

**ENABLE NETWORK SERVICES LIMITED**  
**STANDARD TERMS AND CONDITIONS**

**1. INTERPRETATION**

1.1 The following definitions and rules of interpretation apply in these Terms and Conditions:

- “Affiliate”:** means, in relation to either party, a company which is a subsidiary or holding company of it, or any company which is a subsidiary of any such holding company, “holding company” and “subsidiary” having the meanings ascribed to them in section 1159 Companies Act 2006.
- “Background IP”:** shall mean all Intellectual Property Rights owned or controlled under licence by a party and which were created, developed, conceived or reduced to practice either (a) prior to commencement of the work performed pursuant to this agreement, or (b) outside the scope of the work performed pursuant to this agreement and which are introduced to or disclosed in connection with the Services or otherwise supplied by that party.
- "Business Day":** means 9.00 am to 5.00 pm on any day which is not a Saturday, a Sunday, or a public holiday when banks in England in London are open for business.
- “Charges”:** has the meaning given in clause 10.1.
- “Contract”** means the Customer’s Order and Enable’s acceptance of it in accordance with clause 3.3.
- “Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures”:** as defined in the Data Protection Legislation.
- “Customer”** means the person, firm or company who purchases Services from Enable.
- “Customer Affiliate”:** any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer.
- "Customer's Equipment":** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in an Orders (and any relevant Service Schedule(s)).
- "Customer Materials":** all documents, information, items and materials in any form, whether owned by the Customer or Customer Affiliate or a third party, which are provided by the Customer or Customer Affiliate to Enable in connection with the Services, including the items provided pursuant to clause 5.1.4.

<b>“Customer Sites”:</b>	the Customer locations at which the Services will be provided, as specified in Orders, or as notified otherwise to Enable from time to time.
<b>“Data Protection Legislation”</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>“Early Termination Charge”:</b>	shall mean: (i) 100% of the Charges payable for the full Initial Term of the applicable Order (or relevant Subsequent Terms as the case may be), deducting any Charges already paid by the Customer for such Order; (ii) any outstanding Charges due at the date of termination; and (iii) any charges incurred by Enable by its Underlying Supplier.
<b>“Enable”</b>	means Enable Network Services Limited, a company registered in England and Wales under company number 8850297 and whose registered office is at Suite 104, 128 Aldersgate Street, Barbican, London.
<b>“Enable Equipment”</b>	means any equipment, including tools, systems, materials, cabling or facilities, provided by Enable to the Customer or Customer Affiliate and used directly or indirectly in providing the Services to the Customer, but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.
<b>“Goods”</b>	Means any Underlying Supplier’s goods and/or software, or any instalment or parts thereof, which are supplied by Enable to the Customer pursuant to a Contract, including Underlying Supplier’s documentation related thereto.
<b>“Initial Term”:</b>	Shall mean the period of time set out on the Order which commences from the Service Commencement Date.
<b>“Intellectual Property Rights”:</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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>“Order”:</b>	a document or other such form as may be designated by Enable from time to time detailing Products and/or Services ordered by the Customer, agreed between the parties in accordance with clause 3.
<b>“Pre-existing Materials”:</b>	means all documents, information, items and materials in any form (including computer programs, program listings, programming tools, reports, drawings), equipment, whether owned by Enable or its licensors, or a third party which existed before the commencement of the Services.
<b>“Products”</b>	means any combination of Goods and Services which are supplied by Enable to the Customer pursuant to a Contract or created pursuant to a Contract.
<b>“Purchase Order”</b>	means a written request from the Customer to purchase Products and/or Services from Enable, indicating the type and quantity for such Products and/or Services and which refers to a Quotation.
<b>“Quotation”</b>	means the document provided to the Customer by Enable outlining the proposed Services to be offered, the proposed Charges that would be incurred along with any other relevant information to assist the Customer in placing the Purchase Order.
<b>“Services”:</b>	means any Enable services, that are supplied by Enable to the Customer pursuant to a Contract.
<b>“Service Commencement Date”:</b>	means the date that each Service is ready for use by the Customer as either set out in the Order or by email to the Customer from Enable.
<b>“Service Levels”:</b>	shall mean the target performance levels applicable (if any) to certain Services as set out in the Order and/or document
<b>“Service Schedule”:</b>	shall mean those service schedules or any other document notified by Enable to the Customer from time to time, detailing the service provided by Enable under Order, including any descriptions of each Service and/or any agreed Service Levels.
<b>“Software”:</b>	Includes all relevant computer software, documentation, manuals, printed and written matter as supplied to the Customer from time to time by Enable, its Affiliates or its Underlying Supplier.
<b>“Specifications”</b>	The summary of the technical abilities, functionality, and limitations of the Product and/or Service (for a Service, this document may be in the form of a ‘service description’ or ‘scope of works’)
<b>“Start Date”</b>	means the date the Order is accepted by Enable in accordance with clause 3.3.
<b>“UK Data Protection Legislation”</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive

2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- “Underlying Supplier”:** any third party organisation(s) that provide/resell products/services to Enable and/or a supplier, licensor, publisher, manufacturer or other third party provider of Products.
- "VAT":** value added tax chargeable under the Value Added Tax Act 1994 or any similar tax chargeable in the UK or elsewhere.
- “Virus”:** any thing or device (including any software, code, file or programme) which may:
- a. prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
  - b. prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
  - c. adversely affect the user experience, including worms, trojan horses, **viruses** and other similar things or devices.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 These Terms and Conditions shall be binding on, and enure to the benefit of, the parties to these Terms and Conditions and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to **these Terms and Conditions** or to any other agreement or document referred to in these Terms and Conditions is a reference to these Terms and Conditions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax and email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to clauses and Schedules, unless otherwise provided, are to the clauses and Schedules of these Terms and Conditions.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. APPLICATION OF TERMS AND CONDITIONS**

- 2.1 These Terms and Conditions govern every Contract between Enable and the Customer. No additional or alternative terms or conditions or any alteration to these Terms and Conditions proposed by the Customer purporting to have contractual effect contained or referred to in a Purchase Order, an Order, or other document submitted to Enable setting out or referring to any contractual obligations shall be deemed to apply or which are implied by trade, custom, practice or course of dealing and all of which are hereby excluded.
- 2.2 If there is a conflict between any of the provisions of these Terms and Conditions and any provisions which are included in a Quotation which is subsequently agreed by the Customer in submitting a Purchase Order for that Quotation (and goes on to form a Contract), or if there is any conflict with a Service Schedule, the conflict will be resolved according to the following order of priority:
- 2.2.1 first: conditions included by Enable in a Quotation which subsequently forms a Contract;
  - 2.2.2 second: these Terms and Conditions; and
  - 2.2.3 third: the relevant Service Schedule.
- 2.3 Enable reserves the right to alter these Terms and Conditions at its sole discretion from time to time and will use its reasonable efforts to notify the Customer of any such material changes to these Terms and Conditions before they become applicable, but it is the sole responsibility of the Customer to ensure that it is familiar with the most current set of Terms and Conditions which apply to any Contract between Enable and the Customer. The most up-to-date version of these Terms and Conditions can be found on our website at the following URL: <https://enable.network/ens-stc.pdf>
- 2.4 The Customer shall be deemed to have accepted these Terms and Conditions upon the earlier of: (a) signing and returning to Enable an Enable Account Application form; (b) submitting a Purchase Order to Enable, or (c) accepting delivery of the Services.
- 2.5 Any samples, drawings, descriptive matter, catalogues, brochures, price lists, leaflets, proposals or advertising issued by Enable, and any descriptions or illustrations contained on Enable's website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

## **3. BASIS OF SALE**

- 3.1 Any Quotation is valid for a period of 7 days from the date of receipt only (unless otherwise stated) and Enable may withdraw it at any time during this period by giving written notice to the Customer.
- 3.2 If the Customer wishes to indicate their willingness to engage the Services of Enable they must submit a Purchase Order to Enable, which on acceptance will form the Order which is subject to these Terms and Conditions.
- 3.3 Acceptance of the Order will take place either upon Enable providing a written acceptance of the Order to the Customer, or Enable's commencement or execution of work to provide the Services pursuant to the Order (whichever occurs earlier) at which point a Contract is formed.
- 3.4 Enable reserves its rights to withhold acceptance of the Order pursuant to clause 3.3 for any such reason it deems fit. A Purchase Order submitted by the Customer to Enable does not guarantee acceptance by Enable.
- 3.5 If the Customer wishes to amend or vary a Quotation it must contact Enable in writing, and in any event, prior to the submitting a Purchase Order. The Customer is solely responsible for ensuring that its Order is complete and accurate.
- 3.6 In the event that Enable or its agents makes a material error or omission when quoting a price in the Quotation, Enable shall be entitled, for a period of thirty (30) days following the Start Date, to increase the price of the affected Services by (i) invoicing the Customer for the Customer's proper list price on the date of the Start Date, or (ii) allowing the Customer to return such affected Services to Enable and crediting the Customer for any fees it may have already paid Enable for such affected Services.
- 3.7 If an Underlying Supplier grants a special pricing consideration or discount to Enable which is subsequently made available to the Customer, the Customer agrees to adhere to the Underlying Supplier's terms and conditions of such special pricing consideration or discount and to indemnify Enable for the Customer's failure to comply with such terms and conditions. The Customer agrees that payment and receipt of benefit under such terms are contingent upon the Customer's

compliance with such terms, and further agrees to pay any costs or fees, if any, charged to Enable by the Underlying Supplier for participation in such special pricing consideration or discounts.

#### **4. ENABLE'S OBLIGATIONS**

- 4.1 Enable shall use reasonable endeavours to provide the Services in accordance with the Order and any applicable Service Schedules and warrants to the customer that the Services will be provided using reasonable care and skill.
- 4.2 Enable shall ensure that all work carried out by Enable in connection with the Services is carried out by competent and suitably qualified personnel.
- 4.3 All dates supplied by Enable for the provision of the Services shall be treated as approximate only and time shall not be of the essence of the Contract. Enable shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 4.4 Enable shall use its reasonable endeavours to comply with all laws and regulations directly applicable to Enable in respect of the provision of the Services.
- 4.5 Enable reserves the right to make changes to the Specifications if necessary to comply with any applicable law or regulatory requirement, or if the changes will not materially affect the nature or quality of the Services, and Enable shall notify the Customer in any such event.
- 4.6 If a particular service within an Order is not available, Enable shall be entitled to provide an equivalent product or service, provided that such product or service performs a similar function.
- 4.7 If it becomes necessary to modify any part of the Services, Enable may (and the Customer agrees), by giving the Customer prior reasonable notice, migrate the Customer to the modified service or to a suitable alternative service. The new service provided shall substantially have the same or improved Service performance and/or Service Levels to those of the Service as originally contracted.
- 4.8 Enable will use its reasonable endeavours to provide the Services in accordance with any applicable Service Levels (if any), but it does not warrant that the Services will be uninterrupted or error-free or free from any Virus.

#### **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer or Customer Affiliate shall:
  - 5.1.1 co-operate with Enable in all matters relating to the Services, including complying with any reasonable procedures notified by Enable to the Customer;
  - 5.1.2 appoint a manager in respect of the Services to be performed. That person shall have authority to contractually bind the Customer or Customer Affiliate to any Contract or subsequent agreement between the parties.
  - 5.1.3 provide, for Enable, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Customer Sites, office accommodation, data and other facilities as reasonably required by Enable including after termination of the Services, a Contract, or any other agreement between the parties for the purpose of Enable recovering Enable Equipment and Products (still owned by Enable or its Underlying Supplier) from the Customer.
  - 5.1.4 provide to Enable in a timely manner all documents, data, information, items and materials in any form (whether owned by the Customer or Customer Affiliate or a third party) reasonably required by Enable in connection with providing the Services and use its reasonable endeavours to make sure that they are accurate and complete;
  - 5.1.5 keep Enable informed and up to date of all health and safety and security requirements that apply at the Customer's Sites from time to time;
  - 5.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
  - 5.1.7 ensure that all the Customer's Equipment is technically compatible with the relevant Service(s);
  - 5.1.8 not, except in the circumstances required to be permitted by applicable law, alter, rearrange, disconnect, remove, reverse engineer, repair or attempt to repair or tamper with any part of

the Services (including Enable's Equipment and Products) or cause, or allow a third party to do any of these activities, without Enable's prior written consent;

- 5.1.9 maintain an environment suitable to support efficient operation of Enable's Equipment and Products;
  - 5.1.10 promptly return Enable Equipment and Products provided to the Customer as part of a Service provision or on a rental basis once the relevant Contract has terminated;
  - 5.1.11 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Enable to provide the Services, including in relation to the installation of Enable's Equipment and Products, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the Start Date;
  - 5.1.12 comply with Enable's mandatory policies as updated and notified to it from time to time
  - 5.1.13 obtain, at its expense, any suitable private wires, jack sockets, electric supplies or any other items necessary for the operation of Enable's Equipment and Products;
  - 5.1.14 keep, maintain and insure Enable's Equipment and Products in good condition and not dispose of or use Enable's Equipment and Products other than in accordance with the Enable's written instructions or authorisation;
  - 5.1.15 unless otherwise agreed in writing by the parties, shall during the course of any Contract, have comprehensive general liability insurance with a reputable insurance provider, covering public liability, employer's liability, professional indemnity, personal injury and death, and property damage insurance covering each party's respective liabilities under this agreement;
  - 5.1.16 insure the Products for their invoice value from the date the delivery is made or tendered;
  - 5.1.17 acknowledge that Enable reserves the right to perform a credit check from time to time with no prior notice (including before agreeing and entering into any Order) on the Customer and to pass the Customer's credit history (including details of the Customer's name, address and payment record) on to credit agencies and/or the court if deemed necessary;
  - 5.1.18 acknowledge that where a credit check carried out from time to time shows a significantly lower credit rating from the preceding credit check carried out (if any), Enable may, at its sole discretion, require the Customer to pay a deposit or such other security as Enable may require, within thirty (30) calendar days of such a written request, in a manner specified by the Enable. If the Customer fails to pay such deposit or other security within this period, Enable shall have the right to terminate or suspend the Services (or element thereof);
  - 5.1.19 acknowledge that where Underlying Supplier's change, Enable reserves the right (with due notice to the Customer) to amend the Service accordingly but the amended Service shall have substantially have the same or improved Service performance and/or Service Levels to those of the Service as originally contracted.
  - 5.1.20 comply with any additional responsibilities of the Customer or Customer Affiliate as set out in the relevant Order; and
  - 5.1.21 (if relevant) identify and agree with Enable the source, systems and processes required for the extraction and transfer of the Customer's data onto the Enable's system and provide such assistance as Enable reasonably requests in identifying validation criteria to facilitate successful migration of the Customer's data onto Enable's system.
- 5.2 If Enable's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants, or employees then, without prejudice to any other right or remedy it may have, Enable shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer. If Enable agrees to support existing applications and/or services used by the Customer or Customer Affiliate and the Customer or Customer Affiliate fails to provide Enable with the correct credentials including but not limited to usernames and passwords, Enable shall be allowed an extension of time equal to the delay caused by the Customer.
- 5.3 In addition to an extension of time in accordance with clause 5.2 or 5.2 above, if Enable has incurred any loss or expense, it shall be entitled to compensation to place Enable in the same position it would have been in, had that failure, act or omission not occurred.

- 5.4 The Customer shall be liable to pay any and all applicable Early Termination Charges where it has terminated a Service for convenience or where Enable terminates a Service pursuant to its rights under the applicable Contract.
- 5.5 The Customer or Customer Affiliate shall at all times comply with all reasonable advice given by Enable in relation to the operation and care of Enable's Equipment and Products.
- 5.6 If the Customer or Customer Affiliate leases or rents any Enable Equipment or Products, it shall remain the property of Enable or its Underlying Supplier as the case may be. The Customer or Customer Affiliate shall comply with the relevant terms of any applicable lease, where such terms are provided by Enable.
- 5.7 The Customer shall not use the Services to:
- 5.7.1 send, communicate, knowingly receive, upload, download or use any material or make any calls (where relevant) that are offensive, abusive, obscene or are intended to deceive;
  - 5.7.2 download, possess or transmit in any way, any illegal material;
  - 5.7.3 engage in criminal, illegal, terrorist or unlawful activities;
  - 5.7.4 violate or infringe the rights or property of any person, including rights of copyright and any other Intellectual Property Rights. privacy or confidentiality; or
  - 5.7.5 send, communicate, knowingly receive, upload or download data or make any calls (where relevant) in such a way or in such amount the Customer knows or ought reasonably to know will have a material adverse effect on Enable.
- 5.8 The Customer shall be responsible for all and any account security. If provided with a password and/or unique account number or other security measures in respect of their account, the Customer is responsible for the safekeeping of the password and/or unique account number and any unauthorised use is the responsibility of the Customer entirely, including any losses or damages, howsoever caused, by that misuse. In the event of any misuse the Customer must immediately notify Enable
- 5.9 The Customer acknowledges and understands that Enable is not a supplier of the Products and does not manufacture the Products. Accordingly, all Products are sold subject to express warranty terms, if any, specified by the Underlying Supplier of the relevant Products. Enable shall use its reasonable endeavours to ensure that any express warranty terms provided with the Products, including any benefits related thereto, are passed on to any of its Customers from the Underlying Supplier of the relevant Products.
- 5.10 The Customer undertakes not to bring any warranty claims in connection with clause 5.9 directly (as the Customer acknowledges that Enable does not manufacture the Products) whether in relation to defects in the Products or otherwise and the Customer acknowledges that Enable has no control over the actions of the Underlying Supplier in relation to any defects in Products. The Customer therefore undertakes not to bring any claim against Enable for any failures or inaction on the part of the Underlying Supplier to repair and/or replace any such Products.
- 5.11 The Customer agrees that Enable's sole liability to the Customer regarding any Product defect claims is limited to the administration of such claims with the relevant Underlying Supplier and is expressly contingent upon Enable's ability to obtain a refund, credit or new replacement Products from the relevant Underlying Supplier.
- 5.12 Enable shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, or is not in accordance with the Underlying Supplier's Product documentation, modification or alteration and not authorised by the Underlying Supplier or use in conjunction with a third party product.
- 5.13 The Customer acknowledges that if Enable's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, the Customer shall in all circumstances be liable to pay to Enable all reasonable costs, charges or losses sustained by it as a result, subject to Enable notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 5.14 The Customer acknowledges that Enable is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities,



including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 5.15 The Customer acknowledges that the Products and any technical data related thereto is licensed or sold subject to and controlled by export laws of the United States (**US**) (including its export administration regulations), the European Union (**EU**) and countries within the European Free Trade Area (**EFTA**) (collectively the “**Export Control Laws**”) and that the US, EU and EFTA may require licensing or other authorisation prior to export.
- 5.16 Enable’s policy is to supply Products and Services only to business customers (i.e. those who are not private consumers). In accepting these Terms and Conditions, the Customer warrants that it is not purchasing the Products or Services as a private consumer.

## **6. CANCELLING, RESCHEDULING, DELIVERY AND RETURNS OF ORDERS**

- 6.1 No Order which has been accepted by Enable in accordance with clause 3.3 may be cancelled or rescheduled by the Customer, except with the agreement in writing of Enable. Any such cancellation is subject to clause 5.4.
- 6.2 All deliveries shall be made to the location set out in the order or which may be agreed between the parties in writing. Dates quoted for delivery are approximate and time is not considered to be of the essence.
- 6.3 Insurance, risk, delivery point, transportation costs and export and import duties for all Products are subject to Incoterms 2020 and will be the either of: (i) EXW – Ex Works, (ii) DAP – Delivered at place, or (iii) DDP - Delivery Duty Paid. The Customer will be notified on Enable’s Quotation which of one of the above-mentioned Incoterms (EXW, DAP or DDP) is incorporated into the Contract.
- 6.4 The delivery of any Software shall be deemed to have taken place upon Enable or its Underlying Supplier sending the Customer a licence key or such other form of confirmation as to notify the Customer in writing in order to download and/or use the Software (any Software will include the Underlying Supplier’s terms and conditions of use and the Customer will be deemed to accept any such terms and conditions of use upon the Customer’s use of the Software).
- 6.5 Any Products that are subject to guidelines, restrictions or provisions imposed by an Underlying Supplier are sold, supplied and delivered to the Customer subject to any such guidelines, restrictions or provisions. Any Software supplied to the Customer pursuant to a Contract is supplied subject to the provisions of the Underlying Supplier’s licensing terms.
- 6.6 Proof of delivery must be signed, any shortages or damaged goods are deemed delivered and accepted unless the specific shortage or damage is noted on the delivery note. Any words such as unexamined, unchecked or no signature will not be accepted as proof of later shortages or damage.
- 6.7 Claims for non-delivery of Products must be made in writing to the Enable with five (5) working days from the date of the invoice.
- 6.8 The Customer must check the Products (or in the case of Software, test the relevant Software to ensure that it is working) promptly upon receipt for completeness, compliance with the delivery documents and defectiveness. If no written complaint with fourteen (14) days from delivery or download has been made by the Customer, the Products are considered accepted by the Customer, unless it concerns a manifest defect which was not detectable at the time of first inspection by the Customer.
- 6.9 Subject to a Product being within an Underlying Suppliers warranty period (if any) and clauses 6.6 and 6.8, upon receipt of written notice from the Customer to Enable as to defects in quality, workmanship or otherwise in respect of the Product(s), Enable shall use its reasonable endeavours to contact the Underlying Supplier(s) of the relevant Product(s) and provide them with reasonable details of the relevant defect for the Underlying Supplier to respond to the Customer directly. For the avoidance of doubt, Enable shall not be liable or responsible for any response (or failure to respond) on the part of any such Underlying Supplier and it is the Customers responsibility to comply with all instructions provided to it by the Underlying Supplier, including any of the Underlying Suppliers returns policies.
- 6.10 If the Customer fails to accept delivery of the Products they shall be returned to storage, and such storage and other redelivery, loading and unloading expenses shall be charged to the Customer until delivery takes place.

- 6.11 For delivery outside of the UK customs and export requirements are entirely the responsibility of the Customer.
- 6.12 Enable may deliver the Products by separate instalments, unless otherwise agreed between the parties. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

## **7. RETENTION OF TITLE**

- 7.1 Title to the Products, other than goods which contain software which is subject to any title retention and license agreement, shall not pass to the Customer until payment in full (in cash or cleared funds) for the Products is received and any other payments outstanding for goods that have been supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and
- 7.2 Until title to the Products (other than as described in 7.1) has passed to the Customer, the Customer shall:
- 7.2.1 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Enable's property;
  - 7.2.2 not remove, deface or obscure any identifying mark or packaging or relating to the goods;
  - 7.2.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date and time at which risk passes;
  - 7.2.4 not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products;
  - 7.2.5 notify Enable immediately if it becomes subject to any of the events mentioned in clause 10.3; and
  - 7.2.6 give such information to the relating to the Products as may reasonably be required by Enable.
- 7.3 Irrespective of the retention of title to the Products, Enable reserves the right to take any legal proceedings to recover the price of the Products supplied should the Customer fail to make full payment by the due date.

## **8. NON-SOLICITATION**

- 8.1 The Customer shall not, without the prior written consent of Enable, at any time from the date of the Contract to the expiry of 12 months after the completion of the Services, solicit or entice away from Enable or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Enable.

## **9. CHANGE CONTROL**

- 9.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 9.2 If either party requests a change to the scope or execution of the Services, Enable shall, within a reasonable time, provide a written estimate to the Customer of:
- 9.2.1 the likely time required to implement the change;
  - 9.2.2 any variations to Enable's charges arising from the change;
  - 9.2.3 the likely effect of the change on the Services; and
  - 9.2.4 any other impact of the change on the terms of the Contract.
- 9.3 If Enable requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 9.4 If the Customer wishes Enable to proceed with the change, Enable has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change.

## 10. CHARGES AND PAYMENT

- 10.1 In consideration of the provision of the Services by Enable, the Customer or Customer Affiliate shall pay the Charges. Timely payment is of the essence of the Terms and Conditions.
- 10.2 If the Customer has not been granted credit facilities by Enable, then the Customer's payment shall be due on the date of the invoice and in advance of delivery. If the Customer has been granted credit facilities by Enable then the Customer shall pay the purchase price, without any deduction or set-off, within thirty (30) days from the date of the invoice. All payments of sums due to Enable are to be made by way of bank transfer only to Enable's nominated bank account which shall be notified in writing to the Customer from time to time.
- 10.3 Without limiting Enable's other rights or remedies under these Terms and Conditions, Enable may recover any invoiced amounts notwithstanding that delivery may not have taken place and title has not passed to the Customer. If: (a) the Customer fails to make any payment under any Contract when due; (b) any distress or execution is levied upon the Customer's property or assets; (c) the Customer makes or offers any arrangement or composition with its creditors; (d) the Customer is a body corporate and any resolution or petition to wind up the Customer's business (other than for the purpose of a bona fide amalgamation or reconstruction) is passed or presented; (e) a receiver, administrator, manager or analogous person is appointed in respect of the undertaking, property or assets of the Customer or any part thereof; (f) the Customer is an individual and any grounds arise for the presentation of a petition for a bankruptcy order made under Part IX Chapter 1 Insolvency Act 1986 or any statutory re-enactment or modification thereof or on the presentation of such a petition; or (g) the Customer exceeds its credit limit then, without prejudice to any other right or remedy available to Enable, the full price of all Services delivered to the Customer under any Contract, but not paid for, shall become immediately due (notwithstanding any previously agreed credit terms) and Enable may take any or all of the following courses of action:
- 10.3.1 by notice, suspend or determine any Contract or any part thereof, without liability, stop any Services in transit and, at its discretion, enter the Customer's premises to recover Services for which payment has not been made in full;
- 10.3.2 charge the Customer interest, both pre- and post-judgment, on any unpaid amount past due at the rate of 2.5% per month until full payment is made (a part of a month shall be treated as a full month for the purpose of calculating interest);
- 10.3.3 appropriate any payment made by the Customer to such Services (including Services supplied under any other contract between the Customer and Enable) as Enable may deem fit (notwithstanding any purported appropriation by the Customer); and/or
- 10.3.4 alter the Customer's payment terms, which may include withdrawing or altering any credit limit previously granted, requiring prepayment, and/or demanding adequate assurance of due performance by the Customer through the provision of a bank guarantee.
- 10.4 If title to the Products passes to the Customer before the Customer becomes subject to any of the events listed within clauses 10.3(b) to 10.3(f) then, without limiting any other right or remedy Enable may:
- a) have the Customer's right to resell the Services or use them in the ordinary course of its business ceased immediately; and
- b) at any time:
- (i) require the Customer to deliver up, at its own cost, all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored, using reasonable force, if necessary, in order to recover them.
- 10.5 Any credit note, balance or other liability issued by Enable to the Customer (including values of product trade-ins or promotions) shall expire, without notice, within 12 months of the date of issue by Enable. The Customer shall be deemed to have forfeited any right to such credit amounts and shall not be entitled to a replacement or repayment of any amounts related thereto.
- 10.6 All prices and Charges are exclusive of delivery costs, configuration, fulfilment and other services provided, and applicable VAT or other applicable sales tax and other taxes (other than taxes based

upon Enable's net income) for which the Customer shall be additionally liable. The Customer shall make all payments to Enable without reduction for any withholding taxes, which shall be the Customer's sole responsibility. All such taxes shall be paid by the Customer to Enable unless the Customer provides Enable with a valid certificate of exemption acceptable to the appropriate taxing authority.

- 10.7 All express deliveries are subject to additional shipping charges regardless of invoice value.
- 10.8 If Enable's costs in providing the Services increases due to any factor out of the Enable's control, including an Underlying Supplier increasing its prices to Enable which form part of the Services or due to law, Enable shall be entitled to increase the Charges in order to recover the additional cost from the Customer.
- 10.9 Enable reserves the right to pass on any Charges from its Underlying Suppliers for additional services requested by the Customer.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Subject to clause 11.2, all rights, title, and interests to Background IP shall remain with the party introducing or disclosing the same and shall remain unfettered by this agreement. Each party grants to the other party the right to use its Background IP without payment for the purposes of the provision of the relevant Service(s) (and for no other purpose) for the duration of this agreement.
- 11.2 The Customer is not permitted to use Enable's or its Underlying Supplier's name, logo or trade mark and any permitted use of such will be subject to a separate agreement.
- 11.3 All rights, title and interests to Intellectual Property Rights in the Products shall belong to Enable or its Underlying Supplier entitled to it absolutely and the Customer shall have no claim to any right, title or interest in any such Intellectual Property Rights in the Products. The Customer hereby assigns to the Enable absolutely all its right, title and interest in and to all Intellectual Property Rights in any Products that may be created during the course of providing the Services including by way of present assignment of future rights together with the right to sue for any past infringements. The parties shall execute all documents necessary to give effect to this clause 11.3.
- 11.4 The Customer must not translate, reverse compile or disassemble the Software, or remove, alter or destroy any form of copyright notice, proprietary markings, serial numbers, or confidential legends places with any Products.
- 11.5 The Customer is granted a non-exclusive, non-transferable, royalty-free, revocable licence to use for the duration of the Contract, Enable or its Underlying Suppliers Intellectual Property Rights in the relevant Products for the purpose of the provision of the relevant Service(s) (and for no other purpose).
- 11.6 The Customer shall not sub-licence, assign or otherwise transfer the rights granted to it under clauses 11.1 and 11.5.
- 11.7 The use of Products by the Customer is subject to the relevant licence terms and conditions of the relevant Underlying Supplier.
- 11.8 Except where the Customer's use of the Services is and has at all times been strictly in accordance with the terms of the Contract, the Customer shall defend, indemnify and hold Enable harmless against any and all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) suffered or incurred by Enable arising out of or in connection with the Customer's use of the Services including without any limitation in respect of any action or claim that the Customer's Materials or Pre-existing Materials infringe any Intellectual Property Rights of a third party.

## **12. DATA PROTECTION AND DATA PROCESSING**

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Enable is the processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Enable for the duration and purposes of this agreement.

- 12.4 Without prejudice to the generality of clause 12.1, Enable shall, in relation to any personal data processed in connection with the performance by Enable of its obligations under these Terms and Conditions:
- 12.4.1 process that personal data only on the documented written instructions of the Customer unless Enable is required by applicable laws to otherwise process that personal data. The parties acknowledge that these Terms and Conditions constitute the Customer's written instructions and that the parties will set out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subject when entering into a Contract.
  - 12.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 12.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - 12.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (a) the Customer or Enable has provided appropriate safeguards in relation to the transfer;
    - (b) the data subject has enforceable rights and effective legal remedies;
    - (c) Enable complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (d) Enable complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data.
- 12.5 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 12.
- 12.6 The Customer or Customer Affiliate acknowledges that Enable is reliant on the Customer or Customer Affiliate for direction as to the extent to which Enable is entitled to use and process the Personal Data. Consequently, the Customer will be liable for any claim brought by a Data Subject arising from any action or omission by Enable, to the extent that such action or omission resulted directly from the Customer's instructions.
- 12.7 Enable may authorise a third party ("**sub-contractor**") to process the Personal Data provided that the sub-contractor's contract:
- 12.7.1 is on terms which are substantially the same as those set out in these Terms and Conditions; and
  - 12.7.2 terminates automatically on termination of the relevant Contract for any reason.
- 13. CONFIDENTIALITY**
- 13.1 Each party undertakes that it shall not at any time, without the other party's prior written consent, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.1.
- 13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives or 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 these Terms and Conditions. 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 13; and

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

13.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms and Conditions.

#### **14. LIMITATION OF LIABILITY**

14.1 Except for the express provisions of these Terms and Conditions and to the maximum extent permitted by applicable law, Enable disclaims and excludes all warranties, terms and other conditions, including but not limited to any warranty, term or other condition of merchantability, satisfactory quality, fitness for a particular purpose or non-infringement, in every case whether implied by statute, common law, custom, collaterally or otherwise.

14.2 Neither party shall limit or exclude its liability for:

14.2.1 death or personal injury caused by its negligence;

14.2.2 fraud or fraudulent misrepresentation; or

14.2.3 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.

14.3 Subject to clause 14.1, Enable shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

14.3.1 loss of profits;

14.3.2 loss of sales or business;

14.3.3 loss of agreements or contracts;

14.3.4 loss of anticipated savings;

14.3.5 loss of or damage to goodwill;

14.3.6 loss of use or corruption of software, data or information; and

14.3.7 any indirect or consequential loss.

14.4 Subject to clause 14.1, Enable's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to one hundred per cent (100%) of the price paid by the Customer for the Products and/or Services giving rise to the claim.

14.5 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms and Conditions.

14.6 Unless the Customer notifies Enable that it intends to make a claim in respect of an event within the notice period, Enable shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire twelve (12) months from that notice. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

#### **15. TERMINATION**

15.1 The Contract shall commence on the Start Date and shall continue for the Initial Period as stated in the Order.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 15.2.1 the other party commits a material breach of any term of the Contract and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 15.2.2 the other party is granted a moratorium through a court, whether or not provisional;
  - 15.2.3 a petition for bankruptcy is filed for the other party; or
  - 15.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party.
- 15.3 Without affecting any other right or remedy available to it, Enable may terminate this agreement with immediate effect by giving written notice to the Customer or Customer Affiliate if:
- 15.3.1 the Customer or Customer Affiliate fails to pay any amount due under the Contract on the due date for payment; or
  - 15.3.2 instructed to do so by a court of law, regulator or other appropriate authority.

## **16. CONSEQUENCES OF TERMINATION**

- 16.1 On termination or expiry of the Contract:
- 16.1.1 all licences granted to the Customer by Enable under the Contract shall immediately terminate;
  - 16.1.2 the Customer or Customer Affiliate shall immediately pay to Enable all of Enable's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Enable may submit an invoice, which shall be payable immediately on receipt and where applicable, the Early Termination Charges pursuant to clause 5.4;
  - 16.1.3 the Customer or Customer Affiliate shall return all of Enable's Equipment and Products. If the Customer or Customer Affiliate fails to do so, then the Enable may enter the Customer Sites and take possession of Enable's Equipment and Products and de-install the Services. Until Enable's Equipment and Products has been returned or repossessed, the Customer or Customer Affiliate shall be solely responsible for its safe keeping;
  - 16.1.4 Enable shall on request return any Enable Equipment not used up in the provision of the Services; and
  - 16.1.5 the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 11 (Intellectual property rights), clause 13 (Confidentiality), clause 14 (Limitation of liability), clause 16(Consequences of termination), clause 20 (Waiver), clause 22 (Severance), clause 27 (Multi-tiered dispute resolution procedure), clause 28 (Governing law) and clause 29 (Jurisdiction).
- 16.2 Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **17. FORCE MAJEURE**

- 17.1 "**Force Majeure Event**" means any circumstance not within Enable's reasonable control including, without limitation:"
- 17.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 17.1.2 epidemic or pandemic;
  - 17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 17.1.4 nuclear, chemical or biological contamination or sonic boom;
  - 17.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
  - 17.1.6 collapse of buildings, fire, explosion or accident;

- 17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - 17.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - 17.1.9 interruption or failure of utility service.
- 17.2 Provided it has complied with clause 17.3, if Enable is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event, Enable shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 17.3 Enable shall:
- 17.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
  - 17.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.4 If the Force Majeure Event prevents, hinders or delays Enable's performance of its obligations for a continuous period of more than ninety (90) days, either party may, by written notice to the other, cancel a Contract insofar as Products remain undelivered under said Contract. Upon cancellation, Enable shall have no obligation to deliver, and the Customer will have no obligation to accept delivery of or pay for the undelivered Products, but the Contract shall remain in full force and effect regarding Products delivered prior to the date of cancellation.

## **18. ASSIGNMENT AND OTHER DEALINGS**

- 18.1 The Customer or Customer Affiliate shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Enable.
- 18.2 Enable may at any time assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

## **19. VARIATION**

Subject to clause 9, no variation of a Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **20. WAIVER**

- 20.1 A waiver of any right or remedy under these Terms and Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 20.2 A failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions 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 these Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **21. RIGHTS AND REMEDIES**

The rights and remedies provided under these Terms and Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

## **22. SEVERANCE**

- 22.1 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.
- 22.2 If any provision or part-provision of these Terms and Conditions is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal,



valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **23. ENTIRE AGREEMENT**

23.1 These Terms and Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 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 these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms and Conditions.

### **24. NO PARTNERSHIP OR AGENCY**

24.1 Nothing in these Terms and Conditions 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.

24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **25. THIRD PARTY RIGHTS**

25.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions.

### **26. NOTICES**

26.1 Any notice or other communication given to a party under or in connection with these Terms and Conditions shall be in writing and shall be:

26.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its principal place of business; or

26.1.2 sent by email to the address specified from time to time.

26.2 Any notice or communication shall be deemed to have been received:

26.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

26.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

26.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

26.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **27. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**

27.1 If a dispute arises out of or in connection with a Contract or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:

27.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, an appropriate representative of the Customer or Customer Affiliate and an appropriate representative of Enable shall attempt in good faith to resolve the Dispute;

27.1.2 if the appropriate representative of the Customer or Customer Affiliate and the appropriate representative of Enable are for any reason unable to resolve the Dispute within 15 days of service of the Dispute Notice, the Dispute shall be referred to a more senior representative of the Customer or Customer Affiliate and a more senior representative of Enable who shall attempt in good faith to resolve it; and

27.1.3 if the senior representative of the Customer or Customer Affiliate and the senior representative of Enable are for any reason unable to resolve the Dispute within 15 days of

it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

- 27.2 No party may commence any court proceedings under clause 29 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 27.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 29.

**28. GOVERNING LAW**

These Terms and Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**29. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or its subject matter or formation.