

Terms and Conditions

Schedule 1

I.T. Positive Limited – Standard Terms and Conditions

The Customer's attention is particularly drawn to the provisions of clause 12.

1. Interpretation

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

Bandwidth: the allocated transmission capacity, measured in bits per second, as specified in the relevant Contract.

Bandwidth Provision the provision of Bandwidth by IT Positive.

Commencement Date: has the meaning set out in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.6.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Supplier's quotation.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 14.1.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Hosting the provision of hosting services by IT Positive

Hosted/Dedicated Cloud PBX Service a service that is hosted by IT Positive

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

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

Service Agreement: an agreement between the Supplier and the Customer for the maintenance and support of the Customer's IT systems by the Supplier.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Specific Conditions the specific conditions relating to the provision of specific categories of services set out in Section 15 of these Conditions.

Supplier: I.T. Positive Limited registered in England and Wales with company number 08675847.

Supplier Materials: has the meaning set out in clause 8.1(g).

Telecom Service a telecommunications service provided by IT Positive, or a specified set of user-information transfer capabilities provided to a group of users by a telecommunications system

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

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

2. Basis of contract

- 2.1. Where the Supplier and the Customer enter into a Service Agreement, if there is a conflict between the Service Agreement and these Conditions, the Service Agreement shall prevail.
- 2.2. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.3. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6. 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 trade, custom, practice or course of dealing.
- 2.7. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.8. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1. The Goods are described in the Goods Specification.
- 3.2. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4. Delivery of Goods

- 4.1. The Supplier shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the

code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6. If the Customer fails to accept or take delivery of the Goods within 7 days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 7th day following the day on which the Supplier notified the Customer that the Goods were ready; and

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

4.7. If 30 days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8. The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.9. The Supplier may deliver the Goods 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.

5. Quality of Goods

5.1. The Supplier warrants that on delivery the Goods shall:

(a) conform in all material respects with their description and the Goods Specification;

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

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier.

5.2. Subject to clause 5.3, if:

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

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5. The terms of these Conditions shall apply to any repaired or replacement goods supplied by the Supplier under clause 5.2.

6. Title and risk

- 6.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2. Title to the Goods (which for the purpose of this clause includes website and email domains) shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m); and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1. The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Supplier's quotation or as agreed from time to time, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

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

Use of telecom services

7.5 You represent, undertake and warrant to IT Positive that you will use Services provided by IT Positive only for lawful purposes. In particular, you represent, warrant and undertake that:

7.5.1 you will not use the Services in any manner which infringes any law or regulation, or which infringes the rights of or, causes annoyance, inconvenience or needless anxiety to any third party, nor will you authorise or permit any other person to do so;

7.5.2 You will not use the Services to post, link to or transmit:

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;

(b) any material containing a virus or other hostile computer program; and/or

(c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any intellectual property right;

(d) contain, transmit, distribute, link to or otherwise make available, or advertise or promote any content that infringes any intellectual property rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, abusive, harassing, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), liable to cause anxiety, alarm or embarrassment, knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable; or

(e) contain, transmit or distribute any unsolicited or unauthorised advertising, marketing or promotional material or other form of solicitation (spam);

7.5.3 you will keep secure any identification, password and other confidential information relating to the Services and shall notify IT Positive immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information;

7.5.4 you will observe the procedures which IT Positive may from time to time prescribe and shall make no use of the Services which is detrimental to IT Positive's other customers;

7.5.5 You will ensure that the Services are used in accordance with all applicable legislation (including data protection legislation) and in a secure manner;

7.6 Whilst IT Positive will use reasonable endeavours to ensure the integrity and security of the Services, IT Positive Limited does not guarantee that the Services will be error or interruption free or free from unauthorised users or hackers.

7.7 IT Positive may from time to time:

7.7.1 Temporarily suspend part or all of the Services without notice for the purposes of repair, maintenance or improvement. IT Positive undertakes to use reasonable endeavours to restore the Services as soon as possible after any such suspension;

7.7.2 Give instructions regarding the use of the Services which in IT Positive's reasonable opinion are necessary in the interests of safety or to maintain or improve the quality of the Services provided IT Positive and any such instructions shall, whilst they are in force, be deemed to form part of the Contract between you and IT Positive; and/or

7.7.3 Vary the technical specification of the Services for operational needs.

7.7.4 Require you to maintain accurate service subscriber details.

7.8 The resale of goods or services supplied by IT Positive is forbidden unless prior written consent is given

8. Customer's obligations

8.1. The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) 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;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (h) provide the Supplier with all necessary passwords and login details to all websites, networks, servers and other equipment relating to the Services.

8.2. If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3. Except as expressly permitted by these terms and conditions, any formal service contract or authorised in writing by Supplier, the customer shall not:

- (a) Permit any third party to access or use any services or use the same on behalf of any third party;
- (b) Attempt to interfere with the proper working of the services and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt any Services or any associated computer system, server, router or any other internet-connected device;
- (c) Employ any hardware, software, device or technique to pool connections or reduce the number of devices or users that directly access or use any Services in order to circumvent any restrictions on scope of authorised use contained in any service contract; or
- (d) Obscure, amend or remove any copyright notice, trade mark or other propriety marking on, or visible during the operation or use of any services.

8.4. The Customer shall promptly inform the Supplier if the Customer becomes aware of any unauthorised use of any of the services.

8.5. If IT Positive receive any communications or requests from any regulators or government authority for example the Information Commissioner in relation to the Services provided, IT Positive will pass this

information or request onto the requesting authority and shall charge the customer an administration fee of £160 plus VAT in respect of the same.

9. Charges and payment

9.1. The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2. The price for Services shall be the price set out in the Service Agreement, or if no price has been agreed, the price shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates;
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3. The Supplier reserves the right to:

(a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4. In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.

9.5. The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.6. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 6% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.9. If the Customer at any time fails to pay any invoice, not in dispute, by or on the due date the Supplier may:

- (a) Cease to provide the Services
- (b) Withhold login, password, or configuration information
- (c) Suspend any credit facilities which may have been provided by the supplier.

10. Intellectual property rights

10.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

10.3. All Supplier Materials are the exclusive property of the Supplier.

11. Confidentiality

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- or
- (e) defective products under the Consumer Protection Act 1987.

12.2. Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the order.

12.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4. This clause 12 shall survive termination of the Contract.

13. Termination

13.1. Where no written support contract is in existence, but where ongoing support is provided and invoiced on a regular monthly basis, with an invoice confirming a regular contract, such contract can be terminated by either party on giving 90 days' notice in writing.

13.2. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - (b) 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;
 - (c) 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;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (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);
 - (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (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) 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 13.1(b) to clause 13.1(i) (inclusive);
 - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.3. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.4. Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13.5. On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) The Supplier has the right to withhold login, password, or configuration information until such times as all invoices have been cleared
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. Force majeure

14.1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. SPECIFIC CONDITIONS

15 Specific Conditions applicable to Telecoms Hosting

15.1. IT Positive makes no representation, gives no warranty as to and accepts no liability in relation to your use of the Telecoms Hosting Service, the accuracy or quality of information received by any person via the Hosting Service and/or any loss of or damage to any data stored or transferred via the Hosting Service.

15.2. Any access to other networks connected to the Hosted Service must comply with the rules appropriate for those other networks.

15.3. Save as provided below the maximum amount of data transfer allowed through the Hosted Service (without incurring an excess charge) will be 500 megabytes per calendar month per 10 megabytes of server space leased. The maximum Bandwidth of any Hosted Service shall not exceed 64kbps at any time without prior written approval of IT Positive. Excess data transfer may be permitted at the discretion of IT Positive, charged at £0.08 per megabyte over the monthly quota payable upon receipt of a IT Positive invoice.

15.4. If, as part of the Hosted Service, web space may be provided free of charge, the total (all protocols) data transfer shall not exceed 200 megabytes per calendar month. Any excess will be entirely at IT Positive's discretion and will be charged at £0.05 per megabyte over the monthly quota payable upon receipt of a IT Positive invoice.

15.5. Specific Conditions applicable to Email Provision, Telecom Services, Broadband Services and SMS Services

15.6. IT Positive makes no representation, gives no warranty as to and accepts no liability in relation to your use of the Email Provision, Telecom Services and/or SMS Services the accuracy or quality of information received by any person via the Email Provision, Telecom Services and/or SMS Services and/or any loss of or damage to any data stored or transferred via the Email Provision, Telecom Services and/or SMS Services.

15.2 IT Positive reserves the right to suspend any SMS account if it remains unused for a period of three months and delete any remaining credit balance, without refund. In the case where an account is active but credits remain unused after a period of twelve months or greater, IT Positive reserves the right to remove any unused credits from the balance of the account.

15.3 One message credit is consumed per message delivery or attempted delivery. IT Positive reserves the right to charge interworking or network termination fees or to deduct messages from a sms account balance of equivalent value to any interworking or termination fees due.

15.4 Account Credits including but not limited to top-ups are non-refundable under any and all circumstances.

15.5 Inbound sms: in absence of any other agreement, IT Positive reserves the right to suspend any accounts where the amount of incoming or outgoing messages impinges on the provision of services to other users. In such instances the account holder will be given an opportunity for compliance.

15.6 By purchasing our Voice over IP (VoIP) telephony services you understand that:

15.6.1 Call Quality and Reliability is based on a number of factors such as hardware, network performance etc. and IT Positive does not offer any warranty or assurances of the same

15.6.2 The service may sometimes be unavailable as a result of circumstances beyond our control such as internet connections or other similar issues. Our services should not be used for accessing or attempting to access 999 or 112 type public emergency call services.

15.6.3 If you do connect to emergency services, we may not be able to pass your location details or number to the emergency operator - you must provide all information to the operator.

15.6.4 You may not be able to port your number away from IT Positive and in those circumstances where it is possible, a porting charge may be made by IT Positive.

15.6.5 The service is subject to different OFCOM regulations to that of a normal Publicly Available Telephone Service and that your rights for redress under such regulations may be affected.

15.6.6 The broadband service starts on the date we activate it (service start date). If engineers have to visit to install the service, it will be activated after the installation is complete. You will usually need to take any service option for a minimum period – from 1 to 24 months. The minimum period for each service option is set out at the point of order. This minimum period also begins on the service start date.

15.7. Vanity or cherished telephone number(s) have a minimum term. This is 24 calendar months by default and the remainder of this term is shown within the control panel. This minimum period also begins on the date the number was allocated to the account. The end-user or customer reserves the right to cancel the number within the term at which point the number(s) return to the range holder or IT Positive.

16. General

16.1. Assignment and other dealings.

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

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

16.2. Severance.

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

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

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

16.4. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

16.5. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

16.6. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

16.7. **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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