

Terms and Conditions

1 DEFINITIONS

'Acceptable Use Policy' means Arrow's acceptable use policy (as updated and/or amended from time to time).

'Agreement' means the relevant Product Agreement(s) and Product Schedule entered into between the Customer and the relevant Arrow entity.

'Arrow' means such relevant entity as set forth in the Product Agreement, being either Arrow Business Communications Ltd, a company registered in England and Wales under company number 5643503 or Arrow Business Communications (Scotland) Limited, a company registered in Scotland under company number SC394757.

'Arrow Group' means Arrow, and any of its subsidiaries.

'Charges' means any sums payable to Arrow under this Agreement for any of the Services provided, as further set out in Clause 4.1.

'Confidential Information' has the meaning set out in Clause 17.1.

'Customer' means the customer of Arrow which enters into one or more Product Agreements.

'Customer Group' means the Customer, any subsidiary company of Customer for the time being, Customer's holding company for the time being and/or any holding company or subsidiary of the Customer's holding company for the time being.

'Data Protection Legislation' means the EU General Data Protection Regulation (EU 2016/679) ("**GDPR**") and the UK Data Protection Act 2018 (as amended or replaced from time to time) and any related legislation, regulations or guidance from time to time and the terms "**controller**", "**processor**", "**data subject**", "**personal data**", "**personal data breach**", "**processing**" and "**third country**" used in this letter agreement shall have the meanings ascribed to them in the Data Protection Legislation, and their cognate terms shall be construed accordingly.

'Direct Loss' means any loss characterised at law as direct loss and excludes all indirect, special or consequential loss.

'Equipment' means the items of hardware leased, rented or purchased from Arrow to the Customer under this Agreement.

'Force Majeure' means any cause not within the reasonable control of a party and which that party cannot reasonably prevent or overcome, as a result of which such party is unable to perform its obligations under this Agreement and shall include, in the case of Arrow, any delay or failure caused by Arrow's contractors or Network Operator but shall exclude any failure to pay the Charges.

'Gross Recurring Charges' means any recurring charges applicable to the Customer, as defined in the Product Agreement, prior to any Customer-specific discounts being applied.

'Infrastructure Provider' means a third-party provider of Service Infrastructure, including Network Operators and Cloud Service Providers, and third-party providers of data centres and software.

'Intellectual Property Rights' means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto and the right to apply for registration of and/or register such rights and all extensions and renewals thereof.

'IP Address' means an IP address allocated to the Customer for the use of one or more Products.

'Legislation' means any statute, statutory provision or subordinate legislation in force from time to time.

'Liability' means all liability including liability for breach of contract, negligence, breach of statutory duty and/or tort, any liability in relation to any indemnity and any other liability howsoever arising.

'Losses' means losses, damages, costs, claims, proceedings, expenses and liabilities (including reasonable legal fees).

'Network' means a telecommunications network run by a Network Operator in respect of which Arrow is providing resale services.

'Network Operator' means an organisation operating a telecommunications network or hosted services environment, which has in each case been duly authorised to do so.

'Number' means a telephone number used for receiving the Services, whether or not allocated by Arrow.

'Product' means one of Arrow's standard products from time to time, which may consist of a combination of Equipment, software and other goods and services.

'Product Agreement' means an agreement for a Product entered into between Arrow and the Customer for the purchase and provision of a Product, subject to these Terms and Conditions and the relevant Product Schedule, and validly executed by duly authorised representatives of both parties; and the term 'Product Agreement' shall encompass documents titled as 'Product Agreements' and documents titled 'Product Agreement Forms'.

'Product Schedule' means (if applicable) the Schedule setting out specific terms and conditions in relation to the provision of a particular Product.

'Purchase Order' means an order in writing for additional goods or services from the Customer to Arrow, whether in the form of an official purchase order, an email, fax or letter, and issued by the Customer and accepted by Arrow in accordance with Clause 2.5.

'Service Infrastructure' products and/or services which Arrow is reselling as part of a Product, and/or the infrastructure on which such products and/or services depend, including without limitation any Network and the internet.

'**Services**' means the provision of any Product, Equipment or other goods or services by Arrow to the Customer under a Product Agreement or a Purchase Order.

'**Terms and Conditions**' means Clauses 1 to 18 of this document.

'**Third Party Providers**' means all Arrow third party suppliers in relation to the Agreement.

'**User**' means each user within the Customer Group who is provided or to be provided with Services under the terms of this Agreement.

'**User Details**' means in respect of each User, that User's full name, number, email address and any specific billing requirements.

'**Year**' means, in respect of any Product Agreement, any twelve-month period ending on an anniversary of either (i) the date that the Product Agreement is duly executed, or (ii) if earlier, the date on which Arrow first began to provide Services under that Product Agreement.

2 STRUCTURE AND DURATION

- 2.1 **Terms and Conditions:** These Terms and Conditions shall apply to any Product Agreement that the Customer enters into. These Terms and Conditions shall have effect on and from the date of acceptance by Arrow of the Customer's signed Product Agreement, up to and including the date that all the Customer's Product Agreements are no longer in force, whether through expiry or termination. Each Product Agreement shall also be subject to the provisions of any relevant Product Schedule, which are deemed incorporated into such Product Agreement on signature of the same.
- 2.2 **Product Agreements:** Each validly executed Product Agreement shall constitute a separate binding contract, subject to these Terms and Conditions, the relevant Product Schedule(s). Each Product Agreement shall have effect on and from the date of acceptance by Arrow of the relevant Product Agreement. The duration (including any minimum period), renewal, termination and expiry of each Product Agreement shall, subject to Clauses 2.3 and 2.4, be as set out in such Product Agreement.
- 2.3 **Term:** The parties agree that the term of each Product Agreement shall be as stated within such relevant Product Agreement subject to the minimum spend commitment as stated in the Product Agreement is met within such term (in accordance with clause 2.4 below) and shall continue unless otherwise terminated in accordance with clause 11. Upon 90 days' written notice following the expiry of the initial term or should the Customer provide and serve written notice to terminate a Product Agreement (or fails to give notice to renew a Product Agreement) but subsequently continues to use the relevant Services beyond the end of the notice period (or current term of the Product Agreement, as the case may be), the Product Agreement shall be deemed to continue for an indefinite period, subject to termination by the Customer on 90 days written notice to Arrow and provided that Arrow shall be entitled to charge the Customer for the full price of the relevant Product without any previously applied discount.
- 2.4 **Minimum Spend:** If a Product Agreement contains a minimum spend commitment from the Customer and, at the effective date of termination or expiry of such Product Agreement, such spend commitment has not been reached, then the Customer shall either: (1) within 30 days of such date, pay to Arrow the difference between (i) the minimum spend commitment and (ii) the total amount paid to Arrow by the Customer as at such date. Any such payment shall be without prejudice to the Customer's liability for, and Arrow's ability to recover, any other sums from the Customer under this Agreement; or (2) agree that the term of the Product Agreement shall be extended on the same terms until such time as the minimum spend commitment has been satisfied and thereafter, the terms of the Product Agreement shall continue unless and until terminated by the Customer upon 90 days' written notice.
- 2.5 **Purchase Orders:** Any request for additional Services not already specified in a Product Agreement, and any change to an existing Product (including an upgrade or re-sign) will be made by way of a Purchase Order (which, for the avoidance of doubt, may take the form of email correspondence). A Purchase Order is accepted by Arrow and becomes part of the relevant Product Agreement on the earlier of the date when Arrow has agreed to it and the date when it is fulfilled. Until a Purchase Order is accepted, it does not form part of the relevant Product Agreement. Arrow reserves the right to reject any Purchase Order submitted by the Customer. No Purchase Order submitted to Arrow may be cancelled by the Customer except with the agreement in writing of Arrow (which agreement may be given subject to conditions). All Purchase Orders will be deemed to be issued under and invoking these Terms and Conditions and the relevant Product Agreement.
- 2.6 **Customer's Group:** The Customer may enter into a Product Agreement (or Purchase Order) for the benefit of any company in the Customer Group. The Customer will ensure that each such company complies with the terms and conditions of this Agreement as if it were named in this Agreement in place of the Customer and shall enforce the terms of this Agreement against such company if requested by Arrow.

3 SERVICES

- 3.1 **Supply of Services:** All Services are supplied as set out in the relevant Product Agreement, Product Schedule and these Terms and Conditions.
- 3.2 **Equipment:** All Equipment is supplied by Arrow on an 'as is' basis, and with the benefit of the relevant manufacturer's warranty (if applicable and to the extent freely transferable). Arrow accepts no liability for failure, loss or damage outside of The Sales of Goods Act 1979 and/or Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Risk shall pass in the Equipment when delivered. Title shall pass when the Customer has paid Arrow in full in respect of (i) the Equipment and (ii) all other sums which are or which become due to Arrow from the Customer on any account. When Equipment is purchased and the purchase price is less than the Arrow published list price as published from time to time, title will only pass on completion of the minimum term as specified in the relevant Product Agreement. Delivery of Equipment shall be completed when Arrow places the Equipment at the Customer's disposal at the delivery point. The Customer shall arrange for the

Equipment to be signed for on delivery. Until title in the Equipment has passed to the Customer in accordance with this clause 3.2, the Customer must:

- 3.2.1 hold the Equipment on a fiduciary basis as Arrow's bailee;
- 3.2.2 store the Equipment (at no cost to Arrow) separately from all other goods of the Customer and/or any third party in such a way that it remains readily identifiable as Arrow's property;
- 3.2.3 not destroy, deface or obscure any identifying mark or packaging relating to the Equipment;
- 3.2.4 maintain the Equipment in satisfactory condition and keep it insured on Arrow's behalf for its full price against all risks to the reasonable satisfaction of Arrow. On request the Customer shall immediately produce the full policy of insurance to Arrow.

3.3 **Time of supply:** The desired commencement date for the supply or completion of any Services or the delivery of any Equipment is the date (if any) specified in the relevant Product Agreement (or Purchase Order, as the case may be). No date specified by Arrow shall be contractually binding on Arrow. The Customer acknowledges that the supply of Equipment is subject to availability.

3.4 **Resale:** The Customer undertakes that it will not offer any of the Services for resale or re-supply or otherwise make Services available to any person on an arm's-length commercial basis.

3.5 **Service Technology changes:** The Customer acknowledges and agrees that where any changes are made to the services by a service provider or a network operator withdraws or terminates any service technology used by the Customer under its current Agreement, Arrow shall use all reasonable endeavours to provide an alternative solution and a similar technology service to the Customer upon the most competitive tariffs but such change, withdrawal or any resulting associated price increase shall not constitute a right of termination of the Agreement by the Customer.

4 PRICING

4.1 **Charges for Products, Equipment and services:** The Charges for any Product, Equipment or services shall be as set out in the relevant Product Agreement. Where the Product Agreement does not specify a price for any Product, Equipment or services required, the price will be as set out in Arrow's current price lists (such prices available on request), unless otherwise quoted by Arrow in writing (any such quotation being valid for 30 calendar days from the date of issue). A quotation will not be an offer capable of acceptance.

4.2 **Calculation of Charges:** Save in the case of manifest error, Arrow's calculation of charges, rebates and discounts shall be final and reference will not be had to any of the Customer's data records or logs.

4.3 **Price changes:**

4.3.1 Arrow will use its reasonable endeavours to ensure that the Charges remain competitive and reflect any increase in business volumes, however Arrow may from time to time introduce additional Charges or changes to its existing Charges which may include new Charges or Changes resulting from: a) any requirements or recommendations by Ofcom or any other regulatory body; or b) changes made by Third Party Providers to their own charges for which Arrow will provide written notice no less than 30 days' notice prior to the change being applied. If the total cost to the Customer of the Services is increased as a result of such a notice, the Customer may request (in respect of the Services to which the increase relates) that the Charges for the provision of the relevant Services are reviewed. This request must be made within 14 calendar days of the Customer being given notice of the change to the Charges, however Arrow will have no obligation to alter such Charges.

4.3.2 Arrow shall apply an annual increase to all recurring Charges each July based on the Retail Price Index ("RPI") percentage published by the Office of National Statistics each April; where the RPI value is 3.8% or less, Arrow shall apply a minimum increase of 3.9%. The increase will be calculated on each individual service Charge and rounded up to the nearest penny.

4.3.3 In the event of such change occurring as stated in 4.3.1 and 4.3.2, the Customer has no right to request a change to the Charges for services nor terminate the Services in whole or part.

4.4 **Credit limit:** The Customer agrees that Arrow may search the files of credit reference agencies for information on the Customer. Arrow may, on 14 calendar days' notice to the Customer, specify a reasonable monetary limit that will apply to all or any of the Charges due or which will become due to Arrow and require a particular payment method or period for the Charges. If any monetary limit set by Arrow is exceeded, Arrow reserves the right to suspend provision of the Services. If Arrow forecasts that such limit may be exceeded, the Customer shall deposit, within 7 calendar days of being given a notice to this effect, the amount by which Arrow forecasts the limit will be exceeded in the relevant billing period. Arrow may retain any amount deposited until the end of this Agreement and no interest will be paid on this sum.

4.5 **Tax:** All Charges are exclusive of any value added, sales, withholding or other tax (other than any tax based on Arrow's income) which shall be charged in addition.

4.6 **Payment terms:** All invoices shall be due and payable by Direct Debit 14 calendar days after the date of the invoice. On the expiry or termination of any Product Agreement, the payment due date shall be earlier of this payment date and the date of termination or expiry of such Product Agreement.

4.7 **Dispute:** In the event the Customer in good faith reasonably disputes any portion of the Charges contained in an invoice, Customer will pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount. If the Customer does not submit a documented claim prior to the due date for payment of the invoice, the Customer waives all rights to dispute or query the invoice. As a minimum, such documented claim shall set out the amount in dispute, the reason for such dispute and provide such evidence as shall be reasonably necessary to support the claim. The parties shall negotiate in good faith in an attempt to resolve the dispute, provided that if the dispute cannot be resolved within 30 calendar



days of the date of the invoice, either party may refer the case to an independent arbitrator. All or part of any invoice shall cease to be disputed when the disputed amount is agreed between the parties or is settled in court.

- 4.8 **Set-off and interest:** Subject to Clause 4.7, the Customer shall make all payments under this Agreement without any deduction whether by way of set-off, counterclaim or otherwise. In the event of any late payment, Customer shall be liable to pay interest on the amount of the late payment from the due date to the date of receipt by Arrow at the annual rate of the higher of 2% above the base rate of HSBC from time to time and the maximum rate permitted by applicable law. Such interest shall accrue on a daily basis both before and after any judgment.
- 4.9 **Costs of recovery:** The Customer will pay all legal fees and other costs incurred by Arrow (on a full indemnity basis) in connection with collecting or recovering amounts owed by the Customer under this Agreement or otherwise in connection with the enforcement of any term of this Agreement. During any period of suspension, charges for Services shall continue to accrue.
- 4.10 **User awareness of data charges:** The Customer shall be responsible for making its Users aware of the potential for high data charges resulting from misuse or from data usage and also the process in respect of lost and stolen equipment.

5 FRAUD

The Customer shall be liable for all Charges incurred and other sums owed under this Agreement regardless of the identity of the person using the relevant Services, whether incurred in the course of the Customer's business or any other use (including fraudulent or improper use) save where such use arises out of the fraudulent actions of Arrow or its agents. Customer further acknowledges that in no circumstances shall Arrow have any liability to the Customer or any third party in respect of any fraud perpetrated by the Customer Group or any third party howsoever occurring, including any access gained through fraudulent access to the Services. The Customer shall immediately notify Arrow if it becomes aware of or suspects any fraudulent use of the Services. Where Arrow is providing maintenance services only, Arrow shall use reasonable endeavours to secure the Customer's equipment against fraudulent third-party access, however Arrow shall not be responsible for any sums due to third party suppliers for any fraudulent misuse of the Services.

6 SUSPENSION

- 6.1 Arrow shall be entitled in its sole discretion to elect to suspend any or all of the Services until further notice in the event that:
- 6.1.1 Arrow is entitled to terminate all or any part of this Agreement, without prejudice to Arrow's right subsequently to terminate all or any part of this Agreement; or
- 6.1.2 if an Infrastructure Provider ceases to supply Arrow or suspends provision of Service Infrastructure to Arrow for whatever reason, save where such cessation or suspension is due to the fault of Arrow; or
- 6.1.3 if Arrow is obliged to comply with an order, instruction or request of Government, an emergency service organisation or other competent administrative authority or Infrastructure Provider; or
- 6.1.4 if any amounts due to Arrow are not paid when due; or
- 6.1.5 if maintenance is required on Arrow's equipment for administering the Services, provided that such maintenance occurs outside normal business hours and Arrow gives the Customer reasonable notice in the circumstances; or
- 6.1.6 if there is, or Arrow reasonably suspects there is, a breach of the Acceptable Use Policy.
- 6.2 Where Services are suspended, other than as a result of any breach, fault or omission of the Customer, Arrow shall use its reasonable efforts to procure that recommencement occurs as soon as is practicable and that the Services are only suspended to the extent required in the circumstances. In the event that Services are suspended as a result of any breach, fault or omission of the Customer, it will pay all Arrow's reasonable costs, charges and expenses in connection with any recommencement.

7 AUTHORISED REPRESENTATIVE

Each party shall, as soon as practicable, nominate an individual (or individuals) ('**Authorised Representative(s)**') to manage their relationship under this Agreement. Purchase Orders placed or purported to be placed by a Customer Authorised Representative will, without prejudice to the validity of any other Purchase Order, be binding on the Customer. Each party will be entitled to change their Authorised Representatives by written notice to the other.

8 ACCEPTABLE USE POLICY AND FAULTS

- 8.1 **Acceptable Use Policy:** The Customer warrants that the Services are only used in compliance with the Acceptable Use Policy. The Customer shall provide such assistance as Arrow reasonably requires in relation to the Acceptable Use Policy and shall indemnify and keep the Arrow Group free from and indemnified against all Losses whatsoever arising out of, brought or threatened against the Arrow Group by any person in connection with any breach of the Acceptable Use Policy.
- 8.2 **Faults:** If Arrow determines in its reasonable opinion that a defect, fault or impairment to the Services results directly or indirectly from: (i) the negligence, act, omission, or default of the Customer; (ii) the Customer's breach of this Agreement; (iii) the operation, failure or malfunction of any network, equipment or software owned or controlled by the Customer other than equipment provided by Arrow and used in accordance with its instructions; or (iv) any third party action in response to an act or omission of the Customer or any person given access to the Services by the Customer, then Arrow may recover in arrears or advance from the Customer all reasonable costs incurred or to be incurred by it or on its behalf in connection with the remedy of such defect, fault or impairment.

9 OWNERSHIP AND CONTENT

- 9.1 **Intellectual Property:** Intellectual Property Rights in all materials (including software) supplied to the Customer in connection with this Agreement shall remain the property of Arrow or its relevant licensor. The Customer will comply with (and where reasonably required, execute) any agreement required by the owner or licensor of such Intellectual Property Rights. Arrow and its licensors expressly reserve all Intellectual Property Rights not expressly granted to the Customer under this Agreement.
- 9.2 **Software:** Software is licenced to the Customer not sold, and is provided on the terms of the relevant software manufacturer's licence. The Customer shall sign and return such licence and/or registration card relating to the software by return or as otherwise specified. If the Customer fails either to communicate its acceptance of the terms of the software licence in accordance with this clause or to pay any relevant licence fee for the software, the Customer's right to use the software shall immediately cease, and Arrow may be unable to provide the related Services. Upon the termination or expiry of the relevant Product Agreement, or of the Customer's right to use the software in accordance with the previous sentence, the Customer shall remove the software from its computer systems and return all physical copies thereof to Arrow and will upon request provide a signed declaration that this clause has been complied with. The Customer shall indemnify Arrow in respect of all Losses incurred by the Arrow Group as a result of a breach by the Customer of this Clause 9.2.
- 9.3 **Numbers and IP Addresses:** The Customer shall not, under this Agreement, acquire any right, title or interest in any Numbers or IP Addresses. Arrow reserves the right to modify any telephone numbers or IP Addresses allocated or introduce additional codes if this is required for operational or technical reasons or by an Infrastructure Provider or government authority.

10 ALTERATIONS

Arrow may from time to time without notice change or alter the Service Infrastructure (including Fixed Networks or the Mobile Networks) which it uses and the technical functionality or configuration of the Services provided that no such changes or alterations shall result in any increase in the Charges or any material adverse change to the Services.

11 TERMINATION

- 11.1 **Mutual:** Either party ("**Terminating Party**") may terminate this Agreement, in whole or in part (including any Product Agreement or part thereof) immediately upon written notice:
- 11.1.1 if the other commits any material breach of its obligations under this Agreement which is not capable of remedy, or is capable of remedy but is not remedied within 30 calendar days of the Terminating Party giving notice in writing specifying the breach and requiring its remedy within such 30 calendar day period, provided that, in the case of a breach by Arrow, if the breach relates to a particular Product Agreement or Purchase Order (or part thereof) only that Product Agreement or Purchase Order or part thereof may be terminated and then only to the extent Arrow is in breach;
- 11.1.2 if the other becomes unable to pay its debts as they fall due, enters into liquidation whether compulsorily or voluntarily (otherwise than for the purpose of amalgamation or reconstruction where the emerging company assumes the obligations of the party entering into liquidation), compounds with its creditors or has an administrator, administrative receiver, receiver or other encumbrance appointed of all or any material part of its assets or undertaking or takes or suffers any similar action in consequence of debt.
- 11.2 **Non-Payment:** Arrow may terminate this Agreement in whole or in part (including any Product Agreement or part thereof) if the Customer fails to settle any amount due within 10 (ten) calendar days of notification by telephone, email, facsimile, post or otherwise.
- 11.3 **Product Agreements:** The parties may also terminate a Product Agreement in the circumstances (if any) set out in such Product Agreement or the associated Product Schedule.
- 11.4 **Operation on termination and accrued rights:** Termination or expiration of this Agreement (in whole or in part) howsoever arising or caused shall: (i) be without prejudice to any rights of either party which have accrued up to the date of termination; and (ii) not operate to affect any provisions that expressly or impliedly survive such termination. In particular, the Customer shall be liable to pay all remaining outstanding Charges.

12 PROVISION OF INFORMATION

- 12.1 **Data Protection:** The Customer undertakes that in providing or disclosing any personal information in respect of this Agreement (including the User Details) it has made a proper notification to Office of the Information Commissioner in respect of its use and processing of personal data, that it has collected and transferred such personal information to Arrow in accordance with the Data Protection Legislation. In particular, Customer warrants that it has obtained any relevant consent (or it is relying on another legal basis in relation) to such collection and transfer and the processing of the personal data by Arrow to provide the Services. Arrow will use such information in accordance with its Privacy Policy and Data Protection Policies provided at <https://www.arrowcommunications.co.uk/legal/>. The Customer shall indemnify Arrow in respect of all Losses incurred by the Arrow Group as a result of a breach by the Customer of this Clause 12.1.
- 12.2 **Processing:** Arrow will use personal data transferred to it by the Customer in accordance with its Privacy and Data Protection Policies as provided at <https://www.arrowcommunications.co.uk/legal/>. The parties agree that the Agreement and Arrow's policies set out the details of the types of personal data which may be processed by Arrow, as well as the categories of data subjects, the permitted nature, purpose and duration of that processing. In relation to any personal data provided to or obtained by Arrow in connection with the provision of the Services (the "**Data**") which Arrow processes on behalf of the Customer as a processor, Arrow:

- 12.2.1 shall process the Data only in connection with the provision and monitoring of the Services, to fulfil its obligation under the Agreement, for the purposes set out in Arrow's privacy and data protection policies and/or as otherwise agreed by the parties (which constitutes the Customer's documented instructions), unless Arrow is required by applicable laws to otherwise process the Data (in which case, Arrow shall inform the Customer of such requirement, unless prohibited by applicable law on important grounds of public interest);
- 12.2.2 shall ensure that any persons authorised by it to process the Data are bound by confidentiality obligations;
- 12.2.3 shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by the processing;
- 12.2.4 may engage other processors (each a "**Sub-Processor**") to carry out processing activities on its behalf. Arrow shall inform the Customer of changes to Sub-Processors where Arrow is required to do so, by providing written notice or listing the new or replacement Sub-Processor on its website before Arrow permits the new or replacement Sub-Processor to process the Data, in order to give the Customer the opportunity to reasonably object to such changes. Arrow will enter into a contract with Sub-Processors which impose substantially the same obligations as those imposed under this Clause 12.2.1 to 12.2.9.
- 12.2.5 shall not transfer the Data to a third country unless an adequacy decision or derogation applies or there is an appropriate safeguard in place as required under Article 46 of the GDPR;
- 12.2.6 shall provide reasonable assistance (at the Customer's costs) to the Customer in fulfilling its obligations under the Data Protection Laws (including those at Articles 32 to 36 of the GDPR) taking into account the nature of processing and the information available to Arrow;
- 12.2.7 shall inform the Customer, without undue delay (i) if Arrow become aware of a personal data breach relating to the Data and/or (ii) if in Arrow's opinion an instruction from the Customer infringes the Data Protection Legislation;
- 12.2.8 shall delete or return (at Customer's option) the Data held by Arrow on termination of the Agreement, unless the Customer opts to enter into a new agreement with Arrow or if applicable laws require the storage of that Data;
- 12.2.9 shall make available (at the Customer's costs) to the Customer such information as may be reasonably necessary to demonstrate Arrow's compliance with the obligations under clauses 12.2.1 to 12.2.9, and shall allow for and contribute to audits and inspections (at the Customer's costs) conducted by the Customer or another auditor mandated by it relating to Arrow's compliance with those obligations, provided that Customer shall (a) not carry out an audit or inspection more than once per annum and only on reasonable notice during normal business hours, and (b) enter into, and shall procure that its auditor enters into, a confidentiality agreement prior to an audit or inspection taking place.
- 12.3 **General:** The Customer will provide such information to Arrow as is reasonably required to provide the Services including any information required in relation to directory information services and emergency services and the Customer warrants that all such information is accurate in accordance with clause 12.4 below.
- 12.4 **Accuracy of information:** The Customer is solely responsible for ensuring the accuracy of any information it submits to Arrow in a draft Product Agreement or in a Purchase Order and Arrow shall not be liable in any way for the consequences of any incorrect information submitted. Customer undertakes to notify Arrow of any inaccuracy it discovers promptly. Should specified order prerequisites not be provided by the Customer as part of the Purchase Order then Arrow cannot be held responsible for the fulfilment of any agreed service levels.
- 13 WARRANTIES**
- 13.1 **Execution:** Each party warrants to the other that each accepted Product Agreement and Purchase Order represents a binding commitment on it, and that it has full capacity and authority to enter into and to perform this Agreement.
- 13.2 **Quality of Services:** The Customer acknowledges that, save as otherwise agreed in a Product Agreement (or Purchase Order), Arrow provides the Services (including any Equipment) on a resale basis. Arrow's role is to use its reasonable efforts to manage the provision of the Services in its capacity as a telecommunication service provider acting as a reseller and not to manage or run a network or other Service Infrastructure (which is the relevant Infrastructure Provider's responsibility). The Customer acknowledges that the Services are provided on an "as is" basis and that it is not possible to offer fault or interruption-free Services. Arrow will use its reasonable endeavours to keep and maintain complete and accurate records of data to ensure accurate billing and to operate a helpdesk.
- 13.3 **Users:** The Customer shall be responsible for all Users' compliance with the terms of this Agreement.
- 13.4 **Interception:** Neither Arrow nor the Infrastructure Providers can guarantee protection of telecommunications against unauthorised interruption or interception by third parties.
- 13.5 **Data loss:** With the exception of the provision of hosted services, in the event of any failure in the equipment, service or power supply then Arrow shall not be responsible for restoration of Customer data. The Customer is responsible for taking backups of any configuration settings, user data or dynamic data held within the system to protect themselves in the event of failure.
- 13.6 **No other provisions:** Except for the express provisions of this Agreement and to the maximum extent permitted by applicable law Arrow disclaims and excludes all warranties, terms and other conditions, including but not limited to any warranty, term or other condition of merchantability, satisfactory quality, fitness for a particular purpose or non-infringement, relating to the ownership of the Services or the Equipment or as to price in every case whether implied by statute, common law, custom, collaterally or otherwise.
- 14 LIMITATION OF LIABILITY**
- 14.1 Neither party limits its Liability for death or personal injury caused by its negligence, or for fraud.
- 14.2 Subject to Clauses 14.1 Arrow shall not have any Liability under or in connection with this Agreement.

- 14.2.1 for any loss or damage other than Direct Loss;
- 14.2.2 for any loss of profit, goodwill, business, opportunity, revenue, data or potential saving (in every case whether direct or indirect), whether or not such losses were foreseeable by, or the possibility thereof is or has been brought to the attention of Arrow. Nothing in this Agreement shall impose any Liability on Arrow in respect of non-performance of Services, including delivery of the Equipment, to the extent such non-performance or delivery is due to the Customer's acts, omissions, negligence or default.

14.3 **Other liability:** Subject to Clauses 14.1, 14.2 and 14.4, Arrow's aggregate Liability under or in connection with any Product Agreement in any Year shall not exceed the Charges paid or payable under such Product Agreement in the first 6 months of that Year.

14.4 **Third parties:** Subject to Clause 14.1, in no circumstance will Arrow be liable to any third party including any member of the Customer Group other than the Customer. The Customer shall be entitled to treat Losses suffered by other members of the Customer Group as Losses suffered by the Customer itself, but shall ensure that no other member of the Customer Group shall make any claim or demand against any member of the Arrow Group or against Arrow itself.

15 FORCE MAJEURE

15.1 Neither party shall be liable for any delay or failure to carry out its obligations under any Product Agreement caused by Force Majeure provided that it gives notice of the occurrence of the Force Majeure relied upon to the other party and it uses its reasonable endeavours to remove or avoid such Force Majeure as promptly as practicable. If any Force Majeure event is relied on for longer than 60 calendar days by either party the other party shall be entitled to terminate that part of the Product Agreement in relation to which Force Majeure has occurred forthwith on written notice.

16 CHANGES TO THE AGREEMENT

16.1 Arrow may change their Terms and Conditions and / or any Product Schedule at any time by giving notice of such change on the Arrow website. Any change which is required to comply with any Legislation, regulation or code of practice (on Arrow, an Infrastructure Provider or otherwise) or as a result of a direction by an Infrastructure Provider or is made to the Data Protection Policy or Acceptable Use Policy, will not give the Customer a right to terminate this Agreement or any part of it. In the event of any change which (i) is made for a reason other than that set out in the previous sentence or (ii) is a change to the Charges not referred to in clause 4.3 and operates to the material detriment of the Customer, the Customer shall have the right to terminate the part of the Services to which the change relates by giving 30 calendar days' written notice, provided that such notice is given within 30 calendar days of Arrow's notice of the change.

17 MISCELLANEOUS

17.1 **Confidentiality:** Arrow and the Customer each agree to keep confidential and use only for the purpose of exercising and performing their respective rights and obligations under this Agreement all plans, trade secrets, business and other confidential information that is disclosed or made available by one party to the other, and including the existence and terms of this Agreement ("**Confidential Information**"). Each of Arrow and the Customer undertakes not to disclose to any third party (except other group companies and subsidiaries, employees or third-party advisors or Arrow shareholders) such Confidential Information without the express written consent of the other. No obligation of confidentiality under this Clause 17.1 shall apply to Confidential Information which is: (i) already in the possession of the disclosing party without obligation of confidentiality owed to the other; or (ii) has been developed by the disclosing party independently without access to any of the relevant Confidential Information; or (iii) the disclosing party rightfully receives free of any obligation of confidentiality from a third party; or (iv) enters the public domain other than by reason of any breach of this Agreement; or (v) is required by any competent regulatory authority or by an Infrastructure Provider. However, Arrow shall have the right to publicise that the Customer is a party to this Agreement in any advertising or promotion.

17.2 **Notices:** Save as provided otherwise, any notices required or permitted hereunder will be given to the appropriate party at the address specified in the attached signature page or at such other address as the party may specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or 3 (three) calendar days after the date of mailing if sent by certified or registered mail. Arrow shall be entitled to give notice as to any matter (except termination of the whole of this Agreement) by email (which notice shall be deemed given when sent).

17.3 **Assignment:** The Customer may not assign, transfer, delegate or otherwise deal with its rights or obligations under this Agreement without the prior written consent of Arrow (which consent may be given subject to such conditions as Arrow considers appropriate). Arrow may assign or delegate all or any of its rights or obligations under this Agreement at any time without notice and may appoint a third party to collect the Charges.

17.4 **Entire agreement:** This Agreement sets out the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this Agreement applies in place of and prevails over any terms or conditions contained in or referred to in correspondence or elsewhere or implied by trade custom or course of dealing. In entering into this Agreement and each Product Agreement and/or Purchase Order each party acknowledges and agrees that it has not relied on any representations (whether made innocently or negligently) made by the other. Any such representations are excluded. The parties hereby agree that their only rights and remedies arising out of or in connection with any misrepresentation shall be for breach of contract. Nothing in the clause shall limit or exclude any Liability for fraud or fraudulent misrepresentation.

17.5 **Severance:** If any provision of this Agreement is determined to be illegal or unenforceable by any court of competent jurisdiction it shall be deemed to have been deleted without affecting the remaining provisions.

- 17.6 **Partnership etc:** Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or agency between the parties and, save as to the extent required by Arrow to give effect to a Product Agreement, neither party shall have any authority or power to bind, contract in the name of or create a liability for or against the other.
- 17.7 **Third party rights:** No provision of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 17.8 **Waiver:** No failure or delay by a party in exercising its rights or remedies shall operate as a waiver unless made by written notice. No single or partial exercise of any right or remedy of a party shall preclude any other or further exercise of that or any other right or remedy.
- 17.9 **Arbitration:** Arrow may implement an arbitration or similar complaints procedure as required by the applicable Infrastructure Provider(s), Legislation or applicable code of practice. The Customer and Arrow will comply with such procedure(s) as varied from time to time from the date the Customer is notified of the implementation of the procedure (or its variation) in respect of all applicable complaints. Further details of the dispute resolution process (if any) are available from Arrow on request in writing.
- 17.10 **Law:** This Agreement shall be governed and construed in accordance with the laws of England. The parties irrevocably submit to the exclusive jurisdiction of the English courts in respect of any matter, claim or dispute arising under, out of or in connection with this Agreement (including as to its validity) or the legal relationships established by this Agreement.
- 17.11 **Trial services or promotional offers:** Arrow may from time to time supply trial services and/or promotional offers ("Offers") to some or all of its customers. Such offers may be subject to additional terms and conditions notified by Arrow to its customers. Unless otherwise stated Arrow shall not incur any liability under the Agreement in relation to such Offers. Promotional terms and conditions may require a variation to the Agreement in which case the Customer shall be deemed to have accepted in writing such a variation to the Agreement on acceptance of the Offer. Unless otherwise stated in the promotional terms and conditions an Offer may be amended or withdrawn by Arrow (in relation to some or all of its customers) at any time and without notice. For the avoidance of doubt Arrow is not obliged to include the Customer in any Offers it provides. Liability for excessive charges will be levied against the Customer and any minimum terms exceeded will result in any trial equipment being charged for in full.
- 17.12 **Arrow Website Terms of Use:** Where applicable, Customer access to the Arrow Website (Arrowcommunications.co.uk) is governed by Arrow's Website Terms and Conditions which may change from time to time and are published on the Website. By accessing and/or using the Website services the Customer accepts without limitation or qualification these conditions.
- 17.13 **Anti-bribery:** The Customer acknowledges that it will adhere to the provisions of Arrow's Anti-Bribery policy which can be provided upon request.

18 INTERPRETATION

- 18.1 References to:
- 18.1.1 Recitals, Clauses, Schedules and Annexes are to recitals, Clauses and sub-Clauses of and schedules and annexes to this Agreement;
- 18.1.2 a Product Agreement includes any Product Agreement form, these Terms and Conditions, any Product Schedule, other Schedules and Annexes and any other documents explicitly incorporated by reference;
- 18.1.3 the singular includes the plural and vice versa and use of any one gender includes all genders;
- 18.1.4 a person includes a natural person, company, corporation, firm, partnership, co-operative company, unincorporated or incorporated association, government, state, statutory authority, foundation and trust; and
- 18.1.5 the words "**include**", "**includes**", "**including**", "**in particular**" or any similar words or any general words introduced by the word "**other**" do not limit the words preceding or following.
- 18.2 Any reference to any Legislation shall be interpreted as referring to such Legislation as amended and in force from time to time and/or which replaces, re-enacts or consolidates such Legislation.
- 18.3 Headings (including clause headings) are for convenience only and shall not affect interpretation.

Acceptable Use Policy

This document sets out the Acceptable Use Policy between Arrow Business Communications Ltd and its group companies defined as the "Arrow Group" in Arrow's standard Terms and Conditions ("**Arrow**") and you, the Customer. Capitalised terms in this Acceptable Use Policy shall have the same meaning as set out in Arrow's standard Terms and Conditions.

1. The Customer shall only use the Services in accordance with such conditions as Arrow may notify it in writing from time to time and in accordance with the relevant provisions of any legislation, authorisation or licence applicable to the Infrastructure Provider providing the relevant service or any direction, code of practice or regulation of any competent regulatory authority. Arrow may from time to time vary the technical and/or operational procedures for use of the Services.
2. The Customer shall not make abusive, threatening or nuisance calls to our contact centre, agents or representatives or to us or use any Equipment for this purpose.
3. The Customer must take reasonable care to protect any Equipment and SIM at all times until such time as title transfers to the Customer; any negligence may result in the original charge being levied in full.
4. Arrow may allocate the Customer a password to enable use of the service or for access to the Equipment. The Customer must keep such passwords safe and confidential and notify Arrow immediately if any third party becomes aware of it. Arrow reserves the right to change the password without notice. The Customer must follow reasonable instructions given by Arrow from time to time regarding the use of mobile devices other equipment and services.
5. We shall have no liability or responsibility for the contents of any communications transmitted via the Services and the Customer, will hold Arrow harmless from any and all claims related to such content.
6. The Customer shall not use any of Arrow's services, a mobile device or other equipment used in connection with Arrow's services:
 - (a) as a means of communication for a purpose which is specifically prohibited or unlawful;
 - (b) for any communication which is or is intended to be a hoax call to emergency services or is or may be reasonably considered to be of a defamatory, indecent, malicious, immoral, fraudulent, offensive or abusive or of an obscene or menacing character;
 - (c) to violate or infringe any rights of or to cause unwarranted inconvenience or anxiety to any third party;
 - (d) in such a way as to constitute a violation of any laws or regulations of any other country;
 - (e) to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes" and "chain letters" or which may be contrary to good faith commercial practice;
 - (f) to add, remove or modify identifying network header information in an effort to deceive or mislead. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation;
 - (g) to transmit any bulk email whether opt-in, unsolicited, commercial or otherwise;
 - (h) to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Arrow's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data;
 - (i) to transmit any material (by email, uploading, posting, or otherwise) that infringes any Intellectual Property Rights of any third party, including, but not limited to, the unauthorised copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorised transmittal of copyrighted software;
 - (j) to collect, or attempt to collect, personal information about third parties without their knowledge or consent;
 - (k) for any activity which adversely affects the ability of other people or systems to use Arrow's services or the Internet. This includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the Customer's responsibility to ensure that their network is configured in a secure manner. A Customer may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Customer may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner. Arrow reserves the right to check that Customers using Arrow Services have not left their networks open to abuse by smtp relay checking and sending email through the Customer mail servers;
 - (l) to use a personal account for high volume or commercial use; or
 - (m) which does not adhere with Ofcom's General Conditions B1, the Numbering Plan and the Non-provider Numbering Conditions
 - (n) In the event that a Customer fails to comply with Ofcom's General Conditions B1, the Numbering Plan and/or the Non-provider Numbering Conditions, Arrow has the right to suspend all Services in accordance with clause 6.1.6 of the Arrow Standard Terms and Conditions.

A reference to the Customer includes any person using a service in connection with or as a result of any agreement with Arrow.