Elevate General Terms

Please read this document (the "**General Terms**") carefully as it sets out the general terms and conditions on which the Company shall provide all of its services to you as the Customer.

Please note that these General Terms may be updated from time to time by the Company (as defined below) giving notice to the Customer (as defined below), including by email. Any additional terms and conditions which are applicable to certain services are set out in the relevant Service Document (defined below).

If the Customer has any questions or complaints about the Services, it should contact the Company by telephoning the customer service team at 0330 122 2970 or by email to support@elevate.uk.

1 Definitions & Interpretation

1.1 In this Agreement, the following terms shall have the meanings assigned to them below:

Acceptable Use Policy means the Company's acceptable use policy, as published on the Company's website from time to time (available at go.elevate.uk/au);

Acceptance Tests has the meaning set out in Clause 4.2;

Agreement means the agreement between the Company and the Customer, under which the Company agrees to provide the Services to the Customer, which shall incorporate the following: (i) the Order Form; (ii) any special terms incorporated by reference on the Order Form; (iii) any commercial offer terms incorporated by reference on the Order Form; (iv) these General Terms; and (v) any applicable Service Level Agreement. If the terms in these documents conflict, the hierarchy of precedence is as stated here (with the Order Form having the highest precedence);

Applicable Law means all laws and regulations and codes of practice, guidelines and standards issued by any governmental or regulatory authority that are applicable to the Company, the Customer, any End User, or the Services;

Business Day means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;

Business Hours means the hours of 9am to 5pm UK time during a Business Day;

Charges means the charges payable by the Customer under the Agreement as set out in the Order Form (or as amended from time to time in accordance with this Agreement), which includes any Recurring Charges and Non-Recurring Charges (as applicable) and all other fees, charges and expenses due from the Customer to the Company from time to time under this Agreement (together with any applicable VAT or other taxes or duties);

Company means Luminet Solutions Limited, a company registered in England and Wales (company number: 05467333), with its registered address at Northstar, 135-141 Oldham Street, Manchester, M4 1LN

Consultancy Services means any advisory and consultancy services to be provided by the Company to the Customer under the Agreement, as described in more detail in the Order Form;

Customer means the person (acting as a sole-trader), firm or company who purchases the Service(s) from the Company as named on the Order Form;

Customer Equipment: items of equipment owned or leased by the Customer located either at the Customer Site(s) or at the Supply Site (as applicable to the particular Service(s)) and used in order to provide and/or receive the Service(s);

Customer Materials has the meaning in Clause 5.1.2;

Customer Site(s) or **Site(s)** means the customer location(s) at which the Service(s) shall be provided, including the site address and termination location as specified on the Order Form;

Data Protection Legislation means any Applicable Law relating to the processing, privacy, and use of Personal Data (as defined in Data Protection Legislation), as applicable to the Customers, the Company and/or the Service(s) including (but not limited to) the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426); any laws or regulations implementing the EC Privacy and Electronic Communications Directive (Directive 2002/58/EC); EU Regulation 2016/679 ("**GDPR**"); and any laws or regulations implementing, the GDPR (including, in the UK, the UK GDPR as defined in The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("**UK GDPR**")) in each case, as updated, amended, re-enacted or replaced from time to time;

Deliverables means any output of the Services to be provided by the Company to the Customer as specified in the Order Form and any other documents, products and materials provided by the Company to the Customer in relation to the Services (including the Equipment and any Software incorporated therein);

End User means a person (or group of people) who receives or makes use of the Services provided to the Customer, including (without limitation) any employee, sub-contractor, agent, officer, customer, client or tenant of the Customer, as agreed by the Company in advance;

Equipment means the equipment and/or hardware (together with any Software incorporated therein) owned by the Company and/or its suppliers and provided by the Company, its agents, or contractors to the Customer at a Customer Site for the purposes of the Services (which, for the avoidance of doubt, shall at all times remain the property of the Company);

Force Majeure Event means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under the Agreement, including an act of God, fire, flood, lightning, volcano, earthquake or other natural disaster; war, revolution, act of terrorism, riot or civil commotion; strikes, lock-outs or other industrial action, whether of the affected Party's own employees or others; failure of or interruptions in supplies of power, fuel, transport, equipment, raw materials or other goods or services; epidemics or pandemics; failure of or interruptions in telephone networks or the Network; cyber-attack; non-performance of suppliers or sub-contractors; and/or compliance with any changes in Applicable Law;

Initial Term means the initial term as specified in the Order Form which begins on the Service Commencement Date and then continues for the time period as stated in the Order Form (initial term), subject to earlier termination pursuant to Clause 15. A working example of which is: initial term stated in Order Form (36 months) **THEN** the Initial Term under this Agreement is 36 months from Service Commencement Date;

Installation means the installation of the Equipment at the Site by the Company, its agents or subcontractors;

Installation Dates means the date or dates on which the Company is to install the Equipment at the Site as notified by the Company to the Customer following execution by the parties of an Order Form;

Intellectual Property Rights means patents, know-how, rights in inventions, processes and formulae, confidential information, copyright, rights in software, database rights, domain names, registered trade marks, unregistered trade marks and logos, service marks, goodwill, design right, unregistered designs and all and any other intellectual property rights subsisting anywhere in the world (whether registered or unregistered) and all applications for the same;

Network means the network and communications systems and infrastructure to which the Equipment connects, which is used by the Company to provide the Services;

Non-Recurring Charges the one-off Charges (if applicable) for the Service(s) or Purchased Equipment, including any installation fees or purchase fees, as detailed on the Order Form (and, if applicable, as amended in accordance with this Agreement);

Order Form means an Order Form in the Company's standard form;

Parties means the Customer and the Company together, and the term "**Party**" shall be construed accordingly;

Pay As You Go Services any services which are purchased by the Customer on a "pay as you go" basis, as described in the Order Form;

Professional Services the services described in the Company's Service Document for Professional Services, as current from time to time;

Purchased Equipment the equipment (if any) purchased by the Customer and sold by the Company in conjunction with the provision of a Service, as specified on the Order Form (subject to any third party terms, where notified to the Customer);

Provisioning Date has the meaning given in Clause 4.4;

Recurring Charges the on-going annual or monthly fee (as applicable) for the provision of the Services, as detailed on the Order Form (and, if applicable, as amended in accordance with this Agreement);

Services means the services, including the Deliverables, to be supplied by the Company to the Customer under the Agreement as specified in the Order Form;

Service Commencement Date shall be the earlier of:

- where a Service is subject to Acceptance Tests, the Provisioning Date of that Service;
- where a Service is not subject to Acceptance Tests, the date that the Customer is notified by the Company in writing that the Service is ready for use; or
- the date that the Customer actually starts using the Service,

unless otherwise agreed in writing between the Parties, or otherwise specified in the applicable Service Document;

Service Document means the Order Form and/or any Service Level Agreement that is applicable to a particular Service;

Service Level means the service standard specifically identified as a 'Service Level' in the applicable Service Level Agreement and **"Service Levels"** shall be construed accordingly;

Service Level Agreement means the service level agreement which is applicable to the provision of the Service(s), as specified in the Order Form;

Software means the third-party software applications comprised in the Equipment, including all configurations, customisations, modifications and updates provided by the Company to the same from time to time;

Supply Site the location(s) where the Service(s) shall be provided from (where applicable to a particular Service) including any data centres owned and operated by the Company or its suppliers;

Term has the meaning set out in Clause 15.1;

Termination Payment has the meaning set out in Clause 15.5;

Virus means any thing 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, harmful or malicious code, and other similar things or devices; and

Year means a period of 12 months commencing on the Service Commencement Date and on each successive anniversary of the Service Commencement Date and ending on the day before each successive anniversary of the Service Commencement Date.

1.2 The terms **Data Controller**, **Data Subject**, **Personal Data**, **Personal Data Breach**, and **Processing** shall each have the meanings given to them in Data Protection Legislation (and **Process**, **Processed** shall be construed accordingly).

1.3 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of the Agreement.

1.4 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include a sole-trader, company, corporation, firm or partnership.

1.5 References to any statute or statutory provision shall include: (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.6 The words and phrases other, including and in particular shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

1.7 References to in writing include by e-mail and/or letter (but not by fax).

1.8 All references in the Agreement to clauses and Schedules are to the clauses of and Schedules to the Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2 Scope of Agreement

2.1 Each Order Form agreed and executed by the parties shall constitute an individual contract for the supply of the Services specified in that Order Form and shall be subject to these General Terms and the applicable Service Level Agreements.

2.2 The terms of this Agreement prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or terms or conditions which are implied by law, trade custom, practice, or course of dealing.

2.3 The Customer's Order Form (or, where applicable, the Customer signing and returning the Company's digital contract) constitutes an offer by the Customer to purchase the Service(s) specified in it on these General Terms; accordingly, the Company's acknowledgement of the Order Form (or, where applicable, acknowledgement of receipt of the signed digital contract) or the Company's commencement or execution of work pursuant to the Order Form (or digital contract, if applicable) shall establish a contract for the supply and purchase of those Services on these General Terms. For the avoidance of doubt, the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in the Order Form shall not govern the Agreement.

2.4 Save as expressly set out in this Agreement the Company makes no warranty or representation in relation to the Services and/or Equipment (or any software provided thereof) and hereby excludes all warranties, representations and guarantees relating thereto which may be implied by statute, common law, course of dealing or otherwise to the fullest extent permitted by law.

3 Provision of Services

3.1 In consideration of the payment of the Charges by the Customer and the Customer's compliance with its obligations under the Agreement, the Customer engages the Company, and the Company agrees, to provide the Services to the Customer during the Term in accordance with and subject to the terms and conditions of this Agreement.

3.2 The Company shall provide the Services with all reasonable skill and care.

3.3 The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Site, provided that these rules and regulations have been communicated to the Company in writing in advance. The Company shall not be liable under the Agreement if, as a result of such observation, it is in breach of any of its obligations under the Agreement.

3.4 The Company reserves the right from time to time in its sole discretion to make operational or technical changes to the Services, including to comply with any changes in Applicable Law, provided that such changes do not materially and detrimentally affect the scope of the Services.

4 Installation and Equipment

4.1 The Company shall use reasonable endeavours to meet the Installation Dates, but any such dates shall be estimates only and time for performance shall not be of the essence of this Agreement.

4.2 Once the Company has carried out the Installation, the Company shall carry out provisioning of the Services and shall conduct testing to satisfy itself that the Equipment at each Site is able to connect to the Network and the Customer is able to receive the Services ("**Acceptance Tests**").

4.3 If the Customer:

4.3.1 accepts the outcome of the Acceptance Tests, they shall promptly notify the Company of such acceptance in writing; or

4.3.2 does not accept the outcome of the Acceptance Tests, promptly notify the Company in writing;

provided that if the Customer does not notify the Company of any issues within 14 days of completion of the Acceptance Tests, the Services shall be deemed to be accepted by the Customer.

4.4 Installation shall be considered complete on the later of: (i) the date when the Company confirms to the Customer, by telephone and/or email, that the Acceptance Tests have been completed to the Company's satisfaction; or (ii) 14 days following completion of the Acceptance Tests. (the "**Provisioning Date**").

4.5 For the avoidance of doubt, the Customer confirms that the Company may at will (without the consent of the Customer) change or switch any underlying third party supplier that the Company is working with in order to provide the Services to the Customer. The Company need not seek the Customer's consent to change any such third party supplier and the Customer has hereby consented to such change

5 The Customer's obligations

5.1 The Customer shall:

5.1.1 provide such co-operation and assistance to the Company, its agents or subcontractors, as is reasonably required by the Company, its agents or subcontractors in order to perform the Services in accordance with the Agreement;

5.1.2 provide, in a timely manner, such information, documents, materials and/or data (together, the "Customer Materials") as the Company may request in order to provide the Services under the Agreement and shall ensure that such information is accurate in all material respects;

5.1.3 provide access for the Company, its agents or subcontractors during Business Hours, or at such other times as may be agreed by the Parties, to the premises, facilities, relevant systems and personnel (including, without limitation, the Customer Sites and Customer Equipment (as applicable)) as the Company may reasonably require from time to time to perform the Services in accordance with this Agreement;

5.1.4 be responsible (at its own cost) for preparing the Customer Site(s) for the supply of the Service(s) (if the Service(s) are to be provided at such Sites), including any measures the Company reasonably requires the Customer to take in order to prepare the Site(s);

5.1.5 keep and maintain the Equipment in good condition and repair and in accordance with the manufacturer's specifications and any required environmental conditions advised by the Company to the Customer;

5.1.6 be liable for the cost of replacements of Equipment, including but not limited to where Equipment is not maintained in accordance with Clause 5.1.5, or is damaged or removed;

5.1.7 be liable for the cost of any work required by the Company in order to repeat or re-do any aspects of the Installation as a result of any act or omission of the Customer; and

5.1.8 obtain all authorisations, approvals and consents, including landlord and management company consents, as are required in accordance with Applicable Law, including as required in order for:

a) the Customer and/or any of its End Users to use the Services at the Site;

b) the Company and its agents and subcontractors to provide the Services at the Site and to carry out any alterations required to the Site in order for the Company to provide the Services to the Customer;

c) the Company and its agents and subcontractors to access the Site for the purposes of installing the Equipment and providing the Services; and

d) the Company and its agents and subcontractors to Process any Personal Data in connection with the provision of the Services.

5.2 The Customer shall, and shall procure that any End Users shall:

5.2.1 use the Services in accordance with all Applicable Law, including all telecommunications laws and Data Protection Legislation; and

5.2.2 use the Services in accordance with the Acceptable Use Policy.

5.3 The Customer acknowledges that the Company only provides the Services for internal business use by the Customer, and the Customer agrees not to use the Services for any resale purposes or domestic purposes (unless the Company specifically agrees otherwise with the Customer in advance in writing).

6 Fault Management

6.1 The Company shall support the Service(s) and deal with faults as per the provisions of the applicable Service Document(s) and any applicable Service Levels.

6.2 The Customer shall (and, where applicable, shall procure that the End Users shall) notify the Company of any material non-conformity or fault with the Service(s) as per the Service Document.

6.3 Any time incurred by the Company in investigating alleged issues with the Service(s) notified to it by the Customer or any of its End Users which are later found not to have existed may be charged to the Customer in accordance with the Company's then-current standard rates (available at go.elevate.uk/rates), together with any third party supplier costs incurred in investigating the issue(s). The Customer shall be entitled to see reasonable documentary evidence attesting to such third-party costs.

7 Intellectual Property Rights

7.1 In relation to the Deliverables:

7.1.1 the Company and its third-party licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;

7.1.2 subject to Clause 7.4, the Company grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term of this Agreement to use the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

7.1.3 the Customer may sub-licence the rights granted in Clause 7.1.2 to the End Users, subject to such End User's compliance with the Acceptable Use Policy.

7.2 In relation to the Customer Materials, the Customer:

7.2.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

7.2.2 grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term of this Agreement for the purpose of providing the Services to the Customer.

7.3 The Customer warrants that the receipt and use of the Customer Materials in the performance of this Agreement by the Company, its agents, subcontractors, or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.

7.4 In relation to the Deliverables, the Customer shall (and shall procure that the End Users shall) not:

7.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means;

7.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human- perceivable form all or any part of such Software;

7.4.3 access all or any part of the Equipment or Software in order to build a product or service which competes with the Services;

7.4.4 use the Services and/or Equipment to provide services to third parties outside the Site without the prior written consent of the Company; or

7.4.5 license, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit, or otherwise make the Services and/or Equipment available to any third party outside the Site without the prior written consent of the Company.

8 Charges and payment

8.1 The Customer must pay to the Company the Charges in accordance with this Clause 8, and as stated on the Order Form.

8.2 The Company shall be entitled to invoice for Charges monthly in advance (or as otherwise specified on the Order Form) and the first Charge shall become payable on the Service Commencement Date. Unless otherwise agreed in writing, the Company shall invoice on the first month pro-rata for the initial period prior to the beginning of that month, and in advance for 1-3 (one to three) months as specified on the Order Form.

8.3 Unless otherwise agreed with or specified by the Company, the Customer must pay in full and cleared funds all Charges invoiced within 30 days of the date of the invoice. Time for payment is of the essence of the Agreement.

8.4 Unless otherwise expressly provided in the Agreement, all Charges payable under the Agreement are exclusive of VAT or any other applicable tax or duty payable upon such sums, which (if appropriate) the Company shall add to its invoices at the rate prevailing at the relevant time.

8.5 The Customer shall be responsible for any additional costs or charges imposed by the landlord or management company for the Site(s).

8.6 The Company reserves the right to revise the Charges (or part thereof) upwards or downwards in response to market conditions, legal or regulatory changes, third party supplier increases and/or service related changes subject to written notification to the Customer.

8.7 Without prejudice to any other right or remedy of the Company, if the Customer fails to make any payment under the Agreement on the due date for payment, the Company may:

8.7.1 charge the Customer, and the Customer shall pay the Company on demand, interest on the unpaid amount at the rate of 4% per annum above the then current base rate of Barclays Bank plc from the due date for payment until payment is received in full by the Company, or at 4% if the current base rate is below 0%; and/or

8.7.2 suspend supply and/or performance of all Services to the Customer until it has received payment in full, without prejudice to the Customer's obligation to continue making payments in accordance with the Agreement during the period of any suspension.

8.8 If any sums are due to the Customer from the Company, then the Company may set-off such sums against any payments due to the Company from the Customer under or in relation to this Agreement or any other agreement. All amounts due to the Company from the Customer must be paid by the Customer to the Company in full without any deduction or withholding and the Customer shall not be entitled to claim set-off against the Company in relation to the payment of the whole or part of any such amount.

8.9 The Company may charge the Customer for any expenses reasonably incurred by the Company on behalf of the Customer in respect of all materials, goods, services and/or facilities acquired specifically for the provision of the Services and for all reasonable travelling expenses, hotel costs, subsistence, and any associated expenses. Such expenses shall be agreed by the Parties in advance.

9 Warranties

9.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Agreement.

9.2 If the Customer can prove to the Company's reasonable satisfaction that, due to the Company's own act or omission, the Company has failed to perform any part of the Services materially in accordance with the Agreement, then the Company shall deal with the fault/breach as per the provisions of the applicable Service Document(s) and any applicable Service Levels. If the applicable Service Document does not apply to the relevant circumstances, the Company may at its option remedy such breach:

9.2.1 by re-executing the relevant part of the Services free of charge up to the amount of the Charges received by the Company for the provision of such Services (exclusive of any VAT); or

9.2.2 by repaying or crediting to the Customer that part of the Charges paid by the Customer to the Company relating to the relevant part of the Services which have not been performed in accordance with the Agreement (exclusive of any VAT),

and if the Company does so, this shall discharge in full the Company's liability to the Customer for such failure to perform any part of the Services.

9.3 The Customer shall notify the Company in writing of any claims under Clause 9.2 within 14 days of the date when the relevant Services were performed or were due to have been performed.

9.4 The Company gives no warranty that the use of the Services shall be uninterrupted or error free or free of Virus or bugs.

9.5 Except as expressly and specifically provided in the Agreement: all warranties, conditions, terms, representations, statements, undertakings, and obligations implied by statute, common law, custom, usage or otherwise are, to the fullest extent permitted by Applicable Law, hereby excluded from the Agreement.

9.6 If the Customer is a **consumer** (e.g., if the Customer is a sole trader), the Company is under a legal duty to supply Services that are in conformity with this Agreement. See the box below for a summary of the consumer Customer's key legal rights. Nothing in this Agreement will affect the Customer's legal rights.

Summary of the Customer's key legal rights where it is a consumer

This is a summary of the Customer's key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website adviceguide.org.uk or call 03454 04 05 06.

In relation to the provision of Services under this Agreement, the Consumer Rights Act 2015 says:

- The Customer can ask the Company to repeat or fix a service if it's not carried out with reasonable care and skill or get some money back if we can't fix it.
- If the Customer hasn't agreed a price beforehand, what the Customer is asked to pay must be reasonable.
- If the Customer hasn't agreed a time beforehand, it must be carried out within a reasonable time.

10 Limitation of Liability (where the Customer is a business)

10.1 This Clause 10 only applies if the Customer is a business customer.

10.2 This Clause 10 sets out the entire financial liability of the Company to the Customer in respect of any breach of the Agreement howsoever arising, any use made by the Customer of the Services and/or Equipment, and any representations, misrepresentations (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.3 If any of the Services fail to conform to the Service Levels in the relevant Service Level Agreement, the Customer shall be entitled to the remedies specified in the relevant Service Level Agreement, which shall be the Customer's sole and exclusive remedy for such failure.

10.4 If the Company's compliance with the Service Levels or the performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, or any of its End Users:

10.4.1 the Service Levels shall not apply for the period during which the Company, its agents, or contractors, are delayed or prevented from performing the Services; and

10.4.2 the Company shall not be liable for any costs, charges, or losses sustained by the Customer that arise directly or indirectly from such prevention or delay.

10.5 The Company shall not in any circumstances be liable for any delays, delivery failures, interruptions in service or any other loss or damage resulting from the failure of the Company's third party network and communications service providers and/or the transfer of data over the Network, and the Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications networks and facilities.

10.6 Subject to Clause 10.7, the Company shall have no liability whatsoever for any defects, faults, non- compliance, or shortcomings in the Equipment and/or Services, or for any failure to meet any Service Level, or any other loss or damage suffered or incurred by the Customer, any End User or any other third party, to the extent that such are caused by:

10.6.1 any act, omission and/or default of the Customer, or any of its End Users, including any failure of the Customer to comply with its obligations under the Agreement;

10.6.2 any unauthorised, improper, incomplete and/or inadequate maintenance of Equipment by the Customer, any End User and/or any third party;

10.6.3 the use of any software, hardware, services and/or system(s) which, in each case, are not part of the Equipment and are not compatible with the Equipment or which are defective;

10.6.4 any amendment to or modification and/or alteration of the Equipment which has not been undertaken by or with the prior written approval of the Company;

10.6.5 any unauthorised and/or improper use and/or operation of the Equipment or the Services;

10.6.6 failure by the Customer or any End User to meet the Equipment manufacturer's specifications or any environmental conditions advised by the Company to the Customer; or

10.6.7 the Company's compliance with any instruction or direction given by the Customer

and, to the extent that any of the above applies, the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly in respect of any matter listed in sub-clauses 10.6.1 to 10.6.7 of this Clause 10.6.

10.7 Nothing in the Agreement shall exclude or restrict either Party's liability for: (a) death or personal injury resulting from that Party's negligence; (b) fraud, or for fraudulent misrepresentation; or (c) any other liability which cannot be excluded or limited under Applicable Law.

10.8 Subject to Clause 10.7 the Company shall not in any circumstances be liable to the Customer whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent) or otherwise, for: loss of profits; loss of revenue; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; losses arising from loss or corruption of data; any consequential, special or indirect losses; or any losses suffered by the Customer arising from any claim against it by a third party for any of the above types of loss.

10.9 The Charges have been calculated on the basis that the Company shall exclude or limit its liability as set out in the Agreement, and the Customer agrees that:

10.9.1 the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in the Agreement; and

10.9.2 the Company shall have no further liability to the Customer other than as set out in this Agreement and any applicable Service Level Agreement.

10.10 Subject to Clauses 10.7 and 10.8, the Company's entire liability for all claims under this Agreement whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise:

10.10.1 arising out of or in connection with the Consultancy Services, shall be limited to the Company's Charges for the Consultancy Services; and

10.10.2 otherwise arising out of or in connection with the Agreement, shall be limited in each Year to 105% (one hundred and five percent) of the Charges payable by the Customer under the Agreement in respect of that Year, as set out in the Order Form (or as amended from time to time in accordance with the provisions of the Agreement).

11 Limitation of Liability (where the Customer is a consumer)

11.1 This Clause 11 only applies if the Customer is a consumer.

11.2 If the Company fails to comply with this Agreement, the Company is responsible for any loss or damage the Customer suffers that is a foreseeable result of its breach of this Agreement or its failing to use reasonable care and skill, but the Company is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is obvious that it will happen or if, at the time the Agreement was made, the Company and Customer knew it might happen, for example, if the Customer discussed it with the Company during the sales process.

11.3 The Company does not exclude or limit in any way our liability to the Customer where it would be unlawful to do so. This includes liability for death or personal injury caused by the Company's negligence or the negligence of our employees, agents, or subcontractors; for fraud or fraudulent misrepresentation; for breach of the Customer's legal rights in relation to the services as summarised at Clause 9.5; and for defective products under the Consumer Protection Act 1987.

12 Confidentiality and Publicity

12.1 In this Clause 12, "**Confidential Information**" means any information, technical data, know-how, tangible products, or materials provided by one Party to the other Party under this Agreement. Confidential Information shall not include any information that:

12.1.1 was previously known to the recipient or independently developed by the recipient without reference to the Confidential Information;

12.1.2 is or becomes publicly available through no fault of the recipient;

12.1.3 is disclosed by the recipient with the discloser's prior written approval; or

12.1.4 is required to be disclosed by law or regulatory authority.

12.2 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients, or suppliers of the other Party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 12.3.

12.3 Each Party may disclose the other Party's Confidential Information:

12.3.1 to its employees, officers, representatives, or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each party shall procure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this Clause 12; and

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

12.4 No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

12.5 The Customer agrees that the Company may refer to it being a service provider of the Customer but shall not disclose the nature of such services without the Customer's consent, provided that the Customer shall not unreasonably withhold or delay its consent.

13 Data Protection

13.1 The Company shall hold and use any Personal Data relating to the Customer in accordance with its privacy policy (which can be accessed here: go.elevate.uk/privacy). The types of Personal Data the Company has access to or collects as a result of provision of the Services are set out in the privacy policy.

13.2 The Parties agree that each Party is a Data Controller of the Personal Data exchanged in relation to this Agreement and shall comply with the obligations imposed on Data Controllers under Data Protection Legislation. Each Party shall only Process any Personal Data exchanged in relation to this Agreement to comply with its obligations under this Agreement and in accordance with applicable Data Protection Legislation. Nothing in this Agreement shall prohibit or otherwise restrict a Party from complying with such obligations and neither Party shall take any action which puts another Party in breach of Data Protection Legislation.

13.3 Each Party shall notify the other Parties:

13.3.1 without undue delay and in any event within 7 days upon receiving a subject access or other request from a Data Subject pursuant to their rights under the Data Protection Legislation concerning Personal Data disclosed by the other party, or which relates to any other claim, complaint or allegation relating to Personal Data disclosed to by other party; and

13.3.2 without undue delay and in any event within 48 hours upon becoming aware of or having reasonable cause to suspect a Personal Data Breach has occurred involving Personal Data provided by the other Party,

and in each case the Parties shall cooperate with each other in handling such an event and provide reasonable assistance to the other in the discharging of their respective duties under Data Protection Legislation.

13.4 Each Party shall (at its own cost) assist the other Parties in complying with its obligations as Data Controller including by providing reasonable assistance, information and cooperation as required by Data Protection Legislation to the other Party and, if appropriate, to Data Subjects.

14 Indemnity

14.1 The Customer shall defend, indemnify, and hold harmless the Company against all liabilities, claims, actions, proceedings, losses, damages, expenses, and costs (including, without limitation, any direct, indirect or consequential losses, loss of profit, loss of reputation, loss or damage to property, loss of opportunity to deploy resources elsewhere, and any court costs and reasonable legal fees) which are suffered or incurred by the Company arising out of or in connection with:

14.1.1 the use of the Services and/or Equipment by the Customer or any of its End Users save to the extent caused by any negligence or wilful misconduct of the Company;

14.1.2 any content or communications transmitted, sent or stored by the Customer or any of its End Users using the Services;

14.1.3 any failure by the Customer to obtain the necessary authorisations, approvals and consents for the use and provision of the Services at the Site pursuant to Clause 5.1.8; and/or

14.1.4 any action, omission, delay or breach by the Customer, or any of its End Users, of any of its obligations under this Agreement or any other of the terms of this Agreement or the Acceptable Use Policy.

15 Term and Termination

15.1 Subject to earlier termination of this Agreement in accordance with its terms, this Agreement commences on the date of the Customer's signature on the Order Form and shall continue in force for the following period (the "**Term**"):

15.1.1 until the expiry of the Initial Term (where an Initial Terms applies) and thereafter unless or until terminated by either Party giving to the other Party not less than three (3) month's prior written notice to expire no earlier than the end of the Initial Term;

15.1.2 in respect of any specific Services, for the period stated on the Order Form where it relates to a project or a specific number of days; or

15.1.3 where the order is for Pay As You Go Services only, for the period those Pay As You Go Services are in use by the Customer.

15.2 If the Customer wishes to cancel a Service in accordance with this Clause 15, the Customer shall send an email to the cancellations@elevate.uk specifying the Customer's name, the Site (including postcode) at which the relevant Service(s) is/are provided, what the Service(s) is/are, any applicable service reference number(s) and, where the Customer is terminating pursuant to Clause 15.3, the reason for termination. No other method of cancellation will be accepted. It is the sole responsibility of the Customer to ensure that the cancellation request is submitted using the correct process outlined above. Failure to follow this process may result in the cancellation not being actioned, and any associated charges will remain payable. The Company shall confirm such cancellation, and any relevant Termination Payment (defined below) to the Customer within ten (10) Business Days of receipt of a valid cancellation request.

15.3 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate the Agreement without liability to the other if:

15.3.1 the other Party commits a material breach of any term of this Agreement (other than a failure on the part of the Customer to make payments of sums when due) which breach is irremediable or (if such breach is remedial) fails to remedy that breach within a period of 28 days after being notified in writing to do so;

15.3.2 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

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

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

15.3.5 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;

15.3.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

15.3.7 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;

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

15.3.9 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 15.3.3 or Clause 15.3.9.

15.4 The Company shall have the right (at the Company's option) to terminate, or suspend (in the case of suspension, for as long as any of the circumstances described in sub-clauses 15.4.1 to 15.4.3 below remain), any Services and/or the Agreement immediately upon written notice if:

15.4.1 instructed to do so by a court of law, regulator or other appropriate authority;

15.4.2 the Customer and/or any End User breaches any term of the Acceptable Use Policy;

15.4.3 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment.

15.5 Except in the event of termination of the Agreement by the Customer pursuant to Clause 15.3, where a Service is terminated or otherwise brought to an end and/or this Agreement is terminated for any reason under the terms of this Agreement (including upon acceptance by the Company of any repudiatory breach by the Customer as terminating the Agreement) the Termination Payment shall be payable to the Company by the Customer.

15.6 For the purpose of this Clause 15, the "**Termination Payment**" means:

15.6.1 where termination occurs after the Service Commencement Date: (i) all arrears of Charges payable under the Agreement up to the date of termination plus (ii) all remaining Charges not yet paid which would otherwise have been payable for the greater of the remainder of the Term or the required notice period;

15.6.2 where the Service Commencement Date has not yet occurred all charges incurred or committed to by the Company to the date of termination including without limitation to third party suppliers provided always that the Termination Payment to be paid pursuant to this sub-clause does not exceed the total Charges which would otherwise be payable by the Customer in respect of the Term; and

15.6.3 where the Service is a Professional Service, the Termination Payment shall be as set out in the Service Document for Professional Services; and

15.7 The Customer acknowledges and agrees that the Termination Payment is based upon the Company's revenue expectation, which was reflected in the Charges, and is compensatory in nature only. The Termination Payment is not a penalty.

15.8 Termination or expiry of a Service and/or the Agreement shall be without prejudice to the accrued rights and liabilities of either Party subsisting under this Agreement prior to termination or expiry.

15.9 If the Customer is a **consumer** (e.g., a sole trader), the Customer has an additional legal right under the Consumer Contracts Regulations 2013 to change its mind within 14 days of us signing its Order Form and receiving a refund. However, the Customer's right as a consumer to change its mind does not apply in respect of the Services once they have started to be provided, even if the 14 day cancellation period is still running.

16 Consequences of termination

16.1 On the expiry or termination of the Agreement and/or any Service (for whatever reason):

16.1.1 the Customer must immediately cease (and the Customer shall take all necessary steps to ensure that its employees, contractors, representatives and End Users immediately cease) all use of the Equipment and the Services;

16.1.2 the Customer must (and must ensure that its End Users shall) immediately surrender possession of the Equipment in good condition to the Company (fair wear and tear excepted) and the Customer must (and shall ensure that its End Users shall) provide for the Company access on reasonable notice to its premises, facilities and equipment for the purpose of removing the Equipment and de-installing the Service(s);

16.1.3 the Customer must immediately make payment of all sums due and owing to the Company and the Company may submit an invoice to the Customer for Services rendered up until the date of termination, along with any Termination Payment that is due in accordance with Clause 15.5, and the Customer must make prompt payment of such invoice within 30 days of date of invoice;

16.1.4 the Customer must, within five (5) Business Days of termination of the Service/ Agreement, promptly return to the Company any Equipment (if applicable) or pay the Company for the Equipment at its then-current new purchase price if not so returned, unless agreed otherwise in writing by the Company;

16.1.5 if the Customer requires the Company to remove any Equipment from the Customer Site(s), the Company may charge the Customer for such additional work at the Company's standard rates; and

16.1.6 any licenses granted to the Customer by the Company under the Agreement shall immediately terminate.

16.2 Following termination of the Agreement and provided that the Customer's account is fully paid-up, the Company shall, following the Customer's written request, provide reasonable assistance to the Customer to migrate to an alternative service provider, at the Company's then-current standard charges.

16.3 On termination or expiry of this Agreement, the following clauses shall continue in force and effect: 7 (Proprietary Rights), 9 (Warranties), 10 (Limitation of Liability), 12 (Confidentiality), 12.5 (Data Protection), 14 (Indemnity), 16 (Consequence of Termination), 18 (Assignment), 19 (Entire Agreement), 20 (General), 21 (Notices) and 22 (Governing Law and Jurisdiction).

16.4 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

17 Force Majeure

17.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Agreement (other than payment obligations) caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same. In the event that a Force Majeure Event lasts for a period of 30 days or more, either Party shall be entitled to terminate this Agreement.

18 Assignment

18.1 The Customer may not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

18.2 The Company may (at its sole discretion) assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement.

19 Entire agreement

19.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede all previous arrangements, understanding, promises, assurances, warranties, representations, and agreement between them, whether written or oral, relating to its subject matter.

19.2 Each of the Parties acknowledges and agrees that in entering into this Agreement, it does not rely on any undertaking, promise, assurance, statement, representation, warranty, or understanding (whether in writing or not and whether made innocently or negligently) of any person (whether Party to this Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in this Agreement.

20 General

20.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20.2 The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.3 No failure or delay by a Party to exercise any right or remedy provided to it under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

20.4 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force. If any invalid, unenforceable, or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20.5 If any provision or part-provision of this Agreement 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 achieves the intended commercial result of the original provision.

21 Notices

21.1 A notice given by a Party under this Agreement must be in writing and may be served by personal delivery or by sending the notice by registered post or e-mail at the address given below, or at such other address as the relevant Party may give for the purpose of service of notices under the Agreement.

To the Company:
Address: Telcom Networks Ltd, Northstar, 135-141 Oldham Street, Manchester, M4 1LN
Email: hello@elevate.uk

To the Customer:
Address: As specified on the Order Form
Email: As specified on the Order Form

21.2 A notice is deemed to have been received if delivered personally, at the time of delivery; in the case of e-mail, at the time of sending the e-mail; or in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting.

21.3 To prove service, it is sufficient to prove that:

21.3.1 in the case of email, the email was sent to the correct email address as set out above and receipt was acknowledged by return email from the email address to which it was sent, or otherwise by an authorised representative of the receiving Party; and

21.3.2 in the case of post, that the envelope containing the notice was properly addressed and posted to the relevant Party.

21.4 The provisions of this Clause 21 do not apply to the service of any proceedings or other documents in any legal action.

22 Governing Law and Jurisdiction

22.1 If the Customer is a **consumer**, these terms are governed by English law and the Customer can bring legal proceedings in respect of the services in the English courts. However, if the Customer lives in Scotland, it can bring legal proceedings in respect of the services in either the Scottish or the English courts, and if it lives in Northern Ireland, it can bring legal proceedings in respect of the services in either the Northern Irish or the English courts.

22.2 If the Customer is a **business customer**, any dispute or claim arising out of or in connection with this Agreement 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 and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.