

# Data Messaging & Communications

## Limited terms and conditions

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## General terms

### 1. The parties

- 1.1. “We”, “us”, and “our” means Data Messaging & Communications Limited, a company registered in England and Wales with company number 5852071.
- 1.2. “You” and “your” means the person who has ordered equipment or services from us or, if you ordered on behalf of a company or other entity for which you are authorised to do so, that company or other entity.
- 1.3. Our registered office address is 2 Heap Bridge, Bury, Lancashire, BL9 7HR.
- 1.4. Our “web site” is [www.dmcp.com](http://www.dmcp.com)

### 2. Definitions

- 2.1. “Business Days” means Monday to Friday excluding any bank holidays or other national holidays in England.
- 2.2. “Cancelling” an order means asking us not to give effect to an order you have placed,

before we have made that service available to you.

- 2.3. "Data Protection Laws and Regulations" means all applicable data protection and privacy legislation, as amended, updated or re-enacted from time to time).
- 2.4. "DMC Software" means any software in respect of which we own, or are licensors of, any Intellectual Property Rights.
- 2.5. "Equipment" means any physical item.
- 2.6. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress, rights in goodwill, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 2.7. "Minimum Term" means the minimum term (if any) set out in our quotation.
- 2.8. "Open Source Software" means software which falls within the Open Source Definition, as set out by the Open Source Initiative (<http://opensource.org>) and software which meets the definition of "Free software", as set out by the Free Software Foundation (<http://www.fsf.org>).
- 2.9. "Restricting" a service means that we make some parts of the service unavailable or operate at a lower speed.
- 2.10. "Services" means the services which we agree to provide to you under this agreement, as set out in our quotation to you.
- 2.11. "Staff" means our employees and authorised contractors.

2.12. "Standard Contractual Clauses" means such contractual terms as are currently approved by the European Commission for the transfer of Personal Data to processors established in third countries which do not ensure an adequate level of data protection, currently available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>

- 2.13. "Suspending" a service means that we stop your service from working, but keep it in a state from which we can resume it quickly. Suspension does not affect your obligations under this agreement, and does not terminate this agreement.
- 2.14. "Terminating" a service means that we stop supplying your service completely and terminate this agreement in respect of those services. At this point you are no longer liable for further ongoing charges, but must still pay any outstanding invoices, minimum term charges and any termination charges that apply. If you wish to reconnect after termination, you will have to ensure your account is up to date, and pay any connection charges that apply and may have to wait for several days before service can be reconnected.
- 2.15. Any reference in the description of a service to a "kilobyte" is to 1000 bytes, a "megabyte" is 1000 kilobytes, a "gigabyte" is 1000 megabytes, and so on.
- 2.16. Any reference to a "day" means a period of 24 hours. For example, a period of two days from now means two periods of 24 hours from now.

### **3. Our agreement with you**

- 3.1. If you order Equipment or Services from us, your order, and your use of our Services, is subject to these terms.
- 3.2. These terms apply to the exclusion of any terms you supply us, or which accompany or

are referenced in or linked from any purchase order or communication you send us. They supersede all previous negotiations, understandings and representations. If you do not agree to this, you do not have authority to access our services or systems.

3.3.This agreement is governed by English law.

3.4.Any provision of this agreement which refers to a charge or fee which we may levy on you confers an obligation on you to pay those charges or fees.

## 4. Duration

4.1.This agreement lasts for the Minimum Term (if any), and then continues on a month-by-month basis until either party terminates it in accordance with the terms of this agreement.

4.2.Clause 10 sets out your termination rights.

## 5. Your general obligations

5.1.You must:

5.1.1.comply with our reasonable instructions, guidelines and directions about the use of the Services and the Equipment;

5.1.2.co-operate with us in all matters relating to this agreement, and do so in a timely manner;

5.1.3.provide any information required by us accurately, comprehensively, in good faith, and in a timely manner;

5.1.4.ensure that all Equipment which is used in conjunction with the Services conforms to all relevant standards or approvals;

5.1.5.keep your account credentials secret, and secure your network and equipment as you consider appropriate to the risks facing you. If you become aware of a compromise, you must immediately change your account password(s) and other security devices and notify us;

5.1.6.behave at all times in a polite and professional manner towards us and our Staff;

5.1.7.maintain such backups, disaster recovery, and resiliency, plans, as are appropriate to your situation. These measures are to be in addition to any support services or service level agreements in place between you and us;

5.1.8.comply with all applicable law; and

5.1.9.ensure that your users (and anyone else who may use the Equipment or Services) comply with all the obligations under this agreement which are imposed on you (except for obligations to pay). You are liable to us for their breach or non-compliance.

5.2.You warrant that you have the full power and authority to enter into this agreement.

5.3.You agree that any breach of this clause 5 is a material breach of this agreement.

## 6. Service access, suspension, and maintenance

6.1.While we will use our reasonable efforts to maintain and operate the Services, we make no promises that they will always be available or functioning, nor that they will be fault-free.

6.2.We may restrict or suspend all or part of the Services if, in our reasonable opinion, you fail to comply with your obligations under this agreement, or if we consider it is necessary to do so:

6.2.1.to stop or mitigate any security or integrity incident, threat or vulnerability, or problem or attack affecting our network, equipment, or services (including any network, equipment, or services provided to another customer);

6.2.2.because we reasonably suspect that you cannot, or are not required to, pay your invoices;

6.2.3.to deal with behaviour which, in our reasonable opinion, amounts to misuse of the Services; or

6.2.4.to comply with a legal obligation.

6.3.We will try to make available to you notice of planned maintenance activity, via our status page, [status.dmcip.com](http://status.dmcip.com).

## 7. Service level agreement (SLA)

7.1.We will provide the Services in accordance with the service level agreement you have purchased (as set out in our quotation), provided that you:

7.1.1.are up to date with all payments to us;

7.1.2.are not in breach of any obligation under this agreement; and

7.1.3.satisfy all conditions set out in the service level agreement.

7.2.If you require us to provide technical support for systems which you are hosting, or which others are hosting on your behalf, you are responsible for ensuring that we are able to connect to those systems. You agree that we do not breach any service level agreement if we are unable, through no fault of our own, to access the relevant systems.

7.3.We carry out our own monitoring, but you must notify our support team promptly of any fault or suspected fault with the Services, using the contact details we have provided to you.

7.4.You must promptly provide all reasonable assistance to our staff.

7.5.Unless otherwise specified in our quotation, the Services do not include:

7.5.1.the provision of technical support to end users;

7.5.2.support for software or Equipment which you supply; or

7.5.3.support for any software — whether DMC Software or not — or Equipment, in either case that you have modified, or have

procured someone other than us to modify.

7.6.Any work or services which are outside the scope of your service level agreement is chargeable additional work.

7.7.We record all phone calls made to us and from us.

## 8. Intellectual property and licensing

8.1.If the Services includes access to, or installation of, DMC Software, then provided that you are up to date with all payments due to us, we grant you a non-exclusive, non-sub-licensable and non-transferable licence during the term of this agreement to download and install, or make use of the DMC Software, in each case as necessary for you to receive the Services, and subject to any restrictions or limits set out in our quotation.

8.2.You must comply with any restrictions or limitations set out in our quotation, including as to the number of permitted installations or users.

8.3.Promptly following termination of the agreement, you must delete all DMC Software installers, uninstall or otherwise delete all DMC Software which is running on your systems or third party systems on your behalf, including in all cases any backup systems, and cease to access or make use of any hosted DMC Software. This clause survives cancellation, termination, or expiration of this agreement.

8.4.Unless permitted by law, you may not decompile or reverse engineer, or make any amendments to, the DMC Software.

8.5.If you make changes to the look and feel of the DMC Software, or upload content to the DMC Software (such as brand logos), you:

8.5.1.must retain, visible and unmodified, any copyright, trade mark, or other notices referring to us;

8.5.2.warrant that you own the Intellectual Property Rights in any changes you make or any content you upload, or else have all necessary licences to make those changes or upload that content, and that your changes and content do not infringe the Intellectual Property Rights of any third party; and

8.5.3.grant us, for as long as your changes or content remain on our systems, all licences and permissions necessary for us to host and display your changes and content.

8.6.If we provide you with or make available to you Open Source Software, the terms of that software's licensing govern your use of it.

8.7.Nothing in this agreement assigns or otherwise transfers to you ownership of any Intellectual Property Rights.

8.8.If, in the course of providing the Services to you, we create software or anything else which attracts Intellectual Property Rights, whether specifically for you or at your request or not, we own all resulting Intellectual Property Rights.

8.9.If the Services comprise software or modification, clause 8.7 applies to any such development activity (and any resulting software is DMC Software), and we grant you a licence to the output of that development, in accordance with clause 8.1.

## 9. Payments and invoicing

9.1.You must pay our fees and charges as set out in our quotation, and all other sums due under this agreement, in each case as varied in accordance with clause 12. Your obligation to pay continues until you, or we, terminate this agreement in accordance with its terms.

9.2.If you require us to provide a purchase order number, or any other information, on an invoice, you must provide us with all required information promptly following the date of this agreement, and you must promptly notify us of any changes to that information or your

invoicing requirements. You agree that our invoice is not invalidated if it does not include information, or does not comply with requirements, which you have not notified to us.

9.3.We will invoice you for technical support at the intervals agreed with you. In respect of other services, unless otherwise agreed, we will invoice on the following basis:

9.3.1.On the first day of each month, for hosting and SIP trunks (each in advance), and call charges (in arrears).

9.3.2.On the first day of each quarter, for hosting services.

9.3.3.On delivery of each agreed milestone, for setup charges, consultancy services, or system configuration services.

9.4.We will issue invoices by email, to the address which you specify for invoices, or, if there is no such address, we may send invoices to any address we hold.

9.5.You must read any invoices we issue you, and notify us of any error within 14 days of the date on which we send it to you. You must identify the disputed charges, and explain why they are in dispute, and you must provide any relevant supporting documentation. After that time, you agree that you will not bring any dispute or claim relating to an incorrect invoice. You must still pay any undisputed part of the invoice in accordance with this agreement. On receipt of a notification of dispute, we will contact you, and you must work reasonably with us to resolve the dispute.

9.6.You must pay each invoice within 30 days of the date on which we send it to you.

9.7.If, for any reason, we do not receive your payment in full by the due date, we may do any or all of the following:

9.7.1.restrict or suspend any Services we provide to you (including services outside the scope of this agreement);

9.7.2.send you reminders by email and post, or contact you by phone or other communications channel, at regular intervals. We may charge you an administration fee for each reminder, by way of liquidated damages;

9.7.3.charge you penalties and interest as specified in the Late Payment of Commercial Debts (Interest) Act 1998;

9.7.4.charge you our reasonable costs and expenses (including legal costs) for seeking payment of the overdue amount.

9.8.If, for any reason, we do not receive your payment in full within 60 days of the due date, we may (at our discretion) terminate this agreement or the Services.

9.9.If we restrict, suspend, or terminate the Services or the agreement in accordance with this clause 9:

9.9.1.we shall not be liable for any losses to you arising from this; and

9.9.2.in the case of termination, we are not obliged to reactivate those Services. If you wish us to reactivate the Services, and we are willing to do so, we will notify you of the costs associated with doing so (including any requirement we may have as to a deposit for security of costs), and you can decide at that point whether you wish to proceed.

9.10.You agree not to cancel, reverse, revoke, or do anything similar, any payment you make to us. If any payment you make is cancelled, reversed, revoked, or similar, that payment shall be deemed as having never been made to us.

## **10.Terminating this agreement**

10.1.Provided that you have paid all sums due, you may terminate this agreement at any time by giving us at least 30 days' notice. This agreement will terminate automatically 30 days after we receive your notice, or on the date you specify in your notice if this is later

than 30 days. If the Services have a Minimum Term and you wish to terminate within that Minimum Term, you must pay us in full for the remaining period of that Minimum Term before you attempt to terminate.

10.2.We may terminate this agreement immediately by notifying you if:

10.2.1.we are entitled to do so under this agreement;

10.2.2.you commit a material breach of an obligation under this agreement; or

10.2.3.we reasonably suspect that you cannot, or are not required to, pay your invoices.

10.3.We may terminate either or both this agreement and any Services at any time and for any reason by giving you 30 days' notice of such termination. If we choose to terminate any Services under this clause 10.3, we will not charge you an early termination fee if you are within those Services' Minimum Term.

10.4.Cancellation, termination or expiration of this agreement or any Services shall not affect any rights, obligations or liabilities of either party that have accrued before termination or that are intended to continue to have effect beyond termination or expiration.

10.5.On cancellation, termination, or expiration of this agreement, you will automatically, immediately, and irrevocably, lose access to (and will not be able to recover) any telephone numbers we have allocated to you. We shall not be liable for any losses to you arising from this. If you wish to move your phone number to another provider, you must ensure that it has transferred across to your new provider and verify that it is working with them before the date on which our service cancels, terminates, or expires. If you do not do this, we will not be able to transfer your phone number and you will lose use of it.

## **11.Varying this agreement**

11.1.We can vary this agreement, including as to price, at any time. You cannot.

11.2.If we vary "list prices", such as the prices for calls, we will give you at least 30 days' notice.

11.3.If we increase the price of the Services where the increase is limited to us passing on an amount equal to any increase in the rate of Value Added Tax or any other directly and specifically applicable taxation charge or regulatory levy imposed by mandatory provisions laid down by government or regulatory authorities, payment of which is compulsory, we will notify you by email, and the variation will be effective as of the time at which we send the email (unless otherwise notified).

11.4.For any other variations, we will give you at least 30 days' notice by email or on your invoice. If you wish to terminate the Services to which the variation relates, you may do so without any cancellation charge, as long as we receive your notice of termination of this agreement within 14 days of the day on which we notified you of the variation. If we do not receive notice of termination from you within this time, you are deemed to have agreed to the variation.

## Data protection

### 12.Interpretation

12.1.References in clauses 12 - 17 to a Regulation are to regulation 2016/679/EC, also known as the "GDPR", for as long as the GDPR applies to our Processing of Personal Data. If the GDPR ceases to apply to our Processing of Personal data, references to a Regulation are to the Applied GDPR. References to the "Applied GDPR" are to the GDPR as amended by the UK's Data Protection Act 2018.

12.2.References to an Article are to an Article of the Regulation and capitalised terms in clauses 12 -17 have the meaning defined by the Regulation unless otherwise defined in the Agreement.

### 13.Scope

13.1.If, in respect of any Personal Data Processed by us as part of the Services, you are a Data Controller, and we Process the Personal Data as your Data Processor, clauses 14 - 17 shall apply in respect of such Processing.

### 14.Subject matter of processing

14.1.You must provide us with a document setting out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of Data Subjects. You must notify us promptly if this information changes, and you must provide us with the necessary updated information.

### 15.Your obligations

15.1.You must, for the duration of the Processing, comply with your obligations under Data Protection Laws and Regulations. Without limiting the generality of this, you must, in particular:

15.1.1.have a lawful basis for the Processing, and ensure you are entitled to provide the Personal Data to us for Processing, and must notify us promptly if either of these ceases to be true;

15.1.2.notify your Data Subjects of the Processing, to the standard required by Data Protection Laws and Regulations;

15.1.3.ensure that all Personal Data you provide to us is accurate and up to date, and you must make promptly any amendments necessary to ensure that the Personal Data remain accurate and up to date.

### 16.Our obligations

16.1.We must:

16.1.1.Process Personal Data in accordance with all applicable Data Protection Laws and Regulations;

16.1.2. Process the Personal Data within either or both the UK and the European Economic Area and only on your documented instructions, including with regard to transfers of Personal Data to a third country or an international organisation;

16.1.3. unless prohibited by law, notify you before Processing the Personal Data, if we are required to act other than in accordance with your by:

16.1.3.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and

16.1.3.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.

16.1.4. treat the Personal Data as confidential information;

16.1.5. take all measures required pursuant to Article 32;

16.1.6. taking into account the nature of the Processing, assist you by appropriate technical and organisational measures, insofar as this is reasonably possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;

16.1.7. provide reasonable assistance to you, at your cost, on your written request in ensuring compliance with your obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to us;

16.1.8. at your choice, delete or return all the Personal Data to you after the end of the provision of the Services relating to the Processing, and delete existing copies. If we make available to you tools which enable you to download your Personal Data, you must only ask us to assist where those tools are unable to meet your

reasonable needs. We are not required to delete Personal Data if we are required to continue store those Personal Data:

16.1.8.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and

16.1.8.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.

16.1.9. at your cost allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you. Any audit or inspection shall be carried out on reasonable notice and avoid causing damage, injury or disruption to our premises, equipment, personnel or business;

16.1.10. at your cost provide reasonable assistance to you with any data impact assessments; and

16.1.11. in the event of a Personal Data Breach notify you without undue delay.

16.2. From time to time, we may need to engage other processors (each a "Sub-Processor"). In respect of all Sub-Processors, we will respect the conditions referred to in paragraphs 2 and 4 of Article 28 for any such engagement. We will be liable for the acts and omissions of our Sub-Processors, and we will ensure that the Sub-Processor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this clause 16.

16.3. You hereby specifically authorise us to engage the following Sub-Processors:

16.3.1. Amazon Web Services

16.3.2. Bytemark Hosting

16.3.3. M247 Limited

16.4. You hereby give us a general authorisation to engage other Sub-Processors. We will inform



you if we intend to appoint a Sub-Processor by email. If you object to the intended Sub-Processor, you must notify us within five day of us announcing our intention to appoint that Sub-Processor, and we and you shall discuss changes needed to the Services (which may entail an increase in charges) that might arise from this. If, acting reasonably, we and you cannot agree suitable changes to the Services (including, if relevant, increased charges), we may suspend Services or (at our discretion) terminate this agreement on immediate notice to you, in each case without liability.

## 17. International Transfers of Personal Data

17.1. If:

- 17.1.1. we act as your Processor;
- 17.1.2. the Processing falls within Articles 2 and 3 of Regulation 2016/679; and
- 17.1.3. the United Kingdom is or becomes a “third country” for the purpose of Chapter V of Regulation 2016/679;

unless and until such time as the European Commission has decided that the United Kingdom (or one or more specified sectors within the United Kingdom, where we, or the Processing, falls within one or more of those specified sectors) ensures an adequate level of protection for the purposes of Chapter V of Regulation 2016/679, you and we shall, in respect of any transfer of personal data subject to Chapter V of Regulation 2016/679 which is not subject to any of the permitted derogations set out in that Chapter V, enter automatically into the Standard Contractual Clauses and, for the purposes of these clauses, you shall be the “data exporter”, and we shall be the “data importer”.

## 18. Indemnities

18.1. Where, in this agreement, we say that you will indemnify us from something, it means that you agree to fully indemnify and keep us

fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by us and arising from that thing.

18.2. You will indemnify us from:

- 18.2.1. your breach of this agreement, non-compliance with the terms of this agreement (other than in respect of payment) by your users, and your negligence, or other act, omission or default;
- 18.2.2. the operation or break down of any Equipment or software owned or used by you;
- 18.2.3. any claim brought against us by any third party alleging that its intellectual property rights are infringed by the use by you of the Services, Equipment, or any software we provide or make available to you; and
- 18.2.4. your use or misuse of the Services, Equipment, or any software we provide or make available to you.

18.3. In clauses 18.2.1 - 18.2.4, references to “you” and “your” include your users, and anyone else who makes use of the equipment or services.

## 19. Limits on liability

19.1. All conditions, warranties or terms which might have effect between you and us, or be implied or incorporated into this agreement (whether by statute, common law or otherwise) are excluded to the extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

19.2. Neither party limits or excludes its liability to the other for personal injury or death caused by its negligence, for fraud or fraudulent misrepresentation, or for any matter for

which, at law, a party cannot limit or exclude its liability.

19.3. You do not limit or exclude your liability for any indemnities in this agreement, or for sums due under it.

19.4. Our total liability to you in respect of all breaches of this agreement by us is a “money back guarantee”, meaning the lesser of:

19.4.1. a pro-rata sum of the price you paid for the Services to which the breach relates, for the period in which we were in breach of this agreement; and

19.4.2. the amount you paid for those Services for the month in which you notified us of the breach, excluding any installation, set-up, fault-repair, or other non-recurring charges.

19.5. You agree that:

19.5.1. our limitation of liability in clause 19.4 applies to any compensation or damages awarded through our alternative dispute resolution scheme, or any other basis;

19.5.2. you must not seek, or accept, or look to recover from us, any compensation or damages above this limit of liability; and

19.5.3. you will neither ask for nor accept compensation for any matter which is not a breach of this agreement.

19.6. If you use a telephony service which is not provided by us (for example, a third party’s SIP trunk), you are solely responsible for any charges levied by or claims made by the provider of that telephony service, or any other third party, in respect of traffic originated or received over that telephony service, whether or not that traffic is a result of authorised use by you. You agree that under no circumstances are we liable for any such charges or claims.

19.7. If we become aware of bugs (such as faults, defects, or security vulnerabilities) in Open Source Software which we use in the course of our provision of the Services, we will take

reasonable steps to notify the third parties responsible for that Open Source Software. We cannot, and do not, guarantee if or when a bug will be fixed, and we are not liable for any bugs — whether we are aware of them or not — in any Open Source Software.

19.8. We will take reasonable steps to comply with the requirements of any licences under which Open Source Software is made available, but we are not liable if the Open Source Software infringes any third party’s rights.

19.9. Subject to clauses 19.1 - 19.3, neither party shall be liable to the other for special, indirect, or consequential losses, nor for the following types of loss, whether direct, indirect, special or consequential, in each case however caused:

19.9.1. financial loss (other than in respect of sums due from you to us under this agreement), including loss of profits, earnings, business, goodwill, business interruption;

19.9.2. expected or incidental losses; loss of expected savings; loss of sales; failure to reduce bad debt; reduction in the value of an asset; and

19.9.3. loss of, or corruption to, data.

19.10. You agree that the limits of liability in this agreement are fair and reasonable.

19.11. This clause survives cancellation, termination, or expiration of this agreement.

## **20. Events outside reasonable control**

20.1. Neither party will be liable to the other for any delay or failure in the performance of that party’s obligations caused by events outside that party’s reasonable control, but only if that party promptly notifies the other of the circumstances of the event. This clause 20.1 does not apply to your obligation to pay any sums due under this agreement.

20.2. We may notify you by email, or by posting an updating on our web site or status pages.

20.3.If the event persists for 30 days or more, the party not affected by the event may give notice to the other to terminate this agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on your part to pay any sums due under this agreement).

## 21.Notices

21.1.Any notice (except for the service of court proceedings) shall be sent to the other party by any of the following methods:

21.1.1.by email to the receiving party's nominated email address for service. In our case, this is support@dmcip.com. In your case, this is the email address which you have provided to us for sending invoices; or

21.1.2.by a signed-for postal service which provides proof of delivery.

21.2.If you want to change your email address for receipt of notices, you must notify us and the change will take effect from the date on which we confirm that we have changed your email address.

21.3.Both parties consider that notice has been given:

21.3.1.in the case of email, for us notifying you, one clear day after the time at which we sent the email;

21.3.2.in the case of email, for you notifying us, one clear day after you receive confirmation from us that we received such notification; and

21.3.3.in the case of signed-for post, two Business Days, or for international mail, five Business Days after posting.

21.4.Notice for the service of court proceedings shall be by a signed-for postal service which provides proof of delivery, or by courier, and such notice shall be addressed:

21.4.1.to us, addressed to the Managing Director, and sent to our registered office address; and

21.4.2.to you, to the most recent address which we have on file for you or, where no such address exists, to an address which we reasonably believe is linked with you. We may instead serve you by email, if we are not reasonably able to serve notice to you by post or courier.

21.5.You must obtain and retain proof of sending of any notice, and you must provide this proof of sending to us promptly on request.

21.6.This clause survives cancellation, termination, or expiration of this agreement.

## 22.Dispute resolution procedure

22.1.Each party shall deal with any disputes or claims arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims) as follows:

22.1.1.the issue in dispute shall be referred for discussion to, in your case, your normal point of contact with us, and in our case, our support team;

22.1.2.if the dispute is not resolved within 7 days under clause 22.1.1, the account managers at each party shall attempt to resolve the dispute; and

22.1.3.if the dispute is not resolved within 7 days under clause 22.1.2, a managing director of each party shall attempt to resolve the dispute.

22.2.If, after exhausting the procedure set out in clause 22.1, the dispute is still not resolved, you, or we, may bring a claim before the courts of England. Each party agrees to the exclusive jurisdiction of the courts of England in respect of any claim, dispute or matter arising out of or in connection (including non-contractual claims) with this agreement. You must bring any claim within 12 months of the date on which the cause of action accrued.

22.3. Clauses 22.1 and 22.2 do not affect our ability to seek an injunction, or other appropriate interim relief, from the courts of England, without exhausting the dispute resolution procedure.

22.4. Each party shall bear its own costs for this dispute resolution procedure, up to the involvement of the courts. Costs related to the involvement of the courts shall be at the court's discretion.

22.5. You agree that the allocation of risk in this clause 22 is fair and reasonable having regard to all the circumstances.

22.6. This clause 22 is without prejudice to any rights you may have under clause 35.

22.7. This clause survives cancellation, termination, or expiration of this agreement.

partner, representative or otherwise being entitled to bind us.

23.7. This clause survives cancellation, termination, or expiration of this agreement.

## **23. Miscellaneous terms**

23.1. A person who is not a party to this agreement has no rights under this agreement. This includes any users you may have.

23.2. If any part of this agreement is found to be invalid or unenforceable by any court, this shall not affect the other provisions of this agreement and those provisions shall remain in full force and effect.

23.3. If a party fails to exercise a right or remedy, this failure shall not prevent that party from exercising that right or remedy subsequently for that or any other incident.

23.4. A waiver of any breach or provision of this agreement shall only be effective if made by email or in other writing.

23.5. We may assign, transfer, charge, sub-contract or deal in any other manner with any of our rights or obligations under this agreement. You may not do these things without our prior written consent.

23.6. Nothing in this agreement establishes any partnership, joint venture, or agency. You shall not hold yourself out as being an agent,

## Telephony services

### 24. Telephony: applicability

24.1. Clauses 25 to 35 apply only to any part of the Services which consist of telephony services which enable you to originate calls to, and receive calls from, numbers in the UK's national dialing plan (such as a SIP trunk), where we provide those telephony services to you. They do not apply where you are using a third party telephony service (such as someone else's SIP trunking), even if we have installed, or support or maintain, that system.

### 25. Important: Emergency services access

25.1. Our telephony services generally permit access to the emergency services. However, they are Internet telephony services, and these are dependent on your connection to a suitable data network (such as the data services we offer), the operation of that data network, and operation of your Equipment (which will not function in the event of a power outage unless you have suitable battery backup equipment). If you do not have a connection to a suitable data network, or your data network or equipment is not functioning correctly (including where your data services have been suspended), you will not be able to use the telephony services, including for the purposes of making calls to the emergency services. You must consider this and make appropriate arrangements.

25.2. We will, where possible, pass your location information to the emergency services. This location will be the location you have informed us the telephony service is used from.

25.3. If you expect to use our telephony service:

25.3.1. principally at a single fixed location, we recommend that you register with us the address of the place where the telephony service is to be used before you activate it,

and that you update that address information if there is any change to it; or

25.3.2. from multiple locations, we recommend that you register and update the location information associated with it whenever you access the telephony service from a new location.

25.4. You may be required to confirm your location to the emergency services.

### 26. Phone numbers

26.1. You do not own any phone numbers or other identifiers which we allocate to you.

26.2. While we will use reasonable efforts to avoid doing so, and to give you such notice as is possible and reasonable in the circumstances if we intend to do so, we may change the phone numbers or other identifiers allocated to you. We are not responsible for any costs or losses suffered by you if we do so.

### 27. Responsibility for telephony usage

27.1. You are liable for all calls, messages, data, and any other usage, which:

27.1.1. originate from or appear to us to originate from your network;

27.1.2. originate from or appear to us to originate directly from you; or

27.1.3. present to us with your identifying data (including, but not limited to, your username and password),

irrespective of whether or not they were generated or authorised by you or your users, and including those generated as a result of fraudulent activity by a third party.

27.2. You are responsible for keeping your account credentials secret and for securing your network and equipment. If you become aware of a compromise, you must immediately change your account password(s) and other security devices and notify us. This does not limit your responsibility and liability.

27.3. We may take steps to identify apparent fraudulent activity and automatically suspend your telephony service for outgoing calls if we find such activity, but we cannot promise that this will always be successful or fast enough to prevent unauthorised traffic. We will contact you (by email) if this happens.

27.4. You are responsible for checking the charges which apply to any calls which you or your users make.

## 28. Acceptable use

28.1. You must not use the Services, and must take all reasonable steps to procure that the Service is not used:

28.1.1. in a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence or that is in any way unlawful, or fraudulent, or, which has any unlawful or fraudulent purpose or effect; or

28.1.2. in any way which infringes the Intellectual Property Rights of us or any third party; or

28.1.3. in connection with (without prejudice to the generality of clause 7.4.1) the carrying out of fraud, or criminal offence, against any communications provider; or

28.1.4. in any way that constitutes, accessorises, or enables, artificial inflation of traffic (as set out in Annex E of BT's Network Charge Control Standard Interconnect Agreement); or

28.1.5. in any way that in our reasonable opinion could materially affect the quality of any Services provided by us or any service provided by any third party; or

28.1.6. to make nuisance calls or to send "spam"; or

28.1.7. to threaten, harass, stalk, abuse, disrupt, or otherwise violate or infringe the rights (including but not limited to

copyright, rights of privacy and publicity) of others; or

28.1.8. to obtain access, through whatever means, to restricted areas of our, or our suppliers' underlying networks; or

28.1.9. to send and receive data in such a way or in such amount so as to adversely affect our, or our suppliers' networks (or any part of them) or to adversely affect our other customers; or

28.1.10. contrary to our instructions; or

28.1.11. in a way which (in our reasonable opinion) brings our name, or our suppliers' names, into disrepute, or which places us or our suppliers in breach of any legal obligation, permission or consent.

28.2. If you are providing a communications service to third parties, you must

28.2.1. include and maintain in your contracts with your customers conditions equivalent to those contained in clause 28, and, in the case of your customers who are resellers, require that they include and maintain such conditions in their contracts with further resellers and end users; and

28.2.2. diligently and properly enforce such conditions (including if appropriate by suspending or terminating the provision of its service to the customer or end user) where you know or reasonably suspect that the customer or end user is in breach of such obligations.

## 29. Calling line identification (CLI) facilities

29.1. You must not send CLI data which Ofcom would regard as invalid or non-diallable.

29.2. If you send invalid or non-diallable CLI, you indemnify us from this.

29.3. We may attempt to detect invalid or non-diallable CLI data, and we may block calls which appear to us to have invalid or non-diallable CLI data. This may affect incoming and outgoing calls. We are not responsible for

any losses which you might suffer as a result of this.

29.4. By default, we will present your CLI to any party you dial using our phone services. You can opt to withhold your CLI using a code dialled before the number you are dialling, or for all calls.

### **30. Complaints**

30.1. Our Customer Complaints Code is available on our web site at <https://www.dmcip.com/complaints/>. If you wish to complain, you must follow the Customer Complaints Code.

### **31. Directories**

31.1. Unless compelled to do so, we will not include your personal data in any directory. If compelled to do so, we may pass our costs in fulfilling the request on to you.

31.2. You can purchase a printed telephone directory from us for any geographic area. You acknowledge that will fulfil any such purchase by buying the relevant directory from BT, and providing it to you once we have received it from them. We will charge you for our time and costs in addition to the price we pay to BT. We recommend that you buy a directory directly from BT, if you want one.

### **32. Telephony service limitations**

32.1. You agree that we are not required to provide you with access to numbers or ranges, where it is not technically and economically feasible for us to do so.

32.2. We set a default credit limit of £250.00 (excluding VAT) on all phone accounts. This limit is reset when we produce each bill for that service. If this credit limit is met or exceeded, you will be unable to make calls other than to the emergency services or our office. You can request a higher limit, but this is at our absolute discretion. You can request we reduce your limit at any time.

### **33. Moving your phone number to or from another provider**

33.1. We charge for number portability whether inbound (bringing your existing number to use) or outbound (taking a number we have assigned to you to another provider), as set in our quotation to you.

33.2. If you wish to move your phone number to another provider, you must ensure that it has transferred across to your new provider and verify that it is working with them before the date on which our service cancels, terminates, or expires. If you do not do this, we will not be able to transfer your phone number and you will lose use of it.

### **34. Artificially-inflated traffic**

34.1. You must not use our telephony services in a way that constitutes artificial inflation of traffic (as set out in Annex E of BT's Network Charge Control Standard Interconnect Agreement).

34.2. You indemnify us from any fraud or artificial inflation of traffic.

### **35. Alternative dispute resolution**

35.1. In addition to your rights under clause 22, you may refer a dispute to our alternative dispute resolution scheme, of which details are available on our web site, if:

35.1.1. you are a domestic or small business customer, as defined in Ofcom's General Conditions of Entitlement; and

35.1.2. you are entitled to refer the dispute to our alternative dispute resolution scheme.

35.2. If you are not entitled to refer the dispute to our alternative dispute resolution scheme, you must not do so or attempt to do so. If you breach this clause, you shall be liable for any costs we incur (including our legal fees, and any compensation the alternative dispute resolution scheme requires us to pay to you) as a result of your breach.

35.3.If you refer a dispute to our alternative dispute resolution scheme and the scheme does not decide in your favour on all aspects of the dispute, you shall be liable for any costs we incur (including our legal fees) in engaging with the alternative dispute resolution process.

35.4.This clause survives cancellation, termination, or expiration of this agreement.



## Equipment

### 36. Equipment rental

36.1. Promptly following receipt of any Equipment we have rented or loaned to you, you must visually inspect and test it, and notify us of any damage, or any failure to operate correctly, by sending us photographs. If we do not receive a notification from you within 48 hours of delivery of the Equipment to the delivery address notified, the Equipment is deemed to have arrived undamaged and in working order.

36.2. You must, for the duration of your rental or loan:

36.2.1. insure it for its full replacement value;

36.2.2. keep it safe and secure, and in good working order, following any instructions or manufacturer guidance or recommendations which we provide to you;

36.2.3. use the Equipment solely for your own direct use. You must not lend, rent, hire, sell, or otherwise permit any third party to use the Equipment;

36.2.4. connect it solely to a telephony service provided by us;

36.2.5. use the Equipment solely indoors, in a typical office environment;

36.2.6. notify us immediately if it is stolen, lost, misplaced, or damaged; and

36.2.7. return it to us, at your own cost, safely packaged and by a courier or tracked delivery service, on expiry of the rental or loan period.

36.3. Following our receipt of returned Equipment, we will inspect it, and notify you of any damage or failure in operation which, in our view, is not consistent with reasonable wear and tear, and we will charge you the cost of a new piece of that Equipment.

### 37. Title and risk

37.1. For Equipment we are selling to you, or have sold to you, the Equipment remains our property, and title remains with us, until we have received your payment in full for it.

37.2. For Equipment we are renting or loaning to you, the Equipment remains our property, and title remains with us.

37.3. You must not permit a bailiff, or other similar person, to take, or make part of a controlled goods agreement or similar, any Equipment which we own. You must make them aware that we, and not you, owns the Equipment. If they attempt to take, or take control over, the Equipment, you must notify us immediately.

37.4. Risk passes to you when the Equipment is handed over to the courier or postal services provider, of you or your nominated agent.

## Hosting

### 38.Hosting: applicability

38.1.Clauses 39 to 46 apply where we provide you with hosting services. They do not apply where we manage servers which you host yourself, or which a third party hosts for you.

### 39.Resource allocation and performance

39.1.We will allocate you with server resources in accordance with the package set out in our quotation.

39.2.We monitor the performance of our servers, and try to deal with reductions in operating performance within a reasonable time. In respect of hosting services using shared resources, you acknowledge that an occasional reduction in operating performance of the services is a natural part of the services. This is outside of our control and accordingly we are not liable for these reductions.

### 40.Permitted use

40.1.You may only use the hosting service for the serving of voice and video applications.

### 41.Your responsibilities

41.1.If we permit you to install software or scripts, or provide you with a facility for the installation of software or scripts, you are responsible for, and are liable for, all aspects of these, including security, configuration, and suitability for your purpose. We do not provide technical support in respect of software or scripts which you have installed.

41.2.You are responsible for the content which you or your users store on or transmit through the hosting service. You must ensure that your use of the hosting service, and any content stored on or transmitted through the service, is lawful. You indemnify us from any breach.

### 42.Server access

42.1.You cannot, and may not, physically access any server we use to provide the hosting service, nor visit or access the data centre.

### 43.Monitoring and takedown

43.1.We do not monitor what you store on, or transmit through, the service.

43.2.We may remove or restrict your account, or your content, if we are required to do so by law, if we could be liable for your usage if we did not do so, or if you do not comply with your obligations under this agreement. We are not liable to you if we do this.

43.3.We are not required to notify you in advance if we remove your account or content in accordance with this clause 43.

### 44.Storage capacity

44.1.If you exceed the agreed storage space, we will contact you, and you must either reduce your storage so that it does not exceed the agreed storage space, or else upgrade your hosting package.

44.2.If you repeatedly exceed the agreed storage space, we may require you to upgrade your hosting package.

### 45.Permitted bandwidth

45.1.We monitor network bandwidth usage. We do not impose bandwidth limits, but we may suspend or restrict services where there is significant adverse impact on our network.

### 46.Deletion on termination

46.1.We will retain your content for three months following termination. After this time we will delete it. If you want to retain any content, you must download it before termination takes effect.