

Orixcom General Terms and Conditions

1. **Scope and Overview of the Agreement.** The Agreement consists of: (a) the Orixcom General Terms and Conditions (hereinafter, the "General Terms"); and (b) the Service Order (including the Service Schedule(s), the Credit Documentation (if any); and (c) the Addendum (if any)) to the exclusion of any purchase order, confirmation, terms and conditions or other document issued or provided by Customer ("Agreement").
2. **Definitions.** In the Agreement the following terms and phrases will have the following meanings:
 - 2.1. **"Addendum"** means the specific agreement (if any) by which Orixcom may agree to vary the terms of the Agreement or provide specific obligations in relation to credit arrangements or the provision of Security. An Addendum may pertain to one or more Agreements.
 - 2.2. **"Affiliate"** means any entity or person Controlled by, Controlling, or under common Control with, a Party.
 - 2.3. **"Authorisations"** means any and all permissions, rights, licences, licence conditions, consents, approvals, authorities, registrations, filings, agreements, notices of non-objection, notarisations, certificates, exemptions and any and all analogous authorisations which may be required from time to time by law or by any regulator or other competent authority or government agency.
 - 2.4. **"Business Day"** shall mean every day excluding Fridays, Saturdays, and any national holidays in the United Arab Emirates.
 - 2.5. **"Cause"** is defined as a breach by the other Party of any material provision of the Agreement.
 - 2.6. **"Charges"** means all fees and charges payable by Customer to Orixcom including monthly recurring, usage based, one time, set up, equipment or other charges as specified in the Service Order (or elsewhere in writing) and may include third party charges and Late Payment Interest.
 - 2.7. **"Confidential Information"** is defined as information (in whatever form) (i) designated as confidential; (ii) relating to the Agreement or to potential changes to the Agreement; (iii) relating to the Party's business affairs, networks, customers, products, developments, trade secrets, know-how or personnel (including in the case of Customer, Customer Data); or (iv) received or discovered during the term by a Party (including through an Affiliate or other agent) which should reasonably have been understood as confidential to the Party (or one of its Affiliates or subcontractors), either because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information does not include information that: (a) is in the possession of the receiving Party free of any obligation of confidentiality at the time of its disclosure; (b) is or becomes publicly known other than by a breach of this provision; (c) is received without restriction from a third party free to disclose it; or (d) is developed independently by the receiving Party without reference to the Confidential Information.
 - 2.8. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity whether through the ownership of voting securities, by contract, or otherwise.
 - 2.9. **"Credit Documentation"** means documentation by which credit arrangements are provided in relation to the Services, and may include variations to payment terms or arrangements with respect to Security.
 - 2.10. **"Customer"** means the Party identified as Customer on the Service Order.
 - 2.11. **"Customer Data"** means stored data provided to Orixcom, data transmissions (including IP addresses, date, time and duration of data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of Customer, its employees or authorised End Users of the Service, and other data provided to or obtained by Orixcom, its Orixcom Affiliates and their respective agents in connection with the provision of Service.
 - 2.12. **"Customer Equipment"** means equipment, systems, cabling and facilities provided by Customer and used in conjunction with the CPE and the Service Equipment (as applicable) in order to obtain and/or use the Service.
 - 2.13. **"CPE"** or **"Customer Premises Equipment"** means equipment (whether owned or rented by Customer), which is located at the Customer Site for the purposes of receiving the Service.
 - 2.14. **"Customer Site"** means the property or building specified in the Service Order to which the Service will be provided and may include, if the context requires, a Provisioning Entity, third party or Orixcom premises at which CPE or Customer Equipment is co-located.
 - 2.15. **"Effective Date"** means the date upon which a binding agreement is formed between the Parties for the provision of a Service according to the triggers described in clause 4.2.
 - 2.16. **"Emergency Works"** means works undertaken by Orixcom or its Provisioning Entities to repair a fault in its Network, equipment or facilities as a result of any unplanned outage, to prevent a potential Network or customer outage, or to repair a chronic customer impacting problem that would result in unavailability of the service if the work are not undertaken or for any other reason beyond Orixcom's reasonable control.
 - 2.17. **"End Users"** means any user of the Service provided to Customer by Orixcom or a Provisioning Entity and may include third parties or Customer Affiliates.
 - 2.18. **"Force Majeure Event"** means an event beyond the reasonable control of the Party affected, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, riots, insurrection, wars or other military action, civil disorders, acts of terrorism, rebellion, fires, explosions, accidents, floods, vandalism, cable cuts and sabotage. Market conditions or fluctuations are not a Force Majeure Event.
 - 2.19. **"General Terms"** means the version of the Orixcom General Terms and Conditions as published on Orixcom's website on the day that Customer submits

the Service Order to Orixcom unless a different version is identified in an applicable Addendum.

- 2.20. **"Initial Term"** means the initial period starting on the Service Commencement Date during which the Service will be provided to Customer as stated in the Service Order or, if not stated, the period starting on the Service Commencement Date and ending on the day before the first anniversary of the Service Commencement Date.
- 2.21. **"Installation Charge"** or **"Non-Recurring Charge"** or **"NRC"** means the one-off Charge payable by the Customer to Orixcom for installation of the Service and for the commissioning and configuration of the Service as specified in a Service Order.
- 2.22. **"Late Payment Interest"** or **"LPI"** shall have the meaning described in clause 9.2.
- 2.23. **"Local Access"** means the connection between the CPE and the Network and may be provided by Orixcom or a Provisioning Entity.
- 2.24. **"Network"** means any network or system, cable, transmission facility owned, leased, operated or managed by or on behalf of Orixcom.
- 2.25. **"Orixcom"** or **"Supplier"** means the Orixcom legal entity identified on the Service Order, and will where the context requires, include Provisioning Entities.
- 2.26. **"Orixcom Indemnitees"** or **"Supplier Indemnitees"** means Orixcom, its Affiliates and Provisioning Entities and their respective, employees, officers, agents and subcontractors.
- 2.27. **"Party"** and **"Parties"** means individually as a Party: Customer and Orixcom as the context requires, or including Customer and Orixcom collectively: Parties.
- 2.28. **"Planned Outage"** means any routine maintenance or upgrade work to be performed by Orixcom or its Provisioning Entities that may affect the availability of a Service, notified to the Customer with at least 5 days prior written notice.
- 2.29. **"Provisioning Entity"** means the entity providing or assisting in the provision of the Service to Customer and may include any Orixcom Affiliate or subcontractor, including licensed carriers or other service providers.
- 2.30. **"Reseller"** means any contractual intermediary between Customer and End Users.
- 2.31. **"Security"** means a cash deposit, director's guarantee, parent company guarantee, credit card payment, direct debit guarantee or bank guarantee or any combination of these as determined by Orixcom.
- 2.32. **"Service"** means the specific service (and Service Equipment in certain cases) identified in a Service Order to be supplied by Orixcom or a Provisioning Entity to Customer.
- 2.33. **"Service Commencement Date"** means, (a) with respect to internet, data and on-network services, the date the hub and data circuits are prepared to route packets to the Customer Site; and (b) with regard to other Services, the earliest of (i) the date stated in the Service Order as being the Service Commencement Date, (ii) the date that Orixcom or its Provisioning

Entity dispatches notice to Customer that the Service is ready for use; or (iii) the date Customer begins actual use of the Service. Notwithstanding the foregoing, if within 5 days of the Service Commencement Date Customer gives written notice to Orixcom that the Service is materially non-compliant with the Service Specification, and Orixcom confirms same, then the Service Commencement Date will retroactively be adjusted to be the date that Orixcom corrects the material non-compliance and notifies the Customer that the material non-compliance has been corrected.

- 2.34. **"Service Equipment"** means equipment, systems, cabling and facilities provided by or on behalf of Orixcom at Customer Site in order to make the Service available to Customer and for the avoidance of doubt, excludes the Network. Ownership of the Service Equipment does not pass to Customer from Orixcom.
 - 2.35. **"Service Level Agreement"** or **"SLA"** means the SLA, if any, applicable to the Service. SLAs are contained in the Service Schedule or may be provided on-line on an Orixcom or Provisioning Entity website.
 - 2.36. **"Service Order"** means the Orixcom documents by which the Service may be ordered, naming the specific Service and Customer-specific details. Service Orders may take the form of a document signed by Customer or an on-line 'click-through' form.
 - 2.37. **"Service Schedule"** means the Orixcom-provided description of the Service to be provided. A Service Schedule may take the form of an on-line document on the Orixcom website or may be provided to Customer as a separate document. In the case of Service Schedules published on Orixcom's website, references to Service Schedules herein refer to the version published on Orixcom's website on the day that Customer submits the Service Order to Orixcom unless a different version is identified in an applicable Addendum. Service-specific terms and conditions may appear in the Service Schedule or in the Service Order.
 - 2.38. **"Tax/Taxes"** means all taxes (whether existing or new), tax-like charges, duties and tax-related and other surcharges, of whatever nature imposed by any taxing or government authority including, without limitation, a value added tax (VAT) or withholding taxes, excluding any tax assessments applicable to Orixcom's income.
 - 2.39. **"Term"** means the period from the Service's Service Commencement Date until the Service is terminated in accordance with this Agreement and includes the Initial Term together with any renewal or extension period.
3. **Precedence.** If there is a conflict between the documents incorporated in this Agreement, then the documents will be given the following order of priority (with paragraph 3.1 being the highest in the order of priority) such that the conflicting provision in the document lower in the order of priority will be read down or, if necessary, severed to the extent necessary to resolve the conflict:
 - 3.1. The Addendum (if any);
 - 3.2. The General Terms;
 - 3.3. The Service Order, inclusive of any Service-specific terms and conditions appearing thereon.
 - 3.4. The terms of each relevant Service Schedule;

4. Service Orders and Delivery of Service

- 4.1. **Ordering Services.** To order the Service, Customer will complete and submit a Service Order to Orixcom. Submission via an on-line dialog is available for some Services. Customer warrants the accuracy of the Customer provided details contained in the Service Order.
- 4.2. **Acceptance of Service Orders by Orixcom.** Orixcom shall be deemed to have accepted a Service Order, thus creating a binding Agreement of the Parties and establishing an Effective Date upon the earlier of (i) written notice by Orixcom to Customer of acceptance of the Service Order, or (ii) Orixcom provisioning the service and issuing a Service Commencement Date notification. Orixcom reserves the right to not to accept any submitted Service Order.
- 4.3. **Concurrent Services.** Each accepted Service Order constitutes an independent contract for the provision of Services. The Term of multiple Services may run concurrently, but shall not be co-terminus except where expressly provided for in an Addendum.
- 4.4. **Acceptance of Service by Customer.** Except as otherwise expressly stated in the Service Order or an Addendum, Customer is deemed to have accepted a Service upon the Service Commencement Date.
- 4.5. **Use of Provisioning Entities.** Without releasing Orixcom from any of its obligations, Orixcom may at any time, and without notice, utilise the services of one or more Provisioning Entities in connection with the performance of its obligations under the Agreement.
- 4.6. **Modification of Service.** Orixcom agrees not to modify the Service during the Term in any manner that would have a material adverse effect on the Service's performance or functionality.
- 4.7. **Service Level Agreement.** The SLA sets forth Customer's sole remedies for any claim relating to the Service failing to meet a guarantee set forth in the SLA. Orixcom reserves the right to amend applicable SLAs from time to time effective upon posting of the revised SLA to the URL where the SLA is set out or otherwise providing the revised SLA to Customer in writing. If an SLA amendment results in a material reduction of service levels or credits Customer shall have the right, for 30 days following such amendment, to terminate the Service without early termination liability (except for payment of all Charges up to the date when the Service actually was discontinued) by giving Orixcom a written notice of termination.
- 4.8. **Resale.** Unless the Service is a wholesale service or otherwise specified in the Service Order, Customer is not permitted to and will not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party other than an Affiliate.
- 4.9. **Delivery of Service.** Orixcom will determine the most appropriate means of providing the Service including using a Provisioning Entity to deliver all or part of the Service and the method, technology and route of delivery of the Service to Customer.
- 4.10. **Monitoring.** Customer acknowledges that Orixcom may monitor Customer's use of the Service to the extent required by law or for the maintenance of the Network

or Customer's Service. Nothing in this clause shall be construed as obliging Orixcom to monitor Customer's use of the Service.

5. Term of Service Orders.

- 5.1. **Termination of Service by Written Notice.** Either Party may terminate the Service upon written notice as follows:
 - 5.1.1. If no termination notice period is stated in the Service Order or Service Schedule then the Service may be terminated on 45 days written notice for non-cloud Services or 30 days written notice for cloud Services, said termination to take effect any time after the then extant Term.
 - 5.1.2. If a termination notice period is stated in the Service Order or the Service Schedule then the Service may be terminated on the notice period stated in the Service Order or Service Schedule, said termination to take effect any time after the then extant Term. (See also clause 3 regarding the order of precedence between the Service Order and Service Schedule.)
- 5.2. **Term Renewal.** Absent termination, the Term shall automatically and without notice periodically renew as follows:
 - 5.2.1. Non-cloud Services: If no renewal period is stated in the Service Order or Service Schedule then the Term will renew for successive 45-day periods;
 - 5.2.2. Cloud Services: If no renewal period is stated in the Service Order or Service Schedule then the Term will renew for successive 30-day periods;

Notwithstanding the foregoing, if a renewal period is stated in the Service Order or the Service Schedule then the Term will successively renew for the renewal period stated in the Service Order or Service Schedule. (See also clause 3 regarding the order of precedence between the Service Order and Service Schedule.)
- 5.3. **Termination for Cause.** Either Party may terminate the Service for Cause if a Party fails to remedy within 10 Business Days of having been notified in writing of the Cause, or immediately by notice if the other Party has ceased to do business, become insolvent, entered receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, or undergoes or is subject to any analogous acts or proceedings under applicable law.
- 5.4. **Early Termination of Service by Orixcom.** Notwithstanding any other provision of the Agreement, Orixcom may terminate the Service immediately on notice to Customer if: (a) a suspension made pursuant to clause 11.1 continues for a period of more than 15 days; or (b) Customer is past due on any invoice for the Service for more than 30 days.
- 5.5. **Early Termination of Service by Customer.** Subject to clause 5.6, Customer may by written notice to Orixcom terminate a Service.
- 5.6. **Early Termination Charges.** If prior to completion of the Initial Term Customer terminates a Service under clause 5.5 or Orixcom terminates a Service under clause 5.4, Customer must pay Orixcom 100% of the Monthly

Charges for the cancelled Service for each month remaining in the Initial Term, plus a pro rata amount for each part month commencing from the effective date of termination.

- 5.7. **Service Cessation.** Orixcom may terminate the Service on 90 days notice to Customer if Orixcom ceases to provide the Service on a commercial basis at the location where Customer is being provided the Service.

6. Obligations of the Parties in relation to the Service

- 6.1. **Orixcom's provision of the Service.** Orixcom will provide the Service in conformation with the Service Schedule, and Orixcom will use the reasonable care and skill expected of a competent information technology and telecommunications provider.
- 6.2. **Compliance with law and regulation.** Both Parties shall comply with applicable law and regulation.
- 6.3. **Access.** Where Orixcom requires access to a Customer Site in order to provide a Service, Customer shall grant or shall procure the grant to Orixcom, at no cost to Orixcom, such rights of access to each Customer Site, including any necessary licenses, waivers or consents. Customer shall advise Orixcom in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at a Customer Site, and Orixcom shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at a Customer Site.
- 6.4. **Assistance.** Customer shall provide Orixcom with such facilities and information as Orixcom may reasonably require so that Orixcom may perform its obligations or exercise of its rights under the Agreement.
- 6.5. **Service Equipment.** Where Orixcom provides Service Equipment in order to make the Service available, Customer agrees that it will: (a) use the Service Equipment only for the purpose of receiving the Service and in accordance with reasonable instructions of Orixcom from time to time and/or any software license that may be provided with the Service Equipment; (b) not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network; (c) insure and keep insured all Service Equipment installed at each Customer Site against theft and damage; (d) not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment; (e) permit Orixcom to inspect, test, maintain and replace the Service Equipment at all reasonable times; and (f) upon termination of the Service, allow Orixcom access to each Customer Site to remove the Service Equipment. Should any construction or alteration to a Customer Site have occurred to facilitate the Service, Orixcom is not obliged to restore that Customer Site to the same physical state as prior to the Service being delivered. Customer shall be liable for any and all damage to Service Equipment that is caused by the act or omission of Customer or Customer's agents, employees, or suppliers.
- 6.6. **Local Access.** When Local Access is to be provided, and Orixcom is not the Provisioning Entity, Orixcom will order the Local Access and Customer agrees to pay to Orixcom all Charges associated with the Local Access (including any Orixcom charges for administration). Local Access is

provided to Customer subject to the applicable terms and conditions of use (including any applicable service term and cancellation fees) of the third party provider of the Local Access, and Orixcom may require Customer to sign the Local Access service documentation and/or appoint Orixcom as its agent to do same and to receive Local Access service correspondence on Customer's behalf. Unless otherwise indicated on the Service Order, Orixcom does not proactively monitor or manage Local Access.

6.7. Customer obligations in relation to use and resale.

Customer is solely responsible for:

- 6.7.1. The results and consequences of its resale of the Service to Reseller or End Users;
- 6.7.2. The results and consequences of the use of the Service by End Users;
- 6.7.3. The content of any data or information which the Customer, or any End User or Reseller, sends or receives using the Service;
- 6.7.4. Its relationships with its End Users and Resellers, and serving as sole point of contact for its Resellers and End Users; and
- 6.7.5. Ensuring that any arrangements it makes with its Resellers and End Users (including the provisions in agreements with Resellers and End Users) comply with applicable laws and reflect the Customer's responsibilities under this Agreement.

6.8. Indemnification by Customer.

The Customer will pay all expenses and costs, including costs of investigation, court costs, and reasonable attorneys' fees and expenses (including allocable costs of in-house counsel) incurred by Orixcom Indemnitees on demand, and release Orixcom from all claims, arising out of or in connection with:

- 6.8.1. Any proceedings instituted, demands or claims made, or action taken by any third party (including a Reseller or End User), regulator or government agency, relating to any re-supply, or use of the Services by the Customer or End Users which violate applicable law, regulation or decree;
- 6.8.2. Use of the Service in connection with the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any kind) by the Customer or by the Customer's End Users or Resellers, which violates applicable law, regulation or decree;
- 6.8.3. Customer's use of the Service or Service Equipment in any way that would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity; and
- 6.8.4. Any breach of Customer's obligations under clause 6.7.

This clause 6.8 will survive termination of this Agreement, or any part of it.

7. Charges and Payment

- 7.1. **Charges, Generally.** The Charges for a Service will be specified in the Service Order, and fixed-amount Charges will be valid for the Initial Term of that Service. Orixcom

may vary its Charges at any time after expiration of the Initial Term upon 30 days prior written notice to Customer.

- 7.2. **Certain Third Party Charges.** Where an element of the Service is rendered directly by a third party carrier where Orixcom does not have a "one-stop" or reseller billing arrangement, Customer agrees to assist Orixcom with regard to the payment of said third party carrier charges.
- 7.3. **Non-Recurring Charges.** Unless otherwise stated in the Service Order or Addendum, Orixcom will begin provisioning the Service only after Non-Recurring Charges have been paid.
- 7.4. **Fixed Charges.** Fixed-amount Charges are to be paid monthly in advance of each month of Service.
- 7.5. **Usage-Based or Variable Charges.** Absent different terms in the Service Order, usage-based or Variable Charges are payable in arrears, with payment to be made no later than 30 days after Orixcom's notice or invoicing to Customer.
- 7.6. **Method of making Payment.** Customer is obliged to remit payment via electronic transfer to the Orixcom bank account as stated on the notice of Charges or invoice, provided that Orixcom may require online payment for certain Services (e.g., cloud-based Services).
- 7.7. **Delayed Invoicing.** Orixcom may invoice or provide notice of Charges to Customer up to 6 months after the date a Charge accrues, provided that for cases involving fraud or third party charges, Charges may be invoiced at any time within a reasonable period after Orixcom becomes aware of such Charges.
- 7.8. **Currency and Currency Conversion.** All Charge notices and invoices will be denominated in the currency appearing on the Service Order. If a currency conversion is necessary the conversion rate shall be as notified by Orixcom to Customer from time to time.
- 7.9. **Bank Charges and Offsets.** The Customer must pay all undisputed amounts invoiced without set-off, counterclaim or deductions, free and clear of any withholding or deduction.
- 7.10. **Payment by Customer's Affiliate.** At Customer's request, invoices may, at the discretion of Orixcom, be sent to and Charges may be collected from Customer Affiliate(s), but Customer shall remain fully responsible for payment of any such Charges whether in receipt of the invoice or not.

8. Disputed Charges.

- 8.1. Should the Customer dispute a Charge it must notify Orixcom of the disputed amount no later than 30 days after Customer has actual notice of the Charge. If the Customer does not notify Orixcom of any objection within this period the Charge shall be deemed to have been accepted by the Customer unless Customer can prove that they never received notice of the Charge. Any Charge dispute notification to Orixcom must clearly identify the disputed Charge, the specific objection and include supporting data. The undisputed portions of a Charge remain due and payable.
- 8.2. The Parties agree to promptly investigate such disputes and use reasonable endeavours to resolve same.

9. Taxes, Remittance Fees and Interest.

- 9.1. All Charges are exclusive of all Taxes, remittance fees, bank charges, etc., unless otherwise specified in a Service Order. All such Taxes, fees and charges are the responsibility of and are to be borne by the Customer.
- 9.2. With reference to EU *Directive 2011/7/EU On Combatting Late Payment in Commercial Transactions*, and UK *Statutory Instrument 2013 No. 395 The Late Payment of Commercial Debts Regulations 2013*, simple interest will be applied to late payments per the following calculation:

$$\text{LPI} = (\text{A} \times \text{Interest Rate} \times (\# \text{ of days late}/363)) + \text{SCRC}$$

Where:

LPI = Late Payment Interest

A = Amount in Arrears

Interest Rate =

Bank of England base rate on 31 December plus 12% (for amounts calculated from 1 January to 30 June); or Bank of England base rate on 30 June plus 12% (for amounts calculated from 1 July to 31 December)

SCRC (statutory compensation for recovery costs) =

The USD equivalent of 40 GBP where the amount in arrears is up to 999.99 GBP; the USD equivalent of 70 GBP where the amount in arrears is between 1000 GBP and 9,999.99 GBP; and the USD equivalent of 100 GBP where the amount in arrears is 10,000 GBP or more.

Customer agrees to the application of LPI according the formula above regardless of either Party's location or the location(s) of Service provision.

- 9.3. If any withholding is required by relevant government authorities, the Customer shall gross up the amount remitted such that Orixcom will receive full payment as stated on Orixcom's invoice.

10. Security

- 10.1. The Customer must provide financial statements, credit reports, and other information reasonably requested by Orixcom to determine the Customer's creditworthiness.
- 10.2. Orixcom may require the Customer to consent to the Security for the Charges due under this Agreement as a condition of receipt or continued receipt of the Service. In such event Customer shall be obliged to provide adequate Security drawn on a financial institution, e.g. a bank guarantee, acceptable to Orixcom.
- 10.3. Failure to provide Security within 30 days after receipt of a request from Orixcom shall be deemed to be a material breach of Customer's obligations under this Agreement, amounting to Cause.
- 10.4. Orixcom may offset against the Security any amounts due under this Agreement that are not paid by the Customer when due. If Orixcom applies any or all of the Security against any Charge, the Customer must fully reinstate the Security within 5 Business Days. Failure to so reinstate the Security shall be deemed to be a material breach of Customer's obligations under this Agreement, amounting to Cause.

11. Service Suspension

- 11.1. **Grounds for Suspension.** Orixcom may, without terminating this Agreement and without incurring any liability, suspend all or part of the Services it provides to Customer—
- 11.1.1. Immediately, if there is a Planned Outage, for the duration of the Planned Outage; or Orixcom needs to carry out Emergency Works, for the duration of the Emergency Works;
- 11.1.2. Immediately, if any undisputed invoiced Charges remain unpaid for 30 days after they were due for payment;
- 11.1.3. Immediately, if Customer has ceased to do business, become insolvent, entered receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, or undergoes or is subject to any analogous acts or proceedings under foreign law; and
- 11.1.4. Immediately, if Orixcom is obliged to do so to comply with a ruling, direction, directive, determination, decision/interim decision, order, instruction or request of a regulator, government agency, emergency services organisation or other competent authority; or Orixcom has reasonable grounds to consider that continued use of the Service by Customer violates applicable law; or suspension of the Service is necessary to prevent or protect against fraud, or otherwise protect persons or property.
- 11.2. **Non-exclusive remedy.** Suspension of a Service under this clause does not exclude Orixcom's right to terminate this Agreement in respect of any event resulting in the suspension of the Services or any other event.
- 11.3. **Resumption of Service.** If Orixcom exercises its right to suspend the Service pursuant to clause 11.1 Orixcom will use reasonable endeavours to resume the Service as soon as practicable after the reason for suspension no longer exists (subject to the exercise of any termination right on the part of Orixcom).
- 11.4. **Reasonable Expenses.** If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of Customer or Customer's End User(s), Customer will pay to Orixcom reasonable costs and expenses incurred by Orixcom as a result of the implementation of such suspension and/or reconnection of the provision of the Service.

12. Limitations of Liability

- 12.1. Except for liabilities imposed by clause 6.8, the maximum liability of either Party for any loss or claim arising out of or related to a Service or this Agreement, whether for breach of contract, in tort (including negligence), for breach of statutory duty, or otherwise, will be limited the lesser of (a) direct damages proven by the moving Party or (b) 12 months of Charges for the Service(s) giving rise to, or associated with, the loss or claim.
- 12.2. Notwithstanding any other clause of this Agreement, neither Party will be liable in contract or for tort

(including negligence) for breach of statutory duty or in any other way for--

- 12.2.1. any economic loss, including any loss of goodwill, reputation, revenues, profits, contracts, business, or anticipated savings, or
- 12.2.2. any special, punitive, exemplary, indirect, consequential or incidental losses,
- regardless of whether such losses were within the contemplation of either of the Parties as of the date Customer submitted the Service Order or thereafter.
- 12.3. Notwithstanding any other clause of this Agreement, neither Party excludes liability for death, personal injury or fraud.
- 12.4. The limitations of liability set out in this clause 12 do not apply to a Customer's obligation to pay Charges.
- 12.5. No cause of action, under any theory which accrued more than one year prior to the institution of a legal proceeding alleging such cause of action may be asserted by either Party against the other, to the extent permitted by law.
- 12.6. The liability of Orixcom with respect to the Service also may be limited pursuant to other terms and conditions of the Service Specification or Service Order.
- 12.7. Customer acknowledges and accepts the reasonableness of the disclaimers, exclusions, and limitations of liability set forth in this clause 12 and the Agreement as a whole.

13. Representations and Warranties

- 13.1. Each Party represents, warrants and undertakes to the other that it is a corporation or juridical entity properly incorporated or registered and is in good standing under the laws of its jurisdiction of incorporation or registration, and it has taken all necessary action to authorise the signing, delivery and performance of this Agreement in accordance with its terms.
- 13.2. Customer represents and warrants that the information Customer includes in the Service Order is accurate; and that the individual signing the Service Order or submitting the Service Order through the on-line dialog has the requisite authority to bind Customer in contract.
- 13.3. Except as expressly set forth in the Agreement all warranties, representations or agreements whether oral or in writing and whether express or implied or imposed by applicable law, are hereby expressly excluded to the maximum extent permitted by applicable law.

14. Confidentiality, Customer Data & Privacy

- 14.1. **Confidentiality.** Each Party promises that during the Term and for 3 years after, it will use the other Party's Confidential Information only for purposes of the Agreement, not disclose it to third parties except as provided below, and protect it from disclosure using the same degree of care it uses for its own Confidential Information (but no less than a reasonable degree of care). A Party may disclose the other Party's Confidential Information only (a) to its employees, agents and subcontractors (including professional advisors and auditors), and to those of its Affiliates, who have a need to know for purposes of the Agreement and who are bound to protect it from unauthorized use and disclosure under the terms of a written agreement, or (b) pursuant to law, regulation or court order. Confidential Information

remains the property of the disclosing Party and, upon request of the disclosing Party, must be returned or destroyed when the Agreement ends.

14.2. Customer Data and Privacy. Customer Data shall be deemed Customer's Confidential Information. Customer shall obtain natural person and legal entity consents necessary for the transfer of Customer Data to Orixcom and Orixcom's Affiliates and/or Provisioning Entities for the purpose of provisioning the Service.

15. Intellectual property indemnification. The Parties agree to indemnify and keep indemnified the other party from and against all losses suffered by, incurred by or awarded to the other party arising out of or in connection with a party's violation, misuse or misappropriation of third party trademarks, copyrights, trade secrets, or other proprietary rights or intellectual property rights.

16. Miscellaneous

16.1. Records. Each Party agrees to maintain records reasonably necessary to substantiate all financial, operational and billing data for a period of 2 years.

16.2. Assignments. Neither Party may assign the Agreement without the written consent of the other Party, except that (a) Orixcom may assign any and all of its rights and obligations hereunder (i) to any Affiliate or Provisioning Entity, (ii) pursuant to any sale or transfer of substantially all the assets or business of Orixcom, or (iii) pursuant to any financing, merger, or reorganisation of Orixcom, and (b) subject to applicable law and regulation, Customer may assign any and all of its rights and obligations hereunder to any Affiliate that satisfies the standard credit requirements of Orixcom.

16.3. Amendments. This Agreement may only be varied by written amendment signed by duly authorised representatives of the Parties.

16.4. Waiver. No waiver by either Party of any provision in this Agreement will be binding unless expressly confirmed by written variation in accordance with clause 16.3. Further, any such waiver will relate only to such particular matter, non-compliance or breach to which it is expressly stated to relate, and will not apply to any subsequent or other matter, non-compliance or breach.

16.5. Notices. Any notice required or permitted to be given in writing under the Agreement (and for the avoidance of doubt unless otherwise specified all notices must be in writing) will be in English, and sent via email, facsimile, courier, hand delivery or ordinary, certified or registered mail, to a Party at the addresses set out in the Service Order in the case of Customer, and in the case of Orixcom:

General Counsel
Orixcom Limited
Temple Hall, First Floor
Temple Road
Blackrock, Co. Dublin
Ireland

With a copy via email to legal@orixcom.com

A Party may from time to time designate another address or addresses by notice to the other Party. Such notice will be deemed effective: (a) the day after being sent, if by email; (b) when electronic confirmation is received, if sent

by facsimile; (c) as of the delivery date, if sent by courier; (d) when received, if hand delivered; or (e) 15 Business Days after being sent, if sent via ordinary, certified or registered mail. **Please Note: Notice of termination by Customer of a Service must be from an authorized representative of Customer to be effective.**

16.6. Survival. Certain provisions of the Agreement are intended to have effect after the expiration or termination of the Agreement including but not limited to clauses 2 (Definitions), 3 (Precedence), sub-clause 6.8 (Indemnification by Customer), 7 (Charges and Payment), 8 (Disputed Invoices), clause 9 (Taxes and Interest), sub-clause 10.4 (offsets), 12 (Limitations of Liability), clause 14 (Confidentiality, Customer Data and Privacy), clause 16.4 (waiver), 16.7.4 (Consequences of Termination), clause 16.8 (Severability), clause 16.10 (No Publicity), clause 17 (Governing Law), clause 18 (Arbitration), and this clause 16.6 will continue to bind, and to be enforceable by, the Parties to the Agreement.

16.7. Force Majeure

16.7.1. General. Neither Party will be liable for any failure to perform or for breach of this Agreement caused by a Force Majeure Event, provided that Customer will not be relieved of its obligations to make any payments for Services rendered under this Agreement. Both Parties agree to use reasonable commercial endeavours to minimize the effects of a Force Majeure Event

16.7.2. Notices. A Party claiming that a Force Majeure Event has impacted its ability to perform this Agreement must immediately inform the other Party in writing of the occurrence of the Force Majeure Event, and the estimated extent and duration of such inability to perform its obligations.

16.7.3. Termination Right. If the affected Party is prevented by the Force Majeure Event from performing its obligations under the Agreement for 30 days or such other period as the Parties agree in writing, then either Party may in its sole discretion immediately terminate the Agreement by giving notice of termination to the other Party.

16.7.4. Consequences of Termination. Where the Agreement is terminated by a Party in accordance with sub-clause 16.7.3:

16.7.4.1. Orixcom shall be entitled to payment of: (a) all accrued but unpaid Charges incurred through the date of such termination; together with (b) any termination charges or other costs or expenses incurred by Orixcom for the cancellation of the Service in relation to 3rd party suppliers or equipment provided to Orixcom in connection with the Service; and

16.7.4.2. The Parties shall otherwise bear their own costs and shall be under no further liability to perform the Agreement.

- 16.8. **Severability.** If any provision of the Agreement is held by a court or any government agency or authority to be invalid, void, or unenforceable, the remainder of the Agreement will nevertheless remain legal, valid and enforceable.
- 16.9. **No Partnership.** Nothing in the Agreement and no action taken by the Parties pursuant to the Agreement will constitute or be deemed to constitute between the Parties, a partnership, association, joint venture, or other cooperative entity.
- 16.10. **No Publicity.** Other than as a brief reference to Customer on the Orixcom web site and general marketing materials, neither Party may use the other Party's name, trademarks, or trade names, or issue any press release or public statement relating to the Agreement, any Service Order, or the other Party, without the prior written consent of the other Party.
- 16.11. **Export and Import.** Customer acknowledges that the export, re-export, import and use of certain hardware, software and technical data provided hereunder may be regulated and Customer agrees to comply with all applicable laws and regulations.
- 16.12. **Reliance.** Customer confirms that, in agreeing to enter into the Agreement, it has not relied on any representation except as set out in an Addendum, these General Terms, the Service Schedule or the Service Order, and Customer agrees it shall have no remedy in respect of any representation not incorporated therein.
- 16.13. **Intellectual Property.** Customer acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of Orixcom, or an Orixcom Affiliate, Provisioning Entity or supplier.
- 16.14. **English Language Shall Prevail.** If the Agreement is made available in a language other than English, such other version shall be for reference only. In the event of any inconsistency between the English and any other language version of the Agreement, the English version shall prevail.
17. **Governing Law.** This Agreement is governed by the laws of England and Wales.
18. **Arbitration**
- 18.1. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Finance Centre / London Court of International Arbitration ("DIFC-LCIA") Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration shall be Dubai International Finance Centre, UAE. The language to be used in the arbitration shall be English. Subject to clause 18.3 below, the arbitral tribunal will comprise 3 arbitrators. Each Party will appoint an arbitrator, and the third arbitrator, who will preside over the arbitral tribunal, will be appointed by the DIFC-LCIA. The award of the arbitral tribunal will be written in English. The award of the arbitral tribunal is final and binding on the Parties.
- 18.2. If either of the Parties fails to appoint an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Arbitration Rules.
- 18.3. If the amount in dispute as specified in the notice of arbitration or statement of claim is less than US \$250,000 the arbitration panel will consist of only 1 arbitrator who will be selected by agreement between the Parties. If the Parties fail to agree on an arbitrator within the applicable time period, such appointment will be made in accordance with the DIFC-LCIA Rules.
19. **Entire Agreement.** The Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers and representations relating to Orixcom's, Orixcom's Affiliate's or Provisioning Entity's performance in connection with the Agreement and contains all the terms, conditions, understandings, representations and promises of the Parties hereto.