

## Odyssey Systems Limited - Terms & Conditions

### 1. Definitions

1.1 The following words have the following meaning:

'Odyssey Systems' means Odyssey Systems Limited. Registered in England & Wales no 02517487. 'Registered Office' means the Registered office of Odyssey Systems Limited at Lockheed Court, Preston Farm, Stockton on Tees, TS18 3SH but may vary from time to time.

'Customer' means the customer of Odyssey Systems to whom the Equipment and Services are to be provided (including any member of a group of companies of which the Customer is a member)

'Agreement' means the agreement for the provision of Equipment, Odyssey Equipment and /or Services described in an Agreement Document.

'Agreement Document' means a Sales Agreement, Network Services Agreement, Rental Agreement or Service Agreement or any similar document (regardless of the title of such document) which incorporates a Proposal Document.

'Contract Commencement Date' means date as and when the Agreement is signed

'Data Protection Legislation' means all applicable laws and privacy legislation in force from time to time in the United Kingdom, including the UK GDPR, the Data Protection Act 2018 (and any regulations made thereunder), and the Privacy and Electronic Communications Regulations 2003 (as amended) and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including guidance and codes of practice).

'Equipment' means the equipment to be supplied to the Customer described in an Agreement Document

'Installation Date' means the date that all Equipment and other Services have been finally installed

'Odyssey Equipment' means any equipment which the parties agree is to be supplied by Odyssey Systems to the Customer to facilitate the provision of the Services;

'Odyssey Systems Network' means such of Odyssey Systems internal and/or external services and/or infrastructure as are required to enable Odyssey Systems to comply with its obligations under this Agreement.

'Maintenance' means the maintenance services to be supplied by Odyssey Systems as described in the Agreement.

'Minimum Term' shall be the Contract Term as detailed on the Agreement Document starting on the Installation Date.

'Proposal Document' means the proposal produced by Odyssey Systems for the Customer

'Calls' means any telephone communications made by the Customer using or routed through Odyssey Systems Network.

'Services' means the telecommunication services requested by the Customer, as set out in the Agreement (including for the avoidance of doubt all installation and implementation services described in the Agreement)

'Site(s)' shall mean any site or sites where the Services are to be performed or the Odyssey Equipment to be installed.

'Ombudsman Services' shall mean the specialist Ombudsman for Energy and Communications disputes found at: <https://www.ombudsman-services.org/>

1.2 A reference to an Act of Parliament in this Agreement includes any amendment, replacement or re-enactment and includes any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions made under it and any conditions imposed by it.

1.3 Headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

1.4 References in this Agreement to Clauses and Schedules are references to clauses of or schedules to this Agreement. References to Paragraphs are references to paragraphs of the Schedule in which the reference is made, unless otherwise explicitly provided.

1.5 Unless the context otherwise requires, the singular includes the plural and vice versa.

### 2. Provision of Services and Equipment

2.1.1 Odyssey Systems will provide the Services and the Equipment from the Contract Commencement Date until the Services are cancelled or the Agreement expires or is terminated in accordance with its terms. Odyssey Systems shall not be obliged to provide Services (other than installation and implementation services,

which will commence on the Contract Commencement Date) until it receives a signed Agreement Document (either on paper or in electronic format) from the Customer.

- 2.1.2 Odyssey Systems shall deliver the Equipment to the place and on the date specified in the relevant Agreement Document or (if no details are included) to such other place or on such other date as the parties shall agree from time to time. Ownership of the Equipment shall pass to the Customer only upon receipt of payment in full.
- 2.1.3 The Customer shall be responsible for all delivery charges in respect of the Equipment as set out in any relevant invoice.
- 2.2 Odyssey Systems agrees that at any time during the term of the Agreement the Customer shall be permitted to purchase additional Equipment and/or Services subject to the terms of this Agreement by the execution of an additional Agreement Document.
- 2.3 Odyssey Systems hereby warrants represents and undertakes to the Customer that with effect from the Contract Commencement Date and during the term of the Agreement:
  - 2.3.1 it has and will have full authority and all necessary rights to enter into the Agreement and to provide the Services supply the Equipment and perform its obligations as set out in the Agreement;
  - 2.3.2 it shall comply with all applicable laws enactments orders and other governmental statutory or regulatory requirements and guidance which may from time to time be applicable to the fulfilment of its obligations under the Agreement (including without prejudice to the generality all applicable health and safety laws);
  - 2.3.3 the Services will be provided, and the Equipment will be supplied in accordance with the terms of the Agreement and using all reasonable skill care and due diligence and in accordance with best industry practice;
  - 2.3.4 the Equipment will conform with the quality descriptions and other particulars stated in the Agreement Document; will comply with all applicable legislation for the time being in force; be of satisfactory quality; fit for any intended uses; and free from all defects in materials and workmanship.
- 2.4 The Customer must notify Odyssey Systems as soon as reasonably practicable when it becomes aware of any fault in the Services and/or the Equipment. Odyssey Systems will use reasonable endeavours to correct any fault as soon as reasonably practicable. If Odyssey Systems provides assistance to the Customer for the resolution of a fault, but it is subsequently discovered that the fault lies with the Customers' equipment or systems, the Customer shall pay Odyssey Systems for resolution of the fault on a time and materials basis at Odyssey Systems' current rates from time to time.
  - 2.4.1 In consideration of the payment of the Maintenance Charge, Odyssey Systems shall, as soon as is reasonably practical after notification, provide a maintenance engineer to carry out any maintenance of and repairs and replacements to the Odyssey Equipment or Odyssey Systems Network that may be reasonably requested by the Customer. Odyssey Systems shall carry out any maintenance repairs and replacements (including the provision of any necessary materials and spare parts and reprogramming of software which is not accessible to the Customer through normal operating procedures) as shall be necessary as a result of fair wear and tear arising from the proper installation of the Odyssey Equipment or Odyssey Systems Network. Maintenance and repair works will be carried out during normal working hours as defined in clause 5.4 of this Agreement.
  - 2.4.2 Any maintenance, repairs or replacements or Customer visits caused other than by fair wear and tear arising from the proper operation of the Odyssey Equipment or Odyssey Systems Network may be carried out at the Customer's expense at Odyssey Systems current charges. All maintenance, repairs or replacements may be carried out at the premises where the equipment is installed or elsewhere at the option of Odyssey Systems.
  - 2.4.3 Cabling not provided by Odyssey Systems must be installed to the relevant standards. No maintenance or fault finding can be performed on third party cabling and faults due to third party cabling will be chargeable in accordance with clause 2.4.
- 2.5 Unless otherwise specified in the Agreement document, either party may cancel the provision of all or any of the Equipment and/or Services by giving 30 days written notice to the other party once the Minimum Term has expired.
- 2.6 The Customer may cancel the provision of Services (including Calls) and the supply of Equipment before the expiry of the Minimum Term subject to the payment of early termination charges as detailed in clause 11.7.

### **3. Changes to the Odyssey Systems Network, Services or Equipment**

- 3.1 Subject to clauses 3.2 and 3.3 Odyssey Systems may at any time change the Odyssey Systems Network, the Services or any Odyssey Equipment:
- if it needs to do so to comply with any applicable safety or other statutory requirements; or
  - where the change does not materially detract from the quality or performance of the Services the Equipment and/or the Odyssey Equipment.
- 3.2 Odyssey Systems will give the Customer such notice as shall be reasonable of its intention to make any changes in accordance with clause 3.1, including any changes in instructions for the Customer (including passwords, access codes, service limitations etc).
- 3.3 Odyssey Systems shall have the right to charge the Customer for costs incurred for any changes made under Clause 3.1 (or where any such changes are made to a system, to charge to the Customer a fair proportion of such costs).
- 3.4 Odyssey Systems shall be entitled to install such updates to the Services and the Equipment as it deems necessary or desirable. The Customer grants authority for Odyssey to install such updates. In the event that an update causes any failure of the Services or the Equipment, Odyssey Systems shall use reasonable endeavours to reinstate the previous version of any software. Nothing in this clause shall remove the requirement of the Customer to maintain appropriate backups of their systems and information. Odyssey Systems will not be liable for any loss of system(s) or information where the Customer has not done so.
- 3.5 Odyssey Systems reserve the right to make urgent changes necessary for the security and performance of the Odyssey Systems Network, Services, Odyssey Equipment or Equipment. This may on occasion include a short period of downtime which Odyssey Systems will endeavour to keep to a minimum.

### **4. Compliance with laws and obligations**

- 4.1 The Customer must ensure that it complies at all times with all laws and obligations, including any licence under the Communications Act 2003 and any other Acts of Parliament which are applicable to the Customer. The Customer must obtain any relevant consents and approvals for the installation and use of any Odyssey Equipment at the Site. Odyssey Systems will have no liability under this Agreement for failure to comply with its obligations in any case where the Customer does not comply with any such relevant laws or obligations and/or does not obtain the necessary consents or approvals.
- 4.2 The Customer must hold or obtain all consents, licences, permissions and authorisations needed so that Odyssey Systems can provide the Services at the Site(s) and keep them up to date, including for:
- (a) making any alterations to the Site
  - (b) getting into the Site
  - (c) dealing with any local authorities, landlords or owners of the Site; and
  - (d) installation of any Equipment or Odyssey Equipment.

### **5. Sites**

- 5.1 The Customer must prepare the Site(s) in accordance with Odyssey Systems reasonable instructions so that any Odyssey Equipment can be installed. Unless otherwise agreed between the parties, the Customer will meet the costs of preparing the Site(s).
- 5.2 The Customer must provide adequate electricity supply and suitable earth connection in the room for the operation of any Odyssey Equipment to be installed at the Site(s).
- 5.3 The Customer must assist and co-operate with Odyssey Systems to enable Odyssey Systems to carry out its obligations under this Agreement, including giving access to the Site(s) to install and maintain the Odyssey Equipment.
- 5.4 Odyssey Systems will normally carry out installation and maintenance work referred to in Clause 5.3 during normal working hours (8am to 5pm Monday to Friday) but may, on reasonable notice (which will not be less than 24 hours except in an emergency) require the Customer to provide access at other times. At the Customer's request Odyssey Systems may agree to work outside normal working hours but the Customer will be required to pay any relevant overtime charges for relevant staff.
- 5.5 Odyssey Systems will comply with all applicable health and safety laws when it undertakes installation and maintenance work under this Clause.

## **6. Odyssey Equipment**

- 6.1 If Odyssey Systems provides the Customer with any Odyssey Equipment (other than where the Customer separately buys or leases such Odyssey Equipment from Odyssey Systems under separate terms):
- (a) the Odyssey Equipment will remain Odyssey Systems property at all times; and
  - (b) the Customer will not interfere with or modify the Odyssey Equipment and will not remove or alter any identification mark on the Odyssey Equipment showing that it is owned by Odyssey Systems; and
  - (c) when the ownership of the Odyssey Equipment is relevant, the Customer will make clear to third parties that the Odyssey Equipment is Odyssey Systems property; and
  - (d) the Customer will use reasonable endeavours to ensure that the Odyssey Equipment is safely and appropriately used by its staff whilst it is in the Customer's custody and shall ensure that it is used, cleaned and maintained in accordance with all instructions provided by Odyssey Systems. It is the Customer's responsibility to procure and maintain an appropriate insurance policy for the Odyssey Equipment; and
  - (e) the Customer must keep the Odyssey Equipment at the Site in accordance with Odyssey Systems reasonable instructions; and
  - (f) the Customer must permit Odyssey Systems to inspect or test the Odyssey Equipment remotely at such times as may be agreed between Odyssey Systems and the Customer, such agreement not to be unreasonably withheld or delayed; and
  - (g) the Customer must not attempt to let, sell, charge or otherwise deal with the Odyssey Equipment; and
  - (h) in the event that any execution or distress is levied or used against the Odyssey Equipment or if the Odyssey Equipment is seized under or affected by any distress, execution or other legal process the Customer shall give Odyssey prompt notice of the same.
- 6.2 The Customer will be liable to Odyssey Systems for any loss or damage to the Odyssey Equipment resulting from the Customer's failure to comply with its obligations under the Agreement. The Customer must notify Odyssey Systems as soon as it becomes aware of any loss or damage to the Odyssey Equipment.
- 6.3 Odyssey Systems will provide all maintenance for the Odyssey Equipment. Odyssey Systems may either remotely (or at the Site by prior arrangement), make or procure any inspection, test, modification, change, addition to or replacement of any Odyssey Equipment provided Odyssey Systems acts in a reasonable manner.

## **7. Provisions relating to Services**

- 7.1 The Customer will use the Services in accordance with any reasonable operating instructions Odyssey Systems may provide.
- 7.2.1 The Customer will use all reasonable endeavours to ensure that the Services are not used for the sending of any defamatory, offensive or abusive, or obscene or menacing material or in a manner which infringes the rights of any person (including rights of copyright or confidentiality), or for any person to person sharing or networking and if any award is made against Odyssey Systems in favour of any person as a direct consequence of any such use then subject to clause 7.2.2 the Customer will promptly reimburse such amounts to Odyssey Systems.
- 7.2.2 In the event that any claim is made against Odyssey as in relation to matters referred to in clause 7.2.1, Odyssey shall take all reasonable steps to ensure that any such claim is dealt with promptly, in accordance with good legal and commercial practice, in a manner which ensures that any claim and/or award is mitigated so far as possible.
- 7.2.3 Odyssey Systems service descriptions specify current limits on bandwidth and disk utilisation. Where limits are not specifically defined Odyssey Systems shall use its own judgment to define those limits. The use of bandwidth or disk space in excess of those limits is not permitted. The total number of bytes transferred determines bandwidth utilisation. The total number of bytes required to store data determines disk utilisation. If Odyssey Systems determines that excessive bandwidth or disk space utilisation is adversely affecting Odyssey System's ability to provide service, Odyssey Systems may take immediate action. Odyssey Systems will attempt to notify the Customer by telephone, letter or email as soon as possible.
- 7.3 All Services are subject to fair use. In the event that the Customer's usage of the Services exceeds the limits of what Odyssey Systems considers (at its absolute discretion) to be "fair use", Odyssey Systems reserves the right to (i) suspend the Services until the start of the next period for the purposes of the fair use policy or (ii) restrict the Customer's usage of the Services until the start of the next period for the purposes of the

fair use policy or (iii) make such additional charges for the excess usage of the Services as are detailed in the Agreement or in the fair use policy.

- 7.4 Odyssey Systems will use its best efforts to ensure that any Services provided as part of the Agreement are available.
- 7.5 Odyssey Systems uses traffic shaping to ensure the best performance for all its customers. Odyssey Systems shall have the right to adjust the protocols of the Services in order to ensure the best performance of the network generally, including downgrading of certain Services at specific times.
- 7.6 Odyssey Systems do not retain records of browsing of sites or visitor records, save where this is specified in the Proposal Document or is requested by the Customer for an additional charge (as detailed in a separate Agreement Document).

## **8. Suspension of Services**

- 8.1 Either party may, without terminating this Agreement, immediately suspend part or all of the Services until further notice if:
- (a) it would be permitted to terminate this Agreement under Clause 11.4 (in the case of Odyssey Systems) or clause 11.5 (in the case of the Customer); or
  - (b) it is obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative authority. The suspending party will give the other the maximum period of notice practicable in the circumstances if it needs to suspend the Services for this reason; or
  - (c) (in the case of Odyssey Systems) Odyssey Systems needs to maintain or upgrade the Odyssey Systems Network at the Site, such maintenance or upgrade, where possible, to be carried out at a time agreed between the parties.
- 8.2 If it is necessary for Odyssey Systems to suspend the Services under Clause 8.1(b) or Clause 8.1(c), it will do so for as short a period as is practicable in all the circumstances.
- 8.3 If either of the parties suspends the Services due to any event in Clause 8.1, this will not exclude its right to terminate the Agreement later in respect of that or any other event, nor will it prevent either party claiming damages (or any other remedy) from the other party.
- 8.4 Odyssey Systems may suspend any maintenance services in respect of any hardware which the manufacturer of such hardware deems to be at (or past) the end of its maintainable life.
- 8.5 Without prejudice to the remainder of this clause, if the Customer fails to pay an Invoice by its due date (and has not notified Odyssey Systems that it is disputing the Invoice), Odyssey Systems may:
- (a) restrict or suspend any Service relating directly to the unpaid amounts until the Customer has paid in full; and
  - (b) charge a re-installation fee to start the Services again.

## **9. Security**

- 9.1 Odyssey Systems will use reasonable efforts to maintain the security of the Services. However, in the event that the Customer takes any action (or omits to take any action) which Odyssey Systems reasonably believes compromises the Services (whether provided to the Customer or others), Odyssey Systems reserves the right to suspend or disconnect the Services until such action is rectified and the Customer shall indemnify Odyssey Systems for any loss or damage (including any costs to protect the Services) which Odyssey Systems incurs as a result of such action.
- 9.2 The Customer acknowledges that Odyssey Systems has an obligation to comply with all obligations under the Regulation of Investigatory Powers Act 2000 and the Data Retention and Investigatory Powers Act 2014 and all orders of an appropriate court, tribunal or regulatory authority and the Customer hereby authorises Odyssey Systems to do all such things and undertake all such actions as are necessary in order to so comply.
- 9.3 The Customer shall ensure that all passwords or access codes necessary to access the Services are kept confidential and that if any such passwords or access codes are released or otherwise compromised, that it shall immediately inform Odyssey Systems and take all such steps as Odyssey Systems requires to protect the Services. The security of all systems shall be the responsibility of the Customer. Odyssey Systems shall have no responsibility for any email fraud where such emails have not be caught by the email shield or for any unauthorised access or hacking attacks (or changes which have resulted from such access or hacking attacks) or for any access which has been authorised by the Customer, including where such access results

from the Customer (or any representative, employee or other person associated with the Customer) providing any passwords (including wifi passwords), to any person or where the Customer permits any system to be operated for public use.

- 9.4 Odyssey Systems has the right to bar certain numbers or institute additional security protocols in the event that it believes that any Services (whether provided to the Customer or others), are the subject of dial through fraud. Odyssey Systems shall work with the Customer to ensure that the Customer is not adversely affected by such protocols but shall not be obliged to remove them in the event that Odyssey Systems reasonably believes that such protocols are necessary for the protection of the Customer or others. If the Customer requests the removal of such protocols, the Customer shall indemnify Odyssey Systems for any loss or damage which results as a result of such removal (including charges for any additional work undertaken by Odyssey Systems to rectify any such damage to the Customer's systems).
- 9.5 Odyssey Systems has no ability to protect the Customer from a distributed denial of service (DDoS) attack. Odyssey Systems will use reasonable efforts to assist the Customer in protecting the Services in the event that the Customer is subject to a DDoS attack. If any DDoS attack on the Customer is initiated by the Customer themselves (or any person for whom the Customer is responsible), the Customer shall indemnify Odyssey Systems for any loss or damage which results because of such DDoS attack (including charges for any additional work undertaken by Odyssey Systems to rectify any such damage to the Customer's systems).
- 9.6 Odyssey Systems has the right to change the radio frequency of any Service where required to do so by any appropriate authority and the Customer agrees that Odyssey Systems shall have no liability for any loss or damage incurred by the Customer in relation to such a change.

## **10. Charges and Payment**

- 10.1 Odyssey Systems will charge the Customer for the Services and the Equipment at the fixed prices specified in the relevant Agreement Document.
- 10.2 Odyssey Systems will invoice the Customer monthly in respect of Calls Charges or other usage charges properly delivered in the previous month and Services scheduled to be delivered in the forthcoming month. The Customer will pay all undisputed invoices by Direct Debit by the twenty first day after the date of the invoice. If the Customer is unable to pay by Direct Debit, the Customer must pay the charges by the fourteenth day after the date of invoice. Odyssey Systems may require the Customer to pay all sums due under this Agreement on demand and the Customer agrees to do so when a demand is presented to it.
- 10.3 Odyssey Systems will invoice the Customer within 14 days following the delivery of Equipment and the Customer will pay all undisputed invoices within 14 days of receipt of the relevant invoice.
- 10.4 Odyssey Systems reserves the right to charge daily interest on all amounts not paid in accordance with this Clause 10 until payment is received in full at the rate equal to four percent above HSBC Bank plc Base Lending Rate as current from time to time whether before or after judgment. This right to charge interest is without prejudice to Odyssey Systems' right to treat non-payment of sums due by the Customer as a repudiatory breach of this Agreement.
- 10.5 All sums due to Odyssey Systems under this Agreement are exclusive of Value Added Tax and any other applicable taxes which may from time to time be introduced, which shall be charged in accordance with the relevant regulations in force at the time of making the taxable supply and must be paid by the Customer.
- 10.6 Odyssey Systems may at any time change the charges specified in the Agreement Document by  
(a) decreasing the charges without notice; or  
(b) increasing the charges by giving the Customer (where practicable) 30 days' written notice.  
In the event that the Customer fails to object in writing to the increase in prices within 14 days of the increase taking effect the Customer shall be deemed to have accepted the price. In the event that the Customer objects in writing to the price increase the parties shall attempt to resolve such difference by negotiation or, where such negotiation is unsuccessful, by the Dispute Resolution procedures in this Agreement.
- 10.7 Where an Agreement expires or is properly terminated by either party, the Customer shall pay any charges properly accrued under the Agreement unless agreed otherwise by the parties. The Customer shall be entitled to a pro-rata refund of any pre-paid charges or any other fees or sums paid in respect of any terminated Services that relate to any period after the relevant termination date.

- 10.8 The Customer will notify Odyssey Systems of the reasons for any disputed invoices within 14 days of receipt. In the event that no notification is given the Customer agrees that the invoice shall be regarded as undisputed.
- 10.9 Where the Customer elects not to pay by direct debit or receives a paper bill, Odyssey Systems shall have the right to make an additional charge (details of which are available on request) to take account of the additional administration necessary.
- 10.10 In the event that any direct debit is refused by the Customer's bank, Odyssey Systems shall have the right to charge an administration fee (details of which are available on request) in respect of each such refusal.
- 10.11 The Customer will be responsible for and will pay the Charges, whether a Service is used by the Customer or someone else. This includes all Charges resulting from unauthorised or fraudulent use.
- 10.12 The Customer will pay Odyssey Systems costs that Odyssey Systems incurs when recovering any amount owed by the Customer to Odyssey Systems, including any debt collection agency or legal costs.

## **11. Term and Termination**

- 11.1 The Agreement shall come into force on the Contract Commencement Date and shall continue in full force and effect until terminated in accordance with its terms.
- 11.2 Without prejudice to any other of the parties' respective rights under the Agreement, either party may terminate the Agreement or any supply of Services or Equipment by giving not less than thirty (30) days' written notice to the other to expire at the end of the Minimum Term. If such notice is not given by either party in accordance with this clause, the Agreement shall be automatically renewed for a further period equalling the Minimum Term and the "Minimum Term" for the purposes of this Agreement shall be such additional period. The charges due in respect of such annual renewal shall be either (i) the existing charges payable by the Customer or (ii) such higher charges as Odyssey Systems may notify to the Customer in accordance with clause 11.3.
- 11.3 Not less than thirty (30) days prior to the expiry of the Minimum Term, Odyssey Systems shall advise the Customer of the new charges which shall apply if the Agreement continues beyond the Minimum Term. In the event that the Customer does not terminate the Agreement in accordance with 11.2 at the end of the Minimum Term, the Customer agrees that it shall be deemed to have accepted the new charges and Odyssey Systems shall have the right to charge such new charges from the end of the Minimum Term.
- 11.4. Without prejudice to any other rights or remedies Odyssey Systems may have (either under this Agreement or at law), Odyssey Systems may terminate this Agreement or may cancel the Services at any Site immediately by serving written notice on the Customer if:
- (a) the Customer becomes Insolvent; or
  - (b) the Customer fails to make any payment when it is due under this Agreement after receiving 14 days written notice to do so from Odyssey Systems; or
  - (c) the Customer commits a breach of any material obligation under this Agreement and (in the case of a remediable breach), fails to remedy the breach after receiving 30 days written notice to do so from Odyssey Systems; or
  - (d) the Customer's telecommunications licence under which the Customer has the right to run its telecommunications system is revoked or amended (and not replaced by an equivalent licence or right) so that Odyssey Systems is not permitted by law to provide the Service.
- 11.5 Without prejudice to any other rights or remedies the Customer may have (either under this Agreement or at law), the Customer may terminate this Agreement or may cancel the Services at any Site immediately by serving written notice on Odyssey Systems if:
- (a) Odyssey Systems becomes Insolvent; or
  - (b) Odyssey Systems commits a breach of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach after receiving 30 days written notice to do so from the Customer; or
  - (c) the Customer's telecommunications licence under which the Customer has the right to run its telecommunications system is revoked or amended (and not replaced by an equivalent licence or right) so that Odyssey Systems is not permitted by law to provide the Services.
- 11.6 In this Clause "Insolvent" means the appointment of or the application to a court for the appointment of a trustee in bankruptcy, liquidator, provisional liquidator, administrator, administrative receiver or receiver, the entering into a scheme of arrangement or composition with or for the benefit of creditors generally, any reorganisation, moratorium or other administration involving its creditors or any class of its creditors,

a resolution or proposed resolution to wind it up, or becoming unable to pay its debts as and when they fall due or becoming deemed to become unable to pay its debts as and when they fall due within the meaning of Section 123 of the Insolvency Act 1986.

11.7 If the Customer terminates this Agreement before the end of the Minimum Term other than where the Agreement is terminated under clause 11.5, Odyssey Systems shall have the right to levy early termination charges in respect of any unexpired period of the Minimum Term. These early termination charges shall be calculated as being (i) the remaining Average Charges for the year in which the Agreement is terminated PLUS (ii) an amount for each subsequent unexpired year of the Minimum Term calculated as follows:

- (i) 100 % of the Average Charges for the second year of the Minimum Term;
- (ii) 90% of the Average Charges for the third year of the Minimum Term;
- (iii) 80% of the Average Charges for the fourth year of the Minimum Term; and
- (iv) 70% of the Average Charges for the fifth year of the Minimum Term.

For the purposes of this clause, "Average Charges" means the average annual charges payable for the Calls and Services (averaged from the beginning of the Agreement).

11.8 The Customer acknowledges that it considers the early termination charges referred to in clause 11.7 of this Agreement are reasonable and proportionate to protect Odyssey Systems legitimate interests in the event of early termination of the Agreement and that the early termination charges are neither penal, extravagant nor unconscionable.

11.9 If a Service terminates or expires for any reason, any other Services provide by Odyssey Systems to the Customer will remain unaffected and both parties will continue to perform each of their obligations under them as agreed in the relevant Agreement Document and/or these Terms.

## **12. After Termination**

12.1 On termination of this Agreement or cancellation of all or any of the Services under Clause 11, or termination of this Agreement under Clause 14, all amounts then owed by the Customer to Odyssey Systems under the Agreement shall become immediately due and payable in accordance with the Clause 10 and the Customer must:

- (a) immediately stop using the Services to the extent that they have been cancelled or the Agreement has been terminated; and
- (b) immediately stop using any Odyssey Equipment which is not owned by the Customer; and
- (c) allow Odyssey Systems to enter the Sites during normal business hours at a time agreed by the Customer to remove the relevant Odyssey Equipment. The Customer's obligations in respect of the Odyssey Equipment will continue to apply until Odyssey Systems has removed the relevant Equipment.

12.2 Where the Agreement expires and/or any notice of termination is given in respect of all or any of the Services or the Equipment, for the duration of the notice period and for a reasonable period thereafter Odyssey Systems shall co-operate with any transfer of the provision of the Services from Odyssey Systems to a third party.

12.3 Termination or expiry of this Agreement and/or any part of it for whatever reason, shall be without prejudice to any obligations or rights of either party which may have accrued before termination or expiry and shall not affect any provision of the Agreement which is expressly or by implication intended to come into effect on or to continue in effect on such termination or expiry.

12.4 On termination of this Agreement, Odyssey Systems shall co-operate with the Customer (or any replacement supplier of services appointed by the Customer) to transfer any phone numbers, but Odyssey Systems shall have no liability to ensure the transfer of such phone numbers at any time. Nothing in this Agreement shall obligate Odyssey Systems to transfer any "Gold" numbers (as specified in the Agreement Document) to the Customer (or any replacement supplier of services) and the ownership of any "Gold" numbers shall remain at all times with Odyssey Systems. The Customer agrees that it shall be liable for continued payment of Odyssey Systems' fees (on the Odyssey non-contract rate applicable at the time that such work is carried out, details of which are available on request), until such transfer is fully effected or until Odyssey Systems advises the Customer that further transfer cannot be effected.

12.5 On termination of this Agreement, Odyssey Systems shall transfer control of any domain name to the Customer. For the avoidance of doubt, ownership of any domain name is the responsibility of the Customer and Odyssey Systems shall have no liability for the ownership of any domain name being incorrect or having been transferred in accordance with the requirements of Nominet or any applicable legislation.



12.6 Odyssey Systems shall have no obligations under clauses 12.4 or 12.5 unless and until the Customer has paid all outstanding monies due under the Agreement.

### **13 Complaints**

13.1 Where the Customer is eligible for Ombudsman Services, if the Customer wishes to make a complaint about Odyssey Systems the complaints procedure and details of how to make a complaint can be found at the following web address: [www.odyssey-systems.co.uk](http://www.odyssey-systems.co.uk)

### **14 Dispute Resolution**

14.1 If a dispute arises out of or in connection with this agreement, or the performance, validity of enforceability of it ('Dispute') then the parties must follow the procedures set out in this clause.

14.2 Either party shall give to the other written notice of the Dispute, setting out its nature and full details ('Dispute Notice'), together with any relevant documents. On service of the Dispute Notice the Parties shall attempt in good faith to resolve the dispute by negotiation.

14.3 If the parties are unable for any reason to resolve the Dispute within 30 days of service of a Dispute Notice, the parties agree to enter into mediation in good faith to settle the Dispute. To initiate a mediation a party must serve notice in writing ('ADR Notice') to the other party to the Dispute referring the dispute to mediation. Unless agreed otherwise by the parties, the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR) and the mediation must start within 21 days of the ADR Notice being served.

14.4 No party may commence any court proceedings in relation to the Dispute until 28 days after the service of the ADR Notice, provided that the right to issue proceedings is not prejudiced by a delay.

14.5 If the Dispute is not resolved within 28 days of the service of the ADR Notice, or either party fails to participate or ceases to participate in the mediation before the expiry of the 28 day period, the Dispute shall be finally resolved by the courts of England and Wales.

14.6 The provisions of clause 14 shall not apply to any proposed action by Odyssey to recover any Charges or payment due to it from the Customer, including the payment of any Early Termination Charge.

### **15. Limitation of Liability**

15.1 Nothing in this Agreement excludes or restricts either party's liability;

(a) for death or personal injury resulting from that party's negligence; or

(b) arising from any defect in Equipment if and to the extent that party is liable under Part 1 of the Consumer Protection Act 1987 or any safety regulations made under it; or

(c) arising from a breach by that party of its statutory duty under section 41(1) of the Consumer Protection Act 1987, not to contravene any obligation contained in safety regulations made under section 11 of the Consumer Protection Act 1987; or

(d) in respect of fraud or fraudulent statements; or

(e) in respect of any other liabilities which cannot be lawfully excluded or limited.

15.2 Unless otherwise expressly stated, either party's liability in contract, tort or otherwise including any liability for negligence howsoever arising out of or in connection with the performance of either party's obligations under this Agreement is limited to the price paid for the affected Service(s) by the Customer for the previous 3 months (or since the Contract Commencement Date if less than 3 months).

15.3 Neither party will be liable to the other under this Agreement in contract, tort (including negligence) or otherwise for any loss of revenue, business contracts, anticipated savings, or profits or any indirect, special or consequential loss.

15.4 Neither party will be liable to the other for any failure to comply with its obligations under this Agreement to the extent that this liability arises as a result of the failure by the other party to fulfil its obligations under this Agreement.

15.5 Neither party shall be liable to the other in tort (including negligence) breach of contract breach of statutory duty or otherwise due to under and/or arising out of or in connection with this Agreement to the extent that such loss or damage is indirect consequential special or punitive.

15.6 The provisions of this Clause continue to apply despite the termination or expiry of this Agreement.

15.7 The sole remedy available to the Customer in respect of any breach by Odyssey Systems of any service level agreement given by Odyssey Systems shall be a credit for the relevant period during which Odyssey

Systems breach such service level. Such credit may only be applied to future charges due from the Customer or Odyssey Systems and no refund or reimbursement shall be payable to the Customer.

15.8 Odyssey Systems will not be liable if it fails to do something which Odyssey Systems is supposed to under the Agreement whether or not there is a Force Majeure Event (in which case, clause 14 shall apply) to the extent that Odyssey Systems' failure is due to:

(a) the Customer's failure to carry out any of their responsibilities under the Agreement or carry them out late, in which case the Customer shall pay Odyssey Systems for any reasonable costs Odyssey Systems incurs as a result; or

(b) anyone other than Odyssey Systems, its subcontractors or suppliers doing something or not doing something that they are required to do.

## **16. Force Majeure**

16.1 Neither party shall be liable for any delays or failures to perform any part of its obligations under this Agreement where performance of such obligation is prevented due to any cause beyond the first party's reasonable control, including but not limited to any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, the act or omission of Government (UK or devolved), highways, authorities, other telecommunications operators or administrations or other competent authority, or the obstruction by a third party of line of sight between microwave installations, war, military operations, riot or pandemic, provided that the party so affected shall use all reasonable endeavours to resume performance of its obligations as quickly as possible and shall give the other party prompt and full particulars of the failure or delay, and consult with the other party concerning the delay or failures from time to time (as and when appropriate.)

16.2 If any event described in Clause 14.1 lasts for more than three months from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may, by giving 14 days written notice to the other party terminate this Agreement.

## **17. Information Confidentiality and Data Protection**

17.1 Each of the parties will promptly provide the other (where reasonable, free of charge) with any information which the other may reasonably require to enable it to proceed with the performance of its obligations under this Agreement, including (in the case of Odyssey Systems) any information which Odyssey Systems may reasonably request for the purpose of credit verification.

17.2 Each party shall comply with clause 23 in relation to all information disclosed to it by the other.

17.3 The Customer acknowledges that Odyssey Systems may, and permits Odyssey Systems to use information about the calls routed through any Equipment including but not limited to origin, destination, duration, route and time, provided that such information is only used by Odyssey Systems in so far as is necessary to enable Odyssey Systems to perform its obligations under this Agreement.

17.4 Both parties shall comply fully with the Data Protection Legislation and procure that its employees, agents and contractors so comply when dealing with information given to the other party under this Agreement and when otherwise performing its obligations under the Agreement.

17.5 The parties will ensure that they have all appropriate consents and notices in place to enable the lawful transfer of personal data.

17.6 If Odyssey Systems receives personal data (as defined in the Data Protection Legislation) pursuant to the Agreement Odyssey Systems shall process it in accordance with any policy it has in place relating to the processing of personal data.

17.7 Odyssey Systems and the Customer shall:

- at their own cost, assist in responding to any request from a Data Subject and ensure compliance with its obligations under the Data Protection Legislation
- notify the other on becoming aware of a Data Breach
- at the written request of the other delete or return Personal Data and copies thereof unless required by law to store the Personal Data
- maintain complete and accurate records and information to demonstrate compliance with these provisions.

## **18. Intellectual Property Rights**

- 18.1 All legal and beneficial rights in software in whatever form which Odyssey Systems provides to the Customer for the purpose of using the Services the Odyssey Equipment or the Equipment will remain at all times Odyssey Systems property or the property of its licensor.
- 18.2 To the extent that it is so entitled, Odyssey Systems grants the Customer a non-exclusive non-transferable licence to use such software for the sole purpose of using the Services the Equipment and or the Odyssey Equipment. The Customer will not reproduce the software, save that the Customer will be entitled to make a single back-up copy for security purposes only. The Customer will not modify, adapt, translate, reverse engineer or disassemble the software but if the Customer wishes to exercise its rights under section 50B of the Copyright, Designs and Patents Act 1988 then Odyssey Systems will give the Customer information about the terms on which such rights may be exercised.
- 18.3 Copyright in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with this Agreement remain vested in Odyssey Systems or the copyright owner. Such documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Odyssey Systems prior written consent.

## **19. Notices**

Notices given by Odyssey Systems shall be sent to the Customer's address specified in the relevant Sales Agreement or Network Services Agreement and invoices shall be sent to the Customer's billing address notified by the Customer to Odyssey Systems each as varied by notice in writing from time to time. Notices to Odyssey Systems from the Customer must be to the Registered Office. Notices given under this Agreement must be given in writing.

## **20. Assignment**

- 20.1 Subject to Clause 18.2, the Customer may not assign or try to assign or otherwise deal with any of its rights and obligations under this Agreement without Odyssey Systems prior written consent.
- 20.2 Odyssey Systems may assign, sub-contract or otherwise deal with all or any of its rights and obligations under this Agreement.

## **21. Change to the Agreement**

Notwithstanding any other provision of this Agreement, Odyssey Systems may change the Agreement at any time by notice in writing to the Customer if it needs to do so to comply with any law or statutory obligation and will use its reasonable endeavours to ensure that any change to the Agreement does not result in any deterioration in either the Services or Equipment or both.

## **22. General**

- 22.1 Failure by either party to enforce any of its rights under this Agreement is not to be taken as or deemed to be a waiver of that right unless the waiving party acknowledges the waiver in writing.
- 22.2 Part or all of any Clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.
- 22.3 This Agreement is governed by the law of England and Wales, and the parties agree to submit disputes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.
- 22.4 A person who is not a party to the Agreement has no right under the Contracts (Rights of third Parties) Act 1999 to enforce any term of the Agreement.

## **23. Confidentiality**

- 23.1 Subject to Clause 15, both Odyssey Systems and the Customer will keep all information which is of a confidential nature, including but not limited to any information concerning the business, affairs, customers, clients or suppliers or the other party, ("Confidential Information") confidential and neither party will disclose it unless such disclosure is necessary:
- (a) to meet that party's rights and responsibilities, to perform its obligations under or in connection with the Agreement, or to receive any benefit under the Agreement and then only to that party's employees, agents, affiliates, officers, directors, advisers and, for Odyssey Systems only, Odyssey Systems' subcontractors or suppliers, who need to know. The party disclosing the Confidential Information will ensure that the people receive it comply with this clause; or

(b) because any applicable law or other obligation or a government or regulatory authority or a court of competent jurisdiction requires such disclosure and the party disclosing it will give the other party as much notice as reasonably possible before any such disclosure.

23.2 Each party will return or destroy any of the other's Confidential Information within a reasonable time of the other asking for such return or destruction in writing.

23.3 This clause 21 will remain in force for a period of three years following the end of the Agreement.

**24. Whole Agreement**

24.1 The Agreement and these Terms together with any terms and conditions produced by Odyssey Systems in relation to a specific type of Service ("Specific Terms") sets out the whole agreement between Odyssey Systems and the Customer and replaces any previous communication between the parties.

24.2 The Customer's standard terms are not part of this Agreement even if they were provided to Odyssey Systems before the signing of the Agreement or if sent to Odyssey Systems or referred to in an Order.

24.3 By signing this Agreement, each party acknowledges that they have not relied on any representation, warranty, collateral contract or other assurance (whether made innocently or negligently) except for those contained in the Agreement or these Terms or the Specific Terms. Each party also waives all rights and legal remedies which they may have had if not for the provisions of this clause.

24.4 In the event of any conflict between these Terms and the Specific Terms, the Specific Terms shall take precedence over these Terms and in all circumstances, the provisions of the Agreement Document(s) shall take precedence over these Terms and any Specific Terms.