

## Terms and Conditions for the supply of Telecom Products & Services

### 1. Interpretation

#### 1.1 Definitions. In these Conditions, the following definitions apply:

**Additional Service(s)**, means any additional services other than the Services provided by Ingenio to the Customer, including the Installation, which form part of the Contract.

**Agent**, means any representative or sub-contractor of Ingenio.

**Authorised Person**, means a person that the Customer has expressly authorised to use the Services.

**Business Day**, means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges**, the charges payable by the Customer for any goods or services provided by Ingenio under the Contract as detailed in clause 16.

**Conditions**, means these terms and conditions as amended from time to time in accordance with clause 24.7.

**Contract**, means the contract between Ingenio and the Customer for the supply of Products and/or Rental Products and/or Services and/or Additional Services in accordance with these Conditions and (except for Additional Services) stated on the Order.

**Customer**, means the person or firm who purchases any goods or services from Ingenio under this Contract.

**Data Protection Legislation**, means up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Domain Name(s)**, means the domain name(s) set out in the Order.

**DRS Policy and Procedure**, means Nominet's dispute resolution procedure which can be found at <http://www.nominet.uk/domains/resolving-uk-domain-disputes-and-complaints/>, and as updated from time to time.

**Equipment**, means the hardware required to provide a phone line in accordance with the Services and forming part of the Rental Products.

**Force Majeure Event** has the meaning given to it in clause 23.1.

**GDPR**: General Data Protection Regulation ((EU) 2016/679).

**Ingenio**, means the business name of the supplier of the goods and services supplied under this Contract, being wholly owned and operated by Computer-eyez (South) Limited, a company registered in England and Wales under company number 5882648, with its registered office at Enterprise Centre, Denton Island, Newhaven, East Sussex, BN9 9BA.

**Installation**, means the installation services provided by Ingenio for the Products and/or Rental Products, as requested by the Customer and indicated in the Order.

**Intellectual Property Rights**, means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Login Holder**, has the meaning set out in clause 7.2

**Login**, has the meaning set out in clause 7.2

**Network Provider**, means BT OpenReach, Gamma Telecom and their affiliates, together with any other network provider communicated to the Customer by Ingenio.

**Nominet**, means Nominet UK, a company registered in England and Wales under company number 3203859, with its registered office at Minerva House Edmund Halley Road, Oxford Science Park, Oxford, OX4 4DQ.

**Order**, means the order form for any supply of any goods or services supplied to the Customer and includes any prices or descriptions stated in the Quotation.

**Personal Data**, shall have the meaning giving to it in the Data Protection Legislation.

**Products**, means any goods that are not Rental Products supplied for sale by Ingenio and purchased by the Customer as indicated in the Order.

**Proscribed**, means that the Domain Name would on the face of it (i) tend to indicate, comprise or promote a serious sexual offence and/or (ii) that there is no legitimate use of the Domain Name which could be reasonably contemplated.

**Quotation**, the price and description of the goods or services to be provided under this Contract given by Ingenio to the Customer prior to it placing the Order.

**Register**, the database of domain names that Nominet administer.

**Renewal Notice**, shall have the meaning given to it in clause 6.1.

**Rental Products**, means any goods, including any Equipment or Telephones to the Customer for the Rental Period as ordered by the Customer in the Order.

**Rental Period**, is the time period specified in the Order for the rental of the Rental Products.

**Searchable WHOIS**, means a service provided by Nominet under contract which provides the facility to search WHOIS data by a registrant or for domain names where a particular string of characters appear in the domain name.

**Services Additional Term**, has the meaning giving to it in clause 5.8

**Services Fee**, is the price of the Services as set out in the Order.

**Services**, means the Installation, supplied by Ingenio to the Customer as set out in the Order and in accordance with clause 5.

**Telephones**, means any telephones (including cellular phones where applicable) which the Customer orders as part of the Rental Products or Products and as indicated in the Order.

**Third party Dependencies**, has the meaning set out in clause 20.6

**WHOIS**, means a service provided by Nominet which allows members of the public to check whether a domain name exists.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2. **Basis of contract**

2.1 Receipt by Ingenio of a signed Order constitutes an offer by the Customer to purchase any goods and/or services identified in the Order and as described in the Quotation in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Ingenio receives a signed Order and confirms to the Customer that the Order has been accepted at which point and on which date the Contract shall come into existence (**Commencement Date**). In the absence of an Order, signed or otherwise, on the date in which Ingenio performed any act in the provision of any of the Services or supply of goods for the Customer, at which point a Contract will come into existence between the Customer and Ingenio.

2.3 **In relation to Domain Names only: The Contract is between Ingenio and the Customer but please note that where the Customer orders a Domain Name in the Order, this Contract is subject to the Customer entering into a separate contract with Nominet. By purchasing the Domain Name the Customer is entering into a contract with Nominet, their terms (which may be updated from time to time) can be found at <http://www.nominet.org.uk/go/terms>.**

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Ingenio which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Ingenio and any descriptions of the Services or Products or Rental Products contained in Ingenio's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions and the Order apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any Quotation given by Ingenio shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue. Ingenio reserves the right amend any Quotation given where the change has arisen due to an event outside of Ingenio's control.

2.7 The Customer acknowledges and agrees that the goods or services provided are business to business transactions to which the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply.

### **3. Installation**

- 3.1 Where the Customer orders Installation, Ingenio shall perform the Installation to the location set out in the Order or such other location as the parties may agree (**Installation Location**) at the time set out in the Order (**Installation Date**).
- 3.2 Ingenio shall (whether itself or through an Agent) use its reasonable endeavours to perform the Installation on the Installation Date, however the Installation Date is an approximate date and time is not of the essence. Ingenio (nor its Agent where applicable) shall not be liable for any delay in the Installation that is caused by a Force Majeure Event or the Customer's failure to provide Ingenio with adequate information which has been requested by Ingenio to assist with Installation.
- 3.3 Installation will be treated not as part of the Services but as an Additional Service and such Additional Service will be charged as set out in the Order (**Installation Fee**).
- 3.4 If the Customer fails to accept Installation, then except where such failure or delay is caused by a Force Majeure Event or by Ingenio's failure to comply with its obligations under the Contract:
- 3.4.1 Installation shall be deemed to have been completed at the point Ingenio attempted the Installation; and
  - 3.4.2 Ingenio shall store the Products or Rental Products due to be installed until Installation has taken place, and charge the Customer for all related costs and expenses (including insurance).
- 3.5 Where the Installation is delayed due to any failure or delay of third parties (such as Network Providers), and such a delay is not for an unreasonable period, the Customer accepts that no such delay or failure shall result in the Customer having the right to cancel, bring any action against Ingenio, defer or withhold any payment due to Ingenio, nor shall it give the Customer a right to terminate the Contract.
- 3.6 If the Customer fails to accept the Installation, and this results in Ingenio needing to provide further Additional Services to the Customer, such Additional Services shall be charged to the Customer in addition to the Installation Fee.
- 3.7 If the Customer requests Ingenio to remove any items or existing equipment from the Customer's premise, the Customer hereby confirms that it has good and unencumbered title to such items and that the Customer has the necessary authority to permit the removal and or destruction of such items. Where Ingenio requests, the Customer shall provide Ingenio with evidence to confirm title in such items.
- 3.8 Ingenio warrants to the Customer that the Installation will be provided using reasonable care and skill.
- 3.9 Where the Customer is of the reasonable opinion that Ingenio has failed to perform the Installation using reasonable care and skill under clause 3.8 the Customer may request reperformance of the Installation only where written notification is received by Ingenio not later than 30 days from the date the defective Installation was performed
- 3.10 If 10 Business Days after the Installation Date the Customer has not accepted Installation (except in relation to clause 3.5 or where the delay is caused by a Force Majeure Event), Ingenio may resell or otherwise dispose of part or all of the Products or Rental Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price paid by the Customer or charge the Customer for any shortfall below the price of due from the Customer. Installation will be complete when Ingenio confirms in writing to the Customer that the Installation has been completed.
- 3.11 The Customer cannot use the Services until Installation has been completed.

### **4. Rental Products**

- 4.1 Where the Customer orders any Rental Products the risk in the Rental Products shall pass to the Customer on completion of Installation.
- 4.2 The title to the Rental Products shall remain with Ingenio (or where appropriate the relevant Network Provider), unless the Order states otherwise.
- 4.3 The Customer shall be entitled to use the Rental Products for its use in accordance with this Contract during the Rental Period, but shall:
- 4.3.1 store the Rental Products separately from all other goods held by the Customer so that they remain readily identifiable as property of Ingenio;
  - 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Rental Products;
  - 4.3.3 maintain the Rental Products in a satisfactory condition and keep the Rental Products insured against all risks for their full price on Ingenio's behalf;
  - 4.3.4 shall not resell or create any charge or encumbrance the Rental Products;
  - 4.3.5 notify Ingenio immediately if it becomes subject to any of the events listed in clause 22.6.2 to clause 22.6.11;
  - 4.3.6 allow Ingenio all reasonable access to inspect the Rental Products; and

- 4.3.7 give Ingenio such information relating to the Rental Products, including any information relating to its condition or performance, as Ingenio may require from time to time.

## 5. Supply of Services

- 5.1 Ingenio shall provide the Services to the Customer in accordance with the Order in all material respects.
- 5.2 Where the Services includes the monitoring of the Customer's malware or virus detection systems (as indicated in the Order), Ingenio shall only be responsible for monitoring and notification to the Customer of any invasion of malware or viruses to the Customer's systems. Any further action required after the notification, including any action required to remove any malware or viruses identified by Ingenio, will be the Customer's sole responsibility.
- 5.3 Ingenio shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.4 Ingenio shall have the right to make any changes to the Services (including but not limited to discontinuing, altering, modifying, expanding, improving, maintaining, repairing, suspending or disconnecting Services) which are required by any third party supplier of Ingenio (including telecommunication operators or Network Providers) or which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Ingenio shall notify the Customer in any such event.
- 5.5 Ingenio shall have the right to interrupt or suspend the Services for technical, operational, legal or other reasons in which case Ingenio will restore the Services as quickly as possible.
- 5.6 Ingenio aims to provide uninterrupted Services but the Customer understands and agrees that, from time to time faults, including intermittent faults, may occur.
- 5.7 Subject to clause 23, where the provision of any aspect of the Services is delayed due to any failure or delay of third parties (such as Network Providers), and such a delay is not for an unreasonable period, the Customer accepts that no such delay or failure shall result in the Customer having the right to cancel, bring any action against Ingenio, defer or withhold any payment due to Ingenio, nor shall it give the Customer a right to terminate the Contract.
- 5.8 The supply of Services shall commence on the date of Installation of the Equipment/Hired Products and shall continue for the period of time set out in the Order (**Initial Term**). The contract to provide Services shall automatically renew for a period of 12 months (**Services Additional Term**) from the expiration of the Term, unless the Customer terminates the contract to provide Services by providing 42 days written notice prior to the expiration of the Initial Term or any Services Additional Term.
- 5.9 Ingenio warrants to the Customer that the Services and any Additional Services will be provided using reasonable care and skill.
- 5.10 Where the Customer is of the reasonable opinion that Ingenio has failed to perform any part of the Services or any Additional Services using reasonable care and skill under clause 5.10 the Customer may request reperformance of the relevant part of the defective Services only where written notification is received by Ingenio not later than 30 days from the date the relevant part of the defective Services was performed
- 5.11 The Customer authorises Ingenio to act on its behalf where Ingenio so requires, in relation to dealing with third party suppliers or Network Providers.

## 6. Domain Name

- 6.1 Where the Customer orders a Domain Name in the Order, Ingenio will notify the Customer (at the most up to date address provided by the Customer) 45 days, 30 days and 15 days prior to the expiration of the term of the Domain Name (the term being as stated in the Order) that the use of the Domain Name is due to expire (**Renewal Notice**). Should the Customer wish to renew the Domain Name, the Customer will be required to submit a new Order and the renewal will be regarded a separate contract. The costs for the renewal will be set out in the Renewal Notice. Where the customer does not respond to a renewal notice Ingenio will not take steps to renew the Domain Name and the Domain Name will lapse.
- 6.2 Ingenio shall liaise with Nominet on the Customer's behalf. The Customer acknowledges and accepts that Ingenio may forward information to the Customer on behalf of Nominet, and that Nominet may contact the Customer directly.
- 6.3 A Domain Name(s) is not an item of property and has no 'owner'. As a result:
- 6.3.1 Ingenio (and Nominet where appropriate) will not be bound by, or allow for the record on the Register, of any mortgage-related obligations;
- 6.3.2 Nominet shall own and keep all Intellectual Property Rights in the Register.

## **7. Telephone Numbers and Log-ins for the Services**

- 7.1 The Customer will not own or have any right to sell the number(s) related to the Services.
- 7.2 Where the Order states that the Customer (and its Authorised Person and employees) are required to use a login to access the Services (**Login**) the Customer shall procure that all holders of a login (**Login Holder(s)**):
- 7.2.1 comply with these Conditions (in particular clauses 7.5 and 13) and Ingenio's and cookies policy;
  - 7.2.2 provide accurate and true information;
  - 7.2.3 be an employee or Authorised Person of the Customer; and
  - 7.2.4 not have had their use of the Services suspended or terminated.
- 7.3 Where a Login Holder no longer complies with any of the requirements set out in this clause 7, Ingenio reserves the right immediately terminate their access to the Services and have their Login suspended.
- 7.4 Where the Customer becomes aware that a Login Holder no longer complies with the requirements set out in this clause 7 the Customer shall immediately inform Ingenio to enable Ingenio to terminate their access to the Services and suspend their Login.
- 7.5 The Customer shall procure that each Login Holder will:
- 7.5.1 if provided with, a user identification code, user name, password or any other piece of information as part of the security procedures to use the Login, keep such information secure and treat such information as confidential and not disclose it to any third party;
  - 7.5.2 not permit any other person to use their Login;
  - 7.5.3 only access the Services through their Login and not use any other person's Login;
  - 7.5.4 change their password in relation to the Login at least once every 3 months; and
  - 7.5.5 not without Ingenio's consent, transfer, sell or assign any Login to any other person.
- 7.6 Where the Customer knows or suspects that anyone other than the Login Holder knows a Login Holder's identification code or password, the Customer must promptly notify Ingenio at [help@ingeniotech.co.uk](mailto:help@ingeniotech.co.uk) or call 01273 806211 and must ensure that the Login Holder changes their password immediately.
- 7.7 Ingenio reserves the right to:
- 7.7.1 change user identification codes, user names, passwords or any other piece of information as part of the security procedures, where necessary in relation to Services or where Ingenio is concerned regarding security or fraud;
  - 7.7.2 issue instructions to the Customer or any Login Holder in relation to using, updating or changing identification codes, user names, passwords or any other piece of information as part of the security procedures;
  - 7.7.3 suspend access to Logins (without any liability whatsoever) where required due to a security issue, an emergency, or for maintenance or improvements.
- 7.8 Ingenio will not be responsible for any loss suffered by the Customer or third parties where there has been a breach of this clause 7. Where Ingenio suffers any loss as a result of the Customer's failure (or the failure of a Login Holder), to comply with the provisions of this clause 7, the Customer will be liable to Ingenio and indemnify Ingenio for any loss suffered.
- 7.9 Ingenio will alert the Customer if there is a suspected fraud of over £500 in relation to the Services. This may result in Ingenio suspending Logins. Ingenio will not be responsible for any loss suffered by the Customer as a result of fraud or the suspension of Logins in accordance with this clause 7.9.

## **8. Products**

- 8.1 Ingenio warrants that on delivery, and for a period of six months from the date of delivery, the Products shall:
- 8.1.1 conform in all material respects with their description as detailed in the Quotation; and
  - 8.1.2 be free from material defects in design, material and workmanship.
- 8.2 Subject to clause 8.2.1, Ingenio shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full if:

- 8.2.1 the Customer gives notice in writing during the warranty period stated in clause 8.1 within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 8.1;
- 8.2.2 Ingenio is given a reasonable opportunity of examining such Products; and
- 8.2.3 the Customer (if asked to do so by Ingenio) returns such Products to Ingenio's place of business at Ingenio's cost.

8.3 Ingenio shall not be liable for the Products' failure to comply with the warranty in clause 8.1 if:

- 8.3.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 8.2;
- 8.3.2 the defect arises because the Customer failed to follow Ingenio's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- 8.3.3 the defect arises as a result of Ingenio following any drawing, design supplied by the Customer;
- 8.3.4 the Products contain viruses or malware that introduced by the Customer
- 8.3.5 the Customer alters or repairs such Products without the written consent of Ingenio;
- 8.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; the introduction of malware or viruses after the Products were delivered; or
- 8.3.7 the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

8.4 Except as provided in this clause 8, Ingenio shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 8.1.

8.5 Any replacement Products supplied under warranty of this clause 8 shall exclude any costs to delivery and Installation the replacement Products and the Customer shall be responsible for such costs which will be charged as an Additional Service.

8.6 The terms of these Conditions shall apply to any repaired or replacement Products supplied by Ingenio.

8.7 The Customer agrees to take full responsibility for the Products in relation to the obligations on its disposal as set out in the Waste Electrical and Electronic Equipment Regulations 2013.

## 9. Products Risk and Title

9.1 The risk in the Products shall pass to the Customer when the Products enter the Customer's premises.

9.2 Title to the Products shall not pass to the Customer until the earlier of:

- 9.2.1 receives payment in full (in cash or cleared funds) for the Products; and
- 9.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause;
- 9.2.3 until title to the Products has passed to the Customer, the Customer shall:
  - (a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Ingenio's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Ingenio's behalf from the date of delivery;
  - (d) notify Ingenio immediately if it becomes subject to any of the events listed in clause 22.6.2 to clause 22.6.11;
  - (e) give Ingenio such information relating to the Products as it may require from time to time; and
  - (f) subject to clause 9.2.4, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Ingenio receives payment for the Products. However, if the Customer resells the Products before that time:
    - (i) it does so as principal and not as Ingenio's agent; and
    - (ii) title to the Products shall pass from Ingenio to the Customer immediately before the time at which resale by the Customer occurs.

9.2.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 22.6.2 to clause 22.6.11, then, without limiting any other right or remedy Ingenio may have:

- (a) the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- (b) Ingenio may at any time:
  - (i) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

## 10. Change Request

- 10.1 If the Customer wishes to change the Services, in a manner which would materially change the Services resulting in an increase in the Services Fee (**Change**), it shall submit details of the requested Change to Ingenio in writing (**Change Request**).
- 10.2 Where the Customer submits a Change Request to Ingenio, Ingenio shall within 2 weeks of the date of the request, submit a note to the Customer with details of the likely impact, if any, of the Change on other aspects of this Contract (**Change Request Note**), including:
- 10.2.1 the timetable for provision of implementing the Change;
  - 10.2.2 the personnel to be provided to give effect to the Change;
  - 10.2.3 the increase in the Services Fee;
  - 10.2.4 documentation to be provided;
  - 10.2.5 working arrangements; and
  - 10.2.6 other contractual issues.
- 10.3 The Customer shall evaluate the Change Request Note and, as appropriate, accept or reject the Change Request Note.
- 10.4 Ingenio has the right to refuse a Change Request where such request may result in a decrease in the Services Fee.
- 10.5 A Change Request Note accepted by the Customer and Ingenio shall constitute an amendment to this Contract.

## 11. Support and Maintenance

- 11.1 Where the Customer selects Services in the Order, Ingenio shall also make available a customer helpdesk (**Customer Helpdesk**) which shall be available during 8am -6pm Monday to Friday (excluding bank holidays) (**Helpdesk Business Hours**). The Customer Helpdesk shall be available to the Customer during the Helpdesk Business Hours and shall be available only for malfunctions of Products or Rental Products. Prior to raising a support request the Customer shall consider: "is it present and is it broken?" prior to initiating a support request. If the Products or Rental Products is not malfunctioning or defective in some way the Customer should must raise a Change Request under clause 10. All initial support requests to be raised by a representative of the Customer via telephone or email ticketing system. Ingenio will acknowledge and raise a ticket for each request logged.
- 11.2 Where the Order states that the Services relate to hosted telephone services, the response times to each ticket will depend on the severity:
- 11.2.1 Severity 5 (Standard): This is a Request For Change, and may include changes such as adding a new user or setting up a new device. A response within 16 hours.
  - 11.2.2 Severity 4 (Normal Response): One user or a small group of users of the Customer's business is affected. A response within 8 hours.
  - 11.2.3 Severity 3 (Quick Response): Departments or large group of users of the Customer's business are affected / business is degraded, but there is a reasonable workaround. For example this could be a printer that is not working, but there is another available in the next room. A response within 4 hours.
  - 11.2.4 Severity 2 (Very Quick): Key business critical devices or applications are degraded, no workarounds. This could be a critical PC failure that does a specific role, such as payroll. For example, this could also be Internet failure for a Customer's business where many of their services are in the Cloud. A response within 2 hours.
  - 11.2.5 Severity 1 (Emergency): Where all of the business of the Customer is affected or business critical applications / processes are not working. This could be a (multiple) servers, VoIP Internet connection, network switch or similar. This should not be used for PC failures. Could also be Internet failure for a Customer's business where all of their services are in the Cloud. Response within 1 hour.

- 11.3 Except for the response times stated in above clause 11.2 Ingenio shall respond to all other support requests raised within 30 days of the date of notification of initial receipt.
- 11.4 Where the Order states that the Services relate to line rental services, once Ingenio receives a ticket in accordance with 11.1, Ingenio will forward such request to the Network Provider to address. The response times of the Network Provider will be as set out here: <https://www.ingeniotech.co.uk/btcarelevel> , unless otherwise communicated to the Customer or set out otherwise in the Order.
- 11.5 Ingenio shall not be held liable for any errors or inaccuracies in the response times of Network Providers as referenced in the link at clause 11.4.

## **12. Ingenio Obligations**

- 12.1 Ingenio shall use reasonable endeavours to supply the goods and/or services as ordered by the Customer in accordance with the Order.
- 12.2 Ingenio provides no further warranty or guarantee as to the level of the services or goods supplied under this Contract.
- 12.3 Where the Customer orders any Products the Order will expressly set out if the Products benefit from a manufacturers warranty (**Warranty**). If the Customer is to bring a claim in relation to the Warranty, this must be brought by the Customer directly to the manufacturer. Ingenio has no obligation to assist with this. Where Ingenio assists with any claim in relation to the Warranty, this will be treated as an Additional Service.

## **13. Customer's obligations**

- 13.1 The Customer shall:
  - 13.1.1 where purchasing a Domain Name which is a top level domain as set out in the Order, comply with any additional conditions as set out in the Order;
  - 13.1.2 ensure that, where its customer is an individual, that individual is over 18;
  - 13.1.3 ensure that any goods or services ordered in the Order are being purchased for business purposes only;
  - 13.1.4 ensure that the information provided by the Customer in relation to the supply of the goods or services are complete, up to date and accurate;
  - 13.1.5 co-operate with Ingenio in all matters relating to its obligations to supply the goods or services requested in the Order;
  - 13.1.6 provide Ingenio, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Ingenio to provide the Services and/or perform the Installation;
  - 13.1.7 provide Ingenio (and any third party directed by Ingenio) with such information and materials as Ingenio may reasonably require to supply the Services and/or perform the Installation, and ensure that such information is accurate in all material respects;
  - 13.1.8 only permit Ingenio (and any third party directed by Ingenio) to maintain, and repair the Equipment provided as part of the Installation Services;
  - 13.1.9 where the Order includes a Domain Name(s), notify Ingenio (and where requested, Nominet) promptly about any legal proceedings which involve the Domain Name(s);
  - 13.1.10 where the Order includes a Domain Name(s), not use the Domain Name(s) in a way that Ingenio considers in its sole discretion, is likely to endanger any part of the domain name system, other internet users (including but not limited to the distribution of viruses and malware, phishing activity or facilitating distributed denial of service attacks), Nominet's systems and internet connections generally;
  - 13.1.11 where the Order includes a Domain Name(s), keep Ingenio notified and up to date of its correct name, postal address, phone and email contact information including details of technical, administrative and billing contacts. This includes responding quickly to any request from Ingenio or Nominet directly to confirm or correct the information on the Register;
  - 13.1.12 where the Order includes a Domain Name(s), ensure that any other information provided to Ingenio or Nominet directly by the Customer is correct and up to date;
  - 13.1.13 where the Order includes a Domain Name, comply with clause 2.3;
  - 13.1.14 ensure the premises for where the Installation is to take place, complies with all relevant health and safety legislation;
  - 13.1.15 prepare the Customer's premises for the Installation (if applicable) and the supply of the Services;

- 13.1.16 keep all materials, equipment, documents and other property of Ingenio which is used for the provision of the Services or Installation (**Ingenio Materials**) at the Customer's premises in safe custody at its own risk, maintain in good condition until returned to Ingenio, and not dispose of or use the Ingenio Materials other than in accordance with Ingenio's written instructions or authorisation;
- 13.1.17 not, by purchasing the Domain Name(s), Products and/or or using the Products or Domain Name(s), infringe the Intellectual Property Rights (for example, trade mark) of a third party;
- 13.1.18 notify Ingenio (and where a Domain Name is on the Order and where requested, Nominet) promptly about any legal proceedings which involve the Domain Name(s), Products, Rental Products or Telephones;
- 13.1.19 not register any mortgage or charge against the Domain Name(s) or Rental Products;
- 13.1.20 where the Customer has ordered a Domain Name, ensure it has the permission of any person whose Personal Data is to be held on the Register in line with clause 19 in relation to Personal Data;
- 13.1.21 where the Customer has ordered a Domain Name, ensure that the alphanumeric characters which constitute the Domain Name are not Proscribed;
- 13.1.22 ensure that it will not use the Domain Name(s), Products or Rental Products for any unlawful purpose and will at all times comply with the Communications Act 2003 ;
- 13.1.23 comply with clause 19, in relation to Data Protection;
- 13.1.24 comply and adhere to the acceptable use of the Services set out in clause 14; and
- 13.1.25 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

13.2 The Customer shall pay Ingenio any and all reasonable costs, claims and expenses (whether direct or indirect) arising out of any claim that the Customer has broken any of the obligations in clauses 13.1.1to 13.1.25 above.

13.3 Ingenio's right to rely on the obligations set out in clause 13.1 and the indemnity in clause 13.2 will continue to be available after the expiration of the this Contract and will not be affected by the cancellation of this Contract.

13.4 If Ingenio's performance of any of its obligations in respect of the Services or Installation is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including where a Customer has arranged for a third party to provide additional or connecting services and these have not been received) (**Customer Default**):

- 13.4.1 Ingenio shall without limiting its other rights or remedies have the right to suspend performance of the Services or Installation until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Ingenio's performance of any of its obligations;
- 13.4.2 Ingenio shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Ingenio's failure or delay to perform any of its obligations as set out in this clause 13.4; and
- 13.4.3 the Customer shall reimburse Ingenio on written demand for any costs or losses sustained or incurred by Ingenio arising directly or indirectly from the Customer Default.

## 14. Acceptable Use

14.1 The Customer may only use the Services or Rental Products for lawful purposes. The Customer must not use the Services or Rental Products supplied by Ingenio under this Contract (and shall procure that others (including but not limited to Login Holders) authorised to use the Services or Rental Products shall not commit any act):

- 14.1.1 in any way that breaches any applicable local, national or international law or regulation;
- 14.1.2 in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- 14.1.3 for the purpose of harming or attempting to harm minors in any way;
- 14.1.4 to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material;
- 14.1.5 to publish, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
- 14.1.6 to threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- 14.1.7 to send offence, obscene, defamatory or hoax calls;
- 14.1.8 to send unsolicited commercial calls, automated dialling call, or any calls which are considered fraudulent;
- 14.1.9 in a manner which infringes any third party's Intellectual Property Rights; or
- 14.1.10 to resell the Services or Rental Products.

14.2 Where the Customer breaches (in the opinion of Ingenio) the acceptable use of the Services or Rental Products as set out in clause 14.1, Ingenio has the right to report such breach to the appropriate authority, and where Ingenio deems it appropriate, Ingenio reserves the right to suspend the Services and/or terminate the Rental Period with immediate effect and remove all Rental Products from the Customer's site.

## 15. Premise Moves

15.1 Where the Customer wishes to move premises during the Term and the result of such move will require the Services to be provided to a different location from the Installation Location or the location where the Rental Products were first delivered but where the Customer did not order an Installation, the Customer must notify Ingenio within a reasonable period of time ahead of such relocation. The Customer shall only instruct Ingenio to relocate Rental Products, and such services shall be considered Additional Services for which an addition fee will be payable and fall outside of the scope of the Services.

15.2 Ingenio may at its option provide the Customer with reasonable assistance in the disconnection or reconnection of Rental Products by any Network Provider or any third party relating to a relocation under clause 15.1.

15.3 In the event of a relocation under 15.1 that any Network Provider or any third party do not disconnect or reconnect the Rental Products, for whatsoever reason, the Customer shall remain bound by the terms of this Contract for the remaining Term.

15.4 Ingenio will not be responsible for any loss suffered by the Customer as a result of a premise move.

## 16. Charges and payment

16.1 The charges for any goods or services ordered by the Customer shall be set out in the Order:

16.1.1 Installation (**Installation Fee**);

16.1.2 Services (**Services Fee**);

16.1.3 Rental Products, inclusive of delivery and packaging costs (**Rental Products Fee**);

16.1.4 Products, inclusive of delivery and packaging (**Products Fee**)

16.1.5 Domain Name(s) (**Domain Fee**).

16.2 In order to provide the Services, the Customer may require additional set up services. Set up services will be deemed an Additional Service, and the Customer shall be charged the set up fee set out in the Order (**Set up Fee**).

16.3 Any Additional Services (other than Installation or Set Up) required by the Customer shall be chargeable to the Customer in accordance with Ingenio's price list in force at the relevant time of request for the Additional Service and shall be chargeable to the Customer in excess of any charges stated in the Order.

16.4 Ingenio shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Ingenio engages in connection with the Services.

16.5 Ingenio shall be entitled to charge the Customer for any costs incurred by it from third parties (including but not only Network Providers) in the connection or disconnection of any broadband or telephone connections. The Customer shall be responsible for obtaining any permissions or consents from existing third party providers in relation to any connection or disconnection of broadband and telephone lines.

16.6 Ingenio shall be entitled to charge the Customer any failure by it to return to Ingenio any Rental Products

16.7 Ingenio reserves the right to:

16.7.1 Increase the price of the Services Fee, in the event that Network Providers in relation to the Services to Ingenio (not within Ingenio's control) increase their prices;

16.7.2 Increase the Services Fee and the Rental Products Fee, on an annual basis with effect from the anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the second anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index.

16.8 All goods and services provided under the Contract, and unless otherwise set out in the Order, shall be paid via direct debit on a monthly basis, in advance on the first working day of the month.

16.9 The Customer shall be entitled to a refund on for any Services Fee paid for Services which are unavailable:

- 16.9.1 for a period of between 2 and 4 working days an amount of the Services Fee paid equivalent to the number of days the Services were unavailable up to a maximum equivalent amount of 4 days; or
- 16.9.2 for a period of 5 working days or more, the amount of the Services Fee paid for the entire month in which the delay occurs.
- 16.10 The above clause 16.9 shall not apply in relation to response times under clause 11.3; any delay under clause 5.7 (delays by third parties) or clause 23 (Force Majeure).
- 16.11 Without prejudice to any of its rights under this clause 16, Ingenio shall be entitled to charge the Customer a £20.00 administration charge on each occasion any direct debit which is cancelled by the Customer or returned by the Customer's bank for non-payment.
- 16.12 Invoices relating to Products or Domain Name shall be at any time after Ingenio accepts the Customer's Order.
- 16.13 Time for payment of any sums under the Contract shall be of the essence of the Contract.
- 16.14 The Customer shall have the right to dispute any item on an invoice and Ingenio shall respond to the Customer within 10 working days of the date of receipt of notification from the Customer.
- 16.15 Where the Customer notifies Ingenio under clause 16.14 the amount corresponding to the disputed item shall not be due for payment until Ingenio has fully investigated and responded to the Customer under clause 16.14, however all undisputed items shall remain payable during this period.
- 16.16 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Ingenio to the Customer, the Customer shall, on receipt of a valid VAT invoice from Ingenio, pay to Ingenio such additional amounts in respect of VAT as are chargeable on the supply of the Services or Rental Products at the same time as payment is due for the supply of the Services or Rental Products.
- 16.17 If the Customer fails to make any payment due to Ingenio under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 16.18 No interest under clause 16.17 shall be accrued nor payable on amounts corresponding to disputed items under 16.14 and interest shall only become payable from the date Ingenio has responded in accordance with clause 16.14.
- 16.19 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Ingenio may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Ingenio to the Customer.
- 16.20 Any discount given by Ingenio is subject to payment in accordance with these Conditions, if payment is not received in accordance with these Conditions, Ingenio reserves the right to remove any applicable discount.

## **17. Intellectual property rights**

- 17.1 All Intellectual Property Rights in or arising out of or in connection with any goods or services supplied under this Contract shall be owned by Ingenio.
- 17.2 The Customer shall not copy, sub-license, assign or otherwise transfer any Intellectual Property Rights of Ingenio or any third party without first obtaining written consent from Ingenio and such consent may be withheld at the sole discretion of Ingenio.

## **18. Confidentiality**

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 18 shall survive termination of the Contract.

## 19. Data Protection

- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Ingenio is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 19.3 Without prejudice to the generality of clause 19.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Ingenio for the duration and purposes of the Contract.
- 19.4 Without prejudice to the generality of clause 19.1, Ingenio shall, in relation to any Personal Data processed in connection with the performance by Ingenio of its obligations under the Contract:
- 19.4.1 process that Personal Data only on the written instructions of the Customer unless Ingenio is required by the laws of any member of the European Union or by the laws of the European Union applicable to Ingenio to process Personal Data (**Applicable Data Processing Laws**). Where Ingenio is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Ingenio shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Ingenio from so notifying the Customer;
  - 19.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 19.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - 19.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (a) the Customer or Ingenio has provided appropriate safeguards in relation to the transfer;
    - (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
    - (c) Ingenio complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (d) Ingenio complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
- 19.5 Where the Customer's Order includes a Domain Name(s) it consents to Ingenio making Personal Data available to third parties for the following purposes:
- 19.5.1 to be included on the Register;
  - 19.5.2 to be included it on WHOIS and Searchable WHOIS. Should the Customer wish to opt out of having its address published it can do so by complying with Nominet's WHOIS Address Opt Out policy which can be found at <http://www.nominet.uk/wp-content/uploads/2015/08/WHOIS-Opt-Out.pdf> (if the Customer takes steps to opt out of having its address published it should notify Ingenio of this immediately);
  - 19.5.3 to Nominet and allow Nominet to use such data in accordance with its terms and conditions; and
  - 19.5.4 allow use of it in accordance with Nominet's DRS Policy and Procedure.

## 20. Limitation of liability and responsibilities: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 20.1 Ingenio has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £500,000.00 per claim (**Claim Cap Amount**). The limits and exclusions in this clause reflect the insurance cover Ingenio has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 20.2 Nothing in these Conditions shall limit or exclude Ingenio's liability for:
- 20.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 20.2.2 fraud or fraudulent misrepresentation;
  - 20.2.3 breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);
  - 20.2.4 breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession); or
  - 20.2.5 defective products under the Consumer Protection Act 1987.
- 20.3 Subject to clause 20.1,
- 20.3.1 The following types of loss are wholly excluded:
    - (a) Loss of profits.
    - (b) Loss of sales or business.
    - (c) Loss of agreements or contracts.
    - (d) Loss of anticipated savings.
    - (e) Loss of use or corruption of software, data or information.
    - (f) Loss of or damage to goodwill.
    - (g) Cost relating to delivery, installation, disconnection, reperformance of Installation, Services or Additional Services arising from replacement defective Products provided to the Customer under the warranty clause 8.2.
    - (h) Indirect or consequential loss.
- 20.4 Ingenio's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise in relation to the goods or services supplied under the Contract, shall in no circumstances exceed the Claim Cap Amount per claim.
- 20.5 Ingenio has given commitments as to compliance of any goods or services it supplies under the Contract with relevant specifications in clauses 5.1;5.9; 8.1 . In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.
- 20.6 Unless the Customer notifies Ingenio that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 30 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 20.7 In order to use the Services or Products or Rental Products supplied under the Contract the Customer acknowledges that there may be required dependencies provided by third parties which are entirely outside of the control of Ingenio, for example internet connection (**Third Party Dependencies**). The Customer agrees to take all necessary steps to acquire the required Third Party Dependencies and acknowledges that failure to do so, or failure of the Third Party Dependencies may result in the Services not performing to its full potential. The Customer agrees that Ingenio will not be responsible for any loss the Customer suffers as a result of the Services or Products or Rental Products not performing due to failure arising from or in connection with Third Party Dependencies.
- 20.8 Ingenio shall take reasonable security measures, to ensure that the Services and Installation are provided in a secure manner and to reduce the risk of fraud. Where Ingenio adheres to the terms of this clause 20.8, Ingenio shall not be responsible for any damage or loss suffered by the Customer as a result of fraud.
- 20.9 The Customer shall be liable for any damage, loss or theft to the any of the Equipment or Rental Products during the Term.
- 20.10 This clause 20 shall survive termination of the Contract.

## 21. Suspension of Services

- 21.1 In addition to the suspension rights in clauses 6, 13 and 14 Ingenio may suspend the Services:
- 21.1.1 if Ingenio is required to as a result of a direction or request from a government department, the emergency services or a regulatory or administrative authority or Network Provider;

- 21.1.2 if required to do so to maintain or improve the Services in which case Ingenio will endeavour to ensure this suspension is for as short a time as possible;
- 21.1.3 if the Customer has not paid an invoice after payment was due;
- 21.1.4 the Customer becomes subject to any of the events listed in clause 22.6.2 to clause 22.6.11, or Ingenio reasonably believes that the Customer is about to become subject to any of them.

21.2 Any suspension of the Service does not affect the Customer's obligation to pay for the Services during or after the suspension period.

## **22. Termination**

22.1 Where the Customer orders only Products this Contract shall terminate upon completion of the delivery of the Products.

22.2 Where Ingenio is in default of its obligations under clause 11.3 (except where such a default is caused by a delay due to a Force Majeure Event under clause 23 or under clause 5.7) the Customer shall have the right to immediate termination of the Contract.

22.3 Where the Customer orders Rental Products neither party may terminate this Contract prior to the expiration of the Rental Period (except as otherwise provided for in these Conditions).

22.4 Without limiting its other rights or remedies Ingenio may terminate the Contract immediately upon providing written notice where the Customer fails to provide a bank reference or pass a credit check to the suitability of Ingenio.

22.5 Without limiting its other rights or remedies Ingenio may terminate the Services upon providing 7 days written notice where Ingenio in its reasonable opinion, is unable to provide the Services.

22.6 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

22.6.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

22.6.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

22.6.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where a company for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

22.6.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party being a company other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

22.6.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

22.6.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party being a company;

22.6.7 the holder of a qualifying charge over the assets of the other party being a company has become entitled to appoint or has appointed an administrative receiver;

22.6.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

22.6.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.6.2 to clause 22.6.8 (inclusive);

22.6.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

22.6.11 the other party's financial position deteriorates to such an extent that in its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

22.7 Without limiting its other rights or remedies, Ingenio may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 22.8 In relation to any Domain Name(s) supplied under the Order, Ingenio may at any point (but is not obliged in relation to clauses 22.8.1 to 22.8.4) transfer (at a fixed fee of £25 payable by the Customer) cancel, alter, suspend or amend the Domain Name(s) or prevent its renewal through Ingenio:
- 22.8.1 on the Customer's instructions, where the Customer submits a request to help@ingeniotech.co.uk; or
  - 22.8.2 if Ingenio reasonably believes that changes are required to update the Register or to correct any error, ambiguity or inaccuracy relating to the Product's registration are required;
  - 22.8.3 if the Customer withdraws its permission for Ingenio to use its Personal Data in accordance with clause 19; or
  - 22.8.4 if requested to do so by an expert in accordance with a decision made in following the DRS Policy and Procedure; or
  - 22.8.5 on Nominet's instructions; or
  - 22.8.6 if requested to do so by a valid court order.
- 22.9 In the event that the Customer terminates the Contract in accordance with clause 22.6, Ingenio will transfer the use of the Domain Name(s) as directed at no additional cost.
- 22.10 On termination of the Contract for any reason:
- 22.10.1 the Customer shall immediately pay to Ingenio all of Ingenio's outstanding unpaid invoices and interest and, in respect of any goods or services supplied under the Contract but for which no invoice has yet been submitted, Ingenio shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 22.10.2 the Customer shall return and deliver to Ingenio any Rental Products in its possession at the cost and risk of the Customer, where, under clause 22.10.2, the Customer:
    - (a) fails to return any of the Rental Products under clause 22.10.2; OR
    - (b) fails to return the Rental Products in a satisfactory condition (allowing for reasonable wear and tear);
 it shall purchase the Rental Products at the price of Ingenio's sales list as on the date of return (or where no price can be ascertained at the fair market value of the Rental Products);
  - 22.10.3 if the Customer fails to return the Rental Products under clause 22.10.2, then Ingenio may at its option enter the Customer's premises for the purposes of inspecting and to obtain possession of the relevant Rental Products. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 22.10.4 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 22.10.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 22.11 In the event of the termination or expiry of this Contract for any reason, and subject to the Customer agreeing to cover the reasonable costs of Ingenio, Ingenio shall provide as an Additional Service, all reasonable assistance to the Customer to facilitate the orderly transfer of the Services (including but not limited to number portability) to Customer or to a replacement supplier to take over the provision of all or part of the Services.

## 23. Force majeure

- 23.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Ingenio including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Ingenio or any other party), failure of a utility service or transport network, failure or obstruction of any hardware, software or equipment owned or supplied by a third party and not supplied under this Contract, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of manufacturers, suppliers or subcontractors.
- 23.2 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 23.3 If the Force Majeure Event prevents either party from meeting any of its obligations under the Contract for more than 2 weeks, that party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other.

23.4 Where the Contract has been terminated due to a Force Majeure Event, Ingenio shall be entitled to outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Ingenio shall submit an invoice, which shall be payable by the Customer immediately on receipt.

## 24. General

### 24.1 Assignment and other dealings.

24.1.1 Ingenio may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

24.1.2 The Customer shall not, without the prior written consent of Ingenio, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### 24.2 Notices.

24.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

24.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address provided, if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.

24.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 24.3 Severance.

24.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

24.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

24.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

24.7 **Variation.** Except where required to do so by a Network Provider or as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Ingenio.

24.8 **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.

24.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation including non-contractual disputes or claims.