

## Terms and Conditions for the supply of Telecom Services

### 1. Interpretation

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

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

**Additional Service(s)**, means any additional services provided by Computer-eyez to the Customer outside of the Contract.

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

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

**Commencement Date**, has the meaning set out in clause 2.2.

**Conditions**, means these terms and conditions as amended from time to time in accordance with clause 22.7.

**Contract**, means the contract between Computer-eyez and the Customer for the supply of Services in accordance with these Conditions and the Order.

**Computer-eyez**, means Computer-eyez (South) Limited, a company registered in England and Wales under company number 5882648, with its registered office at Trafalgar House, Quarry Road, Newhaven, East Sussex, BN9 9DD

**Customer**, means the person or firm who purchases the Services from Computer-eyez.

**Data Protection Legislation**, the Data Protection Act 1998 implementing the Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data, the Privacy and Electronic Communication (EU Directive) Regulations 2003 and all current and subsequent applicable laws relating to the processing of personal data and privacy including where applicable the guidance and codes of practice.

**Directories Enquiries**, means the BT directory of businesses and people.

**Equipment**, means the hardware required to provide a phone line in accordance with the Services.

**Force Majeure Event** has the meaning given to it in clause 21.1.

**Fraud**, means a third party or parties (excluding the Customer's employees, contractors or agents) illegally accessing the Services provided by Computer-eyez to the Customer, for example by dial through fraud or call forwarding fraud.

**Intellectual Property Rights**, means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information

(including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Initial Term**, has the meaning giving to it in clause 6.6.

**Installation**, means the installation of the Telephones or Equipment as set out in the Order.

**Installation Date**, has the meaning set out in clause 3.1.

**Installation Fee**, has the meaning set out in clause 3.3.

**Installation Location**, has the meaning set out in clause 3.1.

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

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

**Network Provider**, means BTOpenReach, Gamma Telecom and their affiliates, together with any other network provider communicated to the Customer by Computer-eyez.

**Order**, means the order form for the supply of Services to the Customer.

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

**Services**, means the services, supplied by Computer-eyez to the Customer as set out in the Order.

**Services Fee**, has the meaning set out in clause 14.2.

**Services Additional Term**, has the meaning giving to it in clause 6.6.

**Set Up Fee**, has the meaning set out in clause 14.3.

**Start Date**, means the date Installation of the Equipment (and where appropriate the Telephones) is complete.

**Telephones**, means the telephones set out in the Order.

**Telephones Fee**, has the meaning in set out in the Order.

**Third party Dependencies**, has the meaning set out in clause 18.3.

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

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

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

- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2. Basis of contract

- 2.1 Receipt by Computer-eyez of a signed Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Computer-eyez receives a signed Order and confirms to the Customer that the Order has been accepted at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Computer-eyez which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by Computer-eyez and any descriptions of the Services contained in Computer-eyez's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions and the Order apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Computer-eyez shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue. Computer-eyez reserves the right amend any quotation given where the change has arisen due to an event outside of Computer-eyez's control.
- 2.6 The Customer acknowledges and agrees that the Services provided are business to business transactions to which the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 do not apply.

## 3. Installation of the Equipment and/or Telephones

- 3.1 Computer-eyez shall install the Equipment and or Telephones to the location set out in the Order or such other location as the parties may agree (**Installation Location**) at the time set out in the Order (**Installation Date**).
- 3.2 Computer-eyez shall (whether itself or through an Agent) use its reasonable endeavours to install the Equipment and or Telephones but please note any dates

quoted for installation of the Equipment and or Telephones are approximate only, and time is not of the essence. Computer-eyez (nor its Agent where applicable) shall not be liable for any delay in installation of the Equipment or Telephones that is caused by a Force Majeure Event or the Customer's failure to provide Computer-eyez with adequate information which has been requested by Computer-eyez to assist with Installation.

- 3.3 Where Computer-eyez (or its Agent) install the Equipment and/or Telephones, the installation of the Equipment and/or Telephone will be treated not as part of the Services but as an Additional Service and such Additional Service will be charged as set out in the Order (**Installation Fee**).
- 3.4 If the Customer fails to accept Installation, then except where such failure or delay is caused by a Force Majeure Event or by Computer-eyez's failure to comply with its obligations under the Contract:
  - 3.4.1 Installation of the Equipment and/or Telephones shall be deemed to have been completed at the point Computer-eyez attempted to Install the Equipment and/or Telephones; and
  - 3.4.2 Computer-eyez shall store the Equipment and/or Telephones until Installation has taken place, and charge the Customer for all related costs and expenses (including insurance).
- 3.5 Where the Installation is delayed due to any failure or delay of third parties (such as Network Providers), the Customer accepts that no such delay or failure shall result in the Customer having the right to cancel, bring any action against Computer-eyez, defer or withhold any payment due to Computer-eyez nor shall it give the Customer a right to terminate the Contract.
- 3.6 If the Customer fails to accept the Installation, and this results in Computer-eyez needing to provide further Additional Services to the Customer, such Additional Services shall be charged to the Customer in addition to the Installation Fee.
- 3.7 If the Customer requests Computer-eyez to remove any items or existing equipment from the Customer's premise, the Customer hereby confirms that it has good and unencumbered title to such items and that the Customer has the necessary authority to permit the removal and or destruction of such items. Where Computer-eyez requests, the Customer shall provide Computer-eyez with evidence to confirm title in such items.
- 3.8 If 10 Business Days after Computer-eyez notified the Customer that the Telephones and/or Equipment were ready for Installation the Customer has not accepted Installation, Computer-eyez may resell or otherwise dispose of part or all of the Telephones and/or Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Telephones and/or Equipment or charge the Customer for any shortfall below the price of the Telephones and/or Equipment.
- 3.9 Installation will be complete when Computer-eyez confirms in writing to the Customer that the Installation has been completed.
- 3.10 The Customer cannot use the Services until Installation has been completed.

#### **4. Equipment**

- 4.1 The risk in the Equipment shall pass to the Customer on completion of Installation.
- 4.2 The title to the Equipment shall remain with Computer-eyez (or where appropriate the relevant Network Provider), unless the Order states otherwise.
- 4.3 The Customer shall be entitled to use the Equipment for its use in accordance with this Contract, but shall:
  - 4.3.1 store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as property of Computer-eyez;
  - 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - 4.3.3 maintain the Equipment in a satisfactory condition and keep the Equipment insured against all risks for their full price on Computer-eyez's behalf;
  - 4.3.4 shall not resell the Equipment;
  - 4.3.5 notify Computer-eyez immediately if it becomes subject to any of the events listed in clause 20.4.2 to clause 20.4.11; and
  - 4.3.6 give Computer-eyez such information relating to the Equipment as Computer-eyez may require from time to time.
- 4.4 The Customer agrees to take full responsibility for the Equipment in relation to the obligations on its disposal as set out in the Waste Electrical and Electronic Equipment Regulations 2013.

#### **5. Telephones**

- 5.1 The risk in the Telephones shall pass to the Customer on completion of Installation.
- 5.2 Title to the Telephones shall not pass to the Customer until Computer-eyez receives payment in full (in cash or cleared funds) for the Telephones and any other goods that Computer-eyez has supplied to the Customer in respect of which payment has become due, in accordance with the Order. In the event that Computer-eyez has waived the Telephones Fee, title to the Telephones shall not pass until the expiration of the Initial Term of the Contract.
- 5.3 Until title to the Telephones has passed to the Customer, the Customer shall be entitled to use the Telephones for their use in accordance with this Contract, but shall:

- 5.3.1 store the Telephones separately from all other goods held by the Customer so that they remain readily identifiable as property of Computer-eyez;
  - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Telephones;
  - 5.3.3 maintain the Telephones in a satisfactory condition and keep the Telephones insured against all risks for their full price on Computer-eyez's behalf;
  - 5.3.4 not resell the Telephones;
  - 5.3.5 notify Computer-eyez immediately if it becomes subject to any of the events listed in clause 20.4.2 to clause 20.4.11; and
  - 5.3.6 give Computer-eyez such information relating to the Telephones as Computer-eyez may require from time to time.
- 5.4 The Customer agrees to take full responsibility for the Telephones in relation to the obligations on its disposal as set out in the Waste Electrical and Electronic Equipment Regulations 2013.

## **6. Supply of Services**

- 6.1 Computer-eyez shall provide the Services to the Customer in accordance with the Order in all material respects.
- 6.2 Computer-eyez shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 Computer-eyez shall have the right to make any changes to the Services (including but not limited to discontinuing, altering, modifying, expanding, improving, maintaining, repairing, suspending or disconnecting Services) which are required by any third party supplier of Computer-eyez (including telecommunication operators or Network Providers) or which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Computer-eyez shall notify the Customer in any such event.
- 6.4 Computer-eyez shall have the right to interrupt or suspend the Services for technical, operational or other reasons in which case Computer-eyez will restore the Service as quickly as possible.
- 6.5 Computer-eyez aims to provide uninterrupted Services but the Customer understand and agrees that, from time to time faults, including intermittent faults, may occur.
- 6.6 The supply of Services shall commence on the Start Date and shall continue for the period of time set out in the Order (**Initial Term**). The contract to provide

Services shall automatically renew for a period of 12 months (**Services Additional Term**) from the expiration of the Term, unless the Customer terminates the contract to provide Services by providing 42 days written notice prior to the expiration of the Initial Term or any Services Additional Term.

- 6.7 Computer-eyez warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.8 The Customer authorises Computer-eyez to act on its behalf where Computer-eyez so requires, in relation to dealing with third party suppliers or Network Providers.

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

- 7.1 The Customer will not own or have any right to sell the number(s) related to the Services.

- 7.2 Where the Order states that the Customer (and its Authorised Representatives and employees) are required to use a login to access the Services (**Login**)the Customer shall ensure that all holders of a login (**Login Holders**):

- 7.2.1 Comply with these Terms and Conditions (in particular clauses 7.5 and 12) and Computer-eyez's and cookies policy;

- 7.2.2 Be 18 years of age or older;

- 7.2.3 Provide accurate and true information;

- 7.2.4 Be an employee or Authorised Person of the Customer; and

- 7.2.5 Not have had their use of the Services suspended or terminated.

- 7.3 Where a Login Holder no longer complies with any of the requirements set out in clause 7.2.1 to 7.2.4, Computer-eyez reserves the right immediately terminate their access to the Services and have their Login suspended.

- 7.4 Where the Customer becomes aware that a Login Holder no longer complies with the requirements set out in clause 7.2 the Customer shall immediately inform Computer-eyez to enable Computer-eyez to terminate their access to the Services and suspend their Login.

- 7.5 The Customer shall procure that each Login Holder will:

- 7.5.1 If provided with, a user identification code, user name, password or any other piece of information as part of the security procedures to use the Login, keep such information secure and treat such information as confidential and not disclose it to any third party;

- 7.5.2 Not permit any other person to use their Login;

- 7.5.3 Only access the Services through their Login and not use any other person's Login;

- 7.5.4 Change their password in relation to the Login at least once every 3 months;
- 7.5.5 Not without Computer-eyez's consent, transfer, sell or assign any Login to any other person.
- 7.6 Where the Customer knows or suspects that anyone other than the Login Holder knows a Login Holder's identification code or password, the Customer must promptly notify Computer-Eyez at help@computer-eyez.com or call 01273 806211 and must ensure that the Login Holder changes their password immediately.
- 7.7 Computer-eyez reserves the right to:
  - 7.7.1 Change user identification codes, user names, passwords or any other piece of information as part of the security procedures, where necessary in relation to Services or where Computer-eyez is concerned regarding security or Fraud;
  - 7.7.2 Issue instructions to the Customer or any Login Holder in relation to using, updating or changing identification codes, user names, passwords or any other piece of information as part of the security procedures;
  - 7.7.3 Suspend access to Logins (without any liability whatsoever) where required due to a security issue, an emergency, or for maintenance or improvements.
- 7.8 Computer-eyez will not be responsible for any loss suffered by the Customer or third parties where there has been a breach of this clause 7. Where Computer-eyez suffer any loss as a result of the Customer's failure (or the failure of a Login Holder), to comply with the provisions of this clause 7, the Customer will be liable to Computer-eyez and indemnify Computer-eyez for any loss suffered.
- 7.9 Computer-eyez will alert the Customer if there is a suspected Fraud of over £500 in relation to the Services. This may result in Computer-eyez suspending Logins. Computer-eyez will not be responsible for any loss suffered by the Customer as a result of fraud or the suspension of Logins in accordance with this clause 7.9.

## 8. Change of Control

- 8.1 If the Customer wishes to Change the Services, in a manner which would materially change the Services resulting in a change in the Services Fee (**Change**), it shall submit details of the requested Change to Computer-eyez in writing (**Change Request**).
- 8.2 Where the Customer submits a Change Request to Computer-eyez, Computer-eyez shall within 2 weeks of the date of the request, submit a note to the Customer with details of the likely impact, if any, of the Change on other aspects of this Contract (**Change Request Note**), including:
  - 8.2.1 the timetable for provision of implementing the Change;

- 8.2.2 the personnel to be provided to give effect to the Change;
  - 8.2.3 the Services Fees;
  - 8.2.4 documentation to be provided;
  - 8.2.5 working arrangements; and
  - 8.2.6 other contractual issues.
- 8.3 the Customer shall evaluate the Change Control Note and, as appropriate, accept or reject the Change Control Note.
- 8.4 A Change Control Note accepted by the Customer and Computer-eyez shall constitute an amendment to this Contract.

## 9. Support and Maintenance

- 9.1 As part of the Services, Computer-eyez shall also make available a customer helpdesk (**Customer Helpdesk**) which shall be available during 8am -6pm Monday to Friday (excluding bank holidays) (**Helpdesk Business Hours**). The Customer Helpdesk shall be available to the Customer during the Helpdesk Business Hours for all malfunctions of the Services or questions in relation to the Services identified above. All initial support requests to be raised by a representative of the Customer via telephone or email ticketing system. Computer-eyez will acknowledge and raise a ticket for each request logged.
- 9.2 Where the Order states that the Services relate to hosted telephone services, the response times to each ticket will depend on the severity:
- 9.2.1 Severity 5 (Information): Information request that does not have an impact on the Customer. A response within 16 hours.
  - 9.2.2 Severity 4 (Minor): Minor request that does not have an impact on the Customer. A response within 16 hours.
  - 9.2.3 Severity 3 (Standard): Important issue that does not have a significant impact on the Customer. A response within 16 hours.
  - 9.2.4 Severity 2 (Critical): Critical, high-impact problem where Services are operational, but significantly impaired. This may be a time-sensitive issue important to long-term availability that is not causing an immediate work stoppage. A response within 4 hours.
  - 9.2.5 Severity 1 (Emergency): A problem that causes complete loss of Services with severe business impact. In this situation work cannot continue in an acceptable fashion, the operation is critical to the business, and the situation is an emergency. A response within 1 hour.
- 9.3 Where the Order states that the Services relate to line rental services, once Computer-eyez receives a ticket in accordance with 9.1, Computer-eyez will forward such request to the Network Provider to address. The response times of the Network Provider will be as set out here, unless otherwise communicated to the Customer or set out otherwise in the Order.

## **10. Computer-eyez Obligations**

- 10.1 Computer-eyez shall use reasonable endeavours to supply the Equipment, Telephones and Services in accordance with the Order.
- 10.2 Computer-eyez provides no warranty or guarantee as to the level of the Services or the quality of the Equipment or Telephone.
- 10.3 The Order will expressly set out if the Telephones benefit from a manufacturers warranty (**Warranty**). If the Customer is to bring a claim in relation to the Warranty, this must be brought by the Customer directly to the manufacturer. Computer-eyez has no obligation to assist with this. Where Computer-eyez assists with any claim in relation to the Warranty, this will be treated as an Additional Service.

## **11. Customer's obligations**

- 11.1 The Customer shall:
  - 11.1.1 ensure that the information provided by the Customer in relation to the Services are complete, up to date and accurate;
  - 11.1.2 co-operate with Computer-eyez in all matters relating to the Services;
  - 11.1.3 provide Computer-eyez, its employees, Agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Computer-eyez to provide the Services and/or install the Equipment and/or Telephones;
  - 11.1.4 provide Computer-eyez (and any third party directed by Computer-eyez) with such information and materials as Computer-eyez may reasonably require to supply the Services install the Telephones and/or Equipment, and ensure that such information is accurate in all material respects;
  - 11.1.5 only permit Computer-eyez (and any third party directed by Computer-eyez) to maintain, and repair the Equipment provided as part of the Installation Services;
  - 11.1.6 ensure the premise for where the installation is to take place, complies with all relevant health and safety legislation;
  - 11.1.7 prepare the Customer's premises for the Installation (if applicable) and the supply of the Services;
  - 11.1.8 comply with clause 17, in relation to Data Protection;
  - 11.1.9 comply and adhere to the acceptable use of the Services set out in clause 12; and
  - 11.1.10 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

- 11.2 The Customer shall pay Computer-eyez any and all reasonable costs, claims and expenses (whether direct or indirect) arising out of any claim that the Customer has broken any of the obligations in clauses 11.1.1 to 11.1.10 above.
- 11.3 Computer-eyez's right to rely on the obligations set out in clause 11.1 and the indemnity in clause 11.2 will continue to be available after the expiration of the this Contract and will not be affected by the cancellation of this Contract.
- 11.4 If Computer-eyez's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including where a Customer has arranged for a third party to provide additional or connecting services and these have not been received) (**Customer Default**):
- 11.4.1 Computer-eyez shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Computer-eyez's performance of any of its obligations;
- 11.4.2 Computer-eyez shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Computer-eyez's failure or delay to perform any of its obligations as set out in this clause 11.4; and
- 11.4.3 the Customer shall reimburse Computer-eyez on written demand for any costs or losses sustained or incurred by Computer-eyez arising directly or indirectly from the Customer Default.

## 12. **Acceptable Use**

- 12.1 The Customer may only use the Services for lawful purposes. The Customer must not use the Services (and shall procure that the others (including but not limited to Login Holders) authorised to use the Services shall not use the Services):
- 12.1.1 in any way that breaches any applicable local, national or international law or regulation;
- 12.1.2 in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- 12.1.3 for the purpose of harming or attempting to harm minors in any way;
- 12.1.4 to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material;
- 12.1.5 to publish, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
- 12.1.6 to threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
- 12.1.7 to send offence, obscene, defamatory or hoax calls;

- 12.1.8 to send unsolicited commercial calls, automated dialling call, or any calls which are considered fraudulent;
  - 12.1.9 in a manner which infringes any third party's Intellectual Property Rights;  
or
  - 12.1.10 to resell the Services.
- 12.2 Where the Customer breaches (in the opinion of Computer-eyez) the acceptable use of the Services as set out in clause 12.1, Computer-eyez has the right to report such breach to the appropriate authority, and where Computer-eyez deem it appropriate, Computer-eyez reserves the right to suspend the Services.
- 13. Premise Moves**
- 13.1 Where the Customer wishes to move premises during the Term and the result of such move will require the Services to be provided to a different location from the Installation Location, the Customer must notify Computer-eyez within a reasonable period of time ahead of such relocation. The Customer shall only instruct Computer-eyez to relocate the Equipment and/or Telephones, and such services shall be considered Additional Services for which an addition fee will be payable and fall outside of the scope of the Services.
- 13.2 Computer-eyez will not be responsible for any loss suffered by the Customer as a result of a premise move.
- 14. Charges and payment**
- 14.1 The price for the Telephones shall be the price set out in the Order (**Telephones Fee**).
- 14.2 The charges for Services shall be the price set out in the Order (**Services Fee**).
- 14.3 In order to provide the Services, the Customer may require additional set up services. Set up services will be deemed an Additional Service, and the Customer shall be charged the set up fee set out in the Order (**Set up Fee**).
- 14.4 Computer-eyez shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Computer-eyez engages in connection with the Services.
- 14.5 Computer-eyez reserves the right to:
- 14.5.1 Increase the price of the Services Fee, in the event that Network Providers in relation to the Services to Computer-eyez (not within Computer-eyez's control) increase their prices;
  - 14.5.2 Increase the Services Fee, on an annual basis with effect from the anniversary of the commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the second anniversary of the Commencement Date and shall be based on the latest

available figure for the percentage increase in the Consumer Prices Index.

- 14.6 In respect of Services, unless set out in the Order otherwise, the Services Fee shall be paid via direct debit on a monthly basis, in advance on the first working day of the month.
- 14.7 Unless agreed otherwise by Computer-eyez, the Customer shall pay each invoice submitted by Computer-eyez within 30 days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by Computer-eyez.
- 14.8 Time for payment of any sums under the Contract shall be of the essence of the Contract.
- 14.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Computer-eyez to the Customer, the Customer shall, on receipt of a valid VAT invoice from Computer-eyez, pay to Computer-eyez such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 14.10 If the Customer fails to make any payment due to Computer-eyez under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 14.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Computer-eyez may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Computer-eyez to the Customer.
- 14.12 Any discount given by Computer-eyez is subject to payment in accordance with these Conditions, if payment is not received in accordance with these Conditions, Computer-eyez reserves the right to remove any applicable discount.

## **15. Intellectual property rights**

- 15.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Computer-eyez.
- 15.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Computer-eyez obtaining a written licence from the relevant licensor on such terms as will entitle Computer-eyez to license such rights to the Customer.

## 16. Confidentiality

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 16 shall survive termination of the Contract.

## 17. Data Protection

17.1 Computer-eyez will make (but not release it for any other purpose to any other person) the Customer's Personal Data available in the following ways:

17.1.1 Using the Personal Data in accordance with the provision of the Services and for monitoring and training purposes of Computer-eyez;

17.1.2 give the Customer's Personal Data to people with a legitimate reason for asking for it (based on the exemptions in the Data Protection Legislation as also as set out in clause 11.2), including law enforcement agencies;

17.1.3 give the Customer's Personal Data to its Agents and any Network Provider used to provide the Services; Adding the Customers Personal Data to Directory Enquiries, or publically sharing it on 999 databases.

17.2 The Customer can write to Computer-eyez to ask for a copy of the Personal Data it holds in relation to the Customer.

17.3 By purchasing the Services the Customer agrees to Computer-eyez using its Personal Data as set out in this clause 17.

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

18.1 Nothing in these Conditions shall limit or exclude Computer-eyez's liability for:

18.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

18.1.2 fraud or fraudulent misrepresentation;

18.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

- 18.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 18.1.5 defective products under the Consumer Protection Act 1987.
- 18.2 Subject to clause 18.1:
- 18.2.1 Computer-eyez shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- 18.2.2 Computer-eyez's total liability to the Customer in respect of all other losses arising under or in connection with the Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise in relation to the Services, shall in no circumstances exceed the lesser of the Services Fee payable in a 12 month period or £5,000.
- 18.3 In order to use the Services the Customer acknowledges that there may be required dependencies provided by third parties which are entirely outside of the control of Computer-eyez, for example internet connection (**Third Party Dependencies**). The Customer agrees to take all necessary steps to acquire the required Third Party Dependencies and acknowledges that failure to do so, or failure of the Third Party Dependencies may result in the Services not performing to its full potential. The Customer agrees that Computer-eyez will not be responsible for any loss the Customer suffers as a result of the Services not performing to its full potential due to failure arising from or in connection with Third Party Dependencies.
- 18.4 Computer-eyez shall take reasonable security measures, to ensure that the Services are provided in a secure manner and to reduce the risk of Fraud. Where Computer-eyez adheres to the terms of this clause 18.4, Computer-eyez shall not be responsible for any damage or loss suffered by the Customer as a result of Fraud.
- 18.5 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 Contract.
- 18.6 The Customer shall be liable for any damage, loss or theft to the any of the Equipment during the Term.
- Where Computer-eyez still holds title to the Telephones but they are in the possession of the Customer, the Customer shall be liable for any damage, loss or theft to the Telephones.
- 18.7 This clause 18 shall survive termination of the Contract.
- 19. Suspension of Services**
- 19.1 In addition to the suspension rights in clause 7 and clause 12, Computer-eyez may suspend the Services:

- 19.1.1 if Computer-eyez is required to as a result of a direction or request from a government department, the emergency services or a regulatory or administrative authority or Network Provider;
  - 19.1.2 if required to do so to maintain or improve the Services in which case Computer-eyez will endeavour to ensure this suspension is for as short a time as possible;
  - 19.1.3 if the Customer has not paid an invoice after payment was due;
  - 19.1.4 the Customer becomes subject to any of the events listed in clause 20.4.2 to clause 20.4.11, or Computer-eyez reasonably believes that the Customer is about to become subject to any of them.
- 19.2 Any suspension of the Service does not affect the Customer's obligation to pay for the Services during or after the suspension period.

## **20. Termination**

- 20.1 Without limiting its other rights or remedies Computer-eyez may terminate the Services upon providing 42 days written notice.
- 20.2 Without limiting its other rights or remedies Computer-eyez may terminate the Contract immediately upon providing written notice where the Customer fails to provide a bank reference or pass a credit check to the suitability of Computer-eyez.
- 20.3 Without limiting its other rights or remedies Computer-eyez may terminate the Services upon providing 7 days written notice where Computer-eyez in its reasonable opinion, is unable to provide the Services.
- 20.4 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 20.4.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - 20.4.2 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;
  - 20.4.3 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;
  - 20.4.4 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;

- 20.4.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 20.4.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party being a company;
  - 20.4.7 the holder of a qualifying charge over the assets of the other party being a company has become entitled to appoint or has appointed an administrative receiver;
  - 20.4.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 20.4.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 20.4.2 to clause 20.4.8 (inclusive);
  - 20.4.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - 20.4.11 the other party's financial position deteriorates to such an extent that in its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 20.5 Without limiting its other rights or remedies, Computer-eyez may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 20.6 On termination of the Contract for any reason:
- 20.6.1 the Customer shall immediately pay to Computer-eyez all of Computer-eyez's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Computer-eyez shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 20.6.2 the Customer shall at Computer-eyez's option (and where applicable) either:
    - (a) Return to Computer-eyez all of the Telephones and/or Equipment where title remains with Computer-eyez (or a Network Provider); or
    - (b) Purchase (at the fair market value of the Telephones and/or Equipment) the Equipment and/or Telephones where title remains with Computer-eyez (or a Network Provider).

- 20.6.3 if the Customer fails to comply with clause 20.6.2, then Computer-eyez may enter the Customer's premises and take possession of the relevant Equipment and/or Telephones. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 20.6.4 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 20.6.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 20.7 In the event of the termination or expiry of this Contract for any reason, and subject to the Customer agreeing to pay Computer-eyez £50 plus VAT. Computer-eyez shall provide as an Additional Service, all reasonable assistance to the Customer to facilitate the orderly transfer of the Services (including but not limited to number portability) to Customer or to a replacement supplier to take over the provision of all or part of the Services.

## 21. Force majeure

- 21.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Computer-eyez including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Computer-eyez or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of manufacturers, suppliers or subcontractors.
- 21.2 Computer-eyez shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 21.3 If the Force Majeure Event prevents Computer-eyez from providing any of the Services for more than 2 weeks, Computer-eyez shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 21.4 Where the Contract has been terminated due to a Force Majeure Event, Computer-eyez shall be entitled to outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Computer-eyez shall submit an invoice, which shall be payable by the Customer immediately on receipt.

## 22. General

### 22.1 Assignment and other dealings.

- 22.1.1 Computer-eyez may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under

the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

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

## 22.2 Notices.

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

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

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

## 22.3 Severance.

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

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

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

- 22.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 22.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 22.7 **Variation.** Except where required to do so by a Network Provider or as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Computer-eyez.
- 22.8 **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.
- 22.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation including non-contractual disputes or claims.