

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT was last updated on 2nd November, 2019 and is made between the Company and the Customer.

RECITALS

- A. The parties have agreed that the Company shall supply Products to the Customer under individual Order Forms entered into between the Company and the Customer from time to time.
- B. The parties wish to set out in this MSA the terms under which the Products shall be provided to the Customer during the Term.

NOW IT IS AGREED AS FOLLOWS

1. Definitions

- 1.1 All terms in capitals used herein shall have the meaning given to them below.

<i>“Authorised Users”</i>	means employees, agents, consultants or independent contractors of the Customer who have been expressly authorised by them to receive a password in order to use the Products;
<i>“Business Day”</i>	means Monday to Friday excluding any national holiday in the UK;
<i>“Business Hours”</i>	means 9:00am to 5:30pm local UK time, on each Business Day;
<i>“Commencement Date”</i>	means the date on which the MSA begins, as set out by the Effective Date in the Customer’s first Order Form;
<i>“Company Materials”</i>	means all materials, equipment, documents and other property of the Company;
<i>“Company”</i>	means the Company named in the Order Form;
<i>“Confidential Information”</i>	means any and all information in any form whatsoever relating to the Company or Customer or the business, prospective business, finances, technical process, computer software (both source code and object code) and IPR of any of them (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession as a result of the MSA or provision of the Products, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;
<i>“Consequential Loss”</i>	means pure economic loss, special losses, losses incurred by any Authorised User or other third party, losses arising from business interruption, loss of business or contracts, loss of business revenue, goodwill, production, opportunity or anticipated savings, losses whether or not occurring in the

normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time;

- “Customer”** means the party purchasing Products from the Company, named in each Order Form;
- “Customer Data”** means all data imported into the Products for the purpose of using the Products or facilitating use of the Products;
- “DPA”** means the data processing agreement of the Company published at www.vatix.com/legal/dpa as amended from time to time;
- “Effective Date”** means the effective date set out in each Order Form for the provision of each Product;
- “Fees”** means the fees payable to the Company by the Customer for the purchase of Products, as set out in each Order Form;
- “Force Majeure”** means anything outside the reasonable control of the defaulting party including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, terrorist act, rebellion, insurrection, riot, civil commotion, sabotage, epidemic, quarantine, restriction, labour dispute, labour shortage, strike, lockout or other industrial dispute, power shortage, failure of public power supplies, third party hacking, viruses, trojans, worms, logic bombs or other material attacking the Products, a denial-of-service attack, a distributed or malicious denial-of service attack, failure of communication facilities or unavailability of the Internet and change in legislation;
- “Goods”** means the goods set out in each Order Form;
- “Initial Term”** means the initial term set out in each Order Form for the Products;
- “IPR”** means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;
- “MSA”** means this master services agreement and all schedules, appendices and annexes referred to herein;
- “Monitoring Services”** means the monitoring services set out in each Order Form;
- “Order Form”** means each completed order form accepted by the Company in writing for the purchase of Products from the Company;
- “Privacy Policy”** means the privacy policy of the Company published at www.vatix.com/legal/privacy-policy as amended from time to time;

“Products”	means the Goods, SaaS Services, Monitoring Services and SIM Cards and Services, as applicable, and as set out in each Order Form and any other products, services or functions developed or added to them from time to time;
“Renewal Term”	means the renewal term set out in each Order Form for the Products;
“SaaS Services”	means the SaaS (Software as a Service) services set out in each Order Form;
“SLA”	means the service level agreement of the Company published at www.vatix.com/legal/sla as amended from time to time;
“SIM Cards”	means the SIM Cards and the associated mobile connectivity services set out in each Order Form;
“Special Terms – Goods”	means additional terms and conditions applicable to Goods (including lone working and telematics devices), set out in Annex 2 of this MSA - published at www.vatix.com/legal/legal-special-terms-goods/ and amended from time to time;
“Special Terms – Monitoring Services”	means additional terms and conditions applicable to alarm Monitoring Services, set out in Annex 3 of this MSA - published at https://vatix.com/legal/st-ms/ and amended from time to time;
“Special Terms – SaaS Services”	means additional terms and conditions applicable to SaaS Services, set out in Annex 1 of this MSA - published at www.vatix.com/legal/stss and amended from time to time;
“Special Terms – SIM Cards”	means additional terms and conditions applicable to SIM Cards, set out in Annex 4 of this MSA - published at www.vatix.com/legal/st-sim/ . and amended from time to time;
“Term”	means the term of the MSA which starts on the Commencement Date and ends on the date that either party terminates the MSA, and in relation to the Products the Term for each Product as set out in an Order Form, as applicable;
“Time and Materials Basis”	means the Company’s standard daily consultancy rates in force from time to time.

1.2 In this MSA:

- 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 e-mails where this is specifically stated.

2. Ordering and Formation of the Contract

2.1 This MSA governs the overall relationship of the parties in relation to the supply and use of the Products.

2.2 The Customer may from time to time during the Term of this MSA request Products from the Company by completing Order Forms.

2.3 The Order Form constitutes an offer by the Customer to purchase Products from the Company and no Order Form shall be binding upon the Company until accepted in writing by the Company's signature.

2.4 Each Order Form creates an individual contract between the Company and the Customer for the Products set out in each Order Form.

2.5 The Products to be supplied under each Order Form shall be set out in each Order Form.

2.6 The terms of this MSA apply to the sale of all Products 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.

3. Term

3.1 This MSA will start on the Commencement Date and shall continue until:

3.1.1 Either party gives notice of its intention to terminate the MSA (and therewith all Order Forms); or

3.1.2 Automatically when all Order Forms expire or have been terminated in accordance with the termination rights set out in this MSA.

3.2 Each Order Form shall commence on the date the Company signs each Order Form.

3.3 The Products included in each Order Form shall be provided to the Customer from the respective Effective Date as set out in the Order Form for each Product.

3.4 Where any Products are provided on an ongoing or fixed term basis, such Products will be provided for the Term stated in the Order Form in relation to each such Product.

3.5 No Products can be ordered by the Customer after this MSA has been terminated by either party.

4. Obligations of the Customer

The Customer shall:

4.1 Pay the Company all Fees that the Company is entitled to under this MSA.

4.2 Cover all of its own expenses incurred pursuant to this MSA.

4.3 Comply with all applicable international, national, state/provincial, regional and local laws and regulations in performing its duties and in any of its dealings with respect to the Products.

- 4.4 Be responsible for all activities conducted under user logins and Authorised User's compliance with the terms of this MSA.
- 4.5 Authorise access to and assign unique passwords to the number of users permitted in the Order Form (if specified). User logins are for designated users and cannot be shared or used by more than one user, but any user login may be reassigned to another user as needed. The Customer will be responsible for the confidentiality and use of user's passwords. The Customer agrees to immediately notify Company if a Customer becomes aware of any loss or theft or unauthorised use of any of Customer's passwords or accounts, or any other known or suspected breach of security.

The Customer shall not:

- 4.6 Use the Products to: engage in illegal, abusive, or irresponsible behaviour, including:
 - 4.6.1 Unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
 - 4.6.2 Monitoring data or traffic on any network or system without the authorisation of the owner of the system or network;
 - 4.6.3 Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
 - 4.6.4 Use of an Internet account or computer without the owner's authorisation, including, but not limited to Internet scanning (tricking other people into releasing their passwords), password robbery, security hole scanning, and port scanning;
 - 4.6.5 Any activity or conduct that is likely to result in retaliation against the Products.
- 4.7 Use the Products or any non-Company application:
 - 4.7.1 To store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
 - 4.7.2 To store or transmit malicious code;
 - 4.7.3 To interfere with or disrupt the integrity or performance of any Products or third-party data contained therein;
 - 4.7.4 To attempt to gain unauthorized access to any Products or Customer Data or its related systems or networks; or
 - 4.7.5 To permit direct or indirect access to or use of any Products or Customer Data in a way that circumvents a contractual usage limit.

5. Obligations of the Company

The Company shall:

- 5.1 Provide all Products subject to the provisions of this MSA.
- 5.2 Provide the Goods subject to the Special Terms - Goods.
- 5.3 Provide the SaaS Services subject to the Special Terms – SaaS Services.
- 5.4 Provide the Monitoring Services subject to the Special Terms – Monitoring Services.

5.5 Provide the SIM Cards subject to the Special Terms – SIM Cards.

6. Fees

6.1 The Customer shall pay the Company the Fees set out in each Order Form.

6.2 The Company may increase the Fees on giving notice to the Customer at any time before delivery of the any Products, to reflect any increase in the cost of the Products to the Company that is due to:

6.2.1 Any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

6.2.2 Any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products specification; or

6.2.3 Any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Products.

6.3 After the expiry of any Initial Term set out in an Order Form for a particular Product(s), the Company may increase the Fees for such Product(s) at the start of each Renewal Term. The new Fees shall apply for the duration of each applicable Renewal Term for that Product(s).

6.4 All Products are subject to the usage limit set out in the Order Form (if specified). If the Customer exceeds the permitted usage limit at any time during the Term or an Order Form, the Company shall increase the Fee payable for the respective Products for which the usage has been exceeded and any increased usage fee shall apply for the remainder of the Term for such Products.

7. Invoicing

7.1 All Fees shall be invoiced as set out in each Order Form.

7.2 All Fees 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 this MSA by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Products at the same time as payment is due for the supply of the Products.

7.3 Each Party shall pay all other taxes, duties, levies imposed by all foreign, federal, state and local authorities (including without limitation, export, sales, use, excise and withholding taxes) based on any amounts paid or payable by such party under this MSA. However, no party will be responsible for taxes based on the net income of any other party. Any applicable withholding taxes will be added to the Fees to be paid to the Company if, and as far as, the Company is obliged to pay withholding taxes according to local applicable tax laws.

8. Payments

8.1 Unless stated otherwise in an Order Form, the Customer shall pay all invoices within 30 days of the invoice issue date, in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

8.2 Time for payment of invoices shall be of essence.

8.3 All Fees shall be paid by direct debit, credit card, BACs to the bank account nominated in writing by the Company or any other specified payment method in the Order Form,

8.4 If the Customer believes that any invoice is incorrect, it must notify the Company in writing within 14 days of the invoice date but may not withhold payment of the Fee in whole or in part.

- 8.5 If the Customer fails to make any payment due to the Company under this MSA by the due date for payment, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the National Westminster Bank plc'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 interest together with the overdue amount.
- 8.6 The Company reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.
- 8.7 The Customer agrees and accepts that in the event of non-payment of any invoice and without limiting other remedies available to the Company, the Company may suspend access to and use of the SaaS Services, SIM Cards and/or Monitoring Services and withhold delivery or refuse to supply Goods or SIM Cards until such time as all outstanding amounts are paid in full.

9. Delivery

- 9.1 The Company reserves the right to refuse any orders placed by the Customer or to delay delivery of any Products, if the Customer:
- 9.1.1 Fails to make any payment under this MSA;
 - 9.1.2 Fails to meet the credit or financial requirements established by the Company, including any limitation on allowable credit;
 - 9.1.3 Materially breaches any of its obligations under this MSA.
- 9.2 The Company reserves the right to discontinue the manufacture, license or sale of any or all Products at any time, and to refuse any orders for such discontinued Products without any liability whatsoever to the Customer or any other third party. The Company shall give the Customer at least ninety (90) days advance notice of any intention to discontinue Products. No such refusal or delay in delivery will be deemed a termination or breach of this MSA.
- 9.3 If the Company's performance of any of its obligations in respect of provision of the Products is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation ("**Default**"):
- 9.3.1 The Company shall without limiting its other rights or remedies have the right to suspend performance of the Products until the Customer remedies the Default, and may rely upon the Default to relieve the Company from performance of any of its obligations to the extent the Default prevents or delays the Company's performance of any of its obligations;
 - 9.3.2 The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay in performing any of its obligations as a result of a Default; and
 - 9.3.3 The Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Default.

10. Termination

- 10.1 Without limiting its rights or remedies, either party has the right to terminate this MSA immediately if:
- 10.1.1 The other party commits a material breach of its obligations under the MSA and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

- 10.1.2 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 or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 10.1.3 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;
 - 10.1.4 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;
 - 10.1.5 The other party (being an individual) is the subject of a bankruptcy petition or order;
 - 10.1.6 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;
 - 10.1.7 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);
 - 10.1.8 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; 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;
 - 10.1.9 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 clauses 10.1.2 to 10.1.8 above;
 - 10.1.10 The other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - 10.1.11 The other party's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the MSA has been placed in jeopardy; or
 - 10.1.12 The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 Without limiting its other rights or remedies, the Company may terminate the MSA with immediate effect by giving written notice to the Customer if:
- 10.2.1 The Customer fails to pay any amount due under the MSA on the due date for payment; or
 - 10.2.2 The Customer fails to pay any amount due under any other contract between the Customer and the Company on the due date for payment.

- 10.3 Without limiting its other rights or remedies, the Company may suspend the supply of Products or all further deliveries of Goods or SIM Cards under the MSA or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the MSA or any other contract between the Customer and the Company on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.12, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 10.4 Each party has the right to terminate the MSA without cause, upon or after expiry of the Initial Term, by giving the other party 60 days written notice prior to the start of any Renewal Term. Such notice shall be effective from the expiry of the Initial Term or the current Renewal Term whichever is applicable.
- 10.5 Upon termination of the MSA:
- 10.5.1 All Order Forms will automatically terminate;
- 10.5.2 The Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Products supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt and, in respect of the Products, the Company shall raise an invoice for any outstanding amounts due, which shall be payable by the Customer immediately on receipt; and
- 10.5.3 All licences granted under the MSA shall terminate on the effective date of termination;
- 10.5.4 The Customer shall cease using the Products;
- 10.5.5 The Customer shall return all Company Materials and any Goods in accordance with the terms set out in the Special Terms – Goods (Annex 2). If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. 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 the MSA.
- 10.6 In the event that the Customer has pre-paid any amounts in respect of the Products, the Company will only credit the Customer for any unearned portion of the pre-paid amounts in the event that the Company terminates the MSA early without cause or the Customer terminates early with cause. In all other circumstances the Company will not provide credit for any unearned portion of any pre-paid amounts.
- 10.7 Termination of the MSA for any reason shall not affect the accrued rights and remedies of the parties arising under this MSA and in particular without limitation the right to recover damages in respect of any breach of the MSA which existed at or before the date of termination or expiry. All clauses which by their nature should survive termination, shall survive the expiry or termination of the MSA and shall remain in force and effect.

11. Intellectual Property Rights

- 11.1 The Customer acknowledge the exclusive right of the Company, its licensors or any third party owners in and to all IPRs in the Products, Company Materials and Company Confidential Information.
- 11.2 The Customer acknowledges that, in respect of any third party IPRs in the Products the Customer's use of any such IPRs is conditional on the Company obtaining a written licence from the relevant licensor on such terms that will either:
- 11.2.1 Entitle the Company to sub-licence such rights to the Customer; or
- 11.2.2 Grants the Customer a licence or sub-licence directly with the relevant licensor;

and where the Company is required to pass on third party licence terms to the Customer, the Customer agrees to be bound by the terms of such third party licences.

11.3 All Company Materials are the exclusive property of the Company.

12. Confidential Information

12.1 Each party may use the Confidential Information of the other only for the purposes of this MSA. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.

12.2 Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this MSA, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this MSA.

12.3 Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to the disclosing party without delay upon termination or expiry of the MSA.

12.4 The obligations of confidentiality under this MSA do not extend to information that:

12.4.1 Was in the other party's lawful possession before the negotiations leading to the MSA; or

12.4.2 Is, or after the Commencement Date, becomes publicly known other than through any act or omission of the receiving party; or

12.4.3 Is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

12.4.4 Is independently developed by the receiving party, which independent development can be shown by written evidence; or

12.4.5 Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

If either party is required to disclose any Confidential Information pursuant to clause 12.4.5 such party shall, where lawfully permitted to do so:

12.4.6 Promptly consult with, and take into account any comments from the other party prior to making any disclosure; and

12.4.7 Work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.

12.5 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 12 and without limitation, all information falling within the definition of Confidential Information and any information which is supplied by the disclosing party to the receiving party pursuant to the MSA or the negotiation thereof is:

12.5.1 Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or

12.5.2 A trade secret of the disclosing party; and

12.5.3 Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

12.6 Each party shall be entitled to pursue equitable relief, including injunctions and specific performance, as a remedy for any breach of clause 12 of this MSA. Such equitable relief shall be in addition to and not exclusive of any other relief to which any of the parties may be entitled.

13. Customer Data

13.1 The Company understands that data may be valuable however data loss during provision of the Products is always a possibility, and in some cases, data may be unrecoverable, erased, or reformatted. It is therefore the Customer's responsibility to back up all existing data, software, and/or programmes, and to decide whether to erase any such data, prior to entering into the MSA.

14. Data Protection

- 14.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 14.2 To the extent that personal data is processed when the Customer or Authorised Users use the Products, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply with their respective obligations under applicable data protection law and the terms of the DPA.
- 14.3 If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.
- 14.4 Where the Company collects and processes personal data of a Customer or Authorised User as a data controller, when providing the Products to any of them, such collection and processing shall be in accordance with the Privacy Policy.

15. Warranties

- 15.1 Each party warrants and represents that:
 - 15.1.1 It has full corporate power and authority to enter into this MSA and to perform the obligations required hereunder;
 - 15.1.2 The execution and performance of its obligations under the MSA does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
 - 15.1.3 It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to the MSA.
- 15.2 The Products may contain features designed to interoperate with non-Company applications. The Company cannot guarantee the continued availability of such Product features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of any non-Company application ceases to make the non-Company application available for interoperation with the Product features in a manner acceptable to the Company.
- 15.3 Except as expressly stated in this MSA, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law. In particular, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the MSA.

16. Liability

- 16.1 Nothing in the MSA shall limit or exclude the Company's liability for:
 - 16.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 16.1.2 Fraud or fraudulent misrepresentation;
 - 16.1.3 Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 16.1.4 Breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
 - 16.1.5 Defective products under the Consumer Protection Act 1987; or
 - 16.1.6 Wilful misconduct.

- 16.2 The Company shall not be liable for any Consequential Loss arising out of or related to the MSA, whether based on contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 16.3 The Company shall not be liable for any loss of profits (whether direct or indirect) arising out of or related to the MSA, whether based on contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 16.4 Subject to clauses 16.1. to 16.3 inclusive the total liability of the Company to the Customer in aggregate (whether in contract, tort, breach of statutory duty or otherwise) for any and all claims relating to or arising under the MSA, including any indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by the Customer to the Company for the applicable Products , during the 12 month period immediately prior to either:
- 16.4.1 The date on which the circumstances resulting in the Company's liability arose; or
- 16.4.2 If one such specific date cannot be agreed, or ascertained, the date on which the Company's liability is agreed or determined.
- If the duration of the MSA has been less than 12 months, such shorter period shall apply.
- 16.5 The Customer shall not raise any claim under the MSA more than 1 year after:
- 16.5.1 The discovery of the circumstances giving rise to a claim; or
- 16.5.2 The effective date of termination or expiry of the MSA.
- 16.6 The parties acknowledge and agree that in entering into the MSA, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

17. Insurance

- 17.1 For the Term of the MSA and for a period of 12 months thereafter, the Customer shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover its liabilities that may arise under or in connection with the MSA and shall, at the request of the Company produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

18. Assignment

- 18.1 No party may assign or transfer its rights under the MSA without the prior written consent of the other party, such consent shall not be unreasonably withheld, however the Company shall be entitled to assign the MSA to:
- 18.1.1 Any company in the Company's group of companies; or
- 18.1.2 Any entity that purchases the shares or assets of the Company as the result of a merger, takeover or similar event.

19. Relationship between the Parties

- 19.1 The parties to the MSA are independent contractors and nothing in the MSA will be construed as creating an employer-employee relationship. The Customer shall not have, and shall not represent that it has, any power, right or authority to bind the Company, or to assume or create any obligation or responsibility, express or implied, on behalf of the Company.

20. Force Majeure

- 20.1 Except with respect to the obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under the MSA due to Force Majeure, then that party's obligation to perform in accordance with the MSA will be suspended for the duration of the Force Majeure, subject to the non-defaulting party's right to terminate.

- 20.2 As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the MSA.
- 20.3 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the MSA as a result of Force Majeure. If the Force Majeure prevents the Company from providing any of the Products for more than 2 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate the MSA immediately by giving written notice to the Customer.

21. Miscellaneous

- 21.1 The rights granted to the parties under the MSA are non-exclusive.
- 21.2 The MSA and its schedules, annexes and appendices constitute the entire agreement and understanding between the parties and supersede all prior agreements, negotiations and discussions between the parties relating to the subject matter of the MSA.
- 21.3 In the event of any inconsistency between the content of the main terms of the MSA and its schedules, annexes or appendices, the terms of the Order Form shall prevail, followed by each Annex in relation to the Products referenced therein and then the main terms of the MSA.
- 21.4 Should a provision of the MSA be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision.
- 21.5 Amendments to, or notices to be sent under the MSA, shall be in writing and shall be deemed to have been duly given if sent by registered post to a party at the address given for that party in the MSA. Notwithstanding the aforesaid, the Company may change or modify the terms of the MSA in order to comply with a change in applicable law, upon giving the Customer 30 days notice via email. All changes shall be deemed to have been accepted unless the Customer terminates the MSA prior to the expiry of the 30 day period.
- 21.6 Each party acknowledges that it has not entered into the MSA in reliance on any statement or representation, whether or not made by the other party, except in so far as the representation has been incorporated into the MSA.
- 21.7 Nothing in the MSA 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.
- 21.8 Failure to exercise, or any delay in exercising, any right or remedy under the MSA, or at law or equity, shall not be a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 21.9 Nothing contained in the MSA is intended to be enforceable by any third party pursuant to any rights that such third party may have under applicable law or otherwise and the Contracts (Rights of Third Parties) Act 1999 is hereby specifically excluded.
- 21.10 Neither party shall make any public statement, press release or other announcement relating to the terms or existence of the MSA, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Company may use the Customer's name and trademarks (logo only) to list it as a client of the Company on its website and in other marketing materials and information.
- 21.11 Each party will pay its own legal, accountancy and other costs arising out of and in connection with the MSA.

22. Dispute Resolution

- 22.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to the MSA.
- 22.2 If any such dispute cannot be settled amicably within 30 days through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to the chief operating officer of the Company and the chief financial officer of the Customer who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 23 below.

23. Governing Law and Jurisdiction

- 23.1 The MSA shall be governed by and construed in accordance with the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under the MSA.