

# LAYER17 GENERAL TERMS OF BUSINESS (JANUARY 2017)

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## Document Control Information

Version History		
Version Number	Date Approved	Change/Reason for Change/Comments
1.0	03/01/2017	Initial document creation

This document (the “General Terms”) sets out the general terms and conditions on which Layer17 will provide all of its services to the Customer. Terms and Conditions which are specific to certain services are set out in the relevant Service Document (“Additional Terms”).

Layer17 and the Customer hereby agree as follows:

## 1. DEFINITIONS

1.1. In the Contract, the following terms shall have the meanings assigned to them below:

“Acceptable Use Policy”	the acceptable use policy document of Layer17 (where applicable to a Service) as current from time to time (copy available from Layer17 upon request, including via sales@layer17.co.uk and/or at URL (or other URL as notified from time to time) <a href="http://www.layer17.co.uk/terms-conditions">http://www.layer17.co.uk/terms-conditions</a> ).
“Acceptance Date”	the date on which the Customer signs or is deemed to have signed the acceptance test certificate as set out in Clause 2.2.1 (if applicable).
“Acceptance Test Period”	five (5) Working Days from the date that the Customer is notified by Layer17 in writing that the Service is ready for use (if applicable).
“Acceptance Tests”	the tests to be carried out by the Customer following handover of the Service(s) during the Acceptance Test Period as set out in the relevant Service Document (if applicable) and “Acceptance Testing” shall be construed accordingly.
“Affiliate”	an entity that directly or indirectly controls, is controlled by or is under common control with a Party. For purposes of the foregoing, “control” shall mean the ownership of more than fifty percent (50%) of the (i) voting power to elect the directors of the said entity, or (ii) ownership interest in the said entity.
“Annual Charge”	the on-going fee for the provision of the Service(s), where applicable, as detailed on the Order Form (and, if applicable, as amended in line with the Contract).
“Change Management Process”	the process of requesting and recording changes to the Service(s) and/or the Contract detailed in the Layer17 Change Management Process Document.
“Change Management Process Document”	the Layer17 change management process document as current from time-to-time, copy available upon request including via sales@layer17.co.uk and/or at URL (or other URL as notified from time to time) <a href="http://www.layer17.co.uk/terms-conditions">http://www.layer17.co.uk/terms-conditions</a> .
“Change Order”	the change order agreement prepared in accordance with Layer17’s Change Management Process.
“Charges”	the charges payable for the Service(s) as detailed in the Contract which shall include any Annual Charge (where applicable), any Usage Charges (if applicable), any Non-Recurring Charges (if applicable) and any other charges set out in the Contract.
“Confidential Information”	any information concerning the business, accounts, finance, contractual dealings, customers, pricing, transactions or affairs of a Party which are designated as, or which should reasonably be considered as being, confidential.
“Connectivity Service”	a service set out in Layer17’s Service Document for Connectivity Services, as current from time-to-time.
“Contract”	an Order Form together with (i) any commercial offer terms incorporated by reference on the Order Form, (ii) any special terms incorporated by reference on the Order Form and signed by the Parties; and/or (iii) these General Terms; and (iv) the applicable Service Document(s); and (v) any additional documents that are expressly stated to form part of the Contract in the applicable Service Document.
“Customer”	the entity purchasing Layer17’s products and/or services as detailed on the Order Form.

<b>“Customer Contact”</b>	the Customer’s authorised representative specified as such in the Contract, nominated to liaise and work with Layer17 in connection with the Service(s).
<b>“Customer Content”</b>	the works of authorship, marks, data, information, materials and other content that is sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Service(s), including (without limitation) names, domain names, logos, designs, computer software, recorded visual imagery (including video recordings and photographs), sounds, audio materials (including master recordings), musical compositions (including arrangements and lyrics), graphics (including animation), textual matter, and any combination of the above. For the avoidance of doubt, Customer Content does not include Materials. All Customer Content is and will remain the property of Customer.
<b>“Customer Equipment”</b>	items of equipment owned or leased by the Customer located either at the Customer Site(s) or at an Layer17 Site (as applicable to the particular Service(s)) and used in order to provide and/or receive the Service(s).
<b>“Customer Site(s)”</b>	the customer locations at which the Service(s) will be provided (if applicable), as specified on the Order Form.
<b>“Documentation”</b>	any documentation provided to the Customer by Layer17 for the purpose of providing the Service(s).
<b>“Due Date”</b>	the due date for payment of an invoice for the Charges as set out in Clause 5.6.
<b>“Electronic Signature”</b>	a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with a human readable electronic version of the Contract documents using Layer17’s designated electronic signature software.
<b>“Force Majeure Event”</b>	any circumstance beyond a Party’s reasonable control (including, without limitation, act of God, the act or omission of the other Party, labour dispute, act or omission of government or other appropriate authority, act of terrorism, war, technological attack (including, but not limited to denial of service attacks, attacks involving Malicious Code and computer hacking), and regulatory and legal changes).
<b>“Initial Term”</b>	the initial term for which each Service shall be provided to the Customer (if applicable), as set out on the Order Form and calculated from the Service Commencement Date for that Service or as otherwise specified in the applicable Service Document. The Initial Term is not applicable to Pay As You Go Services.
<b>“Insolvent”</b>	<ul style="list-style-type: none"><li>(i) the appointment of, or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver; or</li><li>(ii) entering into a scheme of arrangement or composition with or for the benefit of creditors generally or any class of creditors; or</li><li>(iii) any reorganisation, moratorium or other administration involving its creditors or any class of creditors; or</li><li>(iv) a resolution, or proposed resolution, to wind it up or strike it off; or</li><li>(v) becoming unable to pay debts as and when they become due or becoming deemed to become unable to pay debts as and when they become due within the meaning of Section 123 of the Insolvency Act 1986.</li></ul>
<b>“Intellectual Property”</b>	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all

similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

<b>“Laws”</b>	all treaties and applicable statutory enactments (as amended, replaced, or re-enacted from time to time) and any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made, required or granted thereunder and any condition attaching thereto, including any specific laws mentioned by name herein.
<b>“Layer17”</b>	Layer17 ICT Ltd, registered in England and Wales under company registration number 09664013.
<b>“Layer17 Equipment”</b>	the equipment (if any) owned by Layer17 and/or its suppliers, which is located either at the Customer Site(s) or the Layer17 Site(s) (as applicable) in order to provide the Service(s).
<b>“Layer17 Personnel”</b>	the staff and contractors of (i) Layer17 and (ii) Layer17’s contractors and suppliers engaged in the provision of the Service(s).
<b>“Layer17 Site”</b>	the location(s) where the Service(s) will be provided from (where applicable to a particular Service) including any data centres owned and operated by Layer17 or its suppliers.
<b>“Malicious Code”</b>	viruses, logic bombs, worms, trojan horses or other types of destructive, disruptive or nuisance programs.
<b>“Materials”</b>	all literary works or other works of authorship (such as computer programs, program listings, programming tools, Documentation, reports, drawings and similar works) that are developed or provided by Layer17 to the Customer pursuant to the Contract or otherwise in connection with the Service(s). For the avoidance of doubt, Materials do not include Customer Content.
<b>“Non-Recurring Charges”</b>	the one-off charges (if any) for the Service(s) or Purchased Equipment, including any installation fees or purchase fees, as detailed on the Order Form (and, if applicable, as amended in line with the Contract).
<b>“Normal Business Hours”</b>	8.30 a.m. to 5.30 p.m. on any Working Day.
<b>“Order Form”</b>	the completed Layer17 order form signed by the Parties.
<b>“Parties”</b>	the Customer and Layer17 and “Party” shall be construed accordingly.
<b>“Pay As You Go Services”</b>	services described as such in the applicable Service Document, and designated as such on the Order Form, which are provided on the basis that there is no fixed Initial Term and no commitment to paying an Annual Charge.
<b>“Portal Terms of Use”</b>	The terms of use applicable to, and accessible via, any portal provided by Layer17 to the Customer for use with the Service(s) or otherwise pursuant to the Contract.
<b>“Professional Services”</b>	the services described in Layer17’s Service Document for Professional Services as current from time to time.
<b>“Purchased Equipment”</b>	the equipment (if any) purchased by the Customer and sold by Layer17 in conjunction with the provision of a Service, as specified on an Order Form and clarified in the Service Document.
<b>“Rate Card”</b>	the then-current rate card setting out the Usage Charges (if applicable) to a particular Service, as provided to the Customer by Layer17 from time to time in accordance with the applicable Service Document.
<b>“Service(s)”</b>	the service(s) to be provided by Layer17 to the Customer as set out on the Order Form and further explained in the applicable Service Document.

<b>“Service Commencement Date”</b>	the earlier of (i) where a Service is subject to Acceptance Tests the Acceptance Date of that Service and (ii) where a Service is not subject to Acceptance Tests, the date that the Customer is notified by Layer17 in writing that the Service is ready for use; or the date that the Customer actually starts using the Service, unless otherwise agreed in writing between the Parties or otherwise specified in the applicable Service Document.
<b>“Service Delivery Form”</b>	the form provided to the Customer by Layer17 requiring technical contact details and relevant technical information such as (where applicable) rack and comms room locations, PSTN DDI numbers, server names, applicable number ranges and features.
<b>“Service Document”</b>	Layer17’s service document current at the time of entering into the Contract and referenced on the Order Form, containing details of the service(s) Layer17 offers (or the component parts thereof) and the Additional Terms applicable thereto, which are available from Layer17 upon request (including via sales@layer17.co.uk and/or at URL (or other URL as notified from time to time) <a href="http://www.layer17.co.uk/terms-conditions">http://www.layer17.co.uk/terms-conditions</a> ).
<b>“Software”</b>	any software to which the Customer is provided with access pursuant to the Contract, or any third party software which the Customer purchases through Layer17 including any software embedded in the Layer17 Equipment and/or Customer Equipment.
<b>“Target Service Commencement Date”</b>	the date by which Layer17 shall use reasonable endeavours to handover the Service(s) (if applicable), as detailed in the applicable Service Document.
<b>“Usage Charges”</b>	the fees (if any) for the use of a Service, calculated as set out in the relevant Rate Card and the applicable Service Document and in accordance with the usage information collected by Layer17’s monitoring and reporting systems.
<b>“Working Day”</b>	Monday to Friday (inclusive), excluding all public and bank holidays in England and Wales.

- 1.2. In the event of any conflict between (i) the Order Form, (ii) any special terms incorporated by reference on the Order Form and signed by the Parties, (iii) any commercial offer terms incorporated by reference on the Order Form, (iv) these General Terms, (v) the applicable Service Document(s), and (vi) any additional documents that are expressly stated to form part of the Contract in the applicable Service Document, the hierarchy of precedence shall be as stated here (with the Order Form having the highest precedence).
- 1.3. The headings in these General Terms are for ease of reference only and shall not be taken into account in the construction or interpretation of these General Terms.

## 2. ORDERING, SERVICE PROVISION & ACCEPTANCE

- 2.1. An Layer17 order form signed and submitted by the Customer to Layer17 shall constitute an offer to acquire the Services specified in the order in accordance with the terms referenced therein. No order shall be deemed to have been accepted by Layer17 until that order form has been signed in acceptance by Layer17. Once accepted by Layer17, each Order Form shall form a Contract between the Parties from the date the Order Form is accepted by Layer17. Each Order Form shall form a separate contract in its own right.
- 2.2. Where a Service has a Target Service Commencement Date, Layer17 will notify the Customer in writing when it is ready to hand-over that Service to the Customer. Where a Service does not have a Target Service Commencement Date (such as Professional Services) Layer17 shall inform the Customer in writing when it is ready to commence performance of such Services. The following acceptance clauses shall apply where Acceptance Tests apply to a Service (as detailed in the applicable Service Document):
  - 2.2.1. The Customer shall have the Acceptance Test Period in which to carry out the Acceptance Tests. The Customer shall sign Layer17’s standard acceptance test certificate upon successful passing of the Acceptance Tests and promptly return it to Layer17. In the event that the Services do not pass the Acceptance Tests, the Customer shall serve written notice to this effect on Layer17. In the event that the Customer (i) has not signed and returned the acceptance test certificate or (ii) served notice that the Service(s) have failed to pass the Acceptance Tests, by the expiry of the Acceptance Test Period, the Customer shall be deemed to have signed the acceptance test certificate upon expiry of the Acceptance Test Period. If the Customer has served notice that the Service(s) have failed to pass the Acceptance Tests before the expiry of the Acceptance Test Period, then Layer17 shall remedy any defect in the Service(s) as soon as reasonably possible and re-submit the Service(s) to the Customer for Acceptance Testing.

Layer17 shall have the right, but not the obligation, to be present during the carrying out of any Customer Acceptance Tests and to that end, the Customer shall provide Layer17 with not less than two (2) Working Days' notice of its intention to carry out the Acceptance Tests.

- 2.3. Where Layer17 agrees to delay the Service Commencement Date following the Customer's written request, or the Target Service Commencement Date is not met as a result of the Customer's delay or failure to fulfil its obligations under the Contract, the Annual Charges for that Service shall be payable from the Target Service Commencement Date for that Service, unless otherwise agreed in writing by the Parties. Nothing in this clause shall oblige Layer17 to agree to any delayed handover of the Service(s).
- 2.4. Layer17 reserves the right, at any time, to make any modification, change or addition to, or replacement of, any Service (or part thereof) or the Layer17 Equipment, where this is required to conform with any applicable safety requirements or Laws.
- 2.5. Subject to Clause 2.4 above and any specific provisions in the applicable Service Document(s), all requested changes to the Service(s) shall be dealt with in accordance with Layer17's Change Management Process.

### 3. CUSTOMER SITE ACCESS

- 3.1. Where necessary to enable Layer17 to carry out its obligations and exercise its rights under the Contract, the Customer shall provide Layer17 Personnel with such access to the Customer Site(s) as Layer17 shall reasonably require, subject to reasonable advance notice. Any period of delay in providing Layer17 Personnel with access to the Customer Site(s) shall be excluded from any service level calculations.
- 3.2. The Customer shall ensure that Layer17 Personnel have a safe working environment at the Customer Site(s). Layer17 Personnel will comply with all reasonable health and safety and security policies applicable to the Customer Site, provided in writing prior to, or at the time of entry to, the Customer Site(s).

### 4. FAULT MANAGEMENT

- 4.1. Layer17 will support the Service(s) and deal with faults as per the provisions of the applicable Service Document(s). The Service(s) (or the component parts thereof) will be subject to the service levels (if any) set out in the applicable Service Document(s).
- 4.2. The Customer shall notify Layer17 of any material non-conformity or fault with the Service(s) as per the Service Document.
- 4.3. Any time incurred by Layer17 in investigating alleged faults or non-conformities with the Service(s) notified to it by the Customer, which are later found not to have existed, may be charged to the Customer in accordance with Layer17's then-current standard rates together with any third party supplier costs incurred in investigating the same. The Customer shall be entitled to see reasonable documentary evidence attesting to such third party costs.

### 5. FEES AND PAYMENT

- 5.1. The Non-Recurring Charges shall become invoiceable upon signature of the Order Form or Change Order as appropriate.
- 5.2. Subject to Clause 2.3, the Annual Charge (where applicable) shall be payable in advance from the Service Commencement Date in accordance with the payment frequency set out on the Order Form. The first payment (being for the remainder of the month in which the Service Commencement Date occurs, calculated on a pro-rata temporise basis, plus the following month / quarter / year, as applicable) shall be invoiceable by Layer17 on or following the relevant Service Commencement Date. Subsequent payments shall become invoiceable at the start of the month immediately preceding the month / quarter / year being invoiced.
- 5.3. Usage Charges (if applicable) shall be invoiceable monthly in arrears.
- 5.4. As from the Service Commencement Date, the Annual Charge shall, subject to anything contrary in the applicable Service Document, be firm and fixed for the duration of the Initial Term. With effect from the expiry of the Initial Term, Layer17 shall be entitled to revise the Annual Charge to reflect Layer17's then current standard rates, by giving the Customer not less than ninety (90) days prior written notice.
- 5.5. All Charges are payable in sterling and are exclusive of Value Added Tax and any other applicable taxes which shall be payable by the Customer in addition, in the manner prescribed by law.
- 5.6. Invoices for the Charges (save where specified otherwise herein) shall be paid by the Customer within thirty (30) days of the date of the invoice. The Customer shall pay all invoiced amounts without any deductions, with-holdings, counter-claims and/or set-offs (sums subject to reasonable and notified dispute in accordance with Clause 5.7 below excepted).
- 5.7. In the event that the Customer has a bona fide dispute as to sums invoiced, the Customer shall serve notice to this effect on Layer17 as soon as reasonably practicable and in any event prior to the Due Date for payment thereof, detailing the sums disputed and the reason for the dispute. All undisputed sums shall be paid by the Due Date. The Parties shall use all reasonable good faith endeavours to resolve any billing dispute prior to the Due Date for payment. In the event that a billing dispute remains outstanding 45 days after the date of notice of the same to Layer17, either Party may refer the matter for resolution in accordance with Clauses 15.1 and 15.2.
- 5.8. If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date for payment thereof, then without prejudice to Layer17's other rights and remedies Layer17 reserves the right to:

- 5.8.1. charge interest on the outstanding sum on a daily basis (before as well as after any judgement) until the date of payment, at Barclays Bank base rate plus four percent (4%); and/or
  - 5.8.2. suspend the Service(s) (or any part thereof) in accordance with Clause 11; and/or
  - 5.8.3. use any deposit given by the Customer under Clause 5.9 below, to pay any outstanding sum.
- 5.9. Layer17 may require the Customer to pay a deposit and/or require the Customer to procure that the Customer's parent company or related company guarantees the payment of the Charges due under the Contract. The Customer agrees to enter into (and/or procure the execution of) any reasonable agreement or deed Layer17 submits for such purpose.

## 6. LAYER17'S OBLIGATIONS AND WARRANTIES

- 6.1. Subject to any service description in the Contract, Layer17 is free to determine how the Service(s) shall be provided to the Customer.
- 6.2. Layer17's obligation to provide the Service(s) is limited to an obligation to use all reasonable endeavours to provide the same. The Customer acknowledges and agrees that Layer17 cannot (and does not) guarantee, represent or warrant that the Service(s) will be error-free or uninterrupted.
- 6.3. Layer17 shall use all reasonable endeavours to meet the Target Service Commencement Date and any other dates or timescales set out in the Contract, but time shall not be the essence of the Contract.
- 6.4. Layer17 shall use the reasonable care and skill expected of a competent information technology and telecommunications provider in exercising its rights, and carrying out its obligations, under the Contract.
- 6.5. Subject to any further description in the Service Document(s) and the Customer performing its obligations, Layer17 shall install and configure the Software (if applicable) if it is specified in the Contract that Layer17 is responsible for installing the Software or (where not so specified) Layer17 shall provide limited remote support to the Customer to enable the Customer to install and configure the Software.
- 6.6. Layer17 warrants that it has the legal capacity and authority to enter into the Contract.
- 6.7. Layer17 warrants that the Service(s) shall be provided in compliance with all applicable Laws.
- 6.8. Layer17 is not responsible to the Customer for unauthorised access to Customer Content or the unauthorised access to, or use of, the Service(s) unless the unauthorised access or use results from Layer17's failure to meet any security obligations stated in the Contract.

## 7. CUSTOMER OBLIGATIONS AND WARRANTIES

- 7.1. The Customer shall:
  - 7.1.1. follow Layer17's reasonable instructions and guidelines in relation to the Service(s), including any set out in the Documentation; and
  - 7.1.2. provide Layer17 with such up-to-date information, co-operation and support as Layer17 may reasonably require pursuant to the Contract; and
  - 7.1.3. appoint the Customer Contact and designate suitably knowledgeable, qualified and authorised employees, who have access rights to all of the Customer's relevant systems and Customer Equipment to provide co-ordination and assistance to Layer17. The Customer agrees and warrants that the Customer Contact and any additional or replacement nominated employees have the appropriate level of authority to make decisions relating to the Service(s). The customer shall notify Layer17 in writing of any updates required to such authorised personnel. Layer17 shall have no liability for failure to deal with requests or respond to instructions from persons not appropriately authorised by the Customer in writing; and
  - 7.1.4. maintain any Customer Equipment to a safe standard; and
  - 7.1.5. ensure that any Customer Equipment located at an Layer17 Site(s) is clearly labelled as belonging to the Customer; and
  - 7.1.6. inform Layer17 forthwith if the Customer Equipment is subject to interference or malfunctioning and it may, or is reasonably likely to, affect the Service(s); and
  - 7.1.7. promptly provide sufficient technology to enable Layer17 to provide remote support where it is necessary to do so; and
  - 7.1.8. promptly install and configure the Software, if (as specified in the Contract or as otherwise notified to the Customer) the Customer is responsible for installing the Software; and
  - 7.1.9. ensure that, where applicable, the Customer's systems comply with the reasonable hardware and software requirements notified to the Customer by Layer17 or detailed in the applicable Service Document; and
  - 7.1.10. ensure that the Software (where applicable) is compatible with the Customer's systems; and
  - 7.1.11. comply with the Portal Terms of Use; and
  - 7.1.12. only use the Service(s) (where applicable) in accordance with the Acceptable Use Policy; and
  - 7.1.13. use any Customer Equipment, Layer17 Equipment and/or Software in a skilful and proper manner by properly trained personnel; and

- 7.1.14. to the extent that the Service(s) is reliant upon the continued provision of other Layer17 services (such as Connectivity Services), ensure that the Customer continues to contract with Layer17 for those other services for the duration of the Service(s); and
  - 7.1.15. be responsible for the accuracy of information provided on the Service Delivery Form and promptly complete and return the same to Layer17; and
  - 7.1.16. take all reasonable steps (including testing with the latest commercially available detection software) to ensure that any software used with or in conjunction with the Service(s) is not infected by Malicious Code; and
  - 7.1.17. undertake any work required to be carried out by the Customer as specified in the applicable Service Document(s) in a timely manner; and
  - 7.1.18. provide suitable space and environment for the Customer Equipment and the Layer17 Equipment (other than when located at Layer17 Sites) in a timely manner. The Customer's compliance with this Clause 7.1 shall be entirely at the Customer's cost.
- 7.2. The Customer shall not (and shall procure that all users of the Service(s) for whom it is responsible pursuant to Clause 7.8 below shall not):
- 7.2.1. use the Service(s), Software, Layer17 Site, or Layer17 Equipment in any way that violates any Laws, or act or omit to act in any way which will place Layer17 in breach of any Laws including but not limited to the Communications Act 2003; and/or
  - 7.2.2. use the Service(s), Software, Layer17 Site or Layer17 Equipment in any way that would constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction); and/or
  - 7.2.3. allow any unauthorised user or third party access to, or use of the Customer Equipment, the Layer17 Equipment, the Layer17 Site(s) (if applicable) or the Service(s) and shall take all reasonable security measures to prevent the same; and/or
  - 7.2.4. add to, modify or interfere in any way with the Software, Layer17 Equipment (if applicable), any equipment which is not Customer Equipment, or the Service(s); and/or
  - 7.2.5. use the Software, Layer17 Site, the Layer17 Equipment, the Customer Equipment, or the Service(s) in any way that:
    - 7.2.5.1. would or may be harmful, or would or may be harmful or detrimental to the reputation of Layer17 and/or its suppliers; and/or
    - 7.2.5.2. do anything that may be dangerous or a nuisance or inconvenience to other users of Layer17's service(s) or the Layer17 Site(s).
- 7.3. The Customer warrants that any material and/or communication received, transmitted, hosted or otherwise processed using the Service(s) (other than entirely unsolicited communications) will not be menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, promote illegal or unlawful activity, be otherwise actionable or in violation of any Laws to which the use of the Service(s) is subject, or infringe the Intellectual Property rights of Layer17 or any third party.
- 7.4. The Customer shall indemnify and keep Layer17 indemnified and hold Layer17 harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Customer (including any user of the Service(s) for whom the Customer is responsible pursuant to Clause 7.8 below) of the provisions of Clauses 7.2.1, 7.2.2 and/or 7.3 above.
- 7.5. The Customer agrees to use the Service(s) solely in connection with its general business purposes. The Customer acknowledges that the Service(s) are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service(s) or the failure of the Service(s), could lead to death, personal injury, or severe physical or environmental damage. Unless expressly authorized by Layer17 in the Contract, the Customer agrees not to use the Service(s) for any such purpose.
- 7.6. The Customer warrants that it has the legal capacity and authority to enter into the Contract.
- 7.7. The Customer warrants it shall comply with all applicable Laws and any relevant licences and permits to operate the Customer Equipment and to provide the Customer Content to the extent required under the Contract.
- 7.8. The Customer is responsible for (and shall be liable to Layer17 in respect of) the use of the Service(s) (including any incurred charges) by any of its employees and any other person who has been given access to the Service(s) by the Customer, and any person who gains access to the Customer Content or the Service(s) as a result of the Customer's failure to use reasonable security precautions, even if such use was not authorised by the Customer.

## 8. STAFF AND CONTRACTORS

- 8.1. Layer17 shall ensure that Layer17 Personnel possess appropriate skills and experience. Layer17 reserves the right to replace any Layer17 Personnel at any time without the Customer's consent.
- 8.2. Neither Party shall, without the other Party's prior written consent, actively initiate recruitment of any staff of the other Party directly involved in the provision and/or support of the Service(s) during the currency of the Contract and for a period of 12 months following termination.

## 9. RISK, TITLE AND WARRANTY

- 9.1. On delivery of each item of the Purchased Equipment and/or the Layer17 Equipment (if applicable), full risk of damage to, or loss of, such equipment shall pass to the Customer. The Customer shall be responsible for the safety, safe custody and safe use of the Purchased Equipment and/or the Layer17 Equipment whilst it is in the Customer's custody and the Customer shall be liable to Layer17 for any loss or damage to the Layer17 Equipment except for (i) fair wear and tear and (ii) any loss or damage caused by the negligent act or omission of Layer17.
- 9.2. On full payment of the Non-Recurring Fee, title in the Purchased Equipment shall pass to the Customer. If the Non-Recurring Fee is not paid in full, then title in the Purchased Equipment shall not pass to the Customer and without prejudice to Layer17's other rights and remedies, Layer17 reserves the right to recover and resell the Purchased Equipment and, for that purpose, the Customer grants to Layer17 an irrevocable licence to enter the premises where the Purchased Equipment is located during Normal Business Hours following two (2) Working Days' notice. The Customer shall keep the Purchased Equipment wholly identifiable and distinguishable from
- 9.3. other goods until such time that title passes to the Customer. For the avoidance of doubt, nothing in the Contract shall act to transfer ownership of any Layer17 Equipment to the Customer.
- 9.4. Purchased Equipment which is subject to a maintenance service by Layer17 shall be maintained as per the applicable Service Document.
- 9.5. Where a manufacturers' warranty applicable to items of Purchased Equipment does not automatically transfer to the Customer upon the sale of the Purchased Equipment, Layer17 shall use all reasonable endeavours to assign to the Customer the benefit of any such manufacturers' warranty. Layer17 does not provide any additional warranty for items of Purchased Equipment.

## 10. INTELLECTUAL PROPERTY & LICENSING, CUSTOMER CONTENT, DATA PROTECTION AND CONFIDENTIALITY

- 10.1. Title to the Software and the Intellectual Property within the Service(s), the Software and the Documentation is held by Layer17 or its third party licensors ("Licensors").
- 10.2. In the event that the Customer is provided with access to, or use of, third party Software, the Customer agrees to abide by any third party software conditions of use as set out in any relevant End User License Agreements (EULA) provided or made available to the Customer by Layer17 (whether via the Portal or otherwise). The Customer shall (and shall procure that all users of the Software shall) only use the Software in accordance with such EULA applicable to the Software.
- 10.3. Layer17 warrants that it has the right to use and sub-license the Software to provide the Service(s) and grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to use the Software in connection with the Service(s). Layer17 shall only be liable in respect of such Software to the extent liability is limited in accordance with the terms of the applicable EULA.
- 10.4. The Customer agrees that Layer17 may provide the Licensors with information regarding the Customer's use of their software, including information on the number of licenses required for the Customer's use or access of the software, the country in which the Customer's is located and the Customer's name and address. The Customer hereby releases Layer17 from any and all liability Layer17 may have to the Customer in relation to any use or other dealing with that information provided pursuant to this Clause 10.4 by Licensors and agrees to co-operate with Layer17 in order to provide this information.
- 10.5. Layer17 and/or a Licensor (or its nominated representatives), may at Layer17's expense, access the Customer Site and Customer systems and records relevant to usage of the Software, to ascertain compliance with any EULA and Clause 10.4 above, during Normal Business Hours and subject to reasonable prior notice.
- 10.6. If the Customer uses software it has purchased for itself in the receipt of the Service(s) which has not been licensed by Layer17, the Customer shall acquire permission to use the software from the person with the rights to the software and must comply with any restrictions regarding license mobility where applicable.
- 10.7. The Customer grants Layer17 a worldwide, irrevocable (except on Contract termination), royalty-free, non-exclusive, sub-licensable (to Layer17's authorised subcontractors only) right for the duration of the Contract to process the Customer Content to the extent reasonably necessary to perform its obligations under the Contract. This provision does not apply where the Service is a Connectivity Service, as Layer17 acts as a mere conduit for Customer Content.
- 10.8. Unless expressly stipulated otherwise, the Customer shall not (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing is permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, "frame" or "mirror" any content available on the Software on any other server or wireless Internet-based device, (iii) re-distribute or sublicense the Software, or any part thereof, to any third party, (iv) operate the Software for use by third parties or otherwise operate the Software on a service bureau basis, without Layer17's express prior written consent, (v) copy, or reproduce the Software in any way, in whole or in part, (vi) modify or create any derivative work based on the Software, or (vii) allow, permit or assist any third party to do any of the foregoing.
- 10.9. Layer17 shall indemnify the Customer in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, the Customer as the result of a claim by a third party that

the provision of the Service(s) and/or Software by Layer17 to the Customer, infringes the Intellectual Property rights of any third party. Layer17 shall only be liable to indemnify pursuant to this Clause provided that: (i) Layer17 is promptly notified of any such claim; (ii) Layer17 is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) the Customer provides all reasonable assistance to Layer17 at Layer17's cost in respect of the claim; (iv) the Customer makes no statements or admits any liability in respect of the claim; (v) the claim does not arise from the use of the Service(s) otherwise than as permitted under the Contract; (vi) the claim does not arise from the combining of the Service(s) with any services or equipment not supplied by Layer17; (vii) the claim does not arise from any modification to the Service(s) or Software not carried out or authorised in writing by Layer17; and (viii) the claim does not arise from the use of the Software other than in accordance with the applicable software licence.

- 10.10. The Customer shall indemnify and hold harmless Layer17 in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, Layer17 as a result of a claim by a third party that Layer17's installation, use, transmission, storage, possession or accessing of the Customer Equipment, Customer Content, material or third party software provided by the Customer in connection with the Service(s) infringes the Intellectual Property or other rights of a third party. The Customer shall only be liable to indemnify pursuant to this Clause provided that: (i) the Customer is promptly notified of any such claim; (ii) the Customer is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) Layer17 provides all reasonable assistance to the Customer at the Customer's cost in respect of the claim; (iv) Layer17 makes no statements or admits any liability in respect of the claim.
- 10.11. The Customer acknowledges that any software may contain known or unknown security vulnerabilities. Layer17 shall not be liable to the Customer or any third party for any loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising from known or unknown security vulnerabilities with any software (including the Software).
- 10.12. The Customer may apply updates, new releases, upgrades or patches ("Modifications") to the software it uses in connection with the Service(s). In such event, the Customer acknowledges that (i) new or amended Software may be required to maintain compatibility but may not be available or immediately available and (ii) if it installs such Modifications before any new or amended Software is available, then the Service(s) may be affected. Layer17 shall not be liable for any adverse effects caused in whole or in part by the installation of Modifications to Customer's software pursuant to this Clause 10.12.
- 10.13. The Customer shall ensure that it promptly (and no later than reasonably required by Layer17) installs all Modifications to the Software that Layer17 makes available to the Customer (unless the Contract stipulates that Layer17 is responsible for installing such Modifications).
- 10.14. The Customer and Layer17 will each comply with the provisions of the Data Protection Act 1998 (the "Act") in relation to the processing of data received pursuant to the Contract. In relation to Customer Personal Data (defined within the Act) received by Layer17 pursuant to the Contract, Layer17 shall act as the "data processor" and the Customer shall be the "data controller" for the purposes of the Act. The Customer confirms that it has obtained all necessary consents from the data subjects concerned for the transfer of Personal Data to Layer17. The Customer agrees, subject to the requirements of this Clause, that although Layer17 does not store Personal Data outside of the European Economic Area (EEA), Layer17 Personnel working outside of the EEA may have access to the systems upon which the Personal Data is held. Layer17 agrees and warrants that it will not provide access to Personal Data to any Layer17 Personnel outside of the EEA unless that person meets the requirements stated below during the entire time that it has access to such Personal Data:
- 10.14.1. the Layer17 Personnel who may access the Personal Data is either (i) located in a country for which the European Commission has made a positive finding of adequacy, or (ii) the Layer17 Personnel is located in the United States and has certified to the United States Department of Commerce "Safe Harbour Framework", and
- 10.14.2. the Layer17 Personnel that have access to the relevant Layer17 systems have signed a confidentiality agreement with Layer17 containing substantially equivalent clauses regarding data protection and confidentiality.
- 10.15. Without prejudice to Layer17 suspension and termination rights, and although Layer17 cannot routinely access any Customer Content, Layer17 will notify the Customer if it becomes aware of (or aware of any allegation of) Customer Content that violates the terms of the Contract ("Prohibited Content") and such Prohibited Content shall promptly be removed from the Service(s). If the Customer fails to promptly remove the Prohibited Content, Layer17 may (without liability) remove the Prohibited Content from the Service(s) or disable access to the Prohibited Content. Notwithstanding the foregoing, Layer17 may (without liability) remove or disable access to the Prohibited Content without prior notice as required by applicable legislation or to comply with any judicial, regulatory or other governmental order or request or order of any law enforcement office. If Layer17 removes Prohibited Content without prior notice, it will promptly notify the Customer thereafter, unless prohibited from doing so by law.
- 10.16. Subject to Clauses 10.16.1 and 10.16.2 below, neither the Customer nor Layer17 shall, without the other Party's prior written consent, disclose to any third party any Confidential Information of the other Party which comes to that

Party's attention pursuant to the Contract. Each Party shall only use the Confidential Information of the other Party as reasonably required to exercise its rights and/or perform its obligations under the Contract and shall only disclose it to those of its employees, agents and contractors having a reasonable need to know pursuant to the Contract. Each Party shall use no lesser degree of care in respect of the other Party's Confidential Information than it uses in respect of its own Confidential Information and which in any event shall be not less than reasonable care. Upon termination of the Contract, if requested to do so by the other Party, a Party shall promptly return or certify destroyed all of the other Party's Confidential Information.

- 10.16.1. The Customer agrees that Layer17 may disclose relevant information pertaining to the Contract and the Service(s), to any relevant third party (including but not limited to its suppliers and the Customer's landlords at the Customer Site(s) to the extent reasonably required by such third party in order to allow provision of the Service(s).
- 10.16.2. Each Party agrees that the other Party may disclose the Confidential Information belonging to the first party, required to be disclosed pursuant to any applicable law, court or regulatory authority. Each Party shall promptly notify the other Party of any such disclosure requirement to the extent that it is legally permissible to do so.
- 10.17. Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 10.16 and accordingly, without prejudice to any other rights or remedies available, each Party shall be entitled to seek injunctive or other equitable relief to prevent any breach or threatened breach of Clause 10.16 by the other Party.
- 10.18. Neither Party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.19. The Customer acknowledges and agrees that it is the best judge of the value and importance of the Customer Content and it is solely responsible for taking out any insurance policy or other financial cover for any costs, expenses, loss or damage, which may arise from any loss, damage or destruction of Customer Content, howsoever occurring.
- 10.20. The Customer acknowledges and agrees that Layer17 has no knowledge of, and accepts no responsibility for, the content, quality, value or use of the Customer Content, traffic or goods or services provided by Customer to end users in connection with the Service(s). The Customer should therefore take all reasonable steps to mitigate the risks inherent in the provision of the Service(s) including, but not limited to, data loss.
- 10.21. Layer17 maintains certain security procedures for the Customer Content while it is stored on or transmitted over equipment and facilities Layer17 controls. The Customer is responsible for management of the Customer Content stored on, or transmitted by means of, the Service(s), including selection and use of the security features and options that Layer17 provides as Service(s). Except to the extent included in the Service(s), as identified in the Contract, the Customer is responsible for developing and maintaining data management and security procedures the Customer deems appropriate, such as application logon security, encryption of data and Malicious Code protection, and retaining source documents and maintaining a procedure that will allow the Customer to recover lost or damaged data. LAYER17 DOES NOT GUARANTEE THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER CONTENT.

## 11. SUSPENSION

- 11.1. Layer17 may, without terminating the Service(s) or the Contract, suspend provision of any Service(s), in whole or in part:
  - 11.1.1. with immediate effect if the Customer is in breach of Clause 7.2.1, 7.2.2 and/or Clause 7.3; and/or
  - 11.1.2. immediately upon written notice if the Customer is in breach of any other material obligation under the Contract and, in the case of remediable breach, the Customer fails to remedy that breach within five (5) Working Days of written notice of the breach; and/or
  - 11.1.3. immediately upon written notice if the Customer becomes Insolvent; and/or
  - 11.1.4. with immediate effect if the Customer's use of the Service(s) may damage or disrupt the proper functioning of the infrastructure and/or equipment used to provide services to Layer17's other customers; and/or
  - 11.1.5. with immediate effect if Layer17 is obliged to comply with the order, instruction or request of a court, government, emergency services organisation or other competent judicial, governmental, administrative or regulatory authority; and/or
  - 11.1.6. for operational reasons (including but not limited to, planned and emergency works) in accordance with the applicable Service Document.
- 11.2. Layer17's right to suspend a Service(s) pursuant to Clause 11.1 above is without prejudice to Layer17's termination rights under Clause 12 below, or any other right under the Contract or at law.
- 11.3. Where Layer17 has suspended the Service(s) pursuant to Clause 11.1.1, 11.1.4 or 11.1.5 above and it has not been practicable to provide written notice prior to such suspension, Layer17 shall inform the Customer as soon as is reasonably practicable thereafter.

## 12. TERM AND TERMINATION

- 12.1. Subject to earlier termination of the Contract in accordance with its terms, the Contract shall continue in force:

- 12.1.1. until the expiry of the Initial Term (where an Initial Terms applies) and thereafter unless or until terminated by either Party giving to the other Party not less than three (3) months' prior written notice to expire no earlier than the end of the Initial Term or at any time thereafter; or
  - 12.1.2. for the period stated on the Order Form where it relates to a project or a specific number of days; or
  - 12.1.3. where the Services are purely Pay As You Go Services, for the period such Service(s) are in use by the Customer.
- 12.2. In the event that the Customer wishes to cancel a Service, the Customer shall send an email to cancellations@layer17.co.uk specifying the Customer's name, the site (including postcode) at which the relevant Service(s) is provided, what the Service(s) is and any applicable service reference numbers. Layer17 shall confirm such cancellation, and any relevant Termination Payment (defined below) to the Customer within 10 Working Days of receipt of such request.
- 12.3. Each Party shall have the right on immediate notice to the other Party, to terminate the Contract at any time in the event that the other Party:
- 12.3.1. has committed a material breach of the Contract (other than a failure on the part of the Customer to make payment of sums when due) and fails to remedy such breach within twenty-eight (28) days of notice from the other Party requiring the breach to be remedied. The aforementioned twenty-eight (28) day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, the Contract shall be terminable by immediate written notice; or
  - 12.3.2. becomes Insolvent.
- 12.4. Layer17 shall have the right on immediate notice to the Customer, to terminate the Contract at any time in the event that the Customer fails to make payment of any undisputed Charges by the Due Date and fails to remedy such breach within fourteen (14) days of notice from Layer17 requiring the breach to be remedied.
- 12.5. Layer17 shall have the right to terminate any Service and/or the Contract immediately upon written notice if instructed to do so by a court of law, regulator or other appropriate authority.
- 12.6. Except in the event of termination of the Contract by the Customer pursuant to Clauses 12.3.1 or 12.3.2 above, or by Layer17 pursuant to Clause 12.5 above, where a Service is terminated or otherwise brought to an end by the Customer, without cause, the Termination Payment shall be payable by the Customer. For the purpose of this Clause, the Termination Payment shall mean:
- a) where an Initial Term applies and termination occurs after the Service Commencement Date: (i) all arrears of Charges payable under the Contract up to the date of termination plus (ii) all remaining Charges not yet paid which would otherwise have been payable for the greater of the remainder of the Initial Term or the required three (3) month notice period;
  - b) where an Initial Term applies but the Service Commencement Date has not yet occurred: (i) the Non-Recurring Charges, plus (ii) 50% of the first year's Annual Charge plus (iii) all charges incurred or committed to by Layer17 with third party suppliers, plus (iv) any charges identified in the relevant Service Document as being recoverable pursuant to this Sub-Clause. provided always that the Termination Payment to be paid pursuant to this sub-clause does not exceed the total Charges which would otherwise be payable by the Customer in respect of the Initial Term;
  - c) where the Service is a Pay As You Go Service: there shall be no Termination Payment;
  - d) where the Service is a Professional Service: as set out in the Service Document for Professional Services. The Customer acknowledges and agrees that the Termination Payment is based upon Layer17's revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty.
- 12.7. Termination of a Service and/or the Contract shall be without prejudice to the accrued rights and liabilities of either Party subsisting under the Contract prior to termination.
- 12.8. Upon termination of a Service and/or the Contract for any reason:
- 12.8.1. the Customer shall immediately cease to make use of the relevant Service(s) and the Layer17 Equipment (if applicable); and
  - 12.8.2. the Customer shall, if required by Layer17, allow Layer17 Personnel to enter the Customer Site(s) during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any Layer17 Equipment and de-installing the Service(s); and
  - 12.8.3. the Customer shall, within five (5) Working Days of termination of the Contract, return to Layer17 by same day courier any Layer17 Equipment (if applicable) or pay Layer17 for the Layer17 Equipment at its then-current new purchase price if not so returned; and
  - 12.8.4. licences granted to the Customer by Layer17 under the Contract shall immediately terminate.
- 12.9. Following termination of the Contract (other than by Layer17 pursuant to Clause 12.3.1, Clause 12.3.2 or Clause 12.4 above) and provided that the Customer's account is fully paid-up, Layer17 will:
- 12.9.1. following the Customer's written request, provide reasonable assistance to the Customer as regards migrating to an alternative service provider, at Layer17's then-current standard charges; and

12.9.2. promptly refund to the Customer any Annual Charges paid in advance relating to the period after the effective date of termination, calculated on a pro-rata temporise basis.

12.10. Clause 5 (Fees and Payment), Clause 7 (Customer Obligations), Clause 8.2 (non-solicitation), Clause 10 (Intellectual Property, Data Protection and Confidentiality), Clauses 12.8 and 12.9 (actions following termination) Clause 13 (Force Majeure, Warranties and Limitation of Liability) and Clause 15 (Disputes, Jurisdiction and Governing Law) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

### 13. FORCE MAJEURE, WARRANTIES AND LIMITATION OF LIABILITY

13.1. Neither Party shall be liable for any delay or failure in performing its obligations under the Contract caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same.

13.2. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSES 13.3 TO 13.8 INCLUSIVE.

13.3. ALL WARRANTIES, CONDITIONS, OBLIGATIONS AND TERMS WHICH WOULD OTHERWISE BE IMPLIED INTO THE CONTRACT BY STATUTE, CUSTOM OR LAW (INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY, FITNESS FOR PURPOSE AND SATISFACTORY QUALITY), ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

13.4. NEITHER PARTY EXCLUDES OR LIMITS THEIR LIABILITY UNDER THE CONTRACT:

13.4.1. FOR DEATH OR PERSONAL INJURY CAUSED BY ITS (OR ITS EMPLOYEES', AGENTS' OR CONTRACTORS') NEGLIGENCE; AND

13.4.2. FOR FRAUDULENT MISREPRESENTATION; AND

13.4.3. FOR BREACH OF THE DATA PROTECTION AND/OR CONFIDENTIALITY OBLIGATIONS SET OUT IN CLAUSE 10); AND

13.4.4. TO INDEMNIFY THE OTHER PARTY PURSUANT TO THE CONTRACT; AND 13.4.5 TO MAKE ANY TERMINATION PAYMENT DUE PURSUANT TO CLAUSE 12.6 ABOVE.

13.5. WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, EACH PARTY'S ENTIRE LIABILITY FOR DAMAGE TO THE TANGIBLE PROPERTY OF THE OTHER PARTY, CAUSED BY ITS NEGLIGENCE (OR THE NEGLIGENCE OF ITS EMPLOYEES', AGENTS' AND CONTRACTORS), SHALL NOT IN ANY EVENT EXCEED ONE MILLION POUNDS (£1,000,000) PER EVENT OR SERIES OF CONNECTED EVENTS AND TWO MILLION POUNDS (£2,000,000) IN THE AGGREGATE FOR ALL EVENTS IN ANY 12 MONTH PERIOD.

13.6. WITHOUT PREJUDICE TO CLAUSE 13.4 ABOVE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY

- LOSS OF PROFITS,
- LOSS OF BUSINESS OPPORTUNITY,
- LOSS OF REVENUE,
- LOSS OF ANTICIPATED SAVINGS
- WASTED EXPENDITURE
- DEPLETION OF GOODWILL
- LOSS OF USE
- LOSS AND/OR CORRUPTION OF DATA OR INFORMATION (UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THE APPLICABLE SERVICE DOCUMENT)
- ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COST, DAMAGE, CHARGE OR EXPENSE.

13.7. ANY LIABILITY OF EITHER PARTY TO THE OTHER PARTY WHICH IS NOT (I) UNLIMITED UNDER CLAUSE 13.4 ABOVE, (II) NOT CAPPED UNDER CLAUSE 13.5 ABOVE AND (III) NOT EXCLUDED UNDER CLAUSE 13.6 ABOVE, SHALL NOT IN ANY EVENT EXCEED GREATER OF (I) 150% OF THE TOTAL CHARGES PAID BY THE CUSTOMER UNDER THE CONTRACT IN THE 12 MONTHS PRECEDING THE DATE OF THE RELEVANT CLAIM; AND (II) FIVE THOUSAND POUNDS (£5,000) REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A BREACH OF CONTRACT, IN TORT OR OTHERWISE.

13.8. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE CHARGES REFLECT THE LEVEL OF LIABILITY UNDERTAKEN BY LAYER17 AND THAT THE EXCLUSIONS AND LIMITATIONS CONTAINED IN THIS CLAUSE 13 ARE REASONABLE GIVEN THE CHARGES THAT ARE PAYABLE.

### 14. GENERAL

14.1. Unless otherwise stated in the Contract, the Contract may only be modified by the written and signed agreement of the Parties.

14.2. Layer17 shall have the right, by serving notice to the Customer, to amend the Contract at any time when this is required to comply with any applicable statutory or regulatory requirements.

14.3. Layer17 may enter into subcontracts for the performance of its obligations under the Contract. Layer17 shall be vicariously liable for the acts and omissions of its contractors acting in the course of their engagement by Layer17.

14.4. Neither Party shall at any time assign or transfer (or purport to assign or transfer) the Contract and/or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), save that Layer17 may at any time assign or transfer the Contract and/or any of its

rights or obligations thereunder, in whole or in part to any Affiliate of Layer17; or to any successor to Layer17 following a re-organisation or merger of Layer17 with another organisation; upon notice but without consent.

- 14.5. No delay, neglect or forbearance by either Party in enforcing its rights under the Contract shall be deemed to be a waiver of, or prejudice, such rights.
- 14.6. Any notice or other communication required to be given to a Party under, or in connection with, this Contract, shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Working Day after transmission, or otherwise at 9.00 am on the second Working Day after posting (or at the time recorded by the delivery service).
- 14.7. If any part of the Contract is held by the courts to be unlawful, invalid or unenforceable, that part shall be considered struck-out and the remainder of the Contract shall remain in full force and effect. Layer17 and the Customer shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.
- 14.8. The Contract supersedes any prior contracts, arrangements and undertakings between the Parties in relation to the subject-matter thereof and constitutes the entire agreement of the Parties relating to the subject-matter thereof. No terms and conditions set out on any Customer paperwork submitted to Layer17 pursuant to the Contract shall have any force or effect. The Customer shall have no remedy in respect of any statement made to it upon which it relied when entering into the Contract, unless such statement was made fraudulently by Layer17.
- 14.9. The Parties agree that signed Contract documents delivered by electronic means shall have the same force and effect as signed originals.
- 14.10. The Parties expressly acknowledge and agree: (i) a human readable electronic version of the Contract documents containing the Parties' Electronic Signatures, or containing a mix of physical signatures and Electronic Signatures, shall constitute an original version of such Contract documents; (ii) a Party's use of a key pad, mouse or other device to select an item, button, icon or similar act/action, to otherwise insert their Electronic Signature into Contract documents constitutes that Party's signature as if it had manually signed the same; and (iii) Layer17's chosen Electronic Signature software shall be accepted as a valid and the solely-required authentication technology.
- 14.11. Both Parties shall:
- 14.11.1. comply with the Bribery Act 2010 at all times and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 14.11.2. promptly report to the other Party any request or demand which if complied with would amount to a breach of Contract or would not be compliant with the Bribery Act 2010.
- 14.12. Breach of Clause 14.11 shall be deemed a material breach of the Contract which is not capable of remedy.

## 15. DISPUTES, JURISDICTION AND GOVERNING LAW

- 15.1. the Parties shall attempt to resolve any such dispute through negotiations between senior executives of the Parties who have authority to settle the same.
- 15.2. If the dispute has not been resolved by such senior executives within thirty (30) days of the initiation of that procedure, the dispute may be referred by either Party to the English courts and the Parties hereby submit to the exclusive jurisdiction of the courts of England.
- 15.3. The Contract shall be governed by, and interpreted in accordance with, the laws of England and Wales.
- 15.4. The Contract is personal to the Customer and Layer17. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and unless specifically provided for in the Contract, no entity other than the Customer and Layer17 shall have any rights or obligations under the Contract and no entity other than the Customer and Layer17 shall have the right to enforce the Contract or have it enforced against them.