# Monika Terms and Conditions for Devices and Services (excluding Cloud Services)

**The Customer's attention is particularly drawn to the provisions of clause** 12 **(Limitation of liability).**

## 1. Interpretation

The definitions in the Proposal and the following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

**Business Hours**: the period from 9.00 am to 5.00 pm on any Business Day.

**Change of Control**: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly**.**

**Conditions**: these terms and conditions as amended from time to time in accordance with clause 15.

**Contract**: the contract between Monika and the Customer for the supply of Devices or Services or Devices and Services in accordance with these Conditions comprising these Conditions and Monika's proposal (and either as signed by the Customer to indicate acceptance or accepted by the Customer proceeding with a purchase under it).

**Deliverables**: the deliverables set out in the Proposal produced by Monika for the Customer.

**Delivery Location**: each location identified as a delivery location in the Proposal.

**Devices Specification**: any specification for the Devices, including any relevant plans or drawings, that is referenced in the Proposal or set out in the Documentation.

**Documentation:** the document made available to the Customer by Monika at *www.monika.com* from time to time which sets out a description of the Devices and the user instructions for the Devices.

**Effective Date:** the date specified in Monika's quotation being (as applicable) the installation date for a new or replacement system; the contract date for an existing system; or the date of despatch in respect of Devices which are to be installed by the Customer.

**Initial Term:** the period of year(s) from the Effective Date specified in Monika's quotation.

**Intellectual Property Rights**: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order**: the Customer's order for the supply of Devices or Services or Devices and Services, as set out in the Proposal.

**Proposal:** Monika's proposal to the Customer.

**Services:** Installation Services and Ongoing Services.

**Service Specification**: the description or specification for the Services that is referenced in the Proposal.

**Site**: each location identified as a Site in the Proposal.

**Third Party Devices**: those Devices identified in the Proposal as supplied by a third party and benefitting only from that third party's manufacturer's warranty.

1.2 Interpretation:

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

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** excludes fax but not email.

## 2. Basis of contract

2.1 These Conditions together with the Proposal constitute all of the terms agreed by the parties in relation to the Devices, Software and Services (or one or more of the Devices, Software and Services).

2.2 Any samples, drawings, descriptive matter or advertising issued by Monika and any descriptions of the Devices or illustrations or descriptions of the Services contained in Monika's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Devices and Services described in them. They shall not form part of the Contract nor have any contractual force.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.4 Any quotation given by Monika shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

2.5 All of these Conditions shall apply to the supply of Devices, Software and Services except where application to one of them is specified.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

**3. Devices and Software**

3.1 The Devices and Software are described in the Devices Specification.

3.2 Monika reserves the right to amend the Devices Specification if required by any applicable statutory or regulatory requirement, and Monika shall notify the Customer in any such event.

3.3 Monika grants to the Customer a non-exclusive licence for the term of the Contract to use the Software at the Site(s) only.

3.4 In relation to scope of use:

(a) for the purposes of clause 3.3, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);

(b) for the purposes of clause 3.3, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed;

(c) the Customer may not use the Software other than as specified in clause 3.3 and clause 3.4(a) without the prior written consent of Monika, and the Customer

acknowledges that additional fees may be payable on any change of use approved by Monika;

(d) the Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying;

(e) except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless Monika is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Monika to carry out such action or to provide such information (and shall meet Monika's reasonable costs in providing that information) before undertaking any such reduction.

3.5 The Customer may not use any information provided by Monika or obtained by the Customer during any reduction permitted under clause 3.4(e) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.6 The Customer shall not:

(a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;

(b) allow the Software to become the subject of any charge, lien or encumbrance; and

(c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of Monika, such consent not to be unreasonably withheld or delayed.

3.7 Monika may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

3.8 The Customer shall:

(a) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to Monika on request from time to time;

(b) notify Monika as soon as it becomes aware of any unauthorized use of the Software by any person at a site which is not a Site;

(c) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which Monika would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced;

(d) give such access to the Software and the Customer's systems (remote or otherwise) as Monika shall require to provide the Services, including installation of updates to the Software;

(e) provide robust, comprehensive and continuous Wi-Fi and/or wired Ethernet connections to Devices as appropriate to and sufficient for Site infrastructure and the specifications of the Devices;

(f) make available such of its staff for training as is required by Monika from time to time, including in the thirty days following the Effective Date (and pay Monika's additional training fee in respect of any staff failing to attend on the agreed training dates).

3.9 The Customer shall permit Monika to inspect and have access to any premises (and to the computer equipment located there) and Customer systems (access to be remote or as otherwise required by Monika) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that Monika provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## 4. Delivery of Devices and Software

4.1 Monika shall deliver the Devices to the Delivery Locations and the Software to the Site(s) in accordance with the timetable agreed by the parties provided that any dates quoted for delivery of the Devices are approximate only, and the time of delivery is not of the essence.

4.2 Delivery of the Devices shall be completed on the completion of unloading of the Devices at the applicable Delivery Location. Delivery of the Software shall be completed on commencement of installation of the Software.

4.3 Monika shall not be liable for any delay in delivery of the Devices and/or Software that is caused by a Force Majeure Event or the Customer's failure to provide Monika with adequate delivery instructions or any other instructions that are relevant to the supply of the Devices and/or Software.

4.4 If Monika fails to deliver the Devices, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement devices of similar description and

quality in the cheapest market available, less the price of the applicable Devices. Monika shall have no liability for any failure to deliver the Devices or Software to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Monika with adequate delivery instructions or any other instructions that are relevant to the supply of the Devices and/or Software.

4.5 If the Customer fails to accept delivery of the Devices, then except where such failure or delay is caused by a Force Majeure Event or by Monika's failure to comply with its obligations under the Contract in respect of the Devices:

(a) delivery of the Devices shall be deemed to have been completed at 9.00 am on the Business Day following the day on which delivery was attempted; and

(b) Monika shall store the Devices until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If ten Business Days after the day on which Monika notified the Customer that the Devices were ready for delivery the Customer has not accepted actual delivery of them, Monika may resell or otherwise dispose of part or all of the Devices and charge the Customer for any shortfall below the price of the Devices.

4.7 Monika may at its option deliver the Devices by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.8 The Customer shall provide to Monika full details of any failure of the Software to conform with the Devices Specification within five days of completion of configuration of the Software by Monika and Monika shall use its reasonable endeavours to correct any such failure within a reasonable time. The Customer shall have a further period of five days in which to provide Monika with full details of any unremedied failure. If the Customer does not provide details of any failure within the specified time period, it shall be deemed to have accepted the Software.

## 5. Quality of Devices

5.1 Subject to clause 5.7, Monika warrants that during the term of the Contract the Devices shall:

(a) conform in all material respects with the Devices Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Devices Act 1979).

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to Monika within a reasonable time of discovery that some or all of the Devices do not comply with the warranty set out in clause 5.1;

(b) Monika is given a reasonable opportunity of examining such Devices; and

(c) the Customer (if asked to do so by Monika) returns such Devices to Monika's place of business at the Customer's cost,

Monika shall, at its option, repair or replace the defective Devices, or refund the price of the defective Devices in full.

5.3 Monika shall not be liable for the Devices' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer makes any further use of such Devices after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow Monika's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Devices or (if there are none) good trade practice regarding the same;

(c) the defect arises from use of the Devices with goods not supplied or approved in writing by Monika;

(d) the defect arises as a result of Monika following any drawing, design or specification supplied by the Customer;

(e) the Customer moves, alters or repairs such Devices without the written consent of Monika;

(f) the defect arises as a result of wilful damage, negligence, or abnormal working conditions;

(g) the defect arises or is not remedied as a result of the Customer’s breach of clause 3.8(d);

(h) the defect results from a failure, interruption or surge in the electrical power or its related infrastructure connected to the Devices; or

(i) the Devices differ from the Devices Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Monika gives no warranty and shall have no liability to the Customer in respect of the Devices' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Devices supplied by Monika.

5.6 Any parts and components removed from the Devices by Monika in the course of repair or replacement will be the property of Monika.

5.7 The Customer shall have no remedy against Monika in respect of Third Party Devices and the Customer's rights shall be limited to any manufacturer's warranty given in respect of those Third Party Devices.

## 6. Title and risk

6.1 The risk in the Devices shall pass to the Customer on completion of delivery.

6.2 Title to the Devices shall not pass to the Customer until Monika receives payment in full (in cash or cleared funds) for the Devices and any other Devices that Monika has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Devices has passed to the Customer, the Customer shall:

(a) store the Devices separately from all other Devices held by the Customer so that they remain readily identifiable as Monika's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Devices;

(c) maintain the Devices in satisfactory condition and keep them insured against all risks for their full price on Monika's behalf from the date of delivery;

(d) notify Monika immediately if it becomes subject to any of the events listed in clause 13; and

(e) give Monika such information as Monika may reasonably require from time to time relating to:

(i) the Devices; and

(ii) the ongoing financial position of the Customer.

6.4 Until title to the Devices has passed to the Customer, Monika may recover them and the Customer irrevocably licenses Monika, its officers, employees and agents, to enter any premises of the Customer (including with vehicles) and to recover any such Devices.

6.5 The Software is provided to the Customer on an "as is" basis; use of the Software by the Customer constitutes acceptance by the Customer of the Software and any configuration and similar Services undertaken by Monika in relation to it, and an acknowledgement that they meet the Customer's requirements. The Customer acknowledges and agrees that:

(a) it is responsible for configuring the Software and Devices to reflect the Customer's risk and hazard profiles and that Monika is not responsible for any default parameters pre-set in the Software and Devices;

(b) Monika is not responsible for any security breach, cyber-attack or third party misuse of the Customer system resulting from Monika's proper use of the remote access provided to Monika pursuant to clause 3.8(e); and

(c) Monika is not responsible for any defect in the Devices or Services to the extent that it is caused by a third party.

## 7. Supply of Services

7.1 Monika shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 Monika shall use all reasonable endeavours to meet any performance dates for the Services specified in the timetable agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Customer acknowledges that it may be necessary for Monika to attend a Site on more than one date in order to provide a specific Service.

7.3 Monika reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Monika shall notify the Customer in any such event.

7.4 Monika warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 Monika undertakes that whilst on the Customer’s premises its personnel shall comply with the Customer’s reasonable health and safety and security policies as brought to the attention of the personnel by the Customer.

## 8. Customer's obligations

8.1 The Customer shall:

(a) ensure that the terms of the Proposal and any information it provides are complete and accurate;

(b) co-operate with Monika in all matters relating to the Services;

(c) comply with any third party terms of supply notified to the Customer by Monika as applicable to any of the Devices, Services and Software, including any third party terms specified in the Proposal;

(d) provide Monika, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Monika to provide the Services;

(e) provide Monika with such information and materials as Monika may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(f) prepare the Customer's premises for the supply of the Services;

(g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(h) comply with all applicable laws, including health and safety laws;

(i) keep all materials, equipment, documents and other property of Monika at the Customer's premises in safe custody at its own risk, maintain them in good condition until returned to Monika, and not dispose of or use them other than in accordance with Monika's written instructions or authorisation; and

(j) comply the Customer Obligations and with any additional obligations as set out in the Proposal.

8.2 If Monika's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, Monika shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Monika's performance of any of its obligations;

(b) Monika shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Monika's failure or delay to perform any of its obligations as set out in this clause 8.2; and

(c) the Customer shall reimburse Monika on written demand for any costs or losses sustained or incurred by Monika arising directly or indirectly from the Customer Default.

## 9. Charges and payment

9.1 The Customer shall pay the price and fees in respect of the Devices and Services to Monika in accordance with this clause 9 and the Payment Terms.

9.2 Monika shall be entitled to increase the fees upon 90 days' prior notice to the Customer.

9.3 All amounts and fees stated or referred to in this agreement:

(a) shall be payable in pounds sterling;

(b) are non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to Monika's invoice(s) at the appropriate rate.

9.4 If Monika has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Monika:

(a) Monika shall be under no obligation to provide any or all of the Services nor to issue any activation key necessary to use of the Software while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Monika's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Devices, Software and the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Monika.

10.2 Monika grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants Monika a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Monika for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 12. Limitation of liability

12.1 Except as expressly and specifically provided in the Contract:

(a) the Customer assumes sole responsibility for results obtained from the use of the Devices, Software and/or Services by the Customer, and for conclusions drawn from such use. Monika shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Monika by the Customer in connection with the Services, or any actions taken by Monika at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

(c) the Devices and Software are provided to the Customer on an "as is" basis.

12.2 Nothing in the Contract excludes the liability of Monika:

(a) for death or personal injury caused by Monika's negligence; or

(b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and clause 12.2:

(a) Monika shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

(b) Monika's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to:

(i) in relation to the Devices, the price of those Devices; and

(ii) in relation to the Software and Services, the fees paid under the Contract during the 12 months immediately preceding the date on which the claim arose.

## 13. Term and termination

13.1 The Contract shall, unless otherwise terminated as provided in this clause 13, commence on the date of signature (or, if later, the date of receipt by Monika of the Customer's purchase order) and shall continue until the end of the Initial Term and thereafter, unless and until one party gives at least three months' written notice of termination, such notice to expire at the end of the Initial Term or an anniversary of that date and Monika's current prices shall apply from each such anniversary.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to 13.2(j) (inclusive);

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.3 Without affecting any other right or remedy available to it, Monika may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer undergoes a Change of Control.

13.4 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to Monika all of Monika's outstanding unpaid invoices and interest and, in respect of Services and Devices supplied but for which no invoice has been submitted, Monika shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) all licences granted under the Contract shall immediately terminate;

(c) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party; and

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## 14. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance

continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 15. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 16. Waiver

16.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## 17. Rights and remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## 18. Severance

18.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

18.2 If any provision or part-provision of the Contract is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 19. Entire agreement

19.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## 20. Assignment

Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## 21. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 22. Third party rights

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 23. Counterparts

The Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 24. Notices

24.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address agreed by the parties in writing from time to time.

24.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 25. Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

## 26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) provided that either party may enforce any judgment of the courts of England and Wales in the courts of any jurisdiction.

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