



# **Elite Group Standard Terms & Conditions**



## ELITE GROUP STANDARD TERMS AND CONDITIONS (“Standard Terms and Conditions”)

These Standard Terms and Conditions apply to all Services to all Customers. If a Service is subject to additional Service Specific Terms these will be detailed on the Order Form and incorporated into the Agreement.

### 1. INTERPRETATION

1.1. In this Agreement, the following words will have the following meanings:

<b>Agreement</b>	means in relation to a particular Service these Standard Terms and Conditions, any relevant Service Specific Terms, the Data Processing Agreement and the relevant Order Form;
<b>Applicable Law</b>	means all applicable laws, statutes and regulations from time to time in force;
<b>Applicable Anti-bribery Law</b>	means any bribery or fraud or any similar corruption law of any country whose laws apply to a Party, including the Bribery Act 2010 and laws enacted in accordance with the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
<b>Associated Person</b>	means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives, consultants, and subcontractors;
<b>Business Day</b>	means a day (other than a Saturday, Sunday, or public holiday in England) when banks in London are open for business;
<b>Charges</b>	means all charges due to the Service Provider by the Customer as set out in the Order Form or otherwise due to the Service Provider in accordance with the Agreement;
<b>Customer</b>	means the person with whom the Service Provider makes the Agreement as set out in the Order Form;
<b>Customer Data</b>	means the data provided by the Customer, (or the Service Provider on the Customer's behalf, for the purpose of facilitating use of the Service);
<b>Customer Generated Order</b>	means a request by the Customer to add or remove Services under the Agreement;
<b>Customer Services</b>	means the Service Provider's Customer Services, contact details of which are set out in the "Customer Service Plan" (CSP);
<b>Data Processing Agreement</b>	Means the Agreement between the Parties as appended in Appendix A;
<b>Data Protection Laws</b>	means Regulation (EU) 2016/679 ("GDPR") as implemented into UK law from time to time; (b) any UK laws, regulations and secondary legislation incorporating, implementing or amending GDPR including without limitation the UK GDPR and the Data Protection Act 2018; and (c) any other applicable law relating to personal data to which the Controller or the Processor is subject;
<b>Distributed Denial of Service Attack (DDoS Attack)</b>	means a form of electronic attack involving multiple computers which send repeated HTTP requests or pings to a server to load it down and render it inaccessible for a period of time;
<b>Effective Date</b>	means the date on which the Agreement is Signed and becomes binding;
<b>Equipment</b>	will be interpreted using the following definitions: <i>Customer Equipment</i> means any equipment (including Purchased Equipment), cabling, wiring, personal computers, network interface card(s) and network interface adaptor(s) not forming part of the Service Provider Equipment used by the Customer in order to use or obtain the service; <i>Purchased Equipment</i> means any equipment explicitly sold to the Customer by the Service Provider; <i>Service Provider Equipment</i> means any equipment that the Service Provider supplies to the Customer in connection with the provision of the Service which will be returned to the Service Provider at the end of the Agreement; <i>Equipment</i> means any or all of the Customer Equipment, Purchased Equipment and Service Provider Equipment as the case may be.

<b>Group</b>	means the corporate group of each Party comprising the Party and each of its holding companies or subsidiaries from time to time and any subsidiary of any such holding company;
<b>Intellectual Property Rights (IPRs)</b>	means rights including any and all inventions, patents, utility models, design rights, copyright, database rights, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill (whether registered or unregistered) and all applications for the same, anywhere in the world;
<b>Minimum Period</b>	means the minimum number of months following the Service Commencement Date that a particular Service must be in operation for as set out in clause 14.1, unless specified elsewhere in the Agreement;
<b>Normal Working Hours</b>	means 9:00 – 17:30 on Business Days;
<b>Order Form</b>	means the Customer’s Order Form, which may be in a form provided by the Service Provider, (and includes any additional order information agreed by the Parties in writing (including e-mail)) accepted by the Service Provider to order the Equipment and/or Services subject to the Agreement;
<b>Party</b>	means each of the Service Provider and the Customer;
<b>Regulatory Body</b>	means in each applicable jurisdiction, those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Service Provider and includes without limitation the UK Information Commissioner ;
<b>Renewal Period</b>	means a period equal to the Minimum Period or as set out in the Order Form;
<b>Service(s)</b>	means the service(s) defined in the relevant Order Form and additionally set out in any Service Specific Terms;
<b>Service Commencement Date</b>	means the date that the relevant Service is available for use by the Customer, or, if earlier, the date the Customer starts to use the Service (or part of the Service), or in the case of connectivity means the date that the circuit is installed by the carrier;
<b>Service Provider</b>	means Elitetele.com PLC t/a Elite Group (registered office address Dawson House Matrix Office Park, Buckshaw Village, Chorley, Lancashire, PR7 7NA, company number 03228824);
<b>Service Specific Terms</b>	means any additional terms and conditions relating to a particular Service that are provided by the Service Provider and/or as referenced on the Order Form;
<b>Signed</b>	means the Agreement being physically signed by both parties, electronically signed by both parties, the point at which the Service Provider explicitly accepts an order in writing (including by e-mail), or the point at which the Service Provider begins to fulfil any such order (whichever is the earlier);
<b>Site</b>	means the site at which any Equipment shall be located or to which the Service shall be provided;
<b>Software</b>	means any software supplied to the Customer by the Service Provider in connection with or to enable use of the Service;
<b>Survey</b>	means any survey or other investigations carried out by or on behalf of the Service Provider that it deems necessary by the Service Provider prior to the installation of Equipment and/or the provision of the Service;
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the UK Data Protection Act 2018.
<b>User Documentation</b>	means such brochures, pamphlets, guidance, codes of practice and other documents, materials or information, if any, in relation to the Service as the Service Provider may publish or issue from time to time;
<b>User Licence</b>	means the licence which grants the end user the right to use the Software application in question and exists between the Service Provider or the supplier and the end user of the Software application.

1.2. References in this Agreement:

- 1.2.1. to a statutory provision will be interpreted as a reference to such a provision as amended or re-enacted from time to time so long as the same shall not have effected a substantive change to that provision;

- 1.2.2. to a person includes any company, firm, body, corporation, partnership or organisation;
- 1.2.3. to a Party includes its respective successors and permitted assigns and their respective Associated Persons; and
- 1.2.4. to any word in the singular includes the plural and vice versa.
- 1.3. References in these Standard Terms and Conditions to Clauses are unless otherwise stated to Clauses in these Standard Terms and Conditions.
- 1.4. Words and phrases which are defined in the Companies Act 2006 shall have the meaning thereby attributed to them.
- 1.5. Words and phrases which are defined in the Data Protection Act 2018 shall have the meaning thereby attributed to them.
- 1.6. Headings are for convenience only and do not affect the interpretation of the Agreement.
- 1.7. Where in the Agreement the Customer agrees not to do any act or thing it also agrees not to allow (including without limitation, taking all reasonable preventative measures) any other person to do that act or thing, or for the thing to happen as a result of its omission.
- 1.8. A reference to a third party is a reference to an entity who is not a Party.
- 1.9. The words 'include', 'including', 'for example' or 'such as' are not used as words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 1.10. In the event of any conflict, ambiguity or inconsistency between these Standard Terms and Conditions, the Order Form, the Service Specific Terms and any other document referred to or attached, the following order of precedence shall apply:
  - 1.10.1. Clause 7.11 of the Standard Terms and Conditions;
  - 1.10.2. the Order Form;
  - 1.10.3. the Service Specific Terms;
  - 1.10.4. the Standard Terms and Conditions other than Clause 7.11; and
  - 1.10.5. any other document referred to or attached.

## 2. AGREEMENT PERIOD

- 2.1. This Agreement becomes legally binding on the Effective Date.
- 2.2. All orders are accepted only upon and subject to these Standard Terms and Conditions. These Standard Terms and Conditions shall prevail over any terms and conditions added by the Customer to the Order Form without the Service Provider's written approval, or any other correspondence between the parties.
- 2.3. The Service will be provided from the Service Commencement Date and subject to Clauses 14.3 – 14.6 inclusive, will continue for the duration of the Minimum Period and any subsequent Renewal Term(s).
- 2.4. The Service Commencement Date will only become effective when each of the following have been complied with by the Customer;
  - 2.4.1. Any information requested by the Service Provider to enable it to deliver Equipment and/or install or provide the Service has been provided; and
  - 2.4.2. All reasonable requests by the Service Provider for action by the Customer have been followed.
- 2.5. If the above conditions at 2.4.1 and 2.4.2 are applicable and not satisfied by the Customer within 60 days of the Effective Date without reasonable efforts made to comply, the Service Provider shall have the right to:
  - 2.5.1. Amend the Charges by a reasonable amount; and/or
  - 2.5.2. Issue Charges prior to the Service Commencement Date; and/or
  - 2.5.3. Delay the Service Commencement Date for a reasonable period; and/or
  - 2.5.4. Terminate the order and issue early termination Charges.

## 3. EQUIPMENT AND INSTALLATION

Where under the Agreement the Service Provider is providing and/or installing Equipment:

- 3.1. Subject to a satisfactory Survey (where applicable) the Service Provider shall use its reasonable endeavours to install and connect the Equipment so that the Service is available by the proposed Service Commencement Date agreed between the Parties. An order may be cancelled by the Service Provider without liability if the results of any Survey are unsatisfactory. The order may be cancelled, or the Service Commencement Date may be postponed by the Service Provider if it is not technically feasible to implement and/or support the Service by the Commencement Date.
- 3.2. The Customer shall provide at its expense appropriate space, power, ducting and environment to install and maintain the Equipment at the Site. Any necessary preparation, which will be communicated by the Service Provider in advance, must be affected before the Equipment is connected.
- 3.3. The Customer shall advise the Service Provider of any and all health and safety at work rules operated at the Site and shall be responsible for identifying and removing any hazardous materials on the Site before installation work commences.
- 3.4. Subject to Clause 4.1, if the Customer fails to take delivery or allow installation of the Equipment on the agreed delivery or installation date the Service Provider may arrange for its transport and storage at the Customer's expense. The Service Provider may also charge the Customer a reasonable call out fee together with any related costs incurred by the Service Provider.
- 3.5. The Customer must provide a secure electricity supply at the Site for the installation, operation and maintenance of the Equipment. Back-up power with sufficient capacity to conform to the stand-by requirements of the relevant British standards is needed if the Service, including the provision of access to emergency services, is required to continue uninterrupted in the event of a failure of the principal power supply.
- 3.6. The Service Provider shall use its reasonable endeavours to comply with the Customer's reasonable requests in respect of the location, installation and connection of the Equipment.

- 3.7. The Service Provider Equipment shall remain the exclusive property of the Service Provider or its nominee and shall be returned to the Service Provider immediately upon request in the same condition as it was initially provided excepting reasonable wear and tear. Such ownership of the Equipment must be made clear to all third parties. The Service Provider may modify, substitute, renew or add to the Equipment from time to time at its sole discretion provided that such modifications, substitutions, renewals, or additions shall not materially and adversely affect the Service. Risk in and liability for the Equipment will pass to the Customer on delivery.
- 3.8. The Customer is responsible for ensuring at all times the safe keeping and proper use of the Equipment at the Site. Subject to Clauses 12.1 and 12.3 and except where such loss or damage is solely attributable to the negligent act of the Service Provider or Associated Persons, the Customer must on demand indemnify and hold harmless the Service Provider from and against any and all losses, demands, claims, damages, costs, expenses and general liabilities arising from the Customer's breach of this Clause 3.8. In particular the Customer will:
- 3.8.1. not (and ensure that no other person shall not) sell, let, transfer, dispose of, mortgage, charge, modify, or in any way interfere with the Equipment or suffer any distress, seizure or execution to be levied against any of the Equipment or otherwise do anything prejudicial to the Service Provider's rights in the Equipment;
  - 3.8.2. to keep the Equipment at the Site and stationary at all times unless the Equipment is designed to be mobile such as laptop computers;
  - 3.8.3. not add to, modify or in any way interfere with the Equipment including the connection of any equipment or device designed to divert telecommunication services to a third-party telecommunications provider;
  - 3.8.4. in the case of an emergency take whatever steps as are reasonable to safeguard the Equipment and to notify the Service Provider as soon as possible in the case of any such emergency;
  - 3.8.5. not to cause the Equipment to be repaired, serviced or otherwise attended to except by a person authorised in writing by the Service Provider or impair its performance or operation;
  - 3.8.6. not to do anything or knowingly allow any circumstance which is likely to damage the Equipment or detract from or impair its performance or operation;
  - 3.8.7. not to remove, tamper with or obscure any words or labels on the Equipment or any part thereof; and
  - 3.8.8. to permit the Service Provider to inspect the Equipment at all reasonable times and on reasonable notice.
- 3.9. The Customer must affect and maintain suitable insurance in respect of the relevant risks for the Equipment at the Site.
- 3.10. Subject to Clause 12.1 and 12.3 the Service Provider shall have no liability whatsoever for any loss or damage incurred as a direct or indirect result of the Customer's breach of Clause 3.7 and/or Clause 3.8.
- 3.11. Following the installation of the Equipment the Service Provider shall conduct tests to ensure that the service is ready for use. Testing may be carried out in the presence of an Associated Person at the Customer's request, in which case the Parties will agree a date and time for the tests to take place without undue delay.
- 3.12. The Customer may by a minimum of 90 days written notice request the Service Provider to re-locate the Equipment. The Service Provider shall use all reasonable endeavours to comply with such request. The Customer must pay reasonable costs associated with any such re-location.
- 3.13. The Customer may request an upgrade to the Equipment or Service. Subject to availability the Service Provider shall use reasonable endeavours to comply with such request. The Customer must pay the Service Provider's Charges for any upgrade. The provision of any and all upgraded Equipment and/or Service may result in an increase in the Charges for which the Customer shall not be entitled to terminate the Agreement pursuant to Clause 14.6.
- 3.14. At its discretion the Service Provider may require payment of any re-location fees or upgrade Charges, and any other outstanding Charges, prior to any change or upgrade taking place.
- 3.15. Title to the Purchased Equipment shall pass to the Customer on payment in full (in cash or cleared funds) by the Customer to the Service Provider.
- 3.16. Until title to the Purchased Equipment has passed to the Customer, the Customer Shall:
- 3.16.1. hold the Purchased Equipment on fiduciary basis as the Service Provider's bailee;
  - 3.16.2. store the Purchased Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Service Provider's property;
  - 3.16.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Purchased Equipment;
  - 3.16.4. maintain the Purchased Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
  - 3.16.5. give the Service Provider such information relating to the Purchased Equipment as the Service Provider may require from time to time, but the Customer may resell or use the Purchased Equipment in the ordinary course of its business.
- 3.17. The Customer must notify the Service Provider if it becomes insolvent before title to the Purchased Equipment passes. If the Service Provider is notified of Customer insolvency or has reason to believe this is about to happen, the Service Provider may require the Customer to deliver any Purchased Equipment that has not been sold or irrevocably incorporated into another product. The Service Provider will have the right to enter the Site in order to recover Purchased Equipment.
- 3.18. The Service Provider warrants that the Equipment provided by the Service Provider under this Agreement shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and will comply with all applicable statutory and regulatory requirements.
- 3.19. Except as expressly set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this Agreement.

#### 4. ACCEPTANCE AND DEFFECTIVE PRODUCTS

- 4.1. The Customer may reject any Equipment provided under the Agreement that does not comply with Clause 3.18. Written notice of rejection and a reasonable and specific explanation for rejection must be given:
  - 4.1.1. In the case of a visually apparent defect, within two (2) days of delivery; and
  - 4.1.2. In the case of a latent defect, within a reasonable time of the defect becoming apparent.
- 4.2. On receipt of a rejection notice the Service Provider will liaise with the original manufacturer of the Equipment as to its quality. The manufacturer may carry out an investigation in relation to the quality of the Equipment following which the Service Provider shall either:
  - 4.2.1. where the manufacturer determines there to be a fault justifying rejection, at the Service Provider's discretion repair or replace the rejected Equipment or repay the price of the rejected Equipment to the Customer; or
  - 4.2.2. where the manufacturer deems that there is no fault that would justify rejection, return the Equipment to the Customer.
- 4.3. The Service Provider may on the manufacturer's behalf, request assistance in the investigation. The Customer shall provide reasonable assistance within 5 days of the Service Provider's request of the same.
- 4.4. Once the Service Provider has carried out its actions in accordance with Clause 4.2, it shall have no further liability to the Customer in respect of the Purchased Equipment.
- 4.5. If the Customer fails to give notice of rejection in accordance with Clause 4.1 or fails to give reasonable assistance in accordance with Clause 4.3 the Customer shall be deemed to have accepted such Equipment.

#### 5. CUSTOMER EQUIPMENT

- 5.1. The Customer may request that cabling and/or wiring already installed at the Site be used in the provision of the Service. Such use is conditional on:
  - 5.1.1. Payment of applicable Charges;
  - 5.1.2. A Survey that the Service Provider considers to be satisfactory;
  - 5.1.3. Confirmation to the Service Provider's satisfaction that the cabling and/or wiring conforms with applicable standards and specifications;
  - 5.1.4. Confirmation that the Customer has full title to such cabling and/or wiring.
- 5.2. The Customer is responsible for the security of access to its computer systems, the integrity of information stored thereon and its security from corruption, change and abuse by others.
- 5.3. Prior to the installation of the Equipment and or provision of a Service, the Customer must:
  - 5.3.1. Take all necessary steps to back up and secure Customer Data;
  - 5.3.2. Comply with all reasonable instructions relating to preparation of Customer Equipment;
  - 5.3.3. Ensure that Customer Equipment is programmed, equipped, compatible and connected for use of the Service;
  - 5.3.4. Ensure that Customer Equipment is safe, in good working order and complies with applicable standards, approvals and any Applicable Law.
- 5.4. The Service Provider is not responsible for the repair and maintenance of Customer Equipment regardless of its use in connection with any Equipment and/or Service.
- 5.5. The Service Provider may require the Customer to disconnect (which must be done so promptly) or may itself disconnect any Customer Equipment if in the Service Provider's reasonable opinion:
  - 5.5.1. It does not conform to applicable standard, approvals or any Applicable Law for the time being in force, or;
  - 5.5.2. It may cause material damage to property, or;
  - 5.5.3. It may materially impair the quality of any Service provided by the Service Provider.
- 5.6. Subject to Clause 12.1 and 12.3 the Service Provider has no liability where any inability to use the Service is due to incompatibility between Customer Equipment or Service, or for any breakdown or failure in Customer Equipment. The Service Provider shall have no liability for any such loss or damage arising directly or indirectly from the use of Customer Equipment, notwithstanding any recommendations as to use or performance that may have been made.

#### 6. ACCESS TO SITE AND INSPECTION

Where under the Agreement the Service Provider requires access to the Site in order to provide the Service:

- 6.1. The Customer warrants that it, or its own customer as appropriate, is the current and lawful occupier of the Site.
- 6.2. Any person in apparent authority, such as wearing staff uniform or ID badge, at the Site who grants entry shall be deemed to have Customer authority to grant such entry.
- 6.3. Where the Site is under the Customer's sole control, it shall if requested by the Service Provider enter into a Site wayleave. Where the Customer does not enter into a Site wayleave:
  - 6.3.1. The Customer grants the Service Provider and its employees, agents or contractors the right:
    - 6.3.1.1. Upon reasonable prior notice to the Customer (except in any emergency when no notice shall be required) to execute any works on the Site for, or in connection with, the installation, maintenance, adjustment, repair, alteration, moving, replacement, renewal or removal of the Equipment, and
    - 6.3.1.2. Where necessary for the provision of the Service, to keep and operate the Equipment on the Site.
    - 6.3.1.3. To enter the Site to inspect any Equipment kept on the Site;
  - 6.3.2. The Customer warrants that it shall not do or allow anything to be done to the Site that may cause damage to the Equipment and the Customer shall take all steps reasonably necessary to ensure that no one interferes with or tampers with the Equipment;

- 6.3.3. The Customer shall provide a safe and suitable working environment for the Service Provider's Associated Persons working on Site.
- 6.4. Where the Site is not under the Customer's sole control it must use all reasonable endeavours to ensure that the Site occupier enters into the applicable Site wayleave.
- 6.5. For the duration of the Agreement and for 60 days thereafter the Customer shall grant and maintain and/or procure the grant and maintenance of any rights and permissions necessary in order for the Service Provider to connect and maintain the Equipment at the Site, to provide the Service and to remove the Equipment following termination of the Agreement.
- 6.6. Without prejudice to the Service Provider's other rights and remedies, the Service Provider reserves the right to recover and resell Equipment (where title has not passed to the Customer) and for that purpose the Customer must allow the Service Provider to enter the Site where the Equipment is located during Normal Working Hours following reasonable notice.
- 6.7. The Customer shall reimburse the Service Provider for any charges levied on the Service Provider by the relevant tail circuit supplier as a sole result of that supplier not being given access to the Site as previously arranged with the Customer.
- 6.8. The Customer shall permit the Service Provider (and its third-party providers and licensors) reasonable access (direct and/or remote) to the Service and the Equipment to enable the Service Provider (or its third-party providers and licensors) to inspect and verify the Customer's use of the Equipment and/or Service. The Service Provider shall be entitled to pass information concerning any breach by the Customer of the terms of a User License or otherwise to the relevant licensor.

## 7. CHARGES, PAYMENT AND INTEREST

The Charges for the Services are detailed in the Order Form and payable on the below terms.

- 7.1. Payment terms for specific Charges are as follows:

<b>Licence Fees</b>	Apply to the right to access Software for a specified period of time.	Payable monthly in advance per User Licence. The first period for a new User License is charged pro rata from the date of first availability of the Service to the end of the first calendar month and monthly in advance thereafter. All fees after the first month are charged in whole months including any part month on termination.
<b>Set-up Charges</b>	Apply to any set-up services as specified in the Order Form.	One off payment invoiced upon completion of the set-up and after the Service Commencement Date. Invoice may be issued prior to the Service Commencement Date where the Service Commencement Date is more than 60 days following the Effective Date.
<b>Rental Charges</b>	Apply to any applicable Service as identified in the Order Form.	Payable monthly in advance.
<b>Call Charges</b>	Apply based on monthly call usage.	Payable monthly in arrears in accordance with the Service Provider's call detail records.
<b>Excess Usage Charges/ Power Charges/ Overage Charges</b>	Apply where monthly or annual usage of a Service has exceeded agreed amount.	Calculated on an individual User Licence basis and are payable monthly in arrears in accordance with the Order Form.
<b>Consumption Charges</b>	Apply based on monthly usage of a Service.	Payable monthly in arrears in accordance with the Service Provider's usage records.
<b>Additional Service Charges</b>	Apply on the provision of additional services, including Professional Services, labour and materials.	Invoiced upon completion of the particular services or monthly at the discretion of the Service Provider.

- 7.2. The Service Provider will issue an invoice for Charges via e-mail only and the Service Provider may invoice, at any time, any Services omitted from a previous invoice. The Service Provider will use reasonable endeavours to comply with any specific invoicing instructions as stated in the Order Form but will have no liability for failure to comply with any such requirements.
- 7.3. The fees, charges and prices payable are exclusive of Value Added Tax and any other applicable taxes which shall be paid by the Customer at the rate and in the manner for the time being prescribed by Applicable Law.
- 7.4. Payment is due within fourteen (14) days of the date of the invoice and, other than as permitted in Clause 7.7, must be paid by Direct Debit.
- 7.5. The Service Provider will issue written notice of missed payments specifying the amount due and the invoice number. If payment is not made within 10 Business Days of such notice the Service Provider may suspend or cancel the Service and (without prejudice to any other rights or remedies) may charge interest on all sums outstanding at the rate of 4% above the base rate of Barclays Bank Plc. The interest rate used will be that in force on the due date and will be applied from the due date to the date of actual payment.

- 7.6. Should a Direct Debit collection fail without prior notification provided to the Service Provider by the Customer, an administration fee of £25.00 will be charged to the Customer's account.
- 7.7. If the Customer chooses not to pay by Direct Debit it will notify the Service Provider of its preferred payment method and the Customer will be charged a processing fee of £7.50 per month. Where a payment is not received by the due date a late payment fee of £15.00 will be charged to the Customer's account to cover the cost and expense incurred by the Service Provider in the event of late payment.
- 7.8. On all telephone numbers ported or migrated away from the Service Provider, the Customer will be charged a transfer fee of £25 per number transferred.
- 7.9. Copy invoices and statements will be provided if requested within sixty (60) days of the document date free of charge. Copy invoices and statements requested from sixty-one (61) days of the document date will be subject to a £10 charge per invoice/statement.
- 7.10. It is the Customer's responsibility to check the monthly invoice for accuracy and notify the Service Provider promptly of any dispute. Any claims for a credit or refund must be notified to the Service Provider within thirty (30) days of receipt of invoice otherwise the invoice will be deemed accepted.
- 7.11. The Customer shall pay all amounts due in full without any deduction or withholding other than as required by Applicable Law and shall not be entitled to assert any credit, set-off or counterclaim against the Service Provider to justify withholding any payment of any such amount in whole or in part. For the avoidance of doubt, no dispute arising under the Agreement shall give rise to a right to withhold payment in full by the Customer in accordance with Clause 7.4.
- 7.12. Subject to Clause 2.5, the Customer will be liable for all Charges for the Services from the Service Commencement Date. Any fraud or other improper use of the Service(s) committed by any third party shall not relieve the Customer of its payment obligations to the Service Provider under this Agreement.
- 7.13. The Service Provider may vary the Call Charges or Rental Charges by giving twenty-five (25) days' written notice. Without limitation such notice may be contained in billing information provided to the Customer by the Service Provider.
- 7.14. Notwithstanding Clause 7.13 above, the Service Provider may vary the Charges annually by an amount equal to 3.7% above the Consumer Price Index by giving the Customer twenty-five (25) days' written notice.

## 8. SERVICE

- 8.1. The Service Provider shall provide the Service in accordance with the Agreement.
- 8.2. The Customer must supply the Service Provider with all information and materials reasonably required by the Service Provider to supply the Service. The Service Provider will have no responsibility for any failure of or to provide the Service due to the Customer's failure to provide accurate and complete information.
- 8.3. The Service Provider shall use the reasonable skill and care of a competent telecommunications and/or IT service provider in providing the Service. The Customer accepts that it is technically impractical for the Service Provider to provide the Service entirely free of faults and the Service Provider does not undertake to do so.
- 8.4. The Service Provider shall use reasonable endeavours to meet such general service level in relation to a particular Service as the Service Provider publishes from time to time. Save as expressly stated in such published service levels, the Service Provider shall have no liability for any failure to meet any such service levels.

## 9. USE OF THE SERVICE

- 9.1. When using the Service the Customer undertakes:
  - 9.1.1. To use the Equipment and Service in accordance with such conditions, instructions or guidance as may be notified in by the Service Provider and in accordance with Applicable Law;
  - 9.1.2. To review and comply with the current version of the Service Provider's Acceptable Use Policy at all times;
  - 9.1.3. Not to allow anyone to use the Service:
    - 9.1.3.1. To send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
    - 9.1.3.2. To cause annoyance, inconvenience or needless anxiety to anyone;
    - 9.1.3.3. To violate or infringe the rights of any person;
    - 9.1.3.4. In any way that the Service Provider considers is detrimental to the provision of Services to the Customer or any other customer of the Service Provider;
    - 9.1.3.5. To make excessive use of, or place unusual burdens on the Service, for example by sending or receiving large volumes of email, excessively large email attachments or streaming of content;
    - 9.1.3.6. In breach of the Agreement;
    - 9.1.3.7. To upload or transmit viruses;
    - 9.1.3.8. If they are not authorised to use the Service.
- 9.2. The Service Provider may at its discretion amend and/or suspend the Service and/or terminate the Agreement if the Customer is in breach of Clause 9.1. The Customer must on demand indemnify and hold harmless the Service Provider from and against any and all liabilities, claims, damages, costs, demands, expenses, losses and proceedings arising out of or in any way connected with any use of the Service in contravention of the Agreement or Applicable Law.
- 9.3. The Customer is responsible for the use of the Service (whether authorised or not and whether by the Customer or any Third Party), including without limitation all Charges incurred and any breaches of this Agreement.
- 9.4. Each Party acknowledges that the Purchased Equipment, technical information and Services under the Agreement may be subject to export laws and regulations of other countries and use or transfer of such Purchased Equipment, technical information and Services must be in compliance with all Applicable Law and international trade sanctions.
- 9.5. The Customer acknowledges that the Service is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Service or the failure of the Service could lead to

death, personal injury, or material physical or environmental damage and the Customer agrees not to use the Service for any such purpose.

- 9.6. The Customer acknowledges and agrees that the Service Provider has no knowledge of, and accepts no responsibility for the content, quality, value or use of the content, traffic or goods or services provided by the Customer to third parties in connection with the Service. The Customer should therefore take all reasonable steps to mitigate the risks inherent in the provision of the Service, including but not limited to data loss.
- 9.7. The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of and has the right to use any trademark or name that it wishes to use as or in its registered domain name(s).

## 10. SOFTWARE AND LICENSING

- 10.1. The Service Provider grants the Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to use the Software [in the United Kingdom] in executable object code form only.
- 10.2. The licence does not grant the Customer any right to any enhancement, reversion or update of the Software. The Service Provider or its licensors may at any time upon 25 days' prior written notice, make available and require the Customer to accept such enhancements, reversions or updates and may cease to distribute or licence previous versions of the Software. The Agreement shall apply in relation to such enhanced, reviews or updates Software as if it were the original Software. The Service Provider shall be entitled to charge the Customer its then current standard Charges for such Software and any enhancements, reversions and updates.
- 10.3. The Customer agrees to comply with the terms of the Agreement and any Software licences provided in relation to the Service. If the Customer does not consent to any such Software licences, it may, within 5 days of being notified of any such licence terminate the Agreement. Continued use of the Service or failure to terminate the Agreement will be deemed acceptance of the licences and the Customer will no longer be entitled to terminate under this Clause.
- 10.4. The licence granted to the Customer is personal to it and may not be leased, sublicensed, transferred, assigned, lent or otherwise disposed of.
- 10.5. Customer use of the Software in any way which contravenes this Agreement, any relevant End User Agreement, or any licence or any attempt to transfer or otherwise dispose of the licence will result in the licence being terminated immediately.
- 10.6. The Customer must not copy the Software except to make a single copy or backup or archival purposes. Any such copy shall be subject to the Agreement as if it were the original and shall contain all notices regarding proprietary rights contained in the original. The Customer must not attempt to reverse engineer, decipher, decompile, disassemble, modify or create derivative works of the Software. The Customer must not transmit or distribute the Software electronically, via the Internet or in any other way.
- 10.7. No warranty is expressed or implied relating to the performance, quality or fitness for purpose of the Software. No Associated Person of the Service Provider is authorised to make any modifications, extensions or additions to this warranty.

## 11. MAINTENANCE

- 11.1. The Service Provider shall provide support services during Normal Working Hours as it reasonably considers necessary for the proper functioning of the Service.
- 11.2. If the Customer detects any defect or impairment in the operation of performance of the Service it must notify the Service Provider of the nature of such defect or impairment. The Service Provider will respond as promptly as reasonably possible after such notification and where possible will make the necessary corrections.
- 11.3. The Service Provider will be entitled to make a reasonable charge where the need for any maintenance results from any of the following:
  - 11.3.1. Misuse or neglect of or accidental or wilful damage to the Equipment and/or Service; or
  - 11.3.2. Accidental or wilful disconnection of the Equipment and/or Service; or
  - 11.3.3. Customer's failure to comply with any of the provisions of the Agreement; or
  - 11.3.4. Fault in, or other problems associated with, any telecommunications system not run by the Service Provider or in Customer Equipment; or
  - 11.3.5. Faults of a minor or intermittent nature which do not significantly affect the provision of the Service.

## 12. LIMITATIONS OF LIABILITY

- 12.1. Nothing in this agreement limits any liability which cannot legally be limited, including liability for fraud or fraudulent misrepresentation, death or personal injury resulting from its own negligence or that of its Associated Persons. However, nothing in this Clause gives a Party any right or remedy which it would not otherwise have.
- 12.2. Except as expressly stated in the Agreement all warranties, conditions, undertakings or terms, express or implied in respect of the Service, Software, Equipment and Purchased Equipment are excluded to the fullest extent permitted by Applicable Law.
- 12.3. Save in relation to payment of indemnities pursuant to Clauses 3.8, 9.2, 14.12 and subject to Clauses 12.1 and 12.2:
  - 12.3.1. Subject to Clause 12.4, each Party's liability (including without limitation liability for negligence) under the Agreement (other than for payment of Charges) in respect of each individual claim shall be limited to the recurring Charges paid to the Service Provider by the Customer for the applicable Service of which the claim relates to in the three-month period preceding such claim; and
  - 12.3.2. each Party's total aggregate liability for all claims under the Agreement (other than for payment of Charges) shall be limited to the value of the recurring Charges paid to the Service Provider by the Customer for the applicable Service/s of which the claim/s relate to in the initial six-month period of the Agreement.

- 12.4. Notwithstanding the above neither Party shall have any liability in contract, tort or otherwise (including liability for negligence), for loss or damage, whether direct or indirect, of business, production, data, operation time, goodwill, contracts, revenue, profits, for any loss of anticipated savings, for wasted expenditure or for any indirect or consequential loss whatsoever arising out of or in connection with the performance or non-performance by the Party of its obligations under the Agreement provided that this will not howsoever affect the obligation of the Customer to pay all fees, costs, expenses and charges set out or provided for in this Agreement (including the Charges).
- 12.5. Should a Service be subject to service credits as identified and detailed in the Service Specific Terms or service level agreement for that Service, the Service Provider's liability will be the maximum extent of the service credits due under the Service Specific Terms or service level agreement and will be the Customer's exclusive financial remedy for a fault, whether or not it actually claims the available service credits.
- 12.6. Any delay or failure by the Service Provider to perform any of its obligations under the Agreement that is caused by or materially contributed to by a restriction of a legal or regulatory nature that affects, wholly or partly, the provision of the Service, will not constitute a breach of the Agreement.
- 12.7. Unless stated in any relevant Service Specific Terms, Clauses 12.1 to 12.8 set out each Party's entire liability (including any liability for the acts and omissions of its Associated Persons) to the other Party in tort, contract or otherwise arising in connection with the performance, contemplated performance or non-performance of the Agreement. The Customer acknowledges that the exclusions and limitations of the Service Provider's liability in the Agreement are reasonable taking into account (amongst other matters) the likelihood that any damages awarded to it for breach of the Agreement by the Service Provider may be disproportionately greater than the Charges.

### 13. SUSPENSION

- 13.1. The Service Provider may:
- 13.1.1. In an emergency suspend the Service to provide or safeguard a service to a hospital or other emergency organisation or any other essential services;
  - 13.1.2. Temporarily suspend the Service in the case of fraud or suspected fraud or a DDoS Attack or to preserve the safety, security or integrity of the Services and the traffic conveyed for the Customer and other Service Provider customers;
  - 13.1.3. Suspend the Service where it believes the Customer's use of the Service is unlawful or illegal;
  - 13.1.4. Give instructions to the Customer about the use of the Service that is deemed reasonably necessary;
  - 13.1.5. Do whatever is required of it to comply with instruction issued by a Government, an emergency service, a law enforcement or regulatory authority or other competent authority; and
  - 13.1.6. Suspend the Service in any circumstance in which it is entitled to terminate the Agreement or User Licence, including without limitation Customer failure to pay Charges owed.
- 13.2. Except in an emergency situation where no such notice is required, the Service Provider shall give the Customer as much notice as reasonably practicable if the Service is to be suspended. The Customer shall have no claim against the Service Provider for any suspension of the Service pursuant to Clause 13.1. Any exercise by the Service Provider of its right to suspend the Agreement shall not exclude the right of the Service Provider to subsequently terminate the Agreement.
- 13.3. If the Service is suspended due to the Customer's default the Customer must continue to pay Charges during such suspension and shall reimburse the costs and expenses reasonably incurred by the implementation of such suspension together with all outstanding amounts due under the Agreement. Where the Service Provider agrees (at its discretion) to recommence the Service it will charge the Customer the then current re-connection fee as per any relevant Service Specific Terms which the Customer must pay to recommence the Services. If the Customer does not pay the re-connection fee then the Service Provider will not effect re-connection. At the Service Provider's discretion, the Customer shall pay a reasonable deposit against future payments.

### 14. DURATION AND TERMINATION

- 14.1. In relation to a particular Service the Agreement shall come into effect on the Service Commencement Date for the Minimum Period and unless the Agreement is terminated in accordance with the terms of this Agreement, this Agreement will continue automatically following the Minimum Period for subsequent Renewal Periods.
- 14.2. Unless otherwise stated on the Order Form, the Minimum Period will be:
- 14.2.1. Sixty months from the Service Commencement Date, or
  - 14.2.2. Where installation of the Service is phased sixty months from the date Service Commencement Date of the last installed element of the Service, or
  - 14.2.3. Where an existing Service is being renewed (as identified in the renewal Order Form) sixty months from the date that Order Form is signed by the Customer, or
  - 14.2.4. Where an existing Service is being upgraded (as identified in the Order Form setting out the upgrade details) means sixty months from the date that the upgraded Service is available for use by the Customer, or
  - 14.2.5. Such period (calculated from the relevant Service Commencement Date) as stated on the Order Form or relevant Service Specific Terms.
- 14.3. Either Party may terminate this Agreement by giving the other Party thirty (30) days' written notice at any time during the last thirty (30) days of the Minimum Period or any subsequent Renewal Term as appropriate.
- 14.4. Notwithstanding Clause 14.3, the Customer may terminate the Agreement in accordance with Clause 14.6.
- 14.5. Notwithstanding Clause 14.3 the Service Provider may terminate the Agreement immediately on written notice if:
- 14.5.1. Any Survey is not satisfactorily completed;
  - 14.5.2. Any Site wayleave is not entered into within a reasonable time as determined by the Service Provider;

- 14.5.3. Any licence (including User Licences), permissions or other approval the Customer or the Service Provider requires to connect to the Service or provide the Service expires, is revoked or otherwise ceases to be valid and is not immediately replaced by a further licence, permission or approval conferring on the Customer or the Service Provider the appropriate rights;
  - 14.5.4. The Customer is found to have made a material misstatement in the details it supplied to the Service Provider to provide the Service;
  - 14.5.5. The Customer materially breaches (including without limitation by failing to pay any Charges promptly) the Agreement or any other agreement it has with the Service Provider or a member of its Group;
  - 14.5.6. The Service Provider suspects on reasonable grounds that the Customer may have committed or may be committing a breach of any law and/or any fraud against the Service Provider or any Third Party;
  - 14.5.7. Any contract (or part thereof) between the Service Provider and a third-party provider of telecommunications services is terminated where such termination affects the provision of the Service; or
  - 14.5.8. Any Software licence is varied or terminated where such variation or termination affects the provision of the Service.
- 14.6. Breach of any of the provisions contained in Clauses 25, 26, 27 and the Data Processing Agreement constitutes a material breach of this Agreement and, without prejudice to any other right, relief or remedy, entitles the Service Provider to terminate this Agreement immediately.
- 14.7. Notwithstanding Clause 14.3 either Party may give notice in writing to the other Party to terminate the Agreement with immediate effect if:
- 14.7.1. The other Party commits a material breach of any term of the Agreement which cannot be remedied, or in the case of a breach capable of being remedied, has failed to remedy the breach within thirty (30) days of notice being given by the other Party requiring it to be remedied; or
  - 14.7.2. The other Party becomes or is declared insolvent, or convenes a meeting of its creditors, or makes or proposes to make any arrangement or composition with them, or if a liquidator, receiver, administrative receiver, administrator, manager or similar office holder is appointed over any of its assets or passes a resolution for winding up or a court makes an order to that effect, or becomes or is declared bankrupt other than as part of a good faith reorganisation of such Party's Group.
- 14.8. On termination of the Agreement any licence granted to the Customer by the Service Provider shall immediately cease. The Customer must immediately stop using the Service and all amounts the Customer owes to the Service Provider shall be due and payable in full.
- 14.9. On termination of the Agreement by reason of the Customer's default, whether during the Minimum Period or Renewal Term or prior to the Service Commencement Date, the Customer shall be liable to pay the Service Provider all Charges that would otherwise have been payable by the Customer during the Minimum Period or subsequent Renewal Term if applicable. The Service Provider shall not be obligated to repay any Charges paid in advance.
- 14.10. On termination of the Agreement the Customer must allow the Service Provider to remove the Equipment. If removal is delayed by the Customer following the termination of the Agreement, the Service Provider shall, until such removal is affected, be entitled to continue to charge the Customer and the Customer shall pay such Charges together with any additional costs and expenses caused by such delay.
- 14.11. The right to terminate the Agreement shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination (including without limitation termination under Clause 16.2).
- 14.12. If the Customer cancels (or purports to cancel) all (or part of) an order for Service, any time before the Service Commencement Date, in addition to the Charges detailed in Clause 14.8, the Customer will (without limitation) be liable to pay any reasonable costs incurred by the Service Provider as a result of the Service Provider progressing the order for Service for delivery prior to cancellation.
- 14.13. On termination the Customer shall return all Software, Equipment, any User Documentation and any other Service relevant documentation to the Service Provider within two (2) weeks of the Service Provider's request and shall certify to the Service Provider in writing that all Software, Equipment or other relevant information held by the Customer has been returned or, at the Service Provider's request, erased or destroyed. The Customer agrees to indemnify and hold harmless the Service Provider in respect of any costs incurred or losses suffered by the Service Provider which have arisen as a result of the Customer's breach of this Clause 14.12.

## 15. ASSIGNMENT

- 15.1. This Agreement, or any of the rights and obligations under the Agreement, shall not be assigned or transferred by the Customer except with the written consent of the Service Provider, which is not to be unreasonably withheld or delayed.
- 15.2. The Service Provider may assign or otherwise delegate all or any of its rights or obligations under the Agreement to any person or entity.

## 16. FORCE MAJEURE

- 16.1. Neither Party shall be liable for any breach of its obligations under the Agreement (other than in relation to the payment of sums due) where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control. Such causes include, but are not limited to, fire, explosion, breakdown or failure of equipment, systems or facilities, third-party strike, lock-out, labour dispute, illness, epidemic, flood, drought, war, civil commotion, pandemic, fault or failure of a communications network or software provider, licensing or requirement of any authority or government agency.

16.2. Where such cause continues for more than 3 calendar months either Party may without additional liability terminate the Agreement by giving no less than 30 working days' written notice to the other Party.

## 17. VARIATION

- 17.1. Subject to Clauses 17.2, 17.3, 17.5, 17.6, 17.7 and 17.8 any variation to the Agreement shall be agreed by the Parties in writing.
- 17.2. Notwithstanding Clause 17.1 the Service Provider reserves the right to amend or vary the Agreement where changes are imposed to the Service Provider by a third-party supplier by giving the Customer 25 days' written notice thereof.
- 17.3. The Service Provider may, at any time on not less than 5 Business Days' notice to the Customer revise this Agreement to the extent that it relates to regulations or laws that effect the Service Provider. The Service Provider agrees to take account of any guidance, recommendations, codes of practice, codes of conduct, guidelines, working documents or similar issued by any relevant Regulatory Body or changes to any Applicable Law.
- 17.4. The Customer may, on not less than 30 Business Days' notice to the Service Provider, propose amendments to this Agreement as it reasonably agrees is required to ensure that each party complies with Applicable Law.
- 17.5. If the Customer requests and the Service Provider agrees to a change of Service (including without limitation adding, deleting or exchanging a Service or a change of Site), it must complete such formalities as the Service Provider shall require giving effect to such change. The Service Provider may require payment prior to effecting such change and to reflect such change the Service Provider may revise the Charges.
- 17.6. Where the Customer requests a change of Service using the Customer Generated Order process in place at the time and this order is accepted by the Service Provider, such change will be treated as an amendment to this Agreement.
- 17.7. Upon prior written notice to the Customer, the Service Provider may vary the Service from time to time, provided that the New Service will have at least equivalent functionality to the original Service. After a variation in accordance with this Clause 17.7 the New Service shall be deemed the Service.
- 17.8. The Service Provider may at any time improve, modify or otherwise alter the Service in the event that:
- 17.8.1. the Service Provider suppliers' services are altered so as to affect the provision by the Service Provider of the Service;
  - 17.8.2. in the reasonable opinion of the Service Provider the Service should be altered for reasons of quality of service or otherwise for the benefit of the Service Provider's customers as a whole;
  - 17.8.3. technical or regulatory reasons so require.
- 17.9. Any variation to the Agreement pursuant to Clauses 17.7 and 17.8 of these Standard Terms and Conditions shall not be subject to the terms of Clause 17.2.

## 18. NOTICES

Unless otherwise stated in the Agreement:

- 18.1. Notices sent by the Customer to the Service Provider shall be sent by hand or first class post to the Commercial Director at the address below or as otherwise notified to the Customer.  
Elitetele.com t/a Elite Group, Dawson House, Matrix Business Park, Chorley, PR7 7NA
- 18.2. Notices sent by the Service Provider to the Customer may be sent:
- 18.2.1. by hand or by post to the billing address specified on the Order Form or to the Customer's registered office; or
  - 18.2.2. by electronic mail to the Customer's electronic mail address specified on the Order Form or as otherwise notified to the Service Provider in writing.
- 18.3. Notice given by hand shall be deemed given the same day. Notice given by first class post shall be deemed to have been given three (3) days after the date of posting. Any communication by electronic mail shall be deemed to have been made on the working day on which the notice is first stored in the other Party's electronic mailbox.
- 18.4. The Customer agrees to inform the Service Provider of any change to its billing address, registered address and contact details in order that notices are able to be sent correctly by the Service Provider.

## 19. ENTIRE AGREEMENT

- 19.1. This Agreement sets out the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Agreement by, or on behalf of, the Parties and relating to its subject matter.
- 19.2. Each Party confirms that it has not relied upon, and (subject to Clause 19.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Agreement) unless that agreement, warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.
- 19.3. Subject to Clause 19.4, neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement.
- 19.4. Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

## 20. TIME NOT OF THE ESSENCE

- 20.1. Any dates quoted by the Service Provider in connection with the provision of the Service or delivery and installation of the Equipment shall be treated as estimates only. The Service Provider accepts no liability for failure to meet such dates.

## 21. MISCELLANEOUS

- 21.1. Nothing in this Agreement shall be construed as to create a partnership or joint venture of any kind between the Parties.
- 21.2. Any waiver by the Service Provider of its right to require compliance with this Agreement shall not prevent it from subsequently requiring such compliance in respect of that or any other instance of non-compliance.
- 21.3. If any provision in this Agreement is held to be illegal or unenforceable in whole or in part, that provision will not form part of this Agreement to the minimum extent required by Applicable Law. The validity and enforceability of the remainder of this Agreement shall not be affected.
- 21.4. The provisions of the Agreement of a continuing nature shall survive termination of the Agreement for any reason.
- 21.5. During this Agreement and for a period of twelve (12) months following the termination of the Agreement (for whatever reason) the Customer shall not employ or engage directly or indirectly (without the prior written agreement of the Service Provider) nor make or seek to make any offer of employment or engagement to any employee of the Service Provider, who have dealt with it in the course of the performance of the Agreement.

## 22. RIGHT TO AUDIT

- 22.1. The Customer may request a reasonable audit of the Service Provider to conduct financial, quality, or compliance audits in order to ensure its compliance with its own applicable standards. Such an audit will be conducted at the Customer's own cost.
- 22.2. The Service Provider agrees to undertake any such reasonable request, and use its reasonable efforts to facilitate, upon written notice of at least 20 Business Days to either complete an audit questionnaire, a due diligence questionnaire or any other such audit documentation or during regular business hours, access and conduct an inspection of the records and documentation of the Service Provider and any facilities and/or systems necessary.
- 22.3. The Customer must provide a detailed scope of the audit to the Service Provider in order for it to quantify the number of hours required to complete the work and the technical level of personnel necessary. The Service Provider will provide a quote for the number of consultancy hours and on acceptance by the Customer of that quote the Service Provider will schedule the audit on an appropriate date agreed by both parties.

## 23. CONFIDENTIALITY

- 23.1. Confidential Information means information that is proprietary or confidential.
- 23.2. Each Party (in this Clause "Receiving Party") undertakes to the other Party ("Disclosing Party"):
- 23.2.1. To keep confidential the Disclosing Party's Confidential Information obtained in discussions leading to the Agreement and subsequently received pursuant to this Agreement; and
  - 23.2.2. Not to disclose the Confidential Information in whole or in part to any other person without the Disclosing Party's written consent, except to the Receiving Party's Associated Persons involved in the supply or use of the Services on a confidential and need-to-know basis, and
  - 23.2.3. To use the Confidential Information solely in connection with the supply or use of the Services and not for its own benefit or the benefit of any Third Party.
- 23.3. The Customer shall not disclose the existence of this Agreement to any Third Party without the prior written consent of the Service Provider.
- 23.4. Any confidentiality obligations will not apply if the Receiving Party is required by court, government or other regulatory body to disclose Confidential Information, but only to the extent required by Applicable Law and provided that the Receiving Party gives the Disclosing Party written notices as soon as practicable of such requirement.
- 23.5. Any confidentiality obligations will not to extent to Confidential Information which the Receiving Party can prove to the Disclosing Party's reasonable satisfaction:
- 23.5.1. Has ceased to be secret without default of the Receiving Party;
  - 23.5.2. Was already in the Receiving Party's possession prior to disclosure by the Disclosing Party;
  - 23.5.3. Has been received from a Third Party who did not acquire it in confidence.
- 23.6. Clause 23 shall survive termination of the Agreement or any part of it.

## 24. INTELLECTUAL PROPERTY RIGHTS

- 24.1. The Customer shall not acquire any right in or to any of the IPRs relating to the Equipment or Software, or any documents, drawings, or specifications supplied in relation to the same save as is expressly set out in this Agreement. If the Customer acquires any such rights it shall immediately inform the Service Provider and shall take any steps required of it to assign such rights to the Service Provider.
- 24.2. The Service Provider shall have the right to apply any trademarks, trade names and/or service marks to the Equipment or Software. No rights are granted to the Customer by its use of such trademarks, trade names and/or service marks and it shall not deface, remove or obscure any such marks, names or logos applied by the Service Provider on or in relation to the Equipment or Software.
- 24.3. Where Equipment or Software are not manufactured by the Service Provider, the Service Provider gives no assurance or guarantee that the sale or use of the Equipment or Software will not infringe the IPRs of any third party.
- 24.4. In the event of any third-party claim that the Customer's use of the Equipment or Services constitutes an infringement of third party IPRs, the Customer shall:
- 24.4.1. Immediately inform the Service Provider in writing of any infringement or alleged infringement;
  - 24.4.2. Allow the Service Provider or its Associated Persons to conduct all negotiations and proceedings and give the Service Provider such reasonable assistance as is required;

- 24.4.3. Make no admissions in relation to the infringement or alleged infringement.
- 24.5. In the event of a claim as set out at Clause 24.4, the Service Provider may:
  - 24.5.1. Procure for the Customer the right to continue using the relevant Service;
  - 24.5.2. Replace or modify the Service to make it non-infringing without substantially effecting the functionality of the same and clauses 24.5.1 and 24.5.2 shall (subject to clause 12 be the entire and exclusive remedy of the Customer for such a claim).

## 25. ANTI-CORRUPTION AND BRIBERY ACT COMPLIANCE

- 25.1. In connection with any actions or activities associated with the Agreement or in connection with the relationship between the Service Provider and the Customer, neither Party will engage in any unlawful trade practices or any other practices that are contrary to applicable Anti-Bribery Law.
- 25.2. Each Party will, and will ensure that each of their Associated Persons will:
  - 25.2.1. Have and at all times implement adequate procedures designed to prevent themselves and any Associate Persons from engaging in any activity which would constitute an offence under the Bribery Act 2010 if it were carried out in the UK, or violate any Applicable Anti-Bribery Law;
  - 25.2.2. Ensure that at all times in connection with the Agreement, no improper financial or other advantage has been, will be, or is agreed to be given to any person by or on behalf of each Party or their Associated Persons.
- 25.3. At the request of the Service Provider, the Customer will provide evidence of the steps being taken to avoid actions prohibited under Applicable Anti-Bribery Law.

## 26. ANTI-FACILITATION OF TAX EVASION

- 26.1. In connection with any actions or activities associated with the Agreement or in connection with the relationship between the Service Provider and the Customer, neither Party will engage in any act or omission which would constitute a UK tax evasion facilitation offence or a foreign tax evasion offence under applicable AFTE Regulations, where AFTE Regulations is defined as the Criminal Finances Act 2017 or any other legal and regulatory anti-facilitation of tax evasion obligations.
- 26.2. Each party will, and ensure that each associated party will:
  - 26.2.1. Not cause or facilitate the commission by the other Party of an offence of failing to prevent the facilitation of tax evasion under AFTE Regulations;
  - 26.2.2. Comply with its own policies and procedures dealing with anti-facilitation of tax evasion and any relevant industry code concerning AFTE Regulations.
- 26.3. For the purposes of this Clause 26, the question of whether a party is associated to the Parties of this Agreement shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of the Act) and an associated party includes but is not limited to any subcontractor.

## 27. MODERN SLAVERY ACT

- 27.1. In connection with any actions or activities associated with the Agreement or in connection with the relationship between the Service Provider and the Customer, each Party will warrant and represent that they have complied with their obligations under the Modern Slavery Act 2015.
- 27.2. If the Modern Slavery Act applies to it, each party will produce for each financial year an annual slavery and human trafficking statement setting out the steps it has taken during that year to ensure that slavery or human trafficking is not taking place in any part of its own business or any of its supply chains.

## 28. THIRD PARTY RIGHTS

- 28.1. A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("CRTPA") to enforce any terms of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available other than pursuant to CRTPA.

## 29. COUNTERPARTS

- 29.1. This Agreement may be signed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 29.2. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

## 30. DISPUTE RESOLUTION

- 30.1. Before resorting to legal proceedings, the Parties shall attempt to settle by negotiation between them in good faith all disputes or differences which arise between them out of or in connection with this Agreement. The Parties further agree that (provided both Parties consider that such negotiations would be assisted thereby), they will appoint a mediator by mutual agreement to assist them in such negotiations. Both Parties agree to cooperate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator. Without limitation this shall not prejudice or affect the right of the Service Provider to take legal action for unpaid Charges.

## 31. GOVERNING LAW

- 31.1. The Agreement shall be governed by and construed in accordance with English Law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

**By signing below the Customer confirms that it has read the Elite Standard Terms and Conditions and agrees to be bound by them, together with the Service Specific Terms and Conditions set out in or deemed to form part of this Agreement.**

**SIGNATURES**

[[SertifiSStamp\_1]]

[[SertifiSStamp\_2]]

[[SertifiCompany\_1]]

[[SertifiCompany\_2]]

[[SertifiTitle\_1]]

[[SertifiTitle\_2]]

## Appendix A - Data Processing Agreement

In this policy statement the following words will have the following meanings. All other definitions are contained within Section 1 of the Standard Terms and Conditions.

<b>Data Protection Laws</b>	means the General Data Protection Regulation ((EU) 2016/679) (GDPR) as specifically incorporated into UK law from time to time; (b) any UK laws, regulations and secondary legislation implementing GDPR including without limitation UK GDPR and the Data Protection Act 2018; and (c) any other applicable law relating to personal data to which the controller or the processor is subject;
<b>Agreement</b>	means in relation to the relationship between Us and You, the Standard Terms and Conditions, any relevant Service Specific Terms and Conditions and the relevant Order Form;
<b>Associated Persons</b>	means in relation to any entity, a person or entity who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;
<b>Party</b>	means each of the Service Provider and the Customer;
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
<b>Us/Our</b>	means the Service Provider, being Elitetele.com t/a Elite Group (company number 03228824);
<b>You/Your</b>	means the Customer.

1. The Service Provider will only store, copy or use Your Data to the extent necessary to perform the Service Provider's obligations under the Agreement.
2. The Service Provider will follow archiving procedures for Your Data as set out in the Service Provider's Data Handling Policy.
3. In the event that Your Data is corrupted or lost or degraded so as to be unusable, as a result of the Service Provider or its Personnel, subject to clause 12 of the Elite Group Standard Terms and Conditions, Your sole and exclusive remedy will be for the Service Provider to use reasonable commercial endeavors to restore or procure the restoration of Your Data that is corrupted, lost or degraded so as to be useable as soon as reasonably practicable from the latest back-up of Your Data maintained by the Service Provider in accordance with the archiving procedure described in its Data Handling Policy.
4. The Service Provider will not be responsible for any loss, corruption, damage, alteration or disclosure of Your Data caused by any third party (except its Personnel which are engaged by the Service Provider to perform services related to Your Data).
5. The Service Provider will in performing its obligations under the Agreement and comply with its Data Handling Policy.
6. In respect of any Personal Data that the Service Provider Processes on Your behalf when performing its obligations under the Agreement, You and the Service Provider hereby agree that You will be the Data Controller and the Service Provider will be a Data Processor; and in any such case:
  - 6.1. The Service Provider will Process the Personal Data solely on Your documented instructions (including as set out in the Agreement), for the purposes of providing the Services;
  - 6.2. The Service Provider will implement appropriate technical and organisational measures as required by Article 32 of the UK GDPR to ensure the security of the Personal Data;
  - 6.3. The Service Provider will take reasonable steps to ensure the reliability of its Personnel who may have access to the Personal Data, and their treatment of the Personal Data as Confidential Information;
  - 6.4. The Service Provider will promptly, and in any case within five (5) Business Days, notify You of any communication from a Data Subject regarding the Processing of their Personal Data to the extent it affects Your Data, or any other communication (including from a Regulatory Body) of which the Service Provider is aware, relating to either party's obligations under the Data Protection Laws in respect of any Personal Data affecting Your Data;
  - 6.5. The Service Provider will notify You without undue delay upon becoming aware of any Personal Data Breach affecting Your Data;
  - 6.6. The Service Provider will provide commercially reasonable assistance to You on request in relation to (i) any communication received under clause 21.6.4 and (ii) any Personal Data Breach affecting Your Data;
  - 6.7. You acknowledge and agree that the Service Provider is generally authorized to appoint third parties to Process the Personal Data ("Sub-Processor"), subject to notifying You about its Sub-Processors and otherwise meeting the conditions set out in Article 28 (2) and (4) of the UK GDPR (or other equivalent provisions of the Data Protection Laws);
  - 6.8. You acknowledge and agree that the Personal Data may be transferred or stored outside the European Economic Area or the country where You are located in order to carry out the Services and the Service Provider's other obligations under

the Agreement. The Service Provider will take such steps as are necessary to ensure the Processing is in accordance with Data Protection Laws;

- 6.9. The Service Provider will provide You, upon request, with information reasonably required to demonstrate compliance with its obligations under this clause 6, including permitting you, on reasonable prior notice and during business hours, and no more than on one occasion in any twenty-four (24) month period (except in the event of a Personal Data Breach), to inspect and audit the facilities used by the Service Provider to Process the Personal Data;
  - 6.10. The Service Provider will cease Processing the Personal Data upon the termination or expiry of the Agreement and, upon Your request, either return to You (in accordance with clause 9) or securely delete the Personal Data;
  - 6.11. You will ensure that You are entitled to transfer the relevant Personal Data to the Service Provider so that the Service Provider may use, Process, and transfer the Personal Data in accordance with the Agreement and Applicable Law, on Your behalf; and
  - 6.12. You will ensure that all relevant Data Subjects have been informed of, and, where required, have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Laws.
7. The following table describes the Personal Data Processing activities performed by the Service Provider (in so far as the Service Provider is a Data Processor) on Your behalf:

Subject matter of processing	Processing of Personal Data and the Services provided under this Agreement.
Duration of processing	For the duration of the Minimum Period and any subsequent Renewal Term.
Purpose of processing	Data processing shall only take place which is necessary to the performance of the contract between You and the Service Provider including to provision and install the Services, to provide support and maintenance for the lifetime of those Services, to support and host Personal Data for cloud based software solutions where that Service is supplied and to provide billing and invoicing, including service charge itemisation which may contain Personal Data.
Type of personal data	Names, contact details, addresses, service details specific to a Data Subject such as a mobile number.
Categories of data subjects	Your employees, workers, end-clients and contractors.

8. You acknowledge and agree that the Service Provider may from time to time monitor Your use of the Services and capture Your Data in relation to Your use of the Services, including using Google Analytics.
9. If on termination of the Agreement You require the Service Provider to return Your Data to You (including Your Data that resides on or within the Service Providers Software or the Service Providers systems), You will notify the Service Provider in writing and the Service Provider will use reasonable commercial endeavours to deliver to You, to the extent the Service Provider is able, the then most recent back-up of Your Data that is in the possession of the Service Provider, subject to You having paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and You and the Service Provider agreeing the reimbursement of the Service Provider's costs and reasonable expenses in relation to the retrieval and return of Your Data.