



**THE NETWORKING PEOPLE MASTER SERVICES AGREEMENT**

CUSTOMER: [customer name] (“ <b>Customer</b> ”, “ <b>you</b> ”, “ <b>your</b> ”):	The Networking People (“ <b>TNP</b> ”, “ <b>we</b> ”, “ <b>us</b> ”, “ <b>our</b> ”):
Registered Address: [registered address].	Registered Address: c/o Hanleys, Spring Court, Spring Road, Hale, WA14 2UQ
Registered Company Number:	Registered Company Number: 7667393
Country of Registration:	Country of Registration: England and Wales
Customer Contact:	TNP Contact: Chris Wade
Name:	Name: Chris Wade
Title:	Title: Director
Telephone:	Telephone: 08456 800 659
Fax:	Fax: 08456 803 971
Email:	Email: chris.wade@tnp.net.uk

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## 1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, the following expressions shall have the following meanings:

**“Acceptance” or “Accepted”** means the actual acceptance of Deliverables by the Customer in accordance with Clause 7;

**“Acceptance Tests”** means the acceptance tests and criteria applicable to the relevant Deliverables and/or Services to ensure that they comply with the Specifications in all material respects;

**“Agreement”** means this MSA and/or an Order(as applicable);

**“Business Day”** means any day other than a Saturday, Sunday or public bank holiday in England;

**“CCN”** means a change control note agreed by the Parties in accordance with Clause 19;

**“Charges”** means the charge payable by the Customer to TNP in accordance with the Agreement;

**“Commencement Date”** means the date on which this MSA is entered into by the Parties;

**“Customer Equipment”** means the equipment that is to be provided by the Customer at the relevant Site prior to the supply of the Deliverables or Services as described in a relevant Order;

**“Data Protection Law”** means the Data Protection Act 1998 and the Data Retention (EC Directive) Regulations 2009, as amended, and all legislation and regulations implemented thereunder;

**“Deliverables”** means the Hardware and/or Software, and other items to be provided by TNP to the Customer, as set out in the relevant Order;

**“Dispute”** shall have the meaning given to it in Clause 23.1;

**“Dispute Notice”** shall have the meaning given to it in Clause 23.2;

**“Due Date”** shall have the meaning given to it in Clause 7.1;

**“Force Majeure Event”** means an event outside the reasonable control of the affected Party including, but not limited to inclement weather, civil unrest and industrial action;

**“Hardware”** means any hardware or IT equipment to be sold by TNP to Customer as set out in relevant Order;

**“Insolvent”** means where a Party is unable to pay its debts (within the meaning of either section 123 or 268 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of that Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, provisional liquidator, liquidator, administrator, trustee or similar officer is appointed over the Party or all or any substantial part of the assets of that Party or that Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction;

**“Intellectual Property Rights”** means patents, design rights, trade marks, copyright and neighbouring and related rights (including any such rights in typographical arrangements, web sites or software), rights subsisting in trading, business or domain names and email addresses, rights in inventions, rights in databases, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights of a similar or corresponding character, in each case whether registered or unregistered and including

all applications and rights to apply for and be granted, renewals and extensions of any of the foregoing which subsist or will subsist now or in the future in any part of the world;

**“Licence Term”** means the licence term specified in the Order or, if none specified, the term of the Relevant Order;

**“Licensed Software”** means any Software to be licensed by TNP to the Customers as set out in any Order (excluding any Third Party Licensed Software);

**“MSA”** means this agreement, the Schedules and Appendices (as amended from time to time in accordance with its terms) together with any documents incorporated by reference;

**“Network Services”** means the voice and/or data network services to be provided by TNP to Customer as set out in a relevant Order;

**“Order”** means a mutually agreed Order Form signed by both Parties;

**“Order Commencement Date”** means the commencement date as set out in the relevant Order or, if no such date is specified in the Order, the date on which the Order is signed by the Parties;

**“Order Form”** means an order for Services and/or Deliverables to be completed based on the template order form set out in Schedule 1;

**“Party”** means either TNP or the Customer as the context requires (together the **“Parties”**);

**“Personnel”** means any person in respect of whom a Party exercises control including, but not limited to, the directors, employees, agents and any sub-contractors of the Party, in any such case who are assigned or engaged by the Party from time to time to perform the Party’s obligations under the Agreement;

**“Professional Services”** means the consultancy or other technical services to be provided by TNP to the Customer as set out in a relevant Order;

**“Service Transfer Date”** means the date on which the Services (or any part of the Services), for whatever reason transfer from TNP to the Customer;

**“Services”** means the Network Services, Professional Services and/or Support Services;

**“Services Order Year”** means, in respect of each Order for Services, a period of 12 months from the Order Commencement Date and each anniversary of such date;

**“Site”** means the location specified in an Order or at which TPN is to provide any Services or Deliverables;

**“Software”** means any software (in object code format) to be provided by TNP to the Customer as set out in the relevant Order;

**“Solution”** means all or any Services and Deliverables provided pursuant to Orders;

**“Specification”** means the specification applicable to the Deliverables or Services as set out in or referred to in the applicable Order, or if none, issued by the manufacturer original suppliers in relation to a Deliverable;

**“Support Services”** means the support services to be provided by TNP to the Customer as set out in any relevant Order;

**“Term”** shall have the meaning given to it in Clause 4.1;

**“Third Party Licensed Software”** means any Software to be supplied by TNP to Customer subject to a user licence agreement to be granted by a third party;

**“TNP Equipment”** means any equipment supplied by TNP for the purpose of providing a Service under the Agreement;

**“Transferring Employee”** means those employees whose contract of employment will be transferred to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 on expiry or termination of this agreement; and

**“User”** means any person who is permitted by the Customer to use or access the Solution.

- 1.2 Any table of contents, headings and bold type included in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to writing or written includes fax and email.

## **2. INTRODUCTION AND STRUCTURE OF THE MSA**

- 2.1 TNP is a provider of communications equipment, network engineering, network connectivity, consultancy and associated Services and Deliverables.
- 2.2 This MSA governs the overall relationship of the Parties in relation to the Services and/or Deliverables provided or supplied by TNP to the Customer in accordance with any Order.
- 2.3 This MSA does not commit the Customer to purchase any Services or Deliverables or enter into any Orders and, likewise, does not commit TNP to provide any Services or Deliverables. The Customer only becomes committed to purchasing, and TNP only becomes committed to providing any Services or Deliverables, upon the entering into of an Order in respect of such Services and Deliverables.
- 2.4 In the event of any conflict between the terms of any Order and the terms of this MSA, the terms of the Order shall prevail.

## **3. ORDER PROCESS**

- 3.1 At any time during the Term, the Customer may request TNP to provide a proposal for the provision of Services and/or the supply of Deliverables. If such proposal is acceptable to the Customer, both Parties shall agree and enter into an Order Form, setting out the Services and/or Deliverables to be provided by TNP.
- 3.2 Each Order shall become effective upon signature of it by the Parties and shall constitute a separate contract incorporating the terms of this MSA [except for clauses ].
- 3.3 Unless otherwise expressly stated in an Order any defined terms used in each Order shall have the same meaning as set out in this MSA.

- 3.4 Subject to Clause 2.4, the terms of this MSA shall apply to each Order to the express exclusion of any other terms and conditions of whatever nature (oral or written) on which any form of proposal is given to the Customer or subject to which an Order is accepted or purportedly accepted or contained in correspondence or implied by trade, custom or course of dealing.
- 3.5 Any amendment to this MSA shall be deemed to apply to all future Orders entered into after the date of such amendment.

#### **4. COMMENCEMENT AND DURATION**

- 4.1 This MSA shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms of this MSA, until either Party gives to the other written notice of termination, such notice to take effect upon the later of:
- (a) twelve (12) months thereafter; or
  - (b) the date on which all outstanding Orders have been completed or otherwise terminated,
- (the “**Term**”).
- 4.2 An Order shall commence on the applicable Order Commencement Date and continues until terminated in accordance with:
- (a) the terms of this MSA; and/or
  - (b) the terms of the relevant Order.

#### **5. TNP’S OBLIGATIONS**

- 5.1 TNP shall:
- (a) provide the Services and/or Deliverables in accordance with the Order and with the reasonable skill and care of a competent service provider;
  - (b) use reasonable endeavours to meet any performance dates specified in the Order but, unless otherwise expressly agreed within an Order, all timescales shall be estimates only;
  - (c) use reasonable endeavours not to introduce into the Customer’s information systems any code or device that corrupts, deletes or renders inaccessible any data, code or files on those systems;
  - (d) comply with all laws applicable in the UK to the provision of the Services and/or provision of the Deliverables, provided that any changes during the Term required in relation to such applicable laws shall be subject to Clause 19, including the right for TNP to charge for any resulting changes; and
  - (e) comply with all reasonable health and safety rules and regulations and security requirements that apply at and Customer Site that have been notified to TNP in writing.

#### **6. CUSTOMER’S OBLIGATIONS**

- 6.1 The Customer shall co-operate and comply with TNP's reasonable requests to enable the timely supply of the Services or that are necessary for reasons of health and safety, , security or environmental conditions or utilities in respect of the Deliverable. This shall include (but is not limited to):
- (a) co-operation in defining the Specifications and requirements of the Customer;
  - (b) provision of feedback and co-operation in the resolution of any problems encountered;
  - (c) co-operation in respect of any Acceptance Tests;
  - (d) providing TNP Personnel access to the relevant Customer Sites and Customer Equipment as are reasonably necessary for the performance by TNP of its obligations under the Agreement, including for the installation, maintenance, recovery or removal of Deliverables or TNP Equipment;
  - (e) ensuring that all preparatory work, utilities and other environmental supplies required in order to provide the Services or Deliverables are completed or available (as applicable) at Customer's own cost;
  - (f) obtaining all necessary licences and executing all necessary documents and agreements with third parties for equipment or deliverables as reasonably required by TNP to enable the provision of the Deliverables and Services;
  - (g) obtaining and maintaining all permissions, approvals and licences necessary in order for TNP to supply the Services or Deliverables including obtaining all necessary consents for any alterations to buildings and for the installation of any Equipment or Deliverables over the Customer's network or at the Customer's Site;
  - (h) providing a suitable and safe working environment for any TNP Personnel working at a Customer Site (including the provision of any electricity and telecommunication connection points required by TNP); and
  - (i) providing TNP and TNP Personnel with remote access as may be necessary for TNP to install, configure, test, diagnose and correct any fault and to otherwise provide its Services.

## 7. CHARGES

- 7.1 The Customer shall pay the Charges to TNP in cleared funds and without set-off, counterclaim or deduction (except where permitted in the Order or where otherwise agreed in writing by the Parties) in accordance with the relevant invoicing schedule, set out in the relevant Order. Except where otherwise provided for in any relevant Order, all invoices shall be paid within thirty (30) days of the date of the invoice ("**Due Date**") and Charges shall be invoiced:
- (a) upon delivery for any one-off Charges for Hardware or Services
  - (b) annually in advance for any recurring Charges for Services; and
  - (c) monthly in arrears for variable Charges for Services.
- 7.2 TNP may charge daily interest on late payments at Bank of England plus 8% per annum both before and after any judgment relating to those Charges for the period beginning on

the day following the date on which the payment is due and ending on the date payment is actually made.

- 7.3 Subject to the terms of any Order, the Customer shall pay TNP all reasonable travel, accommodation and subsistence expenses incurred by TNP Personnel in connection with the supply of Deliverables or provision of Services pursuant to an Order.
- 7.4 All Charges exclude VAT, which is charged at the applicable rate and is payable by the Customer.
- 7.5 If the Customer disputes an invoice, it must notify TNP in writing within fourteen (14) days of receiving the invoice giving its reasons together with all information relevant to the dispute. [The dispute shall be resolved in accordance with Clause 23 and in the event that it is agreed or determined that the disputed amount is properly payable, the provisions of Clause 7.2 shall apply.]
- 7.6 The Customer shall be liable for all Charges incurred by Users, irrespective of whether such Charges are incurred without the Customer's approval or there is a dispute between the Customer and a User.
- 7.7 Where the Customer makes an aggregated payment in respect of more than one invoice, the Customer shall submit a remittance slip to show amounts paid in relation to each individual invoice.
- 7.8 If the Customer delays or fails to perform its obligations under an Order, then at TNP's option, TNP may:
  - (a) change the delivery date or cancel the relevant Order(s) and charge the Customer for any applicable termination charges; and/or
  - (b) invoice the Customer for any reasonable charges incurred for any work that is performed by TNP on behalf of the Customer and that is directly attributable to the Customer's failure to perform or delay where such work is necessary to provide the Deliverables and/or Services.

## **8. ACCEPTANCE TESTING**

- 8.1 Where provided for in a relevant Order, the Parties shall agree a set of Acceptance Tests in relation to the Deliverables and/or Services, which shall be used to determine whether they meet the relevant Specification.
- 8.2 TNP shall notify the Customer once the Deliverable or Service is ready for the Acceptance Tests. Unless otherwise provided in an Order, TNP shall be responsible for carrying out the Acceptance Tests. The Customer shall provide such assistance as may be reasonably required in the conduct of such Acceptance Tests.
- 8.3 Upon successful completion of the Acceptance Tests, TNP shall provide the Customer with a report on the outcome of the Acceptance Tests if successfully concluded and the Customer shall sign TNP's acceptance certificate. The Customer shall not unreasonably withhold signature of an acceptance certificate and minor defects which do not materially affect the performance of the Deliverables or Service shall not be used as a reason to reject or delay acceptance of such Deliverable or Service.



- 8.4 If the Customer disputes that a Deliverable or Service has passed the Acceptance Tests, it shall notify TNP of such dispute within five (5) days of the receipt of TNP's test report, giving full reasons for such dispute.
- 8.5 Acceptance shall be deemed to have occurred on whichever is the earliest of:
- (a) the signing of an acceptance certificate pursuant to Clause 8.3;
  - (b) the expiry of five (5) days after the date of TNP's Acceptance Tests report stating that the Acceptance Tests have been successfully concluded, unless the Customer has given any written notice under Clause 8.4; or
  - (c) the use of the Deliverable by the Customer in the normal course of its business.
- 8.6 If any Deliverable or Service fails to pass an Acceptance Tests, TNP shall:
- (a) make such adjustments or modifications as it deems necessary to enable the Deliverable or Service passes the Acceptance Tests and meet the requirements of the relevant Order;
  - (b) if any adjusted or modified Deliverable or Service fails to pass a further Acceptance Tests, the process of modification and retesting shall be repeated; and
  - (c) if any adjusted or modified Deliverable or Service continues to fail to pass Acceptance Tests on two (2) further occasions, TNP shall, where it is possible to do so, replace the failing Deliverable or Service (or part thereof) with an alternative component or service. If no alternative component service is available or the alternative component fails the Acceptance Tests, the Customer may reject the component of the Deliverable or Service that has failed the Acceptance Tests by serving a written notice of rejection on TNP in which case TNP shall within 30 days repay the Customer all sums in respect of such rejected items already paid by the Customer, whereupon the rights and obligations of both Parties in relation to the component of the Deliverables or Service that has failed the Acceptance Tests under the relevant Order shall terminate.
- 8.7 Unless stated otherwise in an Order, any Support Services for a Deliverable shall commence upon successful completion of the relevant Acceptance Tests for the relevant service or Deliverable.
- 8.8 In relation to any Service or Deliverable which are not expressly subject to Acceptance Tests pursuant to the relevant Order, the following shall apply:
- (a) in relation to a Service, TNP shall notify the Customer when such Service is ready for use; and
  - (b) in relation to any Deliverable it shall be deemed to be accepted by the Customer if it has not given TNP written notice of non-acceptance (which may only be given if it fails to meet the relevant Specifications in all material respects) within five (5) business days after the Deliverable was delivered to TNP. Any such Deliverable shall be deemed to have been accepted in accordance with Clause 8.5(a).

## **9. USE OF THE SERVICE**

The Customer must not use the Solution and must take reasonable steps to ensure that the Solution is not used in any way that:



- (a) breaches any applicable local, national or international law or regulation (including, without limitation, Section 127 of the Communications Act 2003, the Computer Misuse Act 1990 and the Regulation of Investigatory Powers Act 2000);
- (b) is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- (c) transmits any data, sends or uploads any material that contains viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;
- (d) interferes with, damages or disrupts any TNP Equipment, network or software or any part of a TNP Site;
- (e) contains or promotes defamatory, obscene, offensive, hateful, inflammatory or sexually explicit material; or
- (f) infringes or advocates or assists infringement any copyright, database right or trade mark of any other person; or
- (g) infringes the acceptable usage policy (AUP) published from time to time by TNP.

## **10. EQUIPMENT**

- 10.1 TNP Equipment remains the property of TNP at all times unless otherwise agreed by the Parties in writing, or as noted in the Order.
- 10.2 The Customer is responsible for TNP Equipment at any Customer Site and must take reasonable steps to ensure that nobody (other than somebody authorised by TNP) adds to, modifies or in any way interferes with it unless reasonably necessary for reasons relating to the safety of persons or as otherwise agreed in writing by TNP or as ordered by a court or other competent authority.
- 10.3 The Customer shall not (and shall not allow any third party to) remove any proprietary notices on any TNP Equipment.
- 10.4 The Customer shall not acquire any lien or other similar right in relation to the TNP Equipment and shall ensure that the TNP Equipment remains free from any third party encumbrance, lien or similar right (other than any such rights expressly granted by TNP in relation to any third party).
- 10.5 Where TNP Equipment is located at a Customer Site, the Customer shall take reasonable steps to provide and maintain an appropriate place, conditions and environment for TNP Equipment (including, without limitation, air conditioning and requisite utilities and connection points) and otherwise in accordance with TNP's reasonable instructions and shall ensure that the TNP Equipment remains free from any encumbrances.
- 10.6 The Customer shall be liable to TNP for any loss of or damage to TNP Equipment at a Customer Site, except where such loss or damage is caused by TNP or anyone acting on TNP's behalf.

- 10.7 Title to Hardware shall transfer to the Customer upon payment in full by the Customer of all Charges relating to such Hardware.
- 10.8 Risk in the Hardware shall transfer to the Customer upon delivery of the Hardware to the Customer's Site.
- 10.9 TNP warrants that the Hardware will function in accordance with the Specification for a period of 12 months or as otherwise specified in the Order.

## **11. SOFTWARE**

- 11.1 TNP grants the Customer a non-exclusive, non-transferrable licence to use the Licensed Software for the Licence Term to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.
- 11.2 The Customer shall not:
  - (a) copy the Licensed Software save to the extent reasonably necessary for back-up purposes;
  - (b) decompile, reverse engineer or otherwise endeavour to obtain the source code to any Licensed Software save to the extent that cannot be prohibited by law; or
  - (c) modify the Licensed Software.
- 11.3 In respect of any Licensed Software which is proprietary to any third party, the Customer undertakes to comply with such additional reasonable licence terms of which TPN notifies the Customer of in writing.
- 11.4 The Customer's use of Third Party Licensed Software shall be governed by the end user licence agreement with such third party.

## **12. WARRANTIES**

- 12.1 Each Party warrants to the other that:
  - (a) it has all the requisite corporate power and authority to enter into this MSA and each Order;
  - (b) the performance of its obligations under this MSA and each Order has been duly authorised by all necessary corporate action on its part; and
  - (c) to its knowledge and belief, there are no actions, claims, proceedings or investigations pending or threatened against it or by it that would materially or adversely affect its ability to carry out its obligations under this MSA or any Order.

## **13. INDEMNITIES**

- 13.1 The Customer hereby agrees to indemnify and keep indemnified TNP in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the TNP as a result of or in connection with:
  - (a) the Customer's breach of Clause 9; and

- (b) any personal injury or death or any TNP personnel arising from the Customer's negligence and/or breach of statutory duty.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 Except as expressly provided in an Order, nothing in this MSA shall transfer any Intellectual Property Rights from one Party to the other Party or grant any rights in relation to the same.
- 14.2 TNP warrants that the Licensed Software does not infringe the Intellectual Property Rights of any third party.
- 14.3 TNP shall keep the Customer indemnified against all costs, damages and losses arising out of any claim brought against the Customer for infringement of a third party's Intellectual Property Rights arising out of the Customer's use of the Licensed Software in accordance with the terms of the relevant Order.
- 14.4 The Customer shall:
  - (a) notify TNP in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 14.3 of this MSA ("**IPR Claim**");
  - (b) allow TNP, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim;
  - (c) provide TNP with such reasonable assistance regarding the IPR Claim as is required by TNP; and
  - (d) not, without prior approval of TNP, make any admission relating to the IPR Claim or attempt to settle it.
- 14.5 The indemnity provided at Clause 14.3 shall not apply to the extent that:
  - (a) the Customer has modified the Licensed Software or combined it with other software or technology and such modification or combination has caused the infringement of the third party's Intellectual Property Rights; or
  - (b) the Customer has used the Licensed Software other than in accordance with the terms of the Order.

#### **15. LIMITATION OF LIABILITY**

- 15.1 Nothing in this MSA or any Order shall limit or exclude a party's liability for:
  - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law; or
  - (d) pursuant to Clauses 7 or 13.

- 15.2 Subject to Clause 15.1, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the following losses arising under or in connection with this MSA or any Order:
- (a) revenue or profit;
  - (b) anticipated savings;
  - (c) goodwill; or
  - (d) indirect or consequential loss.
- 15.3 Subject to Clauses 15.1 and 15.2, TNP's total aggregate liability to the Customer, whether based on an action or claim in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this MSA and all Orders will be limited:
- (a) in respect of each Order for Deliverables, the total value of the relevant Order; and
  - (b) in respect of each Order for Services, an amount equal to:
    - (i) five hundred thousand pounds (£500,000) per event or series of related events; and
    - (ii) one million pounds (£1,000,000) for all events arising in each Service Order Year.
- 15.4 TNP shall not be liable for any failure to meet its obligations under any Order to the extent that such failure is caused by any failure of the Customer to meet its obligations under any Order.
- 15.5 The Deliverables are not subject to any warranties other than those expressly set out in this MSA and TNP expressly excludes all implied terms and warranties in relation to the Deliverables, including those of satisfactory quality or fitness for purposes.

## **16. SUSPENSION AND TERMINATION**

- 16.1 Either Party may terminate this MSA and all then-current Orders upon written notice to the other Party if the other Party becomes Insolvent.
- 16.2 Either Party may immediately terminate any individual Order in the event that:
- (a) any governmental or regulatory authority with competence and/or jurisdiction over the Parties decides that the provision of the relevant Service or Deliverables under the Order is contrary to existing laws, rules or regulations or any decision, law or other official governmental order makes the provision of the Deliverables or Services illegal; or
  - (b) the other Party commits a material breach of that Order which is not remedied within thirty (30) days after written notice of the breach.
- 16.3 TNP may terminate or suspend this MSA and any or all individual Orders, upon five (5) days' written notice, if the Customer fails to pay any Charges due under any Order within 30 days of the Due Date.
- 16.4 Without prior notice to the Customer, TNP may immediately suspend the supply of a Service or a Deliverable (in whole or in part) if:

- (a) any of the circumstances outlined in clause 16.2 has occurred in relation to the Customer; or
- (b) in the reasonable opinion of TNP, the relevant supply:
  - (i) poses a threat to the safety of persons;
  - (ii) poses a hazard which would impair or prevent the operation of equipment;
  - (iii) is likely to impede the activities of authorised persons responding to an emergency; or
- (c) the Customer ceases to be eligible at law and/or under regulation to receive the Service,

and TNP shall use its reasonable endeavours to advise the Customer of such suspension in advance or as soon after the suspension as is reasonably practicable, including reasons for such suspension.

## **17. CONSEQUENCES OF TERMINATION**

- 17.1 If the MSA is terminated, all Orders will be deemed to have terminated on the same date as termination of the MSA.
- 17.2 Termination of any individual Order shall not affect any other Order or this MSA.
- 17.3 On termination of this MSA or any individual Order:
  - (a) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach which existed at or before the date of termination shall not be affected; and
  - (b) the following clauses shall continue in force: Clause 15 (Limitation of liability), Clause 17 (Consequences of termination), Clause 20 (Confidentiality), Clause 32 (Governing law and jurisdiction).

## **18. FORCE MAJEURE**

- 18.1 Neither party shall be in breach of an Order or liable for delay in performing, or failure to perform, any of its obligations under an Order if such delay or failure result from a Force Majeure Event,. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 18.2 If the period the Force Majeure continues for more than 30 days and it causes a material failure of the affected party to meet its obligations under the relevant Order, the Party not affected may terminate any affected Order by giving 5 days' written notice to the affected party.

## **19. CHANGE CONTROL AND VARIATION**

- 19.1 TNP may amend this MSA upon written notice to the Customer where such amendment is not material. Any such amendment shall apply only to any future Orders not in force at the time of amendment and shall not have retrospective effect unless expressly agreed in writing by the Parties.

- 19.2 All other changes to this MSA or any Order shall only be effective if set out in a change memorandum or variation agreement, in each case signed by the Parties.
- 19.3 The costs of investigating any change request shall be borne by the Requesting Party unless otherwise agreed by the Parties.

## **20. CONFIDENTIALITY AND PUBLICITY**

- 20.1 The Parties agree to keep in confidence any information (whether written or oral) of a confidential nature obtained under or in connection with the Agreement. The Parties shall not without the written consent of the other Party disclose that information to any person other than:
- (a) their employees or professional advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 20; or
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 20.2 A receiving Party shall exercise no lesser degree of care of confidential information than would a reasonable person with knowledge of the confidential nature of the information. A receiving Party shall exercise no less security or degree of care than that Party applies to its own confidential information of an equivalent nature.
- 20.3 The provisions of this Clause 20 shall not apply to:
- (a) any information which is in or which comes into the public domain otherwise than as a direct or indirect result of the information being disclosed in breach of the Agreement by the receiving Party or anyone to whom the receiving Party has disclosed the information;
  - (b) information which lawfully becomes available to the receiving Party from a third party free from and confidentiality restriction prior to its disclosure;
  - (c) information that is or has been developed independently by or for the receiving Party without use or knowledge of the confidential information; or
  - (d) information that the Parties agree in writing is not confidential or may otherwise be disclosed.
- 20.4 Notwithstanding the foregoing, any public announcement regarding the Agreement (including its subject matter and existence) shall be agreed in writing in advance by the Parties.

## **21. DATA PROTECTION**

- 21.1 The Parties each agree to comply with their respective obligations under Data Protection Law and to obtain and maintain all relevant registrations and notifications. For the purposes of this MSA, the Customer shall be the "Data Controller" and TNP shall be the "Data Processor", each as defined under Data Protection Law. The Data Controller shall obtain and maintain all consents required under Data Protection Law to enable the Data Processor

to process personal data (as defined under Data Protection Law) for the performance by the Data Processor of its obligations under the Agreement.

- 21.2 In processing the personal data the Data Processor will process such data to the extent necessary for the purposes of performing its obligations under the Agreement or as may be required by any competent authority under Data Protection Law, or other legislation or regulation.
- 21.3 Any instructions given by the Data Controller in respect of the Personal Data shall at all times comply with the Data Protection Law.
- 21.4 The Data Processor agrees to:
  - (a) take such technical and organisational measures against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data in accordance with such standards of protection (and no less) than that which it would treat its Personal Data where it is the Data Controller;
  - (b) take reasonable steps to ensure that employees who have access to the Personal Data have appropriate Data Protection training; and
  - (c) provide all reasonable cooperation to assist the Data Controller with all notices, requests or other enquiries relating to Subject Access requests which the Data Controller may receive, provided that the Data Controller agrees to pay any reasonable costs incurred by the Data Processor.

## **22. PERSONNEL**

- 22.1 Nothing in the Agreement shall be deemed to create a contract of employment or engagement between the Customer and any of the TNP Personnel and vice versa. Each Party shall be solely liable and responsible for all matters in relation to their Personnel including, but not limited to:
  - (a) payments of all and any remuneration, national insurance contributions, income tax and other statutory charges; and
  - (b) the taking of all disciplinary action.
- 22.2 The Customer shall indemnify TNP against all claims arising from the Customer's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:
  - (a) any act or omission by the Customer relating to a Transferring Employee occurring on or after the Service Transfer Date; and
  - (b) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.

## **23. ESCALATION AND DISPUTE RESOLUTION**

- 23.1 The Parties agree to use their reasonable endeavours to resolve all disputes, except billing disputes, arising out of or in connection with the Agreement (a “**Dispute**”) without the



requirement for escalation and/or the involvement of the courts or applicable regulatory authorities by making use of the dispute resolution procedure set out in this Clause 23.

- 23.2 Either Party may trigger the application of this Clause 23 by serving a notice in writing of any such Dispute, setting out in reasonable detail the nature of the Dispute (“**Dispute Notice**”), on the Party’s designated representative in the relevant Order. Following receipt of such Dispute Notice, the Parties will use their reasonable endeavours to resolve the Dispute within 30 days of notification.
- 23.3 If the Dispute remains unresolved after 30 days of service of a Dispute Notice, the Parties shall use their reasonable endeavours to agree to an appropriate alternative dispute resolution procedure for the resolution of the Dispute.
- 23.4 If a Dispute is resolved pursuant to this Clause 23, the Parties shall create a written memorandum of their agreement in relation to the Dispute which shall be signed by both Parties and which the Parties shall, as soon as reasonably practicable, execute such documents and do such things to give effect to such agreement.
- 23.5 If a Dispute is not resolved in accordance with Clause 23.2 and the Parties are unable to agree on a form of alternative dispute resolution procedure pursuant to Clause 23.3, the Parties shall be free to pursue their remedies in law.

## **24. ENTIRE AGREEMENT**

- 24.1 This MSA, all Orders and the documents referred to therein constitute the entire set of agreements between the Parties and supersede any previous agreement, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 Neither Party has entered into this MSA or any Order in reliance upon any representation, term or other undertaking, other than as expressly set out in this MSA or Order (as applicable).
- 24.3 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

## **25. ASSIGNMENT AND OTHER DEALINGS**

- 25.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this MSA or any Order without the prior written consent of TNP (such consent not to be unreasonably withheld or delayed).
- 25.2 TNP shall be entitled to sub-contract any of the obligations under an Order in the ordinary course of business provided that no such sub-contracting shall relieve TNP of its liability under any Order.

## **26. NOTICES**

- 26.1 Any notice to a Party under the Agreement shall be in writing signed by or on behalf of the Party giving it and shall be delivered by hand, prepaid first class post, prepaid recorded delivery, fax or email to the address of the Party as set out in the relevant Order.

- 26.2 In the absence of contrary evidence, a notice shall be deemed to have been served:
- (a) at the time of delivery if delivered personally by hand;
  - (b) two Business Days after the date of posting if sent by first-class post or recorded delivery; and
  - (c) at the time of successful transmission if sent by fax or email prior to 5pm on a Business Day or at 10am on the following Business Day if sent after 5pm.

## **27. SEVERABILITY**

- 27.1 Should any provision of the Agreement be held by a court or other competent authority to be invalid, unenforceable, void or voidable in whole or in part the remaining provisions of the Agreement will continue in full force and effect.

## **28. NO PARTNERSHIP OR AGENCY**

- 28.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## **29. THIRD PARTY RIGHTS**

- 29.1 A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

## **30. WAIVER**

- 30.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 30.2 A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **31. COUNTERPARTS**

- 31.1 Any Order may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

## **32. GOVERNING LAW AND JURISDICTION**

- 32.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 32.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).