
STANDARD TERMS AND CONDITIONS FOR THE HIRE OF GOODS AND PROVISION OF SERVICES

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

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

Cancellation Period: means the period of fourteen Business Days from the Commencement Date.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time.

Contract: the contract between the Supplier and the Customer for the hire of Goods and the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases the Services from the Supplier.

Data Controller: has the meaning set out in section 6 of the Data Protection Act 2018.

Data Subject: an individual who is the subject of Personal Data.

Downgrade: means a movement of subscription resulting in lower associated monthly costs, be it due to the Customer receiving decreased internet bandwidth, less upload or download capacity or by any other means.

Force Majeure Event: has the meaning given to it in clause 17.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Order: the Customer's order for the supply of Services.

Personal Data: has the meaning set out in section 3(2) of the Data Protection Act 2018 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing services under the Contract.

Processing and Process: have the meaning set out in section 3(4) of the Data Protection Act 2018.

Prohibited Purpose: use of the Goods or the Services that are prohibited by the Supplier in respect of any illegal, offensive or other similar reason or in respect of any breach or alleged breach of Intellectual Property Rights of a third party transmitted via the Services.

Rental Period: the period of hire as set out in clause 3.

Services: the services, including subscribing for broadband internet access up to and including the amount of data you may download or upload as specified in your Order to, supplied by the Supplier to the Customer.

Subscription Fees: means the monthly fees payable by the Customer to the Supplier for the hire of Goods and the supply of Services.

Supplier: Bentley Walker Limited registered in England and Wales with company number 00403127 and having its registered office at 116 Elm Grove, Hayling Island, Hampshire, PO11 9EW.

Upgrade: means a movement of subscription resulting in higher associated monthly costs, be it due to the Customer receiving increased internet bandwidth, greater upload or download capacity or by any other means.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax but not email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services and hire the Goods in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any description of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions 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.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF GOODS

- 3.1 The Goods are described on the Supplier's website, www.Bentley-Walker.com.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4 The Customer shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Supplier's quiet possession of the Goods.

4. RENTAL PERIOD

The Rental Period starts as at the Commencement Date and shall continue for a period of 24 months plus any additional period in accordance with any renewal by the Customer of the subscription to the Services and until the Goods are returned to the Supplier, unless this agreement is terminated earlier in accordance with its terms.

5. DELIVERY OF GOODS

- 5.1 The Supplier shall ensure that:
- a) the delivery of the Goods is accompanied by a delivery note which refers to the Customer's purchase order of the Goods; and
 - b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Customer's expense.
- 5.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.3 Delivery of the Goods shall be completed on the completion of the loading of the Goods by the Supplier (or a party nominated by the Supplier).
- 5.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.6 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.7 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise

dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 5.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY OF GOODS

- 6.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)

- 6.2 Subject to clause 6.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this clause the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

6.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE, RISK AND INSURANCE

7.1 The Goods shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to the terms and conditions of this agreement).

7.2 The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on delivery. The Goods shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Goods is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Goods are redelivered to the Supplier. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Goods to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Goods would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Goods; and
- (c) insurance against such other or further risks relating to the Goods as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.

7.3 All insurance policies procured by the Customer shall be endorsed to provide the Supplier with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Goods. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

7.4 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Goods arising out of or in connection with the Customer's possession or use of the Goods.

- 7.5 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 7.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

8. SUPPLY OF SERVICES

- 8.1 The Supplier shall supply the Services to the Customer.
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.4 You acknowledge and accept the terms of the Supplier's Fair Access Policy, found at Annex 1, and agree not to use the Services for a Prohibited Purpose.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
 - (c) 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.
- 9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10. CHANGES TO SERVICES

- 10.1 If the Customer chooses to Downgrade its subscription package it may do so by giving to the Supplier notice in writing on or before the 15th day of each month, specifying the package the Customer requires. A Downgrade will be applied to the Customer's subscription package on the first day of the following month and the Customer is subject to an administration fee of £25.00 plus VAT.
- 10.2 If the Customer chooses to Upgrade its subscription package it may do so by giving to the Supplier notice in writing on or before the 15th day of each month, specifying the package the Customer requires. An Upgrade will be applied to the Customer's subscription package on the first day of the following month.
- 10.3 For the avoidance of doubt, the Supplier makes no warranty that an Upgrade or Downgrade will result in the Service being error-free, uninterrupted or remain at a bandwidth consistent with the Customer's subscription package at all times.

11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay the price of the Goods (less any discount or credit allowed by the Supplier, but without any other deduction, credit or set off) within 20 Business Days of the date of the Supplier's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and the Supplier in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer.
- 11.2 In order for the Goods to be delivered to such location as given by the Customer to the Supplier, the Supplier reserves the right to charge the Customer by way of service fee an additional £20.00 plus VAT.
- 11.3 The Subscription Fees shall be as listed in the Order or by such other method as the Supplier and Customer agree upon in writing.
- 11.4 The Supplier reserves the right to increase the Subscription Fees from time to time with effect from the due date for payment closest to three months after the date on which the Supplier has

provided the Customer with notification of the sum of the increase in Subscription Fees and an explanation of the valid reasons for the increase in Subscription Fees.

- 11.5 The Customer hereby authorises the Supplier, and the Supplier's payment processor, to charge the applicable recurring Subscription Fees to the Customer's designated billing payment method.
- 11.6 On the Commencement Date, the Customer will be charged immediately for the initial period of the subscription at the then-current fee set out in the Order, followed by recurring periodic charges as specified in the Order.
- 11.7 By choosing a recurring payment plan, the Customer acknowledges that such Services have a recurring payment feature and the Customer accepts responsibility for all recurring charges prior to cancellation.
- 11.8 For the avoidance of doubt, time for payment shall be of the essence of the Contract.
- 11.9 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 the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 11.10 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15 (Termination), the Supplier shall suspend the Services to the Customer and the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%. In the event that the Supplier lifts the suspension of the Services, an administration fee of £25.00 + VAT shall be payable to the Supplier.
- 11.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

13. DATA PROTECTION AND DATA PROCESSING

- 13.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Act 2018, the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data.
- 13.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 13.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 13.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 13.5 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected; and
 - (b) take reasonable steps to ensure compliance with those measures.
- 13.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause.
- 13.7 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 13.8 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- (a) is on terms which are substantially the same as those set out in this agreement; and
 - (b) terminates automatically on termination of this agreement for any reason.

14. LIMITATION OF LIABILITY

- 14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation.
- 14.2 Subject to clause 14.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (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; and
 - (g) any indirect or consequential loss.
- 14.3 Subject to clause 14.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall not exceed the total Subscription Fees that have been paid to us by you during the Rental Period.
- 14.4 This clause shall survive termination of the Contract.

15. TERMINATION

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract within the Cancellation Period by giving the other party written notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than two month's written notice.
- 15.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer commits a material breach of the Contract which is incapable of remedy;
or

- (c) the Customer commits any other material breach which is capable of remedy but which you fail to remedy within fourteen days of written notice by us specifying the breach and requiring its remedy.

15.4 After 24 months from the Commencement Date, and unless the Customer has given the Supplier not less than two month's written notice to terminate the Contract, then the Contract will renew for a minimum period of 12 months (and until the Supplier receives written notice to terminate the terminate the Contract).

15.5 Without affecting any other right or remedy available to it, in the event of the Customer breaching the Supplier's Fair Usage Policy or the Customer using the Goods or Services for a Prohibited Purpose, the Supplier may terminate the Contract with immediate effect.

16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

16.2 On termination of the Contract the Customer shall (at its sole cost) return to the Supplier, at the address listed on page 1 of this agreement, the Goods and all additional samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Customer and relating to the Supplier's business (other than correspondence that has passed between the parties) that the Customer may have in its possession or under its control.

16.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

16.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. FORCE MAJEURE

17.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18. ASSIGNMENT AND OTHER DEALINGS

- 18.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 18.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

19. NOTICES

- 19.1 Any notice or other communication given to a party under or in connection with the Contract may be in writing and may be delivered by hand or by pre-paid first-class post or other next working day delivery service to:-
- (a) in the case of any notice or other communication to the Supplier – the Supplier's registered office or such other address as the Supplier notifies to you; and
 - (b) in the case of any notice or other communication to the Customer - to the Customer's address set out in the Order or such other address as the Customer shall notify to the Supplier.
- 19.2 Alternatively, any notice or other communication given to a party under or in connection with the Contract may be in writing and delivered by electronic mail to:-
- (a) in the case of any notice or other communication to the Supplier – accounts@bentley-walker.com; and
 - (b) in the case of any notice or other communication to the Customer – to the Customer's electronic mail address set out in the Order or such other electronic mail address as the Customer shall notify to the Supplier.
- 19.3 Any notice or other communication shall be deemed to have been received if:
- (a) delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting (exclusive of the day of posting).

20. SEVERANCE

- 20.1 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.

21. VARIATION

21.1 No variation of the Contract shall be effective unless it is agreed in writing and signed by both parties (or their authorised representatives).

22. WAIVER

22.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

22.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

22.3 No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

24. ENTIRE AGREEMENT

24.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

24.3 Nothing in this clause shall limit or exclude any liability for fraud.

25. THIRD PARTY RIGHTS

25.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

26. GOVERNING LAW AND JURISDICTION

- 26.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Notwithstanding, the Customer is entitled to any mandatory consumer provisions of law, which would otherwise be applicable in the country in which the Customer lives.
- 26.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

ANNEX ONE: FAIR USAGE POLICY

OVERVIEW

Such networks used by the Supplier from time to time for the Services to be supplied to the Customer (each a “**Network**”, together the “**Networks**”) are shared and best effort Networks; at any given time, subscribers within a given geographic area must share available network capacity. The aim is to provide each subscriber with a “fair share” of that capacity, while providing all subscribers with a high-quality online experience.

To achieve these goals, Network management practices are employed, designed to prevent any subscriber from placing a disproportionate demand on Network resources. Certain of these practices are used only when the Network is congested; others are used more generally.

Traffic levels on the Network are usually below a congestion point that would have a significant impact on the user experience. The Networks are carefully designed to achieve this result. At other times, however, simultaneous transmissions from multiple subscribers may result in a total demand for capacity exceeding that available on the Network, resulting in congestion. During these times, congestion management practices will strive to treat traffic in a manner that minimizes adverse impacts on the user experience while preventing a subscriber from exceeding his or her “fair share” of available capacity.

The goal of these measures is for subscribers, on the whole, to enjoy a better overall service experience than they otherwise would without these practices. The target performance level (measured as the average service speeds achieved across all customers on corresponding Service Levels during a calendar month and excluding periods where speed has been restricted due to usage exceeding the monthly data) is set at 40% of the headline Service Level rate.

CONGESTION MANAGEMENT PRACTICES

A. Congestion Management Overview

Under normal traffic conditions, it is not necessary for congestion management practices to be employed. That said, while Network capacity is abundant, it is not unlimited. Stated differently, the Networks can be expected to experience some level of congestion, necessitating the application of congestion management practices described in this Policy. The Networks are managed to minimise the adverse impact that congestion may have on the user experience. Congestion typically occurs in the link between the subscriber terminal and the gateway earth station via the satellite. In order to determine if the link is congested, the traffic load in each spot beam channel is continuously monitored.

B. Mitigating The Impact Of Network Congestion On The User Experience

Internet traffic flows generally are not continuous, but rather are characterised by “bursts” of data. On occasion, simultaneous transmissions from multiple subscribers in a given spot beam channel result in a total instantaneous demand for capacity exceeding, on a temporary basis, the capacity available within the channel. On such occasions, the Network can experience Congestion. Congestion most typically occurs during the Network’s “peak” usage hours which generally can be expected to be from about 17:00 to 00:00 local time at the subscriber location, depending on the day of the week (“**Peak Hours**”). Congestion may also occur during certain periods when usage is “unmetered” (such as the “night free zone”).

Congestion, and the resulting transmission delay, impacts the user experience with respect to some types of applications more than others. For example, a delay in the rendering of a web page may be noticeable to a subscriber waiting for the content to appear on his/her screen. On the other hand, a subscriber downloading a bulk file (e.g. a software update) may be less impacted if the download takes longer during Congestion than it otherwise would, since the subscriber may already know that the download requires some time to complete.

The goal is for the Networks to be managed to minimise the impact of congestion on traffic. To accomplish this objective, the congestion management algorithm is designed to reduce the traffic load, while giving a preference to (i.e. having a lesser effect on) services and applications that require less transmission bandwidth such as web page browsing and email. During periods of congestion, bandwidth intensive applications such as video streaming and file downloading may be slowed more than other applications. As a result, the quality of video streaming may be reduced and/or buffering may occur. In addition, file downloads may take longer to complete during periods of congestion. Under more severe congestion, all applications may need to be slowed, and in those instances, the time to download web pages may take longer.

A “mere conduit” is operated. Following a specific request of a Public Authority, access to specific URLs may be blocked.

No particular forms of traffic are intentionally blocked (unless explicitly specified in the characteristics of a given service profile), but TCP/UDP ports and/or specific protocols may be blocked if it may represent a security threat to the Networks.

C. Heavy Users

A “Heavy User” is a user (or a small group of users) consuming a disproportionate amount of a Network’s resources. Overall Network performance and individual resource consumption will be monitored to determine if any user is a Heavy User that could potentially disrupt or degrade the Network and/or its usage by other users.

All rights are reserved to immediately restrict, suspend or terminate Heavy Users’ Service Accounts without further notice.