxes Act 1988;

9.3.2 Excalibur becomes aware of, or the Customer notifies Excalibur of, any proposed transfer or assignment of all or a majority of its End Users or any proposed grant of any option or the entry into any agreement for the same;

9.3.3 Excalibur becomes aware of, or the Customer notifies Excalibur of, any actual transfer or assignment of all or a majority of its End Users, or the grant of any option or the entry into any agreement for the same;

9.3.4 the Customer is in breach of any Security Document;

9.3.5 any agreement giving Excalibur access to any part of the ability to provide Services is suspended or terminated;

9.3.6 the Services has been repeatedly Suspended;

9.3.7 subject to any bona fide dispute in respect of any invoice, the Customer fails to pay any Charges due under this Agreement within 30 Business Days of the due date; or

9.3.8 the Customer is in breach of its obligations with respect to GSM Gateways.

9.4 Termination for Cause: Either Party shall have the right to terminate this Agreement at any time in any of the following circumstances by prior written notice to the other Party:

9.4.1 if the other Party commits a breach of any of the provisions of this Agreement and in the case of a remediable breach has failed to remedy the breach within fourteen (14) days of that other Party being notified of such breach by the Party seeking to terminate; or

9.4.2 if the other Party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) makes or offers to make any arrangement or composition with any one or more of its creditors (including Excalibur) or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against that other Party or if any resolution or petition to wind up that other Party (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation or if an administrator or a receiver of that other Party's undertaking property or assets or any part thereof is appointed; or

9.4.3 if for any reason there is a complete or major suspension of the Services or a material part thereof for a period in excess of 2 months.

9.5 The Customer may terminate this Agreement on not less than 15 Business Days notice if Excalibur exercises its rights under Clause 8 (Changes to the Services and Regulatory Changes) and the Customer does not agree the changes proposed pursuant to that Clause. For the avoidance of doubt an increase in the Charges in line with the appropriate Index of Retail Prices (as published by the Central Statistical Office in the Monthly Digest of Statistics (or any successor body from time to time)) shall not give the Customer the right to exercise a right of termination pursuant to this Clause. Upon receipt of the Customer's notice to terminate Excalibur may withdraw such variations to the Agreement in which case it shall notify the Customer and the Parties shall discuss in good faith the continuation of the Agreement in its then current form.

10. CONSEQUENCES OF TERMINATING

10.1 Consequences of terminating the Agreement:

Without prejudice to Clause 9.2 upon termination of this Agreement for whatever reason:

10.1.1 all Charges (including those in respect of Committed Volumes) shall become immediately due and payable by the Customer to Excalibur; and

10.1.2 Excalibur shall repay to the Customer all payments made by the Customer in advance so far as they relate to the period following termination, subject to the rights of set off as stated in Clause 3 which shall include the right to set off Charges due for the Committed Volume.

10.2 Termination of this Agreement shall be without prejudice to any claims or remedies that either Party may have against the other that have accrued up to the date of termination.

11. INTELLECTUAL PROPERTY

11.1 The Customer acknowledges that all Intellectual Property Rights in the Services, Software, Products and Systems are owned by Excalibur or its licensors. The Customer shall not, and shall procure its End-Users do not, take any action that jeopardizes or that might reasonably be expected to jeopardize any right, title or interest of Excalibur or its licensors in or to such Intellectual Property Rights or any modifications to those rights. The Customer shall not acquire any right, title or interest in or to any Excalibur Intellectual Property Rights.

11.2 The Customer shall not and shall not permit any End-User or other person to remove or replace any intellectual property notice on any Products.

11.3 With the prior written consent of Excalibur the Customer shall have the right to promote the Services under the "Excalibur" trade mark subject to the Customer complying with such guidelines and directions issued by Excalibur from time to time in connection with such trade mark and subject to the Customer entering into such agreements as may from time to time be required by Excalibur in order to protect the rights of Excalibur in the "Excalibur" trade mark and any other Intellectual Property Rights owned and/or licensed by Excalibur. The Customer shall not use or apply to register any name or trade mark or other Intellectual Property Rights similar to any Excalibur trade mark except as set out in this Clause 11.3.

11.4 With the prior written consent of the Customer, Excalibur shall have the right to promote its relationship with the Customer and use the Customer trademark in connection with the same, subject to Excalibur complying with such guidelines and directions issued by the Customer from time to time in connection with such use of the trademark.

11.5 The Customer shall indemnify Excalibur against all claims, demands, liability, costs and expenses (including reasonable legal fees) arising from any infringement by the Customer or an End User of Excalibur's (or those of its licensors) Intellectual Property Rights.

12. INFORMATION, CONFIDENTIALITY AND THE CUSTOMER DETAILS

12.1 Accuracy of information: All information that the Parties provide to each other shall be accurate and complete. The Customer shall inform Excalibur in writing of all changes to information it has provided to Excalibur, including decisions to stop trading or sell the Customer's business.

12.2 Confidential Information: All business or technical information disclosed by either Party ("disclosing Party") to the other ("receiving Party") shall be regarded as confidential unless expressly stated otherwise in writing and shall not be disclosed to third parties without prior written consent provided that information shall not be regarded as confidential if:

12.2.1 it is authorised to be disclosed by the disclosing Party; or

12.2.2 it is, or becomes publicly known through no fault of the receiving Party.

13. LIMITATION OF LIABILITY

13.1 This Clause 13 sets out the Parties financial liability to the other (including in the case of Excalibur any liability for the acts or omissions of employees, agents, consultants and subcontractors of Excalibur and any liability to End-Users).

13.2 Nothing in this Agreement limits or excludes a Party's liability:

13.2.1 for death or personal injury resulting from negligence; or

13.2.2 for any damage or liability incurred as a result of fraud or fraudulent misrepresentation;

13.2.3 any liability that cannot be excluded by law; or

13.2.4 pursuant to the IPR indemnity in Clause 11.5.

13.3 Excalibur shall not be liable (to the Customer or End-Users) for:

13.3.1 loss of profits;

13.3.2 loss of business or business opportunity;

13.3.3 depletion of goodwill and/or similar losses;

13.3.4 loss of goods;

13.3.5 loss of contract;

13.3.6 loss of or corruption of data or information;

13.3.7 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

13.3.8 any act or omission of a Network Operator or any other provider of electronic communications services.

13.4 Excalibur's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total amount recoverable under Excalibur's product liability insurance policy in place from time to time (less any excess payable by Excalibur) or, in the event that a claim is not covered by its product liability insurance, an amount equal to the Charges payable in relation to the remaining period of the Agreement as at the date the incident giving rise to the liability occurs.

13.5 Save as set out herein, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

14. INSURANCE

14.1 Each Party warrants to the other that it has in place all appropriate insurances to satisfy their obligations hereunder and will maintain such insurances for the term of the Agreement. Notwithstanding the foregoing each Party shall maintain as a minimum:

14.1.1 public and product liability insurance of at least £5,000,000; and

14.1.2 employer's liability insurance of at least £10,000,000.

15. ESCALATION PROCEDURE

15.1 In the event that the Customer is dissatisfied in relation to any issue under this Agreement or has a bona fide dispute in relation to an invoice, and the Customer's account manager has been unable to resolve the issue to the Customer's satisfaction, the Customer shall be entitled to escalate such issue to a more senior representative within Excalibur. Excalibur shall attempt to resolve any concerns that the Customer has by using the escalation process. The Customer shall exhaust the escalation process to its full before taking legal action against Excalibur. Escalation routes within Excalibur shall be as follows:

First: Account Manager or Service Delivery Manager, Excalibur

Second: Sales or Operations Director, Excalibur

Final: Chief Executive, Excalibur

16. GENERAL

16.1 This Agreement together with any documents referred to in this Agreement sets out the entire agreement and understanding between the Parties relating to the subject matter. Each Party acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, each party shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

16.2 Neither Party will be liable to the other for any failure to perform its obligations because of something beyond its reasonable control such as, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, military operations, national or local emergency, civil disorder, industrial disputes (whether or not involving its employees), or acts of local or central Government or other competent authorities and any failure by a Network Operator that prevents a Party from being able to deliver the Services.

16.3 Excalibur may assign or novate its rights and obligations under this Agreement at any time on written notice. The Customer cannot assign or purport to assign any rights or obligations under this Agreement without Excalibur's prior written consent.

16.4 Failure by either Party to enforce rights under this Agreement shall not prevent a Party from taking further action or constitute any waiver of any of its respective rights hereunder.

16.5 This Agreement can only be varied or amended by mutual written agreement of both the Customer and Excalibur.

16.6 No right or remedy herein conferred on or reserved to either Party is intended to be exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy given hereunder now or hereafter existing at law or in equity or by statute.

16.7 The Parties shall comply with the provisions of the General Data Protection Regulation as amended or replaced from time to time. The Customer consents to Excalibur processing data relating to the Customer or End-User for legal, administrative and management purposes and as necessary for Excalibur to verify the credit worthiness of the Customer and for the fulfilment of this contract. The Customer accepts that Excalibur may make such information available to third Parties who provide products and services to Excalibur and to any regulatory authorities, governmental or quasi-governmental organisations. Protecting your personal information is incredibly important to Excalibur. Our privacy policy which sets out how we do this is available here: <https://www.excaliburcomms.co.uk/gdpr-policy/>. This policy explains the information that we hold, how we use it, and how long we keep it for.

16.8 If any provision of this 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.

16.9 A person who is not a Party to this Agreement shall have no rights to enforce any term or terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

16.10 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name of or on

behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.11 All notices delivered under this Agreement must be in writing and will be delivered by hand or first class post to the other's address as stated on the front page of this Agreement and will be deemed to have arrived at their destination within 24 hours if delivered by hand and within 48 hours if sent by first class post.

16.12 This Agreement is subject to and shall be construed in accordance with the laws of England and the Parties agree to be bound by the exclusive jurisdiction of the English Courts.