

The Customer's attention is specifically drawn to the limitation of liability in Clause 12.

## 1. DEFINITIONS & INTERPRETATION

1.1 The following terms shall have the following meanings in this Agreement:

**"Activ"** Activ Technology Limited (CRN: 5801496) a company registered in England and Wales whose registered office is at Hadrian House, Balliol Business Park West, Newcastle upon Tyne NE12 8EW;

**"Activ's Materials"** any and all materials, equipment, documents and other property belonging to Activ;

**"Agreement"** the agreement between Activ and the Customer for the purchase and supply of Products and/or Services in accordance with these Standard Terms & Conditions of Business, the Specific Terms (as applicable), the Service Level Agreement and the Order Sheet;

**"Appendix"** means the appendix to these Standard Terms & Conditions of Business;

**"Background IP"** any IP Rights which the relevant party to this Agreement can demonstrate are already held by it at the date of this Agreement or which at any time after the date of this Agreement have been acquired or developed by it entirely independently of the provision of the Products and/or Services, and of the use of any Confidential Information of the other party, and all modifications thereto and derivative versions thereof created at any time;

**"Business Day"** any day other than a Saturday, Sunday, bank or public holiday in England when banks in London are open for business;

**"Charges"** the total charges set out or provided for within the Order Sheet or otherwise provided for or payable under this Agreement in return for supply of the Products and/or Services;

**"Communication Services Agreement"** the agreement between the Customer and the relevant network/service provider for cellular mobile telecommunications airtime and network capacity, fixed line communications and/or software hosting services;

**"Confidential Information"** in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including the Products and/or Services), technical or commercial know-how, specifications, inventions, processes or initiatives and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party;

**"Customer"** the person or organisation who purchases the Products and/or Services from Activ;

**"Customer Default"** any acts or omissions of the Customer or its failure to perform any relevant obligation;

**"Delivery Location"** the location set out in the Order Sheet or such other location as the parties may agree for the delivery of the Products and/or Services;

**"Force Majeure Event"** an event beyond a party's reasonable control including strikes, lock-outs or other industrial disputes (whether involving the workforce of Activ or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors

**"IP Rights"** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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;

**"Order Sheet"** any project proposal, quotation, s and/or order form issued by Activ to the Customer in connection with the provision of the specific Products and/or Services;

**"Premises"** the Customer's premises/property as set out in the Order Sheet;

**"Personal Data"** **"Data Subject"** **"Data Controller"** **"processing"** and **"process"** have the meanings set out in the Data Protection Act 1998 and the General Data Protection Regulation;

**"Products"** any products ordered by the Customer and provided by Activ, as specifically set out within the relevant Order Sheet;

**"Products Specification"** any specification for the Products, including any relevant plans or drawings, set out in the Order Sheet or otherwise provided to the Customer by Activ in writing; and **"Services"** any services ordered by the Customer and provided by Activ, as specifically set out within the relevant Order Sheet including but not limited to connectivity, maintenance and installation;

**"Service Level Agreement"** the service level agreement provided to the Customer by Activ in writing;

**"Service Specification"** the description or specification of the Services set out in the Order Sheet and/or Service Level Agreement or as otherwise provided to the Customer by Activ in writing; and

**"Specific Terms"** the specific terms and conditions, as set out in the Appendix.

1.2 Headings are for convenience only and shall be ignored in interpreting this Agreement.

1.3 Words in the singular include the plural and those in the plural include the singular.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 2. BASIS OF AGREEMENT

2.1 The Order Sheet constitutes an offer by Activ to supply the Products and/or Services in accordance with the Agreement. All prices quoted in an Order Sheet shall be valid for a period of 30 days for its date of issue only, unless otherwise expressly agreed by Activ.

2.2 The Order Sheet shall be deemed to be accepted and the Customer agrees to the terms of this Agreement from the earlier of the Customer: signing and returning a copy of the Order Sheet (which may be by electronic signature and/or scanned copies on email); or, acknowledging that it wants to proceed with the purchase of the Products and/or Services verbally, in writing or by conduct including payment of a deposit; at which point and on which date this Agreement shall come into existence (**Commencement Date**).

2.3 In the case of conflict, the Order Sheet shall take precedence and prevail over any provisions of these Standard Terms & Conditions of Business in relation to the conflicting subject matter only.

2.4 All of these Standard Terms & Conditions of Business shall apply to the supply of both Products and Services except where application to one or the other is specified.

## 3. PRODUCTS

3.1 The Products are described in the relevant Product Specification.

3.2 Activ reserves the right to amend the Product Specification if required by any applicable statutory or regulatory requirements.

3.3 Activ shall either deliver the Products to the Delivery Location at any time after Activ notifies the Customer that the Products are ready or the Customer shall collect the Products from Activ's premises at a mutually agreed time on a Business Day during regular business hours.

3.4 Delivery of the Products shall be completed on the Products arrival at the Delivery Location

3.5 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. Activ shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Activ with adequate delivery instructions or any other instructions that are relevant to the supply of the Products, or the Customer's failure to take delivery of the Products.

3.6 If, in the absence of any mitigating circumstances, the Customer has not received any Products within 14 calendar days of the date of its order for those Products, then the Customer shall be required to give Activ written notice. In the event that the Customer have not provided such notice on time, and Activ are able to evidence proof of posting and a signature upon receipt of the Products, the Products shall be deemed delivered.

3.7 In the event that the Customer accept delivery of any Products, the Customer shall be required to give Activ notice of any fault,

- mis-description or damage to Activ within 3 Business Days of receipt of the Products, and provide such reasonable photographic or other evidence that Activ deem necessary in respect of such fault, mis-description or damage.
- 3.8** Activ may deliver the Products by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.9** If Activ fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. Activ shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Activ with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 3.10** Customers' are advised to keep the original packaging of the Products as this may be a requirement of the manufacturer if the Products need to be returned.
- 3.11** Subject to clause 3.12, Activ shall use its reasonable endeavours to ensure that the benefit of any manufacturers warranties for the Products supplied are passed on to the Customer. Otherwise, Activ provides no warranty or guarantee regarding the Products and all warranties implied by law are excluded to the fullest extent possible. The Customer is aware that if it incorporates the Products with any other third party product or service this may invalidate the Products warranty and/or its ability to return the Product.
- 3.12** Where Activ provides mobile phones and/or associated Products that are proved to Activ's reasonable satisfaction to be defective in material and/or workmanship, provided that such Products are returned to Activ within 14 days of the date of delivery Activ will at its option: repair; replace; substitute for substantially equivalent Products; or, credit the Customer in respect of such Products. Risk and title to the original Products shall automatically transfer to Activ on its receipt of such Products. The obligations in this clause will not apply where:
- 3.12.1** the Products have been altered in any way whatsoever or subjected to misuse or unauthorised repair;
- 3.12.2** the Products have been improperly installed or connected (unless Activ carried out such installation and connection);
- 3.12.3** the Customer failed to observe any maintenance requirements relating to the Products;
- 3.12.4** the Products have been expressly sold on a no warranty basis; or
- 3.12.5** in respect of any promotional items supplied from time to time with or in connection with the Products.
- 4. TITLE AND RISK**
- 4.1** The risk in any Products shall pass to the Customer on completion of delivery.
- 4.2** Title to any Products shall not pass to the Customer until either Activ has received payment in full (in cash or cleared funds) for the Products and any other Products that Activ has supplied to the Customer in respect of which payment has become due or, where relevant, expiry of the minimum period of time under which the Customer has agreed to maintain connections under this Agreement.
- 4.3** Until title to the Products has passed to the Customer, the Customer may use the Products in the ordinary course of its business provided that it shall:
- 4.3.1** hold the Products on a fiduciary basis as Activ's bailee;
- 4.3.2** store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Activ's property;
- 4.3.3** not remove, deface or obscure any identifying mark on or relating to the Products;
- 4.3.4** maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Activ's behalf from the date of delivery;
- 4.3.5** notify Activ immediately if the Customer become subject to any of the events listed in Clauses 13.3.2 to 13.3.13;
- 4.3.6** not purport to sell or otherwise part with possession of the Products, and
- 4.3.7** give Activ such information relating to the Products as Activ may require from time to time.
- 4.4** If, before title to the Products passes, the Customer becomes subject to any of the events listed in Clauses 13.3.2 to 13.3.13 or Activ reasonably believe that any such event is about to happen and notifies the Customer accordingly, then without limiting any other right or remedy Activ may have, Activ may at any time:
- 4.4.1** require the Customer to deliver up all the Products in its possession and, if the Customer fail to do so promptly, enter the Premises, Delivery Location or any premises of the Customer or of any third party where the Products are stored in order to recover them; and
- 4.4.2** suspend the provision of further Products and/or Services.
- 4.5** The Customer acknowledges that it shall not acquire title or interest in any telephone numbers it is allocated and shall not be entitled to sell or transfer such numbers without Activ's prior written consent (which may be withheld, delayed or conditioned).
- 5. SUPPLY OF SERVICES**
- 5.1** Activ shall provide the Services to the Customer in accordance with the Service Specification in all material respects using reasonable care and skill.
- 5.2** Activ shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Sheet or timescales within the Services Specification but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.3** Activ shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services including changing telephone numbers allocated due to a regulatory, operational or technical reason, and Activ shall notify the Customer in any such event
- 6. CUSTOMER'S OBLIGATIONS**
- 6.1** Activ may need access to the Premises, Delivery Location, office accommodation or other facilities, information, tools and resources for, and during the course of, the provision of the Products and/or Services. If so requested the Customer will provide free and unfettered access to these to the extent reasonably requested by Activ for the purposes of performing Activ's obligations under this Agreement, and, more generally, shall co-operate with Activ in all matters relating to the Products and/or Services. The Customer hereby warrants that the Customer is entitled to grant such access, and provide any such information, tools or resources as outlined in this Clause 6.1.
- 6.2** The Customer acknowledges that, in giving any opinion or advice in connection with the provision of the Products and/or Services, Activ rely on the information about the Customer and the Products and/or Services, and do not seek to establish the reliability of such information. Accordingly, the Customer:
- 6.2.1** undertakes to provide complete and accurate information about itself and about anything which is or may be relevant to the Products and/or Services and to provide such other information as Activ may reasonably request; and,
- 6.2.2** warrants that any such information provided is accurate and complete in all material respects, and not misleading.
- 6.3** The Customer also agrees to, to the extent necessary, prepare the Premises and/or Delivery Location for the provision of the Products and/or Services, and to obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 6.4** The Customer shall also keep and maintain all Activ's Materials at the Premises/the Delivery Location in safe custody at its own risk, maintain Activ's Materials in good condition until returned to Activ, and not dispose of or use Activ's Materials other than in accordance with Activ's instructions or authorisation.
- 6.5** To the extent applicable, the Customer acknowledges that it will retain responsibility at all times for compliance with all relevant laws, protocols and regulations with respect to Products, as well as responsibility for all costs of such compliance.
- 6.6** If Activ's performance of any of Activ's obligations in respect of the Products and/or Services are prevented or delayed by any Customer Default, or otherwise in the event of Customer Default:
- 6.6.1** Activ shall, without limiting Activ's other rights or remedies, have the right to suspend provision of the Products and/or Services until the Customer remedies the Customer Default, and to rely on Customer Default to relieve Activ from the performance of any of Activ's obligations to the extent Customer Default prevents or delays Activ's performance of any of Activ's obligations;
- 6.6.2** Activ shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Activ's failure to perform, or delay in performing, any

- of Activ's obligations where such failure or delay is attributable to Customer Default; and
- 6.6.3** the Customer shall reimburse Activ on written demand for any costs or losses sustained or incurred by Activ arising directly or indirectly from Customer Default.
- 6.7** The Customer acknowledges that it has assessed for itself the suitability of the Products and/or Services and that Activ has not warranted that they will be suitable for its requirements or that usage will be uninterrupted or error free.
- 6.8** The Customer warrants that it has full capacity and authority and all necessary licences, permits and consents to enter into and perform its duties and obligations under this Agreement and that individuals who sign Order Sheets and any other documentation relating to this Agreement are duly authorised to bind the Customer.
- 7. DATA PROTECTION**
- 7.1** Each party undertakes to the other that it will take all necessary steps to ensure that it operates at all times in accordance with the Data Protection Act 1998 ("DPA") and the General Data Protection Regulation ("GDPR") on the basis that the Customer is the Data Controller and (where Activ processes Personal Data but not otherwise) Activ is the Data Processor in relation to Personal Data.
- 7.2** Without limiting Clause 7.1, if either party (the "Data Provider") passes to the other party (the "Data Recipient"), or otherwise gives the Data Recipient access to, Personal Data under these Conditions:
- 7.2.1** the Data Recipient will not Process Personal Data under the Contract except in accordance with the Contract or otherwise on the instructions of the Data Provider;
- 7.2.2** the Data Recipient will implement appropriate technical, security and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in compliance with the DPA and the GDPR;
- 7.2.3** the Data Recipient will only Process such Personal Data in accordance with the data protection principles set out in the DPA and the GDPR;
- 7.2.4** the Data Recipient will comply promptly and in full with any request made by the Data Provider further to the Data Provider's statutory obligations pursuant to the DPA and the GDPR;
- 7.2.5** the Data Provider represents, warrants and undertakes that it has all necessary consents and permissions in relation to the Personal Data concerned; and
- 7.2.6** Where Activ is the Data Recipient, the Data Recipient may transfer data including Personal Data outside of the European Economic Area only where necessary in order to carry out the Services and fulfil its obligations under this Agreement.
- 7.3** For the purposes of this Clause 7, "Data Controller", "Data Processor", "Personal Data" and "Process" bear the meanings given to them within the DPA and the GDPR.
- 8. CHARGES**
- 8.1** The Charges (or the method for calculation thereof) (as applicable) stated the Order Sheet shall only be fixed with regard to the provision of the Products and/or Services specified in said Order Sheet subject to all the other terms of this Agreement.
- 8.2** Where Activ have been retained on an ad-hoc basis to provide Products and/or Services, and no monthly retainer or other fixed fee or retainer arrangement exists (as may be set out within the relevant Order Sheet), where:
- 8.2.1** Activ provide the Customer with additional Products and/or Services beyond those contemplated by the relevant Order Sheet, or
- 8.2.2** no Order Sheet having been provided to the Customer; the Charges for all Services shall be at calculated on a time and materials basis at Activ's then prevailing standard hourly rates for such Services, and the Customer shall be liable to pay the Charges for all Products at the costs specified by Activ.
- 8.3** Activ reserves the right to alter Activ's prevailing standard rates for Charges for Services at any time, including, for the avoidance of doubt, during the term of Activ's Agreement with the Customer. However, where such a change to Activ's standard rates is to be applied, Activ shall normally provide the Customer with at least 1 (one) week's prior notice, either orally or in writing. Changes to Activ's prevailing standard rates will not affect any Charges which Activ have specifically confirmed as applying during the term of Activ's Agreement within the relevant Order Sheet. Charges for successive 12 calendar month periods in accordance with clause
- 13.2 shall be notified to the Customer no later than 4 calendar months in advance of an anniversary of the Commencement Date.
- 8.4** Activ reserve the right to increase the price of the Products and/or Services, with immediate effect on giving the Customer notice and raising an invoice for such increased amount, to reflect any increase in the cost of the Products and/or Services that is due to:
- 8.4.1** any factor beyond Activ's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, other manufacturing costs, or other increases attributable to the actions of third parties);
- 8.4.2** any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the specification for the Products (if any); or
- 8.4.3** any delay caused by the Customer's instructions in respect of the Products or the Customer's failure to perform its obligations under this Agreement.
- 8.5** Activ shall invoice the Customer for the Charges specified in the Order Sheet or otherwise provided for under this Agreement for Products on or at any time after completion of delivery, and for Services on a monthly basis or annually in advance (unless otherwise agreed in writing). The Customer must pay all undisputed Charges set out within each invoice in full and cleared funds in accordance with the payment terms specified on the relevant invoice or within such other timescales as the parties agree in writing. Timings for payment shall be of the essence of this Agreement.
- 8.6** Where the Customer disputes any invoice, the Customer shall notify Activ within 7 calendar days in writing. Activ agree to provide all such evidence as may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. Activ reserve the right not to supply any further Products and/or Services to the Customer while such a dispute is ongoing. Where only part of an invoice is disputed, the Customer shall pay the undisputed amount on the due date for payment as set out within Clause 8.5. If the parties have not resolved the dispute within 30 days of the Customer providing Activ with notice that the Customer dispute the relevant invoice, Activ reserve the right to terminate this Agreement, whereupon all Charges payable under this Agreement shall become immediately due and payable as per Clause 14.2.
- 8.7** Payments due under this Agreement shall be made in pounds sterling. If a Customer is situated outside the UK it shall be responsible for transferring the relevant funds internationally to Activ's nominated account and for paying any fees relating to such transfer. Unless otherwise stated in an Order Sheet, Customers are required to set up direct-debit mandates for payment and Activ reserves the right to charge the Customer an additional monthly administration charge of £2.50 (two pounds and fifty pence) plus VAT if it does not pay by direct debit.
- 8.8** All amounts payable by the Customer under this Agreement are exclusive of all costs of packaging, insurance and transport of the Products and amounts in respect of value added tax chargeable from time to time (**VAT**) for Products and Services. Where any taxable supply for VAT purposes is made under this Agreement by Activ to the Customer, the Customer shall, on receipt of a valid VAT invoice from Activ, pay to Activ such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 8.9** The Customer shall have no right to any refund of the Charges paid or payable under this Agreement including on the termination of this Agreement.
- 8.10** Interest shall be chargeable on any Charges overdue at the rate of 5% above the base rate of Barclays Bank plc from time to time. Such interest shall accrue on a daily basis from the due date for payment until receipt by Activ of the full amount due whether or not after judgement and without prejudice to any of Activ's other rights or remedies. The Customer shall pay the interest together with the overdue amount.
- 8.11** All Charges due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding except as required by law. Activ may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Activ to the Customer.
- 8.12** Any payments made by the Customer and returned by the bank will incur a £15 administration charge, which will be payable by the Customer.
- 8.13** Where a Customer enters into a Communication Services Agreement and: cancels prior to a connection (which, for the purposes of this clause, shall mean the connection of an end user

to a network/service provider such that the end user is capable of accessing and utilising the communication services under the Communication Services Agreement); or, transfers away from Activ or changes tariff to one which results in a lower monthly line charge during the initial term of such Communication Services Agreement; the Customer shall pay an administrative charge of £250 for each connection and/or service user to Activ. The parties agree that the administrative charge is not a penalty but a genuine attempt to pre-estimate the administrative expenses incurred by Activ in processing the said cancellation, transfer or downward migration.

## **9. SUBSIDIES**

- 9.1** Subject to the other provisions of this clause 9, Activ may provide a subsidy to the Customer either (a) by way of an offset or (b) by paying the Customer, in one or more of the following ways:
- 9.1.1** by Activ deducting the subsidy from the Charges for Products ordered from Activ; or
- 9.1.2** the payment of the subsidy by Activ, on receipt of a valid invoice from the Customer, as follows:
- 9.1.2.1** in full after the expiry of 3 (three) months from the Commencement Date where the term of the Agreement is 12 (twelve) months; or
- 9.1.2.2** in two equal instalments where the term of the Agreement is 24 (twenty four) months, with the first instalment being due after the expiry of 3 (three) months from the Commencement Date and the second instalment being due after the expiry of 13 (thirteen) months from the Commencement Date; or
- 9.1.2.3** in three equal instalments where the term of the Agreement is 36 (thirty six) months, with the first instalment being due after the expiry of 3 (three) months from the Commencement Date, the second instalment being due after the expiry of 13 (thirteen) months from the Commencement Date and the third instalment being due after the expiry of 25 (twenty five) months from the Commencement Date; or
- 9.1.3** by using the subsidy to discharge any termination charges levied upon the Customer by their incumbent network/service provider provided that Activ is provided with a copy of the invoice/demand for payment of such charges.
- 9.2** The amount of the subsidy and method of payment shall be determined by Activ in its sole discretion and Activ is under no obligation, contractual or otherwise, to provide a subsidy unless expressly agreed in writing and set out in an Order Sheet.
- 9.3** Payment of the subsidy is conditional upon the Customer, for the duration of this Agreement, (a) maintaining the exact number of end-user connections to the network/service as agreed at the outset of the Agreement, (b) not changing tariff to one which results in a lower monthly charge, and (c) complying any other terms that Activ may specify in writing in advance of agreeing a particular subsidy with a Customer. If a Customer breaches a condition of this clause or a network/service provider reclaims or withholds in full or in part any commission due to it for any reason, then Activ may, in addition to the administrative charge referred to at clause 8.13 above, reclaim any subsidies already paid to a Customer and withhold any further subsidy payments.
- 9.4** Any such sum reclaimed or withheld pursuant to this clause 9 shall be invoiced to the Customer and such sum shall be payable (unless withheld) within 5 (five) days of the date of the relevant Activ invoice.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1** Background IP shall remain the sole property of that party.
- 10.2** The Customer hereby grants to Activ a royalty-free, non-exclusive, non-transferable licence to use its Background IP, if any, as required to allow Activ to perform Activ's obligations under this Agreement.
- 10.3** The Customer acknowledges that, in respect of any third party IP Rights in the Products and/or Services, its use of any such IP Rights is conditional on Activ's obtaining a written licence from the relevant licensor on such terms as will entitle Activ to license such rights to the Customer.
- 10.4** Any IP Rights, other than Background IP, created or developed by Activ in the course of provision of the Products and/or Services shall be Activ's sole property.

## **11. AMENDMENTS TO THESE TERMS**

- 11.1** Every time Activ supply Products and/or Services to the Customer, the terms applying to the Agreement between the Customer and Activ for the provision of the Products and/or Services, shall be as outlined in the relevant Order Sheet, and as outlined in the version

of this Agreement in force at the time of the signing (or issuing if no Order Sheet have been signed) of the relevant Order Sheet.

- 11.2** Activ may, acting in Activ's sole discretion, amend the Agreement from time to time, including but not limited to amending these Standard Terms & Conditions of Business. Before ordering any Products and/or Services from Activ, the Customer should check the Agreement to ensure that the Customer understands which terms, including but not limited to these Standard Terms & Conditions of Business, will apply to the Agreement.

## **12. LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 12.1** Nothing in this Agreement shall exclude or limit Activ's liability for:
- 12.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2** fraud or fraudulent misrepresentation;
- 12.1.3** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 12.1.4** breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 12.1.5** for defective products under the Consumer Protection Act 1987 (if applicable); or
- 12.1.6** for any other liability which cannot be excluded or limited under applicable law.
- 12.2** Subject to Clauses 12.1 and 12.3, Activ's total liability arising out of or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the Charges paid to Activ by the Customer pursuant to this Agreement for the particular Product or Service giving rise to the claim, in the period of 12 calendar months immediately preceding the date on which the cause of action arose.
- 12.3** Subject to Clause 12.1, Activ shall not in any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of contracts, loss of business or business opportunities, loss of production, loss of turnover or revenue, loss of availability, any loss or corruption (whether direct or indirect) of data or information provided by the Customer, loss of anticipated savings, wasted expenditure, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the Customer, or for any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature (even if Activ had been advised of the possibility of the Customer incurring the same) or any punitive or exemplary damages.
- 12.4** The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.5** Nothing in this Clause 12 shall affect or limit the Customer's obligation to pay Charges properly due under this Agreement.
- 12.6** Subject to Clause 12.1, the express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.7** Activ shall have no liability to the Customer to the extent that such liability would not have arisen but for a Customer Default or the default of any third party.
- 12.8** Statements made by Activ relating to the Products and/or Services, and all recommendations, opinions, surveys and forecasts (together "Forecasts") in any communication between the Customer and Activ, if any, are made in good faith on the basis of information available at the time and such Forecasts are addressed only to the Customer. Whilst Activ will use reasonable skill and care in the preparation of such Forecasts, neither Activ nor any subcontractor engaged by Activ shall have any liability in relation to losses or damage incurred as a result of or in relation to reliance on such opinions or recommendations and the Customer expressly acknowledge that such liability is a business risk that the Customer wholly assume.
- 12.9** Implementation of the results of the Services that Activ provides, and completion of any project of which the Services that Activ provides form part of, may require the involvement or supervision of, or giving advice by, Activ to third parties engaged by the Customer. Activ strongly recommend that the Customer obtain independent advice before entering into any legally binding

commitment with any such third parties. Without limiting any other provision of this Agreement, Activ will, where appropriate, use reasonable endeavours to assist the Customer in minimising the risk and additional cost or delay relating to the involvement in the project of any third parties involved in manufacturing or the provision of other services or goods to the Customer, however, in no circumstance shall Activ be liable for any of the acts or omissions, or the negligence, of such third parties.

**12.10** Activ may, during the supply of the Products and/or Services, make statements about or recommendations of third party products or services. Activ gives no warranty in relation to such third party products or services, and the Customer shall rely solely on the warranties and remedies provided by any such third party with whom the Customer may contract.

**12.11** Activ shall not be liable for any loss suffered by the Customer as a result of the Customer's use or misuse of any third party goods, equipment or apparatus or as a result of any faults in such third party goods, equipment or apparatus. In particular, Activ shall not be liable whatsoever if the Customer damages or incorrectly reconfigures any third party goods, equipment or apparatus, for example a router, which the Customer has purchased for use with the Services.

**12.12** This clause 12 shall survive termination or expiry of this Agreement.

### **13. TERM AND TERMINATION**

**13.1** In relation to the provision of Products, unless otherwise specified in writing, this Agreement shall come into effect upon the Commencement Date, and, subject to other terms of this Agreement, shall continue in force until Activ cease providing the Products and all outstanding Charges owing to Activ by the Customer have been paid in full or the termination of this Agreement in accordance with its provisions, whichever is sooner.

**13.2** In relation to the provision of Services, unless otherwise specified in writing, this Agreement shall come into effect upon the Commencement Date, and, continue for an initial period of 12 calendar months and thereafter automatically renew for successive 12 calendar month periods unless and until terminated in accordance with the terms and conditions of this Agreement or either party provides not less than 3 calendar months written notice to the other party such notice to expire no earlier than the next anniversary of the Commencement Date.

**13.3** Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:

**13.3.1** the other party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

**13.3.2** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

**13.3.3** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) 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;

**13.3.4** 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

**13.3.5** the other party (being an individual) is the subject of a bankruptcy petition or order;

**13.3.6** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

**13.3.7** an application is made to courts, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

**13.3.8** the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

**13.3.9** a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

**13.3.10** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.3.1 to Clause 13.3.8 (inclusive);

**13.3.11** the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

**13.3.12** the other party's financial position deteriorates to such an extent that in Activ's opinion the Customer's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy; or

**13.3.13** the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**13.4** Without limiting its other rights or remedies, Activ may:

**13.4.1** terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment; or

**13.4.2** suspend the supply of Services or all further deliveries of Products under this Agreement or any other Agreement between the Customer and Activ if the Customer fails to pay any amount due under this Agreement on the due date for payment, the Customer becomes subject to any of the events listed in Clause 13.3.1 to Clause 13.3.12, or Activ reasonably believes that the Customer is about to become subject to any of them.

### **14. EFFECTS OF TERMINATION**

**14.1** On termination or expiry of this Agreement for any reason:

**14.1.1** the Customer shall immediately pay to Activ all of Activ's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted or Charges relating to the unexpired period of a fixed term where payments are not made in advance, Activ shall submit an invoice, which shall be payable by the Customer immediately on receipt. The parties agree that such payments are not a penalty;

**14.1.2** the Customer shall return all of Activ Materials and any Products and/or Services which have not been fully paid for. If the Customer fails to do so, then Activ may enter the Premises and/or Delivery Location and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;

**14.1.3** the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and

**14.1.4** clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**14.2** Upon termination, the Customer shall, at Activ's request, promptly return to Activ or otherwise dispose of as Activ may instruct any Confidential Information which the Customer may have in its possession or under its control and pay to Activ all outstanding Charges, including interest, due under the terms of this Agreement.

### **15. GENERAL**

**15.1** Confidentiality: Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under this Agreement. The provisions of this Clause 15.1 shall not apply to any information which: (a) is or comes into the public domain without breach of this Agreement; or (b) was in the possession of the receiving party prior to receipt

- from the disclosing party without an obligation of confidence; (c) was obtained from a third party free to divulge such information; or (d) is required by law to be disclosed to any person who is authorised by law to receive the same (after consultation, if practicable, with the disclosing party). Each party shall notify the other party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person. This Clause 15.1 shall survive termination or expiry of this Agreement.
- 15.2 No Assignment or Sub-Licensing:** the Customer may not assign, sub-license, sub-contract, mortgage, transfer, dispose or otherwise deal with this Agreement or any of its rights or obligations under it without Activ's prior written consent. Activ may at any time assign, sub-license, sub-contract, mortgage, transfer, dispose or otherwise deal with all or any of its rights under this Agreement. The Customer will continue to be liable to pay Activ's Charges where a subcontractor is engaged and shall not be liable directly for any of the fees of any such subcontractor unless otherwise agreed.
- 15.3 Notices:** Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's registered business address or by email to Activ with the reference "Notice" in the subject heading to [info@helloactiv.co.uk](mailto:info@helloactiv.co.uk) or by email to the Customer to any email addresses it has provided to Activ during the term of this Agreement and which Activ has reasonable grounds to believe to be valid from time to time or such other registered business or email address as either party may notify to the other from time to time in accordance with this clause. Any notice shall be treated as having been served on delivery if delivered by hand, if delivered by commercial couriers, on the date and at the time that the couriers' delivery receipt is signed, 2 Business Days after posting if sent by pre-paid first class post, and on completion of transmission if sent by facsimile (subject to receipt of acknowledgement of successful transmission). The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 15.4 Force Majeure:** Neither party shall be liable to the other party for any delay or failure to perform its obligations under this Agreement to the extent and for so long as such delay or failure results from a Force Majeure Event provided that it notifies the other party within 5 Business Days of becoming aware of such event. If any Event of Force Majeure continues for a period exceeding three calendar months, either party shall, without limiting its other rights or remedies, have a right to terminate this Agreement immediately on written notice to the other party.
- 15.5 Waiver:** The failure or delay of either party to enforce or to exercise any term of this Agreement or remedy does not constitute a waiver of such term or remedy and shall in no way affect that party's right to later enforce or to exercise it. A waiver of a right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.
- 15.6 Severability:** The illegality, invalidity or unenforceability of any term of, or any right arising pursuant to, this Agreement shall not affect the validity or enforceability of the remaining terms or rights which remain in full force and effect.
- 15.7 Entire Agreement:** This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. Any samples, drawings, descriptive matter or advertising issued by Activ and any illustrations or descriptions of the Products and/or Services contained on Activ's website or in Activ's advertising material are issued or published for the sole purpose of giving an approximate idea of the Products and/or Services described in them. They shall not form part of this Agreement or have any contractual force.
- 15.8 Survival:** The terms of Clauses 1, 6.4, 6.5, 7, 8.7, 8.10, 9, 11, 12, 13, 14 and 15 shall survive expiry, variation or termination of this Agreement. Such other terms which, from their nature or context, it is contemplated that they are to survive expiry, variation or termination, shall remain in full force and effect notwithstanding expiry, variation or termination of this Agreement.
- 15.9 No Variation:** Without prejudice to Activ's right to amend the Agreement from time to time, no variation of, or all bind either party unless made in writing and signed by authorised representatives of both parties.
- 15.10 Independent Contractors:** The relationship of the parties is that of independent contractors dealing at arms' length and nothing in this Agreement shall be construed so as to constitute the parties as partners, joint venturers, agents of the other, or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither party shall hold itself out as entitled to do the same. Nothing in this Agreement shall create or be deemed to create the relationship of employer and employee.
- 15.11 Dispute Resolution:** Activ encourages all issues to be raised with it as soon as conveniently possible and it will aim to resolve matters promptly. In some cases, depending on the Product and/or Service procured, the Customer may be able to refer disputes to the Ombudsman Service or OFCOM – full details of which are available on request from Activ.
- 15.12 Governing Law:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 15.13 Jurisdiction:** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims).
- 15.14 Third Party Rights:** A person who is not a party to this Agreement shall not have any rights to enforce its terms.
- 15.15 Remedies:** Except as set out in this Agreement, the rights and remedies provided are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.16 Non-Solicitation:** From the Commencement Date, and for a period of 12 months from the termination of this Agreement, neither party shall (except with the prior written consent of the other) solicit the employment of any person who is employed by the other party in the course of providing the Products and/or Services, other than by means of a general advertising campaign open to all comers and not specifically targeted at any of the employees of the other party.
- 15.17 Publicity:** The provisions of Clause 15.1 notwithstanding, Activ reserve the right to publicise the fact of this Agreement, the Customer's identity, and details concerning the nature of the Products and/or Services provided to the Customer for, inter alia, marketing and promotional purposes.