Fluent Communications Ltd

TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

'Agreement' — this agreement incorporates the Order Form and these terms and conditions

'Change Control Procedure' — the procedure set out in clause 8

'Change Request' — the meaning ascribed to it in clause 8

'Change Order' — the meaning ascribed to it in clause 8

'Client' — the client detailed on the Order Form

'Client IT' — any components of the Client's current IT infrastructure (including but not limited to cabling, hardware and software) whether or not located at the Premises

'Dispute Resolution Procedure' — the procedure set out in clause 26

'Effective Date' — the date when the Equipment has been installed or the Service is provided, whichever is the earlier

'Equipment' — the physical hardware as detailed within the Order Form

'Fluent' — Fluent Communications Limited whose registered office is at The Estate Yard, Eridge Road, Eridge Green, Tunbridge Wells, Kent.TN3 9JR (Company no. 05117606)

'Intellectual Property' — property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, service marks, design rights, database rights, know-how rights, goodwill, reputation, get-up, logos, devices, plans, models, data, diagrams, specifications, source and object code materials, data and processes, design rights, trade or business name rights, rights in confidential information, present contingent and future copyright, rights

to sue for passing-off, plus applications or rights to apply for any of the foregoing) subsist

'month'	a calendar month and 'monthly' shall be construed accordingly
'Minimum Period'	the minimum period of this agreement set out in the Order Form
'Order Form'	the order form signed by the Client for the Equipment or Services
'Premises'	the premises occupied by the Client as set out in the Order Form
'Required Service Level'	in respect of any Service in any period means the standard of performance in accordance with the SLA in the period in question
'Security Failure'	any intrusion due to: the failure of the security of the Client's IT or a failure by the Client to mitigate the risk of the Services being used fraudulently and failing to maintain security and confidentiality of authentication details, disabling access to any accounts that are compromised and failing to mitigate exposure to any suspected or known security breach by resetting passwords, and failing to prevent viruses, logic bombs or worms, Trojan horses any unauthorised access, unauthorised use, denial of service attack or denial of access or receipt or transmission of a malicious code, malicious software and any other types of disruptive destructive or nuisance programs and/or any calls generated by rogue diallers or hackers, which causes the destruction, modification, corruption, damage or deletion of data or, the disclosure of data and includes any such failure or intrusion resulting from the theft of a password or network access code from the Client's premises or Client's IT
'Services'	the services to be provided by Fluent to the Client as set out in the Order Form or agreed in writing with the Client from time to time

'Service Charges'	the charges levied by Fluent for the Services as set out in the Order Form or notified to the Client from time to time
'Service Contact'	the individual appointed by Fluent and the Client pursuant to clause 9 and as set out in the Order Form or agreed in writing with the Client from time to time
'SLA'	the Service Level Agreement between the parties and attached to this agreement at Schedule 1
'System Failure'	any negligent act or negligent failure to act by an officer director or employee of the Client whilst operating, maintaining or upgrading the Client's IT
'Third Party Provider'	the provider of any of the third party products
'VAT'	value added tax
'Virus'	anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices

1.2   In the case of conflict or ambiguity between the SLA and any provision contained in these Terms and Conditions the SLA shall take precedence.

2.   **Supply of Services**

2.1. Fluent will provide the Services to the Client with effect from the Effective Date for the duration of this agreement (see section 10) in accordance with the provisions of these Terms and Conditions.

2.2. Fluent will use its reasonable endeavours to provide the Required Service Levels.

2.3. Fluent will use its reasonable endeavours to provide the Services in accordance with this agreement as amended to the extent reasonably necessary to take account of:

2.3.1.
any breach of any obligations of the Client under these Terms and Conditions and/or negligence by it; and/or

2.3.2.
an event of force majeure falling within the scope of clause 14

2.4. Prior to the provision of the Services and if reasonably necessary, the client shall ensure that up-to-date virus protection software shall be installed upon all computer systems to which Fluent requires access for the purpose of performing any Services. The Client agrees to pay for such installation. The Client shall ensure that all such virus protection software is used in accordance with the manufacturer's instructions or Fluent's reasonable requirements. Due to the constant threat of new viruses Fluent will not be liable for Security Failures.

3. **Fluent's obligations**

3.1. Fluent will provide the Services with reasonable skill and care in accordance with relevant industry best practice.

3.2. In the provision of the Services, Fluent shall use personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and who shall perform those tasks in a workmanlike and professional manner.

3.3. In the provision of the Services, Fluent shall use their reasonable endeavours to keep secure the Client's passwords to which Fluent have access or use.

3.4. Fluent shall comply with the Client's reasonable IT security, premises and health and safety policies as notified to it from time to time.

4. **Client's obligations and warranties**

4.1. The Client undertakes throughout the term of this agreement to:

4.1.1. enter into and maintain contracts directly with Third Party Providers and ensure that such contracts permit Fluent to request resources from each Third-Party Provider on behalf of the Client when required in order to carry out the Services;

4.1.2. keep in place current software maintenance agreements with the vendors of all supported software applications used by the Client to ensure adequate assistance from such vendors if required;

4.1.3. grant to Fluent such access to and such facilities at the Premises as Fluent may require from time to time in order to provide the Services and Take all reasonable precautions to protect the health and safety of Fluent's personnel, agents and sub-contractors whilst at the premises;

4.1.4. provide Fluent with all assistance, materials and accurate information for the purposes of enabling Fluent to provide the Services;

4.1.5. ensure that all personnel assigned by it to provide assistance to Fluent shall have the requisite skill, qualification and experience to perform the tasks assigned to them;

4.1.6. monitor any virus protection software installed by Fluent and accept any updates and implement Fluent's reasonable requirements;

4.1.7. save all data, documents and other information on the Client's server and not on individual desktop PCs and to carry out backups;

4.1.8. establish and implement policies and procedures for compliance with IT security and safety, cybercrime prevention, Virus protection and the protection of passwords, making those policies and procedures available for inspection by Fluent;

4.1.9. take all reasonable precautions to prevent a Security Failure or a System Failure;

4.1.10. keep all software licenses up to date and ensure that all software is obtained from a recognisable and valid source;

4.1.11. ensure that all the Client's staff are fully trained and aware of any requirements under this clause 4.1;

4.1.12. notify Fluent as soon as the Client becomes aware of a Security Failure, a System Failure or a Virus, and the Client acknowledges and agrees that Fluent will not be liable for any loss prior to the date of notification.

4.2. The Client warrants that it is the owner of all the Client IT (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment which is the subject of Services to be provided by Fluent), or is authorised by the owner thereof to make them available to Fluent.

4.3. The Client warrants that the details of the existing hardware and software at the Premises and all current licences it holds for software provided to Fluent are complete and accurate.

4.4. The Client warrants that all data and other information provided by it shall not be obscene, defamatory or likely to result in any claim being made against Fluent by any third party.

4.5. The Client shall be liable for all losses, costs, claims, demands, expenses and all other liabilities arising from a Virus, distributed denial of service attack or other technologically harmful material that may infect the Client's IT, computer

programs, data or other proprietary material as a result of any Security Failure or System Failure or any breach of this clause 4 and the Client shall indemnify Fluent for any loss, damage, charges or costs resulting from such breaches or any work required to remedy such issues.

4.6. The Client shall be liable for all acts where any Client password is used as any use of the Client's passwords will be held by Fluent as being carried out with the full authority of the Client, whether or not this is the case.

4.7. The Client acknowledges that Fluent only retains recorded calls for a maximum of 90 days following which all calls are deleted and therefore it is the Client's duty to download all calls before the expiration of this 90 day period. Fluent shall have no liability to the Client for the Client's failure to download recorded calls.

5. **Acceptance of software**

5.1. Where Fluent supplies any software to the Client, such software shall be subject to acceptance by the Client pursuant to this clause.

5.2. Fluent shall notify the Client when installation is complete. Fluent shall supply to the Client immediately after installation of any software, test data which in the reasonable opinion of the parties is suitable to test whether the software performs to the specification agreed between the parties. The Client shall not be entitled to object to such test data or expected results unless the Client can demonstrate to Fluent that they are not suitable for testing the software as aforesaid, in which event Fluent shall make any reasonable amendments to such test data and expected results as the Client may request. Subject to the receipt of such test data and expected results, the Client shall process such data, in the presence of Fluent or its authorised representative, by way of acceptance testing within 7 days after such receipt at a time mutually convenient to both parties.

5.3. The Client shall accept the software immediately after Fluent has demonstrated that the software has correctly processed the test data by achieving the expected results.

5.4. If the software fails to pass the tests referred to in clause 5.2 the Client shall notify Fluent of such failure. Fluent shall, within 3 days following notification of the relevant failure, at its own expense correct the errors in the software and notify the Client that it is ready to repeat the tests. Such tests shall be repeated within 7 days after such notice at a time mutually convenient to both parties.

5.5. Notwithstanding the above, installation of the software shall be deemed to be completed and the software shall be deemed to be accepted upon successful execution of the tests referred to above including as a result of the Client's failure to notify Fluent of the failure of any tests within the timescales provided above or when the software has been put into operational use by the Client, whichever is the earlier.

6. **Service charges and payments**

6.1. In consideration of the provision of the Services by Fluent the Client shall pay to Fluent the Service Charges without any set-off, counterclaim or other deduction whatsoever.

6.2. The Service Charges shall be invoiced to the Client monthly in advance. Each invoice shall be paid by the Client prior to the start date of the period being invoiced.

6.3. Any additional Service Charges, (including charges to remedy or deal with a Security Failure, a System Failure or a Virus) shall be invoiced by Fluent to the Client monthly in arrears accompanied by any substantiating documentation which may be reasonably required by the Client.

6.4. All Service Charges and payments to be made by the Client are stated exclusive of VAT which shall additionally be paid by the Client where relevant at the rate and from time to time in the manner prescribed by law.

6.5. All Service Charges are exclusive of expenses incurred in connection with the provision of the Services which shall be payable by the Client and shall be invoiced monthly in arrears.

6.6. If the Client fails to make any payment, then, without prejudice to any other right or remedy, Fluent shall be entitled to:

6.6.1. suspend performance of any Services until all sums due to Fluent have been paid in full (but only after having given written notice to the Client of its intention so to do);

6.6.2. charge the Client interest (both before and after any judgment) on any unpaid amount at the rate of 4% above the base rate of LloydsTSB Bank plc or the prevailing court interest rate, whichever is the higher, from time to time from the due date until the actual date of receipt of such amount by Fluent; and/or

6.6.3. charge the Client for any costs resulting from non-payment or the failed collection of a direct debit or any costs incurred in obtaining (or attempting to obtain) payment of any unpaid amounts including, without limitation, reasonable legal fees and bank charges.

6.7. Fluent reserves the right, by giving notice to the Client at any time before performance of the relevant Services to increase the price of such Services to reflect any increase in the cost to Fluent which is due to an act or omission of the Client including but not limited to any change in the date for the performance of Services or any delay caused by any instructions of the Client or failure by the Client to give Fluent adequate information or instructions.

7.   Required Service Level

7.1. Fluent shall provide monthly service level reports to the Client in accordance with the Service Level statement set out in the SLA.

7.2. Fluent shall not be liable for any failure to achieve the Required Service Levels to the extent that such failure results from:

7.2.1. a breach by the Client of any of its obligations under the SLA or these Terms and Conditions;

7.2.2. an event of force majeure falling within the scope of clause 14.

7.3. In the event that the parties are unable to agree upon the cause of the failure to reach the Required Service Level or the extent to which the Required Service Levels may be adjusted, the matter shall be referred to an expert for determination in accordance with the Dispute Resolution Procedure.

8. Change control

8.1. For the purposes of this Agreement a 'Change Request' is:

    8.1.1. a request to change (including to cease) any Service or add new services to the Services; or

    8.1.2. a request to amend this Agreement or any document attached to it or referred to in this Agreement; or

    8.1.3. any proposal which causes or is likely to cause the Client to incur costs or charges outside the scope of the Service Charges.

    8.1.4. A Change Request shall become a 'Change Order' when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the Service Contact of both parties to signify their approval of the change.

8.2. Change Requests may be originated either by the Client or by Fluent.

8.3. Where Fluent originates a Change Request it shall provide, with the Change Request, details of the impact which the proposed change will have upon the Services; the Implementation Plan; the Required Service Levels; any systems or operations of the Client which communicate with, or are otherwise affected by, the Services; the Service Charges; and the other terms of this Agreement.

8.4. Where the Client originates a Change Request, Fluent shall provide the Client, within 21 days of receiving the Change Request, details of the impact which the proposed change will have upon the Services; the Implementation Plan; the Required Service Levels; any systems or operations of the Client which communicate with, or are otherwise affected by, the Services; the Service Charges; and the other terms of this Agreement.

8.5. Save where otherwise stated in these Terms and Conditions, neither party shall be obliged to agree a Change Request originated by the other.

8.6. The costs of implementing a Change Order shall be borne as set out in the Change Order.

8.7. Fluent shall be entitled to charge the Client for work undertaken by Fluent in analysing the effect of any proposed Change Request. Where Fluent wishes to make a charge for carrying out such analysis, it will first notify the Client in writing, in order to allow the Client to choose whether or not to authorise Fluent to proceed with the analysis of the requested change.

8.8. Fluent reserves the right at any time without notifying the Client to make changes to any Services which are necessary to comply with any applicable safety or other statutory requirement, or for any integration or upgrade of software relating to the Services provided that such variation does not materially affect the quality or performance anticipated by the Client.

9. Co-operation between the parties

9.1. Each party will appoint a Service Contact to deal with any Change Control Procedure. The first appointees are as set out in the Order Form. Neither party shall change its Service Contacts without prior consultation with the other.

9.2. The Service Contacts shall meet regularly to review the performance of the Implementation Plan and the Services provided and any changes required.

10. Term of this agreement

10.1. This agreement shall commence on the Effective Date and shall, subject to prior termination provided for under these Terms and Conditions, continue for the Minimum Period and then otherwise the contract will continue on a rolling 12 month basis until terminated by either party upon giving 3 months' prior written notice of termination of this Agreement to the other, such notice to expire on, or at any time after, the expiration of the Minimum Period.

11. Assignments and successors

11.1. This Agreement is personal to the parties and, subject to clause 11.2 below, neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

11.2. Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.

11.3. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

11.4. In this Agreement references to a party include references to a person:

11.4.1. who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

11.4.2. who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

12. Intellectual Property rights

12.1. Fluent and its licensors shall retain ownership of all Intellectual Property rights subsisting in all materials, data, information, software and any other matters relating to or supplied as part of the Services ("IPR materials").

12.2. Fluent grants the Client or shall procure the direct grant to the Client of a non-exclusive, royalty free licence to use such IPR materials.

13. Confidentiality

13.1. Except as expressly provided, each party ('the Receiving Party') undertakes to treat as confidential and keep secret all information of the other party ('the Disclosing Party') marked 'confidential' or which may reasonably be supposed to be confidential that is disclosed by the Disclosing Party to the Receiving Party during the negotiations or the performance of this Agreement ('the Information'). If the Disclosing Party is the Licensor the Information includes, without limitation, information contained or embodied in the Client ID and the deliverables. The Receiving Party shall protect the Information with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any Information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

13.2. The Receiving Party shall not without the prior written consent of the Disclosing Party disclose any part of the Information to any person except:

13.2.1. to its employees who need to know the same;

13.2.2. to its auditors, an officer of HM Revenue and Customs, a court of competent jurisdiction, a governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the Receiving Party and then only in pursuance of such right duty or obligation;

13.2.3. any person who is for the time being appointed by the Receiving Party to maintain the Equipment on which the Licensed Programs are for the time being used (in accordance with the terms of the Licence) and then only to the extent necessary to enable such person to properly maintain the Equipment.

13.3. The Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any breach of confidence by any person to whom it discloses all or any part of the Information and shall give the Disclosing Party all reasonable assistance in connection with any proceedings which the Disclosing Party may institute against such person for breach of confidence.

13.4. The Receiving Party undertakes to ensure that persons and bodies referred to in clause 13.2 are made aware before the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party.

13.5. Clause 13 shall remain in full force and effect notwithstanding any termination of the Licence or the SLA.

13.6. Provided that it is not in breach of the confidentiality obligations set out above, Fluent may refer to and publicise its involvement with the Client, but only with the Client's prior written approval in relation to each publication, which shall not be unreasonably withheld or delayed.

14. Force majeure

14.1. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster, pandemic, epidemic, terrorist attack, civil war, civil commotion or riots, war, armed conflict or imposition of sanctions, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party), or interruption or failure of utility service (an event of 'Force Majeure'). In the event that a Force Majeure event continues for a continuous period of more than 14 days, the non-affected party may terminate this Agreement by written notice to the other party.

14.2. The Client shall be free to obtain substitute services from an alternative supplier during the continuance of the event of Force Majeure and shall be under no obligation to pay Fluent for Services which have not been supplied by Fluent during that period because of the event of Force Majeure.

15. Compliance with relevant law

Both parties will comply with all applicable laws, rules, codes of conduct and regulations in respect of all activities conducted under this Agreement.

16. Fluent's exclusion of liability

Fluent shall not be liable to the Client or be deemed to be in breach of its warranties or obligations under any provision in this Agreement:

16.1. for any delay in performing or failure to perform Fluent's obligations to the extent that such delay or failure was due to a failure by the Client to perform its obligations under this Agreement or if delay results from a failure by the Client to comply with reasonable requests by Fluent for instructions information or action required by it to perform its obligations within a reasonable time limit; or

16.2. for the consequences of any acts or omissions of the Client, its employees or agents or any Third-Party Provider or other third party suppliers or manufacturers

engaged by or on behalf of the Client (other than third party sub-contractors or suppliers selected by Fluent); or

16.3. if the Client is in default of any of its payment obligations under this Agreement.

17. Indemnity, limitation of liability and insurance

17.1. Fluent shall, during the term of this Agreement, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement, such professional negligence cover to be to a maximum value of £500,000 and with a reputable insurance company. Fluent shall on request supply copies of the relevant certificates of insurance to the Client as evidence that such policies remain in force. Fluent undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.

17.2. Nothing in this Agreement shall limit or exclude Fluent's liability for personal injury or death caused by the negligence of Fluent's employees in connection with the performance of their duties under this Agreement or by the provision of the Services supplied pursuant to this Agreement.

17.3. Fluent shall not be liable to the Client whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

17.3.1. loss of profits;

17.3.2. loss of sales or business;

17.3.3. loss of agreements or contracts;

17.3.4. loss of anticipated savings;

17.3.5. loss of use or corruption of software, data or information;

17.3.6. loss of or damage to goodwill;

17.3.7. any indirect or consequential loss; or

17.3.8. for any damages that are an indirect or secondary consequence of any act or omission of Fluent whether such damages were reasonably foreseeable or actually foreseen.

17.4. Except as provided above in the case of personal injury, death, and damage to tangible property, Fluent's maximum liability to the Client under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of

remedial services or otherwise) shall be for direct costs and damages only and will be limited to the greater of:

      17.4.1. the sum for which the Fluent carries professional negligence insurance cover pursuant to clause 17.1 above regardless of whether such insurance covers the claim giving rise to the liability; or

      17.4.2. The amount of 12 month's Service Charges.

17.5. The parties acknowledge and agree that the limitations contained in this clause 17 are reasonable in the light of all the circumstances.

17.6. If the Client is a consumer, the Client's statutory rights as a consumer are not affected.

17.7. For the purposes of this clause, 'Fluent' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

17.8. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

17.9. In accordance with clause 4 but subject to the provisions of this clause 17, Fluent shall not be liable to the Client for any Security Failure, System Failure or Virus, denial of service attack or other technologically harmful material that might affect the Client's IT, computer programs, data or other proprietary material or prevent backups.

18. Termination for cause

18.1. Subject to the Dispute Resolution Procedure, this Agreement may be terminated for cause in the following circumstances:

      18.1.1. by either the Client or Fluent with immediate effect from service on the other party of written notice if the other party is in breach of any material obligation under this Agreement and, if the breach is capable of remedy, that party has failed to remedy such breach within 30 days of receipt of notice so to do (or within 7 days of receipt of such notice in respect of breach of payment obligations by the Client);

      18.1.2. by either party with immediate effect from the date of service on the other of written notice if a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the other's property;

      18.1.3. by either party with immediate effect from the date of service on the other of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom.

19. Consequences of termination

19.1. If this Agreement is terminated in whole or in part for any reason Fluent shall, subject to payment of all outstanding Service Charges and its reasonable fees, co-operate fully with the Client to ensure an orderly migration of the Services or replacement services to the Client or, at the Client's request, a new service provider.

19.2. Forthwith on termination of this Agreement, Fluent shall return to the Client all Client IT together with all other materials, assets and other information provided to Fluent, or if requested by the Client, Fluent shall destroy the same (in the case of any software erasing it from the magnetic media on which it is stored) and certify in writing to the Client that the same has been destroyed.

19.3. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.

20. Data protection

20.1. Each party undertakes to the other that it will comply with data protection law and regulations. Fluent shall act as the Data Processor and will only carry out the services and only process the data received from the Client who act as the Data Controller):

20.1.1. for those services and not for any other purpose

20.1.2. to the extent and in such manner as is necessary for those purposes; and

20.1.3. strictly in accordance with the express written authorisation and instructions of the Data Controller (which may be specific instructions or instructions of a general nature or as otherwise notified by the Data Controller to the Data Processor)

20.2. In addition, each party:

20.2.1. warrants that it has appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by it and that it has taken reasonable steps to ensure the reliability of any of its staff who have access to personal data processed in connection with this Agreement;

20.2.2. undertakes that it will act only on the instructions of the other party in relation to the processing of that party's personal data in connection with this Agreement; and

20.2.3. undertakes to allow the other party access to any relevant premises on reasonable notice to inspect its procedures described above.

20.3. The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.

21. Waiver

Unless a Client expressly waives its rights in writing, no delay, neglect or forbearance by either party in enforcing against the other party any term or condition of this Agreement

shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

22. Remedies

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity by statute or otherwise.

23. Severability

If any provision of this Agreement is or becomes prohibited by law or is judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement the remainder of this Agreement.

24. Nature of relationship

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

25. Notices
25.1. All notices under this Agreement shall be in writing and must be in English.
25.2. Notices shall be deemed to have been duly given:
    25.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
    25.2.2. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated; or
    25.2.3. on the fifth business day of the sender following mailing, if mailed by national ordinary mail, postage prepaid; or
    25.2.4. on the tenth business day of the sender following mailing, if mailed by airmail, postage prepaid in each case addressed to the most recent address, email address, or facsimile number notified to the other party.

26. Dispute resolution procedure and governing law
26.1. The parties agree that the place of performance of this Agreement is England. This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

26.1.1. either party shall have the right to sue to recover its fees in any jurisdiction in which the other party is operating or has assets; and

26.1.2. either party shall have the right to sue for breach of its Intellectual Property and other proprietary information (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property and/or other proprietary information might be taking place.

26.2. Each party recognises that the other party's business relies upon the protection of its Intellectual Property and that in the event of a breach or threatened breach of its Intellectual Property, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property.

26.3. With respect to all other disputes which are not Intellectual Property related pursuant to clauses 26.1 and 26.2 above and its special rules the following procedures in clauses 26.3 to 26.5 shall apply. Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each party ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by each party. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

26.4. If the parties cannot resolve a dispute in accordance with the procedure in clause 26.3 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, the matter shall be settled in accordance with the procedure below.

26.5. If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.

26.6. While the dispute resolution procedure above is in progress and one party has an obligation to make a payment to the other party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing

bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

27. Non-poaching of staff

The Client covenants with Fluent that it shall not either during the term of this Agreement or within a period of 12 months thereafter directly or indirectly entice away or endeavour to entice away from Fluent any person who has during the previous 12 months been employed by Fluent to provide Services in connection with this Agreement.

28. Third party rights

Without prejudice to any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 except as provided in clause 17.7 above, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The parties to this Agreement do not require the consent of any third party to terminate, rescind, or agree to any variation, waiver or settlement in relation to it.

29. Interpretation

In this Agreement unless the context otherwise requires:

29.1. words importing any gender include every gender;

29.2. words importing the singular number include the plural number and vice versa;

29.3. words importing persons include firms, companies and corporations and vice versa;

29.4. references to numbered clauses, schedules and annexes are references to the relevant clause in or schedule or annex to this Agreement;

29.5. reference in any schedule or annex to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule or annex;

29.6. the headings to the clauses, schedules, annexes and paragraphs of this Agreement will not affect the interpretation;

29.7. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

29.8. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

29.9. any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

30. Amendments

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

31. Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

32. Subcontracting

Fluent may perform any or all of its obligations under this Agreement through agents or sub-contractors.

Schedule 1

Service Level Agreement

Schedule of service

1 Service Interpretations

This SLA is made subject to Fluent's Terms and Conditions which are on

www.fluent-group.co.uk

2 Definitions

2.1 Core Hours – for the purpose of this SLA normal business hours are 8:30am to 5:00pm Monday to Friday excluding UK bank holidays.

2.2 Emergency – A severity 3 issue where:

2.2.1 The whole of either office is affected by a major outage and staff cannot carry out their daily tasks.

2.2.2 Failure of the system has a detrimental effect on the Clients business.

2.3 Response Time – is the maximum time within which Fluent will allocate a support call number, assign a priority and notify the Client of that priority.

3 Telecoms Support Service

Fluent shall provide the following telecoms support Services.

3.1   Telephone support - with guaranteed response by technical staff for any telephone enquires via our support number of +44 (0)1892 532373 in core hours.

3.2   Email support - with guaranteed response by technical staff for all emails sent to support@fluent-group.co.uk in core hours.

3.3   Calls unresolved in target times automatically escalated to telecoms manager.

3.4   All calls are recorded.

3.5   We log the client's call and assign a Call Reference number. All the detail given by the Client will be added to the call and an SLA priority will be determined. This will then be notified to the client.

3.6   SLA Priority – The following chart shows the SLA priority.

SLA Level	Description
SLA 1	Non-urgent matters – such as when the client can still make outbound calls, Additional programming changes, Installation of software due to the client changing hardware without notifying Fluent.
SLA 2	Situations where only one person cannot work.
SLA 3	Major incidents affecting a whole office

3.7   Onsite support – Onsite support will be provided for all Emergency / SLA level 3 faults which cannot be resolved remotely. Fluent's support engineer or sub-contractor will be onsite as soon as possible from notifying the Client a site visit is necessary. All times run within core hours.

3.8   Installing patches and upgrades out of hours– Minor and maintenance patches and upgrades will be chargeable at the agreed hourly rate.

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3.9   Fluent reserve the right to charge for SLA level 3 emergency callouts where the client has been notified of a recurring fault and has not taken the advised preventative action.

4   Services NOT Included:

4.1   Service covered by external SLA's – Any service that is covered by any SLA with a third party is not covered under this SLA.

4.2   Inspections and repairs arising by reason other than fair wear and tear i.e programming, addition, reinstallation.

4.3   Repairs or replacements made necessary due to accidental damage, neglect, misuse or abnormal electrical stress.

4.4   Faults arising from any modification, enhancements, alterations or the relocation of equipment other than by Fluent personnel.

4.5   Maintaining wiring or sockets installed other than by Fluent personnel.

4.6   On-site or remote programming changes or other issues arising from the software used in the equipment and provided by a third party or benefiting from a third party guarantee.

4.7   Out of contractual hours' support.

4.8   Maintaining external cabling of any type whether or not installed by Fluent.

4.9   Ensuring continuity of CCTV monitoring and filming. It is the Client's responsibility to check the function and filming of the CCTV equipment and therefore Fluent will not be liable if the CCTV fails to record or film at any time.

5   Escalation

5.1   First level of escalation is via our support number +44 (0) 1892 532373

5.2   Second level is escalation is to call our Telecoms support Manager on +44 (0)1892 532373

5.3   If an issue has not been resolved to your satisfaction after two escalations, please call Fluent on+44 (0)1892 532373 and ask for the customer service manager

6   Contract Cancellation

6.1   This SLA is valid for 5 years. The SLA may not be cancelled by the client until the full term has passed or the contract has been paid in full. This SLA will automatically renew annually for a further 12 months from the end date if notice is not given 90 days prior. Once renewed, the same terms apply except as to the Service Charges.

7   Service Charges

7.1   Fluent reserve the right to increase the Service Charges annually on the anniversary of this SLA, such increase to be notified to the Client in writing.

8   Exclusion of liability

8.1   In addition to the exclusion of liability specified in the Terms and Conditions, in particular to the telecoms Services, Fluent shall not be responsible for uptime or the Client's data or antivirus software on CCTV, call record /logging and Samsung xchange installations.

8.2   The Client acknowledges and agrees that it is the Client's responsibility to ensure that any IT equipment, software or hardware involved in the functions outlined in clause 8.1 above is their sole responsibility.

8.3   The Client shall monitor these services, process their data and ensure that any automatic updates or carried out successfully and properly.

8.4   The client shall be responsible for changing passwords from their default or factory setting on any equipment or software installed by Fluent.