

Virgin Media Purchase Order Terms and Conditions of Purchase

1. Definitions.

In these conditions the "Purchaser" shall mean the Virgin Media group company issuing and named in a purchase "Order" and the "Supplier" shall mean the company or person to whom the purchase "Order" is addressed and issued. These terms and conditions shall govern the sale or supply of goods (including software) and/or services by the Supplier and shall be deemed incorporated in any contract between the Purchaser and the Supplier for the sale or supply to the Purchaser of goods (including software) or services. Any terms and conditions on any acknowledgement, delivery note, invoice, quotation (including where such quotation is included or referred to in the Order) or other document shall not apply. In the case of conflict, these terms and conditions shall take precedence over any other terms included or referred to in an Order, unless expressly stated otherwise in the Order.

2. Acceptance of Order.

The Purchaser shall have the right to revoke the Order without liability unless accepted by the Supplier within fourteen (14) days from the date of the Order. Acceptance of the Order constitutes a contract which incorporates these terms and conditions "Agreement". Failure to accept the Order in writing or otherwise will not prevent the Supplier's implied acceptance of the Order and these terms and conditions by conduct. No variation, amendment or addition to the Order or these terms and conditions by the Supplier shall form part of the Agreement unless expressly accepted by the Purchaser in writing.

3. Delivery.

- 3.1. The date of delivery of goods and the provision of any services shall be prompt and in any case as specified on the Order unless otherwise agreed in writing between the Purchaser and the Supplier. The Supplier shall immediately give notice to the Purchaser of any likely delay in delivery of which it becomes aware.
- 3.2. If the Supplier is late with any delivery of goods or provision of any services the Purchaser shall have the right to terminate the Agreement (without liability to the Purchaser) at any time before delivery of the goods or provision of the services (as applicable) and, where specified on the Order, the Purchaser shall be entitled to payment of liquidated damages by the Supplier on the basis specified on the Order. Any such liquidated damages are a commercially agreed genuine pre-estimate of loss caused to the Purchaser as a result of delay but are not intended to reflect the full extent of such losses as may be incurred and recoverable from the Supplier.
- 3.3. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing, labelling, storage and delivery of the goods. The Order number must be quoted by the Supplier on all delivery notes, invoices, advice notes, correspondence, packing lists and containers. The Supplier shall provide the Purchaser in reasonable time before delivery of any goods such written information and assistance as may be reasonably necessary to enable the Purchaser to prepare for receipt and/or installation of those goods (including any information in respect of necessary environmental and operational conditions for operation of the goods).
- 3.4. The goods, properly packed and secured in such manner as to reach their destination in good condition under normal conditions of transport, shall be delivered or despatched for delivery by the Supplier at its cost and risk to the address of the Purchaser specified on the Order or as the Purchaser shall otherwise specify. Delivery shall be made between the hours of 8.30 am and 5.00 pm Monday to Friday (inclusive), bank and public holidays excepted unless agreed otherwise.
- 3.5. No charge shall be payable by the Purchaser for packing or crating materials or services, cartons, containers, carriage, storage or unloading unless such charge is expressly specified in writing in the Order.
- 3.6. Following delivery of the goods, unloading and unpacking by the Purchaser the Supplier shall, if so requested by the Purchaser, collect and remove the discarded packaging.
- 3.7. The Supplier shall, upon receiving notice to that effect from the Purchaser, repair or replace free of charge goods damaged or lost in transit and due delivery of the goods shall not be deemed to have taken place until replacement or repaired goods have been delivered by the Supplier to the Purchaser. The Purchaser reserves the right to hold such damaged goods at the Supplier's risk or to return them at the risk and expense of the Supplier.
- 3.8. The Supplier shall, on demand, provide any reasonable advice, co-operation or assistance in connection with the Purchaser's enjoyment of use of goods, materials or services provided under the Agreement.

4. Acceptance.

- 4.1. The Supplier shall afford the Purchaser or its agents every facility for inspection and/or testing of the goods and of any raw or finished materials or work before, during and after manufacture or production.
- 4.2. The Purchaser shall be entitled to reject any goods, materials or work which do not comply with the standard required or the terms expressed or implied in the Agreement as to quality, quantity, condition, fitness for purpose, description or otherwise. The Purchaser shall remain entitled to reject any goods, materials or work upon delivery or performance or within a reasonable time thereafter, and goods or materials so rejected will be returned at the Supplier's expense and risk. The Purchaser shall not be deemed to have accepted the goods or materials until it has had a reasonable opportunity to inspect and/or test the goods following delivery or, if later, within a reasonable time after any latent defect in the goods or materials has become apparent to the Purchaser.
- 4.3. Unless within a reasonable time of receipt of notice of rejection the Supplier collects the goods or materials, the Purchaser may dispose of them as the Purchaser shall think fit provided that if the Purchaser sells the goods the Purchaser shall account to the Supplier for the net proceeds of such sale.

5. Work on Purchaser's Premises.

Where any Agreement involves work being carried out on or delivery at the Purchaser's premises the Supplier and its employees, agents and sub-contractors shall observe all statutory rules and regulations and all of the Purchaser's applicable policies, rules and regulations. The Purchaser may refuse to admit or may order the removal of any person who in its reasonable opinion is not fit to be on the premises.

6. Price.

- 6.1. The price of the goods and the services shall be as stated in the Order and, unless otherwise so stated, shall be: (a) exclusive of any applicable UK value added tax; and (b) inclusive of all other charges and costs (including of packaging, packing, shipping, carriage, insurance and delivery) and of any duties, taxes or levies other than UK value added tax; and (c) full and exclusive remuneration of the Supplier for performance of its obligations under the Agreement.
- 6.2. No increase in the price may be made (whether on account of additional effort, additional or increased material, labour or transport costs, fluctuation in rate of exchange or otherwise) without the prior consent of the Purchaser in writing.
- 6.3. Payment of the undisputed price shall be made within ninety (90) days plus one (1) week of the consignment of goods or the provision of services being properly delivered or made in accordance with the Agreement (or of delivery of the Supplier's invoice if later), unless otherwise agreed by the parties in writing (for instance, the Order may specify an alternative milestone based invoicing profile).
- 6.4. Unless otherwise agreed, a separate invoice must be rendered for each individual consignment of goods or each distinguishable element of services and all invoices must quote the Order number.
- 6.5. The Purchaser shall be entitled to set off against the price any sums owed to the Purchaser or any other member of the Virgin Media group by the Supplier on any account whatsoever.
- 6.6. In the event that any undisputed payment due under this contract is not made on the due date the defaulting party shall pay to the other (if demanded) interest on the amount outstanding at the rate of 2% per annum above the base rate of National Westminster Bank plc, for the period from the due date until the date of actual payment. This rate of interest shall apply notwithstanding any higher rate of interest specified in The Late Payments of Commercial Debts (Interests) Act 1998 or any other statute, and the parties acknowledge and agree that this rate of interest represents a substantial remedy for late payment of debts.
- 6.7. The Supplier acknowledges that in order to ensure effective management of the Purchaser's internal budgets and cashflow, it is reasonable for the Purchaser to request that the Supplier submits an invoice to the Purchaser no later than twelve (12) months following the date on which the Supplier was entitled to raise an invoice. Accordingly, the Supplier agrees that if it fails to issue an invoice to the Purchaser within twelve (12) months of the date on which the Supplier was entitled to raise an invoice, the Purchaser shall not be liable to pay the amounts that would have been due under such invoice and the Supplier shall not be entitled to recover such amounts from the Purchaser.

7. Title.

Property in the goods shall pass to the Purchaser on the earlier of delivery, payment of the purchase price or expiry of the period specified in clause 6.7, without prejudice to any right of rejection which may accrue to the Purchaser under the Agreement.

8. Software Licence.

The Supplier grants to the Purchaser a non-exclusive, royalty free, perpetual and irrevocable right to use any software supplied (together with any updates or new versions to that software) and any associated materials for such purposes as the Purchaser and any other Virgin Media group company may require and to sub-license any such item to the Virgin Media group's customers for the purpose of accessing and using the Virgin Media group's services. The Purchaser shall not make any copies or duplicates of any such item (unless reasonably necessary to do so for the above purposes) without the Supplier's prior written consent, save for backup and archival purposes. The Purchaser may permit third parties contracted to provide services to the Purchaser to use any such items to the extent reasonably necessary for the performance of such services. The Supplier agrees to promptly deliver up a copy of items licensed under this clause to the Purchaser on demand.

9. Warranty, Indemnity and Liability.

- 9.1. The Supplier warrants, represents and undertakes to the Purchaser that (without prejudice to the Purchaser's rights and remedies implied by statute and common law):
 - (a) the Supplier has the corporate power and authority to execute, deliver and perform its obligations under the Agreement and has the right to and shall supply all goods and materials free from any charges, liens or other encumbrances;
 - (b) all goods and materials shall correspond strictly with description and other specification supplied or made known to the Supplier and with any sample, shall be in every respect fit for the purpose for which the Purchaser has expressly or by implication made known that it requires and shall be of satisfactory quality (which is also of a standard not less than that of previous supplies (if any) approved by the Purchaser);
 - (c) the goods and materials will be free from defects in design, material, workmanship and performance and will not contain or introduce to any equipment or system any computer viruses, trojan horses or other destructive, disruptive or nuisance computer programs;
 - (d) all goods and materials and the performance of any services shall comply (and enable the Virgin Media group to comply) with all current and applicable laws and regulatory requirements;
 - (e) all services and obligations under the Agreement will be performed by appropriately skilled, competent, qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances;

- (f) the Supplier will at all times maintain insurance with a reputable insurance company against all liability under this contract and shall provide reasonable evidence of such insurance to the Purchaser on request.
- 9.2. The Supplier shall indemnify the Purchaser in full against all liability, loss, damages, costs and expenses (including legal expenses and consequential or economic loss) suffered by or incurred by the Purchaser as a result of or in connection with:
- (a) breach of any warranty given by the Supplier under the Agreement;
 - (b) any claim that the goods, materials or services infringe, or their production, importation, use, performance or resale, infringes the patent, copyright, database right, design right, trade mark or other intellectual property right of any other person;
 - (c) any liability under the Consumer Protection Act 1987 or similar, equivalent or replacement legislation in respect of the goods; and
 - (d) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying or delivering the goods, materials or services.
- 9.3. Neither party excludes or limits liability to the other party for fraud or for death or personal injury due to its own negligence or its employees' or agents' negligence whilst acting in the course of their employment or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 9.4. Subject always to the provisions of Clause 9.3 and save in respect of any claim for indemnification under Clause 9.2, neither party shall be liable to the other for any type of special, indirect or consequential loss including, without limitation, any loss of profit or anticipated savings arising from:
- (a) any breach of its contractual obligations under the Agreement or
 - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement, even if any such loss was reasonably foreseeable or that party had been advised of the possibility of the other incurring the same.
- 9.5. Subject always to the provisions of Clause 9.3 and notwithstanding Clause 9.4, the Purchaser's liability to the Supplier, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for any losses incurred or suffered by the Supplier shall be limited, in aggregate, to the total of the prices paid and/or payable under the Agreement.

10. Remedy.

Without prejudice to any other remedy, if any goods, materials or services are not supplied or performed in accordance with the Agreement, then the Purchaser shall be entitled to require the Supplier to repair the goods, materials or to supply replacement goods, materials or services in accordance with the Agreement within seven (7) days or to have them so repaired or re-performed by a third party in which case the Supplier shall reimburse the Purchaser for all costs and expenses thereby incurred.

11. Termination.

- 11.1. If the Supplier being an individual shall at any time become bankrupt or shall have a receiving order made against him/her or shall make any composition or arrangement with or for the benefit of his/her creditors, or if the Supplier being a company shall go into liquidation (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver shall be appointed or an encumbrancer takes possession of any of its assets or an administration order is made, or the Purchaser reasonably apprehends any of the foregoing and notifies the Supplier accordingly, the Purchaser may terminate the Agreement without liability immediately upon notice in writing to the Supplier.
- 11.2. If at any time the Purchaser shall become insolvent or become the subject of a winding up order (of any type) or an administration order, or have an administrative receiver appointed (including under the Law of Property Act), or compound with its creditors, enter into a company voluntary arrangement or scheme of arrangement (in any such case other than in connection with liquidation a reconstruction or amalgamation), then the Supplier shall be entitled to terminate the Agreement immediately upon notice in writing to the Supplier.
- 11.3. Either party may terminate the Agreement immediately upon written notice to the other at any time if the other is in material breach of the Agreement and such breach is not capable of remedy (which in the case of the Supplier shall include where the Supplier is in persistent or continuous breach of the Agreement or where the Supplier has incurred liability for liquidated damages up to the level of any agreed cap on liquidated damages) or, if capable of remedy, if the other party fails to remedy such breach within twenty (20) days of written notice to remedy the same.
- 11.4. The Purchaser may terminate the Agreement at any time by giving not less than fourteen (14) days written notice to the Supplier, without liability.
- 11.5. On termination or expiry of the Agreement, the Supplier shall return all information or materials made available by or on behalf of the Purchaser to the Supplier and shall co-operate fully with the Purchaser to ensure an orderly, efficient and undistruptive as reasonably possible transfer of the Supplier's obligations to the Purchaser (or its nominated third party). Any perpetual licence granted under these terms and conditions together with accrued rights and remedies and any clauses which expressly or by implication have effect after termination or expiry shall survive such termination or expiry.

12. Intellectual Property.

- 12.1. Unless otherwise agreed in writing, all copyright and other intellectual property rights in any goods, products, materials, software, drawing, reports or other documents or data generated, created or produced by the Supplier in the performance of the Agreement (including all future rights arising out of such items and any preparatory material) (the "Works") and physical possession of any media upon

which such Works are contained shall vest in and be the property of and are hereby assigned to the Purchaser. The Supplier hereby waives all moral rights in the Works, and confirms that it has obtained all waivers of moral rights and consents from any agent or sub-contractor or other third party necessary to comply with its obligations hereunder.

12.2. Where the intellectual property rights in any Works have not, for whatever reason, been assigned to the Purchaser, the Supplier hereby grants to the Purchaser and all other Virgin Media group companies an exclusive, perpetual, irrevocable, royalty-free licence to use, copy or modify the Works with a right to sub-license those Works to third parties. The Supplier agrees to promptly deliver up all copies of the Works and associated materials necessary for the use of the Works to the Purchaser on demand.

13. Confidentiality.

13.1. All information of a confidential nature imparted by either party to the other or which may be imparted from time to time to the other in connection with the Agreement, including but not limited to data of or about customers or suppliers, drawings, patterns, raw materials, designs, specifications and any information relating to the technical affairs or business or product plans of either party ("Confidential Information") shall be treated as proprietary and confidential to the party disclosing the Confidential Information.

13.2. Neither party shall use or disclose any Confidential Information of the other party without the agreement in writing of the other party except:

- (a) to the extent necessary to comply with any law or regulation in which event the relevant party shall so notify the other as promptly as reasonably practicable and shall seek confidential treatment of such information;
- (b) to its auditors, legal advisers and other professional advisers provided that it uses its reasonable endeavours to procure that such persons maintain such confidentiality;
- (c) in order to enforce and enjoy its rights under the Agreement; and
- (d) to any person with a bona fide and legitimate interest in such information who enters into a confidentiality agreement including, but not limited to, a prospective purchaser of the Purchaser or its business and provided that such person only uses the information for the purpose of such bona fide and legitimate interest.

13.3. The provisions of clause 13.2 shall not apply to:

- (a) any information in the public domain otherwise than by breach of the Agreement;
- (b) information obtained from a third party who is free to divulge the same;
- (c) information that was already known to the receiving party prior to disclosure under the Agreement and was not previously acquired by the receiving party from the disclosing party under an obligation of confidentiality or non-use towards the disclosing party;
- (d) information that can be shown by documentary evidence to have been created by one party to the contract independently from work under the Agreement.

14. Hazardous Goods.

14.1. The Supplier shall not deliver any hazardous goods or toxic substance to the Purchaser's premises without the Purchaser's prior written approval. The Supplier shall observe all international agreements relating to the pricing, labelling or carriage of hazardous goods and such goods must be marked by the Supplier with the appropriate international danger symbols and a description of the material displayed in English. Transport and other documents must include a declaration of the hazard and a description of the material in English. Goods must be accompanied by appropriate emergency information in English in the form of written instruction, labels or markings.

14.2. The Supplier shall promptly notify the Purchaser of any information or instructions it holds, or are reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport, handling, storage or use of the goods.

15. IT Security.

15.1 In supplying the Services, the Supplier shall in accordance with Good Industry Practice:

- (a) take all necessary steps (and ensure that the Supplier and its subcontractor personnel take all necessary steps) to:
 - (i) ensure that no Virus is contained in or affects the Deliverables as at the date of delivery by the Supplier to the Purchaser of such items; and
 - (ii) prevent any Viruses being introduced via the Supplier Owned Systems into the Purchaser's Systems; and
- (b) use the current release of recognised market leading Virus detection software.

15.2 The Supplier shall indemnify the Purchaser for all losses incurred or suffered as a result of a breach of this Clause.

16. Virgin Media Data and Data Security.

16.1 The Supplier shall, in accordance with Good Industry Practice:

- (a) not use or reproduce the Purchaser's Data in whole or in part in any form except as expressly permitted by the Purchaser in accordance with this Agreement;
- (b) apply appropriate security procedures within the Supplier Premises and take all precautions necessary to preserve the integrity of the Purchaser's Data; and
- (c) procure that no unauthorised third party will, as a result of any act or omission of the Supplier or any of the Supplier and its subcontractor personnel, obtain access to any of the Purchaser's Data or any information forming part of or being used in connection with the Services.

16.2 The Supplier shall indemnify Virgin Media for all losses incurred or suffered by them as a result of a breach of this Clause 16.

16.3 For the avoidance of doubt, the Supplier's obligations under this Clause 16 are in addition to its obligations under Clause 17 (Data Protection) (including to the extent that any Purchaser Data is "Personal Data" under the Data Protection Act).

16.4 Where there has been any breach or where the Supplier suspects there has been a breach of this Clause 16, the Supplier shall inform the Purchaser immediately.

17. Data Protection.

17.1 In relation to the parties' rights and obligations under this Agreement, the parties agree that the Purchaser is the Data Controller and the Supplier is the Data Processor.

17.2 Neither party shall do, nor cause or permit to be done, anything which may result in a breach of the Data Protection Legislation by the other party.

17.3 The Supplier shall, at all times, comply with the Data Protection Legislation in relation to Personal Data processed by it under this Agreement.

17.4 Without limiting Clauses 17.2 and 17.3 the Supplier warrants, represents and undertakes to the Purchaser that:

- (a) it shall only process the Personal Data:
 - (i) on behalf of Virgin Media and in accordance with this Clause 17 and the documented instructions of Virgin Media (which may be specific instructions (including in respect of the subject matter, duration, nature, purpose, type of Personal Data, specific restrictions and categories of Data Subjects as in each case are as set out in the Contract) or instructions of a general nature as set out in the Contract or as otherwise notified by Virgin Media to the Supplier during the Term), and to the extent, and in such a manner, as is reasonably necessary to provide the Goods and/or Services in accordance with the Contract; or
 - (ii) as required by applicable law (provided that the Supplier first informs Virgin Media of the legal requirement unless this is prohibited by such applicable law) and always in compliance with Data Protection Legislation;
- (b) it shall only (and is only authorised by VM to) engage another Data Processor to perform Processing activities in respect of Virgin Media Data on behalf of Virgin Media, or transfer or disclose any Virgin Media Data to any other party as is necessary for the provision of the Services and in such circumstances Supplier shall: (a) notify Virgin Media in writing in advance and at the conclusion of such engagement, transfer and/or disposal; and (b) shall comply with the terms of this Contract (including without limitation Clauses 17.4(c) and (d) herein);
- (c) it shall: (a) enter into a written agreement ("Processor Contract") with all third parties that will Process Virgin Media Data containing obligations on such third party which are equivalent to and no less onerous than those set out in this Contract (including in relation to engaging another Data Processor) and the Supplier shall promptly upon request by Virgin Media provide the relevant details of any such Processor Contract to Virgin Media; and (b) undertake a data protection impact assessment in relation to any high risk Processing activity and make available to Virgin Media in a timely manner the results of such data protection impact assessment;
- (d) it shall remain fully liable to Virgin Media for any non-compliance with the terms of this Contract by any sub-contractor it appoints;
- (e) It shall not transfer any Virgin Media Data to any country or territory outside the European Economic Area or to any international organisations ("International Recipient") without first obtaining the express written consent of Virgin Media and, if Virgin Media consents to the transfer of Virgin Media Data to an International Recipient, the Supplier shall ensure that such transfer (and any onward transfer): (a) is pursuant to a written contract including provisions relating to security and confidentiality of the Virgin Media Data; (b) is effected by way of a legally enforceable mechanism for transfers of Personal Data as may be permitted under Data Protection Laws from time to time (the form and content of which shall be subject to Virgin Media's written approval); (c) complies with Clause 17.4(a); and (d) otherwise complies with Data Protection Laws. For the purpose of this Clause 17.4(e), Virgin Media hereby approves the use of Model Contract Clauses as a legally enforceable mechanism for transfers of Personal Data and provides a power of attorney for the Supplier to enter into any such Model Contract Clauses with an International Recipient in the name and on behalf of Virgin Media as the Data Exporter provided that Supplier shall not modify, vary, supplement or disapply any of the Model Contract Clauses or its Appendices without Virgin Media's prior written approval; and
- (f) the Supplier shall maintain data secrecy in accordance with applicable Data Protection Legislation and shall take all reasonable steps to ensure that:
 - (i) only those Supplier personnel and personnel of another Data Processor engaged by Supplier in accordance with this Contract that need to have access to Personal Data are given access and only to the extent necessary to provide the Goods and/or Services; and
 - (ii) the Supplier and any other Data Processor engaged by the Supplier are reliable, familiar with the requirements of data protection and subject to appropriate obligations of confidentiality and data secrecy in accordance with applicable Data Protection Legislation and at all times act in compliance with Data Protection Legislation and the obligations of this Clause 17;
- (g) it has implemented (and shall comply with) all appropriate technical and organisational measures to ensure the security of the Personal Data, to ensure that Processing of the Personal Data is performed in compliance with the requirements of the applicable Data

- Protection Legislation and to ensure the protection of the Personal Data against accidental or unauthorised access, alteration, destruction, damage or loss as well as against any other unauthorised Processing. Such measures shall ensure best practice security, be compliant with Data Protection Legislation at all times and comply with the Security Measures;
- (h) the Supplier shall promptly notify Virgin Media in writing: (i) if the technical and organisational measures taken by the Supplier do not fulfil the requirements of Clause 17.4(g) above; and (ii) of any advance in technology or changes in risk which mean that Virgin Media should change the Security Measures;
- (i) the Supplier shall provide Virgin Media with such assistance and co-operation as Virgin Media may reasonably request to enable Virgin Media to comply with any obligations imposed on Virgin Media by Data Protection Legislation in relation to Personal Data Processed by the Supplier, including, but not limited to:
- (i) on request of Virgin Media, promptly providing written information regarding the technical and organisational measures which the Supplier has implemented to safeguard Personal Data;
- (ii) disclosing full and relevant details in respect of any and all government, law enforcement or other access protocols or controls which it has implemented;
- (iii) notifying Virgin Media as soon as possible and as far as it is legally permitted to do so, of any access request for disclosure of data which concerns Personal Data (or any part thereof) by any governmental or other Regulator, or by a court or other authority of competent jurisdiction. For the avoidance of doubt and as far as it is legally permitted to do so, the Supplier shall not disclose or release any Personal Data in response to such request served on the Supplier without first consulting with and obtaining the written consent of Virgin Media; and
- (iv) notifying Virgin Media as soon as possible of any legal or factual circumstances preventing the Supplier from executing any of the instructions of Virgin Media.
- 17.5 The Supplier shall inform Virgin Media immediately of any enquiry, complaint, notice or other communication in connection with the Goods and/or Services or Virgin Media's compliance with Data Protection Legislation from any Regulator or any individual, which the Supplier or any third party appointed by the Supplier receives. The Supplier shall provide all necessary assistance to Virgin Media to enable Virgin Media to respond to such enquiries, complaints, notices or other communications and to comply with Data Protection Legislation. For the avoidance of doubt, the Supplier shall not respond to any such enquiry, complaint, notice or other communication without the prior written consent of Virgin Media. To the extent that Supplier is legally required to provide to any third party information in relation to Virgin Media Data on the basis of mandatory statutory provisions, the Supplier shall inform Virgin Media, in writing and in due time prior to providing the information, of the recipient, the date and time, the content of the information to be issued, and the legal basis thereof.
- 17.6 The Supplier shall notify Virgin Media immediately in writing if it becomes aware of any Data Breach and provide Virgin Media, as soon as possible, with complete information relating to a Data Breach, including, without limitation, the nature of the Data Breach, the nature of the Personal Data affected, the categories and number of Data Subjects concerned, the number of personal data records concerned, measures taken to address the Data Breach, the possible consequences and adverse effect of the Data Breach and any other information Virgin Media is required to report to the relevant Regulator or Data Subject. The Supplier shall maintain a log of Data Breaches including facts, effects and remedial action taken. The Supplier, at its own cost, shall take all steps to restore, re-constitute and/or reconstruct any Personal Data which is lost, damaged, destroyed, altered or corrupted as a result of a Data Breach, with all possible speed and as if they were the Supplier's own data, and shall provide Virgin Media with all reasonable assistance in respect of any such Data Breach. The Supplier shall also provide all reasonable assistance to Virgin Media in relation to Virgin Media's compliance with the Data Protection Legislation.
- 17.7 Where Virgin Media is legally required to provide information regarding the Personal Data and its Processing to any Data Subject or any third party, the Supplier shall support Virgin Media in the provision of such information as instructed by Virgin Media.
- 17.8 The Supplier shall implement appropriate technical and organisational measures to provide Virgin Media with co-operation and assistance in complying with any Data Subject rights under the Data Protection Legislation (including access requests, right to be forgotten and data portability) received by, or on behalf of, or in connection with Virgin Media or this Contract.
- 17.9 The Supplier shall support and assist Virgin Media in fulfilling its legal requirements with regards the creating and updating a Process register and undertaking required risk assessments for the Processed personal data, especially but not limited to changes in the technical and organizational measures. The Supplier shall maintain complete, accurate and up to date written records of all categories of Processing activities carried out on behalf of Virgin Media containing such information as required under Data Protection Legislation and any other information Virgin Media reasonably requires ("Processing Records"), and shall make the Processing Records available to Virgin Media on request in a timely manner, where reasonably required by Virgin Media to demonstrate compliance by Virgin Media with its obligations under Data Protection Legislation and this Contract, which Virgin Media may disclose to any relevant Regulator.
- 17.10 The Supplier shall permit Virgin Media, or a third-party auditor acting under Virgin Media's direction, to conduct, at Virgin Media's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to the Processing of Personal Data, and its compliance with this Contract and Data Protection Legislation. Virgin Media may, in its

- sole discretion, require the Supplier to provide evidence of the Supplier's compliance with these procedures and with Data Protection Law (which may include, by way of example and without limitation, any assessment of any qualified independent third party engaged by the Supplier) in lieu of or in addition to conducting such an audit, assessment or inspection.
- 17.11 The Supplier shall notify Virgin Media prior to adopting a new or updated type of Processing (including, without limitation, the use of new technology to continue current Processing) in respect of Personal Data and at Virgin Media's request the Supplier shall participate in a data protection impact assessment in respect of the new or updated type of Processing which is being proposed (and provide assistance to Virgin Media in consulting with the relevant Regulator in relation to high risk Processing), as required from time to time by Virgin Media.
- 17.12 After the termination of the Processing of the Personal Data or earlier upon request of Virgin Media, the Supplier shall cease all use of Personal Data and, at Virgin Media's election, irrevocably delete, destroy, or transfer (in a mutually agreed format and by a mutually agreed method) to Virgin Media (or a third party nominated by Virgin Media) all Personal Data and copies thereof in its possession as well as any Processing products produced with such Personal Data. The deletion and/or destruction thereof are to be documented in a suitable manner and evidenced to Virgin Media.
- 17.13 The Supplier shall confirm that it (i) has appointed an in-house data protection officer if required by applicable Laws; and (ii) shall be obligated to maintain the appointment of an in-house data protection officer for the duration of the term of this Contract. The Supplier shall provide the name of such data protection officer to Virgin Media in writing and shall advise Virgin Media without undue delay of any change in such officer.
- 17.14 The Supplier shall, immediately on demand, fully indemnify Virgin Media and keep Virgin Media fully and effectively indemnified against all costs, claims, demands, fines, awards, expenses (including legal costs and disbursements on a full indemnity basis), losses (including direct and indirect losses and loss of profits), actions, proceedings and liabilities of whatsoever nature arising from or incurred by Virgin Media or its affiliates in connection with any failure of the Supplier or any third party appointed by the Supplier to comply with the provisions of this Contract and/or Data Protection Law in respect of its Processing of Virgin Media Data or acting outside Virgin Media's lawful Processing instructions.
- 17.15 The Supplier shall not acquire any rights (including any retention rights) in the Personal Data Processed under this Contract.
- 17.16 For the purpose of this Clause 17 (Data Protection), the following words and phrases shall have the following meaning unless the context otherwise requires:
"Data Breach" means any unauthorised or unlawful Processing, disclosure of, or access to, Personal Data or any accidental or unlawful destruction of, loss of, alteration to, or corruption of Personal Data;
"Data Controller" has the meaning set out in the Data Protection Legislation;
"Data Exporter" has the meaning set out in the Model Contract Clauses;
"Data Processor" has the meaning set out in the Data Protection Legislation;
"Data Protection Legislation" means all applicable Laws and regulations relating to the processing of Personal Data and privacy including the EU Data Protection Directive 95/46/EC and the European Union's General Data Protection Regulation, including all regulations made under them and any amendment or re-enactment of any of them, any other legislation relating to privacy (including the EU Directive on privacy and electronic communications, the European Union's e-Privacy Regulation, any applicable telecommunications Laws in respect of data secrecy) and/or the processing of Personal Data (as amended, supplemented or superseded from time to time), and including where applicable, the guidance and codes of practice issued by Regulators;
"Data Subject" has the meaning set out in the Data Protection Legislation;
"Model Contract Clauses" means the standard contractual clauses set forth in the EU Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC;
"Personal Data" has the meaning set out in the Data Protection Legislation;
"Processing" has the meaning set out in the Data Protection Legislation (and "Process" and "Processed" shall be construed accordingly);
"Processing Records" has the meaning given in Clause 17.9;
"Regulators" means those government departments and regulatory, statutory and other bodies, entities and committees which, whether under statute, rule, regulation, code of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Contract (and "Regulator" shall be construed accordingly);
"Security Measures" means Virgin Media's security policies and measures (including IT policies and measures) for the protection of Personal Data issued to Supplier by Virgin Media from time to time which as at the date hereof are as specified in Appendix 1; and
"Virgin Media Data" means all Personal Data, in whatever form or medium which is: (i) supplied, or in respect of which access is granted to the Supplier (or any approved third party) whether by Virgin Media or otherwise in connection with this Contract, or (ii) produced or generated by or on behalf of the Supplier (or any approved third party) in connection with this Contract.

18. Miscellaneous.

- 18.1. The Supplier will not without the prior written consent of the Purchaser in any way whatsoever advertise or publish the fact that the Supplier has entered the Agreement or contracted to supply to the Purchaser any goods or services.
- 18.2. The Agreement is personal to the Supplier and the Supplier shall not transfer, assign, novate, subcontract or otherwise dispose of any of its rights or obligations under the Agreement without the prior written consent of the Purchaser.

- 18.3. At the request of the Purchaser, the Supplier shall execute all deeds and other documents required to effect any transfer, assignment, novation, subcontracting or disposal of all or any of the Purchaser's rights and obligations under the Agreement to another member of the Virgin Media group or to any purchaser of the whole or substantially all of the business undertaking of the Purchaser to which the Agreement relates.
- 18.4. Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing addressed to that other party at its registered office or principal place of business or such other address in the United Kingdom as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.5. The exercise or waiver, in whole or in part, of any right, remedy, or duty provided for in the Agreement will not constitute the waiver of any prior, concurrent or subsequent right, remedy, or duty within the Agreement. No single or partial exercise of any right, power, privilege or remedy under the Agreement shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy.
- 18.6. If any provision of the Agreement is held by any court or competent authority to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of the Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of the Agreement in any other jurisdiction shall not be affected. In these circumstances, the parties shall meet to discuss the affected provisions and shall substitute a lawful and enforceable provision which so far as possible results in the same economic effects.
- 18.7. The Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except that any warranty or indemnity given to the Purchaser or limitation or exclusion of liability in favour of the Purchaser is also given to other members of the Virgin Media group.
- 18.8. The Agreement, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 18.9. Each party acknowledges that it has not been induced to enter into the Agreement by any representation or warranty other than those contained in the Agreement and, having negotiated and freely entered into the Agreement, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.
- 18.10. The rights, powers, privileges and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by law or otherwise.
- 18.11. At any time after the date hereof each of the parties shall, at the request and cost of another party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the party so requiring may reasonably require for the purpose of giving to the party so requiring the full benefit of all the provisions of the Agreement, subject to any express restrictions in the Agreement on the extent of either party's obligations under the Agreement.
- 18.12. Subject to any express provisions to the contrary each party to the Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement and in carrying out any related due diligence.
- 18.13. Nothing in the Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor shall it constitute, or be deemed to constitute, any party the agent of any other party for any purpose except as expressly provided.
- 18.14. The Supplier shall maintain all reports, records and other documents relating to performance of the Agreement and prices payable under the Agreement and shall allow the Purchaser access to all such documents at all reasonable times
- 18.15. The Agreement and any non-contractual obligations arising from or connected with it shall be governed by English law and the Agreement shall be construed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with the Agreement (whether arising out of or in connection with contractual or non-contractual obligations), each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to action or proceedings in such courts on the grounds of venue or on the grounds that action or proceedings have been brought in an inappropriate forum.