



Cadmus Distribution Group Limited
t/a Cadmus Products, VoIPon Solutions & 4Gon Solutions
Unit 5 Suffolk Dr, Chelmsford, CM2 6UN
Tel: +44(0)330 088 0595
Email: info@cdgl.co.uk - Web: www.cdgl.co.uk

SIM Services General Terms and Conditions

CDGL (Cadmus Distribution Group Ltd.) is a provider of managed communications services including leased lines, telephone lines, mobile services, local national and international telecommunications services, hosted telephone services, PCI compliance, hosted desktop products and broadband. By ordering and using the services you agree to the following Terms and Conditions and that they set out the basis upon which CDGL will provide the services to you the Customer.

Some clauses in these General Terms and Conditions may conflict with similar clauses in terms and conditions relating to specific products. Where this happens the terms in this document take precedent.

1. DEFINITIONS AND INTERPRETATIONS

1.1 The Order Form, Supplementary Order Form(s) and relevant service schedules form part of this Contract and are contractually binding on the parties.

1.2 In this Contract the following expressions have the following meanings, unless the context requires otherwise:-

“Billing Period”	means any period in respect of which we bill you from time to time for your use of any of the Services provided to you
“Charges”	means our published list of prices as amended from time to time applicable to our Services
“Commencement Date”	means the date upon which our supply to you of any Service commences
“Conditions” & “Terms and Conditions”	means these terms and conditions as amended by us from time to time in accordance with clause 18.3
“Confidential Information”	means any information marked confidential or information that the author would not wish to be disclosed to customers, suppliers or to be publicly available
“Contract”	means the contract between you and us to pay for and receive the Service set out in these Conditions and the Order (together with such changes and/or other terms as may be notified to you from time to time) and your current Tariff Plan as amended from time to time
“Credit Limit”	means any credit limit, which is applied to your account either when you apply for any Service or at any time thereafter at CDGL’s sole discretion
“Customer Purchased Equipment”	means any equipment sold or provided to the Customer by CDGL
“Customer Representative”	means the person or persons named under Customer Representative on the Order Form
“Customer Services”	means the customer services facility provided by us for you to make general, sales or account enquiries. Customer Services are available between the hours of 9am to 5pm Monday to Friday. Calls to Customer Services may be monitored.
“Customer”	means any customer who enters a Contract
“Customers Logo”	means the trading logo of the Customer
“Delivery Address”	means the Delivery Address as detailed in the Order Form
“Directors Guarantee Provision”	means the personal guarantee given by a Director of the Customer to CDGL
“Equipment”	means any equipment, electronic portal or service provided to the Customer for the performance of the Services “CPS” means Carrier Pre-Select, a method of indirect access to route your calls over a network of CDGL’s choice
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily

be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

“GSM Gateway”	means a fixed device containing one or more SIM Cards which enables a call from a fixed phone to a mobile phone to be routed directly into a mobile Network as if it were from a mobile phone and thereby attract a different call rate
“CDGL portal”	means the electronic portal allowing the Customer access to control of some or all of the Services
“CDGL Representative”	means the person or persons named under CDGL Representative on the Order Form or other such person or subcontractor notified by CDGL to the Customer from time to time
“Initial Term”	means the time outlined in the Order Form which begins on the Commencement Date
“Installation Date”	means the date when the Service(s) are activated and ready for use
“Minimum Period”	means the minimum period that applies to your Contract, which will depend on the Tariff Plan you select at the time you place your Order as outlined on your Order Form
“Minimum Spend”	means the sum exclusive of VAT set out in the Order Form that the Customer shall spend with CDGL for the Landline Service
“Landline Service(s)” or “Service(s)”	means the landline, Ethernet, leased line, non-geographic number communications and related services to be supplied by CDGL to the Customer under the Conditions of this Contract
“Network”	means as the context requires either the public switched telecommunications, internet protocol packet Network and/or a wireless telegraphy link by means of a cellular radio system operated by a Network operator
“Order” or “Order Form”	means any order that you submit to us for any of the Services
“Premises” or “Site”	means the UK premises where we agree we shall provide you with the Landline Service
“Renewal Period”	means the period of time subsequent to the Initial Term or previous renewal periods
“Representatives”	means a person or company acting on behalf of either CDGL or the Customer
“Service Level Commitment”	shall have the meaning given to it in the Order Form or clause 16
“Supplementary Order Form”	an additional Order Form for use for an existing Customer to take additional Services
“Tariff Plan”	means the Tariff (that may include some elements which are not chargeable) which you select for the Services at the time you place your Order and which you may change from time to time by agreement with us and, where we agree such change to take effect at the start of your next Billing Period
“Tariff”	means the tariff setting out our list of Charges for any of the Services we offer from time to time
“Technical Support”	means the service by which customers can report technical issues with their Service
“Termination Fee”	means the Minimum Spend less any sums already paid to CDGL (exclusive of VAT)
“Title”	means the legal ownership
“we”, “us”, “our”, “CDGL”	means CDGL of Unit 5 Suffolk Dr, Chelmsford CM2 6UN, and any of its trading divisions including but not limited to Cadmus Products, 4Gon Solutions, VolPon Solutions.
“Working Day”	means any day (other than a Saturday or Sunday) when banks are generally open for normal business in London
“Year”	means the twelve-month period commencing on the Installation Date until the first anniversary of the Installation Date and each subsequent twelve-month period until the next anniversary of the Installation Date

1.3 The headings in these Terms and Conditions are for convenience only and will not affect the construction of the Terms and Conditions. References to clauses are to the clauses of the Conditions; references to the Order Form and paragraphs are to the Order

Form for the Services which these Terms and Conditions cover and the paragraphs within the Order Form. If there is any conflict between the Conditions and an Order Form the Conditions will prevail.

1.4 In these Terms and Conditions:

- 1.4.1 the use of the singular will be construed to include the plural (and vice versa) and the use of any gender will be construed to include all genders;
- 1.4.2 references to a person include individuals, incorporated bodies, unincorporated associations and partnerships and the permitted transferees and assignees of such persons;
- 1.4.3 references to any statute, enactment, order, statutory instrument or statutory provision include such statute, enactment, order, statutory instrument or statutory provision together with all regulations and subordinate legislation made there under, all as from time to time amended, re-enacted, consolidated or replaced;
- 1.4.4 the expressions "including", "include", "includes", "included" and "in particular" will be construed to mean without limitation; and
- 1.4.5 references to loss include destruction

2. TERM AND RENEWAL

2.1 This Contract will come into force immediately upon signature of the Order Form by both parties and will remain in force for the Initial Term and renew for further terms of equivalent length of the Initial Term upon expiry of the Initial Term unless and until terminated earlier in accordance with Clause 11.

3. CDGL'S OBLIGATIONS

3.1 Without prejudice to any other provision in this Contract **CDGL** shall: -

- 3.1.1 provide the Services in accordance with this Contract
- 3.1.2 take all reasonable steps to obtain such documents, information and co-operation from the Customer as it may reasonably require to supply the Services;
- 3.1.3 supply the Services in accordance with health and safety and environmental legislation and other applicable legislation, statutory requirements, regulations and Good Industry Practice and relevant codes of conduct of the professions and industries to which **CDGL's** activities relate;
- 3.1.4 ensure that each of its Representatives who visits a Site complies with all rules, instructions, codes of conduct and security codes in force from time to time at such Site as notified to CDGL's Representative by the Customer and with all reasonable requests and requirements in respect of Site rules, instructions, codes of conduct and security codes communicated by or on behalf of the Customer to **CDGL**;

3.2 Without prejudice to the generality of the foregoing, **CDGL** warrants, subject to clause 3.3 that:

- 3.2.1 the Services will be provided under proper supervision, with reasonable skill and care, in a professional manner by suitably trained, skilled, experienced professionals;
- 3.2.2 it shall use reasonable endeavours to perform the Services in accordance with such timescales as may be agreed between the parties from time to time, but any such timescales shall be estimates only and time shall not be of the essence for performance of the Services;

3.3 CDGL reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and CDGL shall notify the Customer in any such event.

3.4 The Customer acknowledges that the Services in general will not be error free, and agrees that the existence of such errors shall not constitute a breach of the Contract.

3.5 **CDGL** will provide the Services using such Representatives as it considers suitable to undertake the work. Nothing in this Contract will in any way restrict **CDGL's** right to use its Representatives to supply services similar to the Services to other customers of **CDGL**.

3.6 Subject to clause 3.3, the Customer Purchased Equipment will comply with all applicable legal and regulatory requirements and with applicable British Standards (or, if applicable, their equivalent requirements in the territory in which the Customer Purchased Equipment is supplied)

3.7 CDGL shall deliver the Customer Purchased Equipment to the Delivery Address and risk in such Equipment shall pass to the Customer on delivery.

3.8 Title to the Customer Purchased Equipment shall not pass to the Customer until:

3.8.1 CDGL has received payment in full (in cash or cleared funds); or

3.8.2 if subsidised in any way from the recommended retail price by CDGL, once the Minimum Spend has been satisfied.

3.9 CDGL shall endeavour to transfer to the Customer the benefit of any manufacturer warranty or guarantee given to CDGL in respect of the Customer Purchased Equipment.

3.10 The date for delivery of the Customer Purchased Equipment shall be the date agreed between the parties. Time shall not be of the essence with respect to the delivery of the Customer Purchased Equipment.

3.11 Where CDGL offers a support contract or warranty on Customer Purchased Equipment, or on equipment leased or rented to the Customer, the Customer accepts that where equipment needs to be replaced, the replacement equipment may be refurbished and not new.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall provide such co-operation, information (including authorisation to transfer the line rental and CPS), facilities and access to the Site to **CDGL** and **CDGL's** Representatives as may reasonably be requested and as are reasonably necessary for **CDGL** to perform its obligations under this Contract.

4.2 The Customer shall provide **CDGL** with all information in its possession or power concerning the Customer's operations and activities, including but not limited to software, manuals, data, drawings and any other documents or materials, which may reasonably be necessary to enable **CDGL** to perform the Services and will also ensure that its relevant Representatives are generally available to provide such assistance or information as **CDGL** may reasonably require in the course of providing the Services.

4.3 The Customer shall be responsible for any changes or modifications made to the Equipment by any person other than **CDGL** or a **CDGL** Representative, unless made with **CDGL's** prior written consent or approval. **CDGL** shall be entitled to charge the Customer at **CDGL's** standard rates for work caused by such changes or modifications to the Equipment.

4.4 The Customer shall comply with all licences, acceptable use policies (available on www.4Gon.co.uk), legislation, regulations and codes of practice to which it is subject in relation to the Equipment and receipt of the Services.

4.5 The Customer shall prevent its Representatives from using the Services in any of the following ways:

4.5.1 in breach of any reasonable instruction given by **CDGL**, or any body which has regulatory powers relating to the Services;

4.5.2 to send, receive, upload, download, use or reuse any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing or in a breach of any legally enforceable right of confidence, copyright, privacy or any other similar right;

4.5.3 to put **CDGL** in breach of the terms of any agreement **CDGL** has with any public telecommunications operator, the details of which have previously been notified in writing by **CDGL** to the Customer; or

4.5.4 in any way which could render **CDGL** subject to any criminal prosecution, enforcement action, civil claim or other action or liability.

4.6 The Customer shall comply with **CDGL's** reasonable instructions as to the use and care of the Equipment. The Customer shall keep all Equipment, and **CDGL's** other property at the Customer's Premises, in safe custody at its own risk and maintain the Equipment and other property in good condition until returned to **CDGL**. The Customer will pay for any repair or replacement needed if the Equipment is damaged by any means.

4.7 Customer shall take all reasonable steps to ensure that PIN numbers and passwords are kept confidential and secure, are used properly and are not disclosed to unauthorised persons. The Customer shall indemnify **CDGL** and keep **CDGL** effectively indemnified against all and any losses, costs and expenses (including legal costs) that **CDGL** may suffer from fraudulent activity on the Service(s) or incurred as a consequence of any failure on the part of the Customer to comply with the terms of this clause.

4.8 If applicable the Customer shall provide **CDGL** with the necessary written authorisation to enable **CDGL** to arrange for the Services to be transferred to **CDGL** as soon as possible following the signature date of the Order Form.

4.9 If required by **CDGL** either at the start of the Contract, or at any point thereafter, agree and sign **CDGL's** Directors Guarantee Provision.

4.10 The Customer shall ensure that they have correctly given any notice periods required to any previous service providers.

4.11 If **CDGL's** performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 4.11.1 without limiting or affecting any other right or remedy available to it, CDGL shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays CDGL's performance of any of its obligations;
- 4.11.2 CDGL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CDGL's failure or delay to perform any of its obligations as set out in this clause 4.11; and
- 4.11.3 the Customer shall reimburse CDGL on written demand for any costs or losses sustained or incurred by CDGL arising directly or indirectly from the Customer Default.

5. ADDITIONAL ITEMS

- 5.1 The Customer may at any time during the term of their Contract request additional goods or Services via a Supplementary Order Form.

6. CHARGES AND PAYMENT

- 6.1 The Tariff chosen by the Customer in respect of the Services on commencement of this Contract will remain the minimum Tariff selected for the Minimum Period and the terms and conditions relating to the selected Tariff shall apply.
- 6.2 CDGL may on not less than 14 days' notice to the Customer, change the rates in any Tariff or price list, such change not to become effective during the Minimum Period of the relevant mobile Network Service unless the change arises due to:
 - 6.2.1 a change in the costs to CDGL due to a requirement or direction of OFCOM; and/or
 - 6.2.2 a change in the costs charged to CDGL by its suppliers.
- 6.3 The Customer will pay any agreed initial Charges, the monthly access Charge and any other fixed monthly Charges (each as defined in the applicable Order Form), on or before the payment date.
- 6.4 The Customer shall be invoiced monthly in arrears for any usage based Charges and monthly in advance for any monthly access or other fixed Charges and shall pay the Charges by Direct Debit within fourteen days of the date of the invoice (unless otherwise expressly agreed with CDGL and set out on the Order Form). The acceptance by CDGL of payment by any method other than Direct Debit may incur a monthly administration fee of £3.00 per connection. All payments must be received within thirty days of CDGL's invoice date.
- 6.5 Any Tariff and/or Equipment subsidies that CDGL makes available to the Customer are subject to the length of contract chosen by the Customer on the Order Form and the terms applicable to such Tariff and/or Equipment, and are based upon the predicted or anticipated revenue over the Customer's contract term (including any notice period).
- 6.6 In the event that the Customer fails to make payment for the Services for (or otherwise breaches the Contract during) the Minimum Period, and fails to make payment of any early termination charges (including those Charges set out in clause 11.8, CDGL reserves the right to invoice the Customer for such predicted or anticipated revenue at full retail price without discount, over the full applicable contract term including notice period and to recover any benefits received and losses incurred.
- 6.7 The Customer shall pay all Charges (namely usage in excess of any allowances or bundles that may be comprised in the monthly Charge but without rebate for any unused element of such allowances or bundles) including any of the following: any charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators (without discount) and any handling charges set out in the Tariff. UK calls are billed per second and rounded up to the nearest penny. In addition, the service operators may apply a fixed or minimum call charge, details of which can be found in the tariff terms and conditions on the relevant service operator websites.
- 6.8 The Customer may be required to pay a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques.
- 6.9 If payment of any sum payable to CDGL is not made on or before the due date, CDGL shall be entitled to charge interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as CDGL would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.
- 6.10 Value Added Tax (VAT) and other taxes, tariffs, customs charges or other such costs from time to time in force where appropriate shall be payable on all Charges payable pursuant to these Conditions.
- 6.11 The Customer will promptly advise CDGL in writing of any change to its address or bank details.
- 6.12 The Customer authorises CDGL to charge the Customer's debit/credit card, where details have been provided by the Customer, with an amount equal to the outstanding balance on the Customer's credit account, where the Customer has failed to pay CDGL by the payment date.

- 6.13** The Customer authorises CDGL to levy a service Charge of three percent (3%) where CDGL is debiting the Customer's credit card account with any outstanding balance.
- 6.14** Without prejudice to CDGL's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, CDGL reserves the right to refer the outstanding account to a debt collection agency. If CDGL instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay CDGL's costs payable to the agency, who will add the sum to the Customer's outstanding debt.
- 6.15** If any sum owed by the Customer to CDGL under the Contract or any other contract with CDGL is not paid by the due date, CDGL may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with CDGL.
- 6.16** Any invoices issued by CDGL in respect of the Charges shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
- 6.17** If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to CDGL as soon as possible on receipt of an invoice, and in any event within 30 days of the date of the invoice and provide CDGL with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or more than five per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute. The Customer must inform CDGL seven working days before a Direct Debit payment is due, if they intend to withhold monies in dispute. This will give CDGL time to verify the claim and adjust the amount taken from the Customer's account. If the Customer fails to notify CDGL in time to adjust the Direct Debit payment the withheld amount will be deducted from the following Direct Debit payment. If the Customer cancels the Direct Debit payment without prior agreement with CDGL they will be liable for the charge stipulated in 6.8.

7. THIRD PARTY RIGHTS

- 7.1** A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

8. LICENCE GRANT AND INTELLECTUAL PROPERTY INDEMNITY

- 8.1** Subject to clause 8.2 CDGL grants to the Customer a non-exclusive, non-transferable, royalty free licence to use the CDGL portal for the purposes described in this Contract for so long as this Contract remains in force.
- 8.2** The Customer will not without CDGL's prior written consent;
- 8.2.1 distribute or sell copies of the CDGL portal or its documentation to third parties; or
 - 8.2.2 sub-licence or otherwise grant rights to third parties for the use of CDGL; or
 - 8.2.3 copy nor (except as permitted by law) decompile or modify the software, or copy manuals or documentation licensed to it by or on behalf of CDGL. In the case of manuals or documentation such written consent will not be unreasonably withheld or delayed.
- 8.3** The licence granted under sub clause 8.1 shall terminate when this Contract expires or is terminated.
- 8.4** CDGL shall indemnify the Customer to the extent that it suffers any damage, loss, liability, cost, fine or expense of any kind in relation to a claim or allegation from a third party that the Customer's use of the Services infringes a third party's Intellectual Property Rights. As a condition of this indemnity the Customer must:
- 8.4.1 notify CDGL forthwith in writing of any allegation of infringement;
 - 8.4.2 make no admission in respect of or settlement of any claim without CDGL's prior written consent;
 - 8.4.3 allow CDGL sole control of all negotiations and defense of proceedings;
 - 8.4.4 provide CDGL all reasonable assistance in dealing with the allegation or claim (CDGL shall pay the Customer's reasonable expenses for such assistance); and
 - 8.4.5 allow CDGL to modify or replace the Services or any part thereof, so as to avoid the infringement.
- 8.5** The indemnity in clause 8.4 above does not apply to infringements caused by the use of the Services in conjunction with other equipment, software or services not supplied by CDGL and not approved by CDGL for use in conjunction with the Services or to infringements occasioned by designs or specifications made by or on behalf of Customer (but excluding designs or specifications made or approved by CDGL).

8.6 The Customer agrees to indemnify CDGL against all claims, proceedings, costs and expenses of any nature arising from infringement (or alleged infringement) of any third party Intellectual Property Rights by reason of the Customer's use of the Services in conjunction with other equipment, software or services not supplied by CDGL and not approved by CDGL for use in conjunction with the Services and infringements occasioned by designs or specifications made by or on behalf of Customer (but excluding designs or specifications made or approved by CDGL). CDGL shall:

- 8.6.1 notify the Customer forthwith in writing of any allegation of infringement;
- 8.6.2 make no admission in respect of or settlement of any claim without CDGL's prior written consent;
- 8.6.3 allow the Customer to conduct all negotiations and defence of proceedings;
- 8.6.4 provide the Customer all reasonable assistance dealing with the allegation or claim (Customer shall pay CDGL's reasonable expenses for such assistance); and
- 8.6.5 allows the Customer to modify any equipment, software or services it uses in conjunction with the Services so as to ensure the equipment, software or services does not continue to infringe the third parties Intellectual Property Rights.

8.7 The limitations and exclusions of liability contained in clause 10 below do not apply to liability under this clause 8.

9. CONFIDENTIALITY AND PUBLICITY

9.1 The obligations in this clause 9 will remain in force following termination of this Contract for any reason

9.2 Each party will keep strictly confidential all Confidential Information belonging to the other and/or the other's Representatives which is received or obtained during the negotiation or performance of this Contract and, except with the prior written consent of the other (or of the relevant Representative of the other) or to the extent that disclosure is required by law, will not disclose such Confidential Information to any third party or copy or use it for any purpose other than for the proper performance of its obligations or the proper exercise of its rights under this Contract.

9.3 Neither party will acquire any right in or title to Confidential Information of the other or the other's Representatives nor any licence in respect of it except as expressly stated in this Contract. Each party will protect the Confidential Information of the other and of the other's Representatives as if it were its own Confidential Information and will not copy, summarise, modify or disclose it except to the minimum extent necessary to perform its obligations or exercise its rights under this Contract. Each party will ensure that all persons to whom it discloses Confidential Information of the other or the other's Representatives are bound by obligations of confidentiality and non-disclosure at least equivalent to those in this Contract.

9.4 The duties imposed on the parties by clauses 9.1 and 9.2 above do not extend to information or data which at the time of its disclosure or use by the receiving party:-

- 9.4.1 is generally available and known to the public other than by reason of the receiving party's breach of this clause 9;
- 9.4.2 the receiving party can demonstrate had previously come lawfully into the receiving party's possession from a third party under no restriction as to its use or disclosure; or
- 9.4.3 the receiving party can demonstrate that it developed independently without reliance on Confidential Information of the other or of the other's Representatives.

9.5 Each party agrees and acknowledges that damages alone may not be an adequate remedy for breach of this clause 9 and that each party and their Representatives may be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this clause 9.

9.6 CDGL may use the Customer's logo on sales and promotional material without notification to the Customer. However, neither party will use the other's name nor issue any statement, press release, other advertising or other publicly disseminated material in connection with this Contract without the other's express prior written consent (not to be unreasonably withheld).

9.7 On termination of this Contract, each party shall;

- 9.7.1 return to the other party all documents and materials (and any copies thereof) containing, reflecting, incorporating or based on the other party's Confidential Information;
- 9.7.2 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- 9.7.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

10. LIABILITY

- 10.1** Neither party limits its liability for death or personal injury arising from its negligence (or its officers, agents or employees) or any other matter in respect of which liability cannot be limited by law and clause 10.3 below will not apply to such liability.
- 10.2** Nothing in this clause 10 will exclude, restrict or limit either party's liability for fraud or fraudulent misrepresentation committed by that party (or its officers, agents or employees).
- 10.3** Subject to clauses 10.1 and 10.2, CDGL's entire liability under this Contract (other than under clause 8.3 above) or for any cause of action related to the Services shall be limited to 25% of the contract value in the preceding 12 months.
- 10.4** Except as regards to 10.1 CDGL shall not be liable to the Customer, whether in contract, tort (including negligence) or otherwise, for:
- 10.4.1 loss of profits;
 - 10.4.2 business interruption; or
 - 10.4.3 loss of anticipated savings; or
 - 10.4.4 for any special, indirect or consequential loss or damages; or
 - 10.4.5 for any loss, corruption or destruction of data; or
 - 10.4.6 loss of business opportunity.

11. TERMINATION

- 11.1** CDGL may terminate this Contract by:
- 11.1.1 giving not less than 30 days (or 90 days in the case of leased lines) written notice to the Customer to expire no later than the end of the Initial Term or the end of the Renewal Period.
 - 11.1.2 notice to the Customer if any third-party service which is essential to the provision of the Service(s) is terminated or ceases to be available to CDGL, at all or at an appropriate quality and no suitable replacement shall be available on commercially reasonable terms. CDGL shall give such advance notice to the Customer as it is reasonably able to.
- 11.2** The Customer may terminate this Contract by giving 30 days (or 90 days in the case of Leased Lines) written notice to expire no later than the end of the Initial Term or the end of the Renewal Period.
- 11.3** Either party may terminate the Contract:
- 11.3.1 immediately by written notice if the other has a receiver, liquidator or administrator appointed, is the subject of bankruptcy proceedings, ceases to trade, passes a resolution for or is the subject of a winding up order (except for the purpose of a solvent amalgamation or reconstruction), makes any composition or arrangement with creditors or is unable to pay debt as and when they fall due;
 - 11.3.2 on 14 days prior written notice if the other party is in material breach of its obligations under this Contract and, if the breach is capable of remedy, has failed to remedy the breach within 28 days of receiving a written notice from the other party specifying the breach and requiring it to be remedied.
- 11.4** In the event that the Contract is terminated pursuant to clause 11.3.1, the Customer shall immediately pay to CDGL all of CDGL's outstanding unpaid invoices and interest and, CDGL shall submit an invoice for the remaining terms on all Contracts, as detailed on the Order Forms, which shall be payable by the Customer immediately on receipt.
- 11.5** Following termination of this Contract for any reason CDGL shall, if so requested by the Customer, immediately destroy all documents and materials of whatever kind belonging to the Customer and in CDGL's possession or power which belong to the Customer or which have been created for the purpose of CDGL's performance of the Services.
- 11.6** Provisions which expressly or by implication are intended to come into force upon or survive termination of this Contract will come into force upon or survive termination of this Contract for any reason.
- 11.7** If this Contract is terminated and the Customer wishes to transfer to another provider of landline services, CDGL will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service providing all Termination Fees have been paid and no outstanding monies are owed to CDGL by the Customer.
- 11.8** Upon Termination for any reason any Termination Fees or Minimum Spend which has not been reached will become immediately payable.

12. FORCE MAJEURE

- 12.1** Neither party will be liable except as specified in this clause for any failure to perform, delay in performing or imperfect performance of any obligation under this Contract to the extent that such failure, delay or imperfect performance is caused by events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**").
- 12.2** If either party is affected by a Force Majeure Event it shall promptly notify the other party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.
- 12.3** If a Force Majeure Event prevents CDGL from providing the Services in accordance with this Contract for 12 consecutive weeks or more, either party may terminate this Contract immediately by written notice.

13. ESCALATION AND DISPUTE RESOLUTION

- 13.1** If any dispute arises between the parties, the parties shall use their reasonable endeavours to settle such dispute in accordance with the following procedures:
- 13.1.1 any dispute which has not been settled by the Customer's Representative and the CDGL Representative within 10 working days of the matter being raised, may be escalated by either party;
 - 13.1.2 if the dispute is not resolved under 13.1.1 then both parties shall indicate a Director of their respective businesses within 10 working days and use their best endeavours to resolve the dispute within 30 working days of the original dispute being raised;
 - 13.1.3 If the parties fail to reach agreement under 13.1.1 or 13.1.2 the dispute resolution procedure under this clause 13 shall be deemed exhausted.
- 13.2** Neither of the parties shall commence or pursue legal proceedings against the other until the dispute resolution procedure under this clause 13 is deemed exhausted save that nothing in this clause 13.2 shall prevent either party applying for injunctive relief.

14. ASSIGNMENT, SUB CONTRACTING AND DELEGATION

- 14.1** CDGL may appoint sub-contractors to facilitate the delivery and ongoing support of this Contract.
- 14.2** Without CDGL's express consent the Customer may not assign any part of this Contract or any of its rights or obligations.

15. INSURANCE

- 15.1** The Customer warrants that it will insure any Customer Purchased Equipment (to its full replacement value) delivered to it until title has passed to the Customer pursuant to Clause 3.7.

16. SPECIAL CONDITIONS

- 16.1** If any Services come with a Service Level Commitment these are only targets and failure to attain these levels will not be considered to be a breach of this Contract.

17. NOTICES

- 17.1** Any notice to be served on either party by the other under this Contract will be in writing and delivered by hand or recorded delivery to the addresses set out in the Order Form.
- 17.2** Notices delivered by hand during normal business hours will be served on the day they are delivered. Notices sent by first class post will be deemed served on the second business day after the date they are posted.

18. ENTIRE AGREEMENT

- 18.1** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes any previous negotiation, written, oral or electronic communication, arrangement or agreement between them or any other statement or representation made by either of them in relation to the subject-matter of this Contract including any proposal document (except that neither party hereby seeks to exclude liability for fraudulent misrepresentation and except to the extent that either party has any outstanding liability to the other under a previous arrangement or agreement).

- 18.2** The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CDGL which is not set out in this Contract.
- 18.3** From time to time CDGL may update its Terms and Conditions or Contract without being required to give prior notice to the Customer;
- 18.3.1 if the Customer, acting reasonably, believes these changes materially affect the commercial viability of the Service(s) then they will give notice of this within 30 days of receiving the notification from CDGL and both parties agree to resolve this dispute in line with clause 13.
- 18.3.2 if no objection is received then the CDGL updates are deemed to have been accepted.
- 18.3.3 any other variation of this Contract or the Terms and Conditions must be in writing and signed by or on behalf of each party.
- 18.4** If any provision of this Contract is held by the parties or by any court or competent authority to be illegal, invalid or unenforceable in whole or in part, that provision will be deemed to be deleted and not to form part of this Contract and the enforceability of the remainder of this Contract will not be affected thereby. If any provision of this Contract is so broad as to be held unenforceable, such provision will be interpreted to be only so broad as is enforceable.
- 18.5** This Contract and any variation to this Contract may be executed in one or more counterparts, which, taken together, will constitute a single Contract. If both parties execute two copies of this Contract, each executed copy will count as an original.
- 18.6** Certain telecommunication systems and services are subject to regulation by the Office of Communications ("**OfCom**"). OfCom may from time to time change the regulatory framework within which the Services and Charges are provided and the Customer accepts that CDGL may need to change the Services and Charges to comply with such regulatory framework. The parties accept that such changes shall be deemed to comply with the terms of clause 18.3.

19. WAIVER AND CUMULATIVE NATURE OF REMEDIES

- 19.1** The failure or delay of either party in any one or more instances to insist on strict performance of one or more of the terms of this Contract or to exercise any right or remedy under this Contract or at law will not be construed as a waiver of that or of any subsequent breach of the same term, any breach of any other term nor of the right to enforce another such right or remedy or the same right or remedy arising on another occasion.
- 19.2** Unless there is express provision to the contrary in this Contract, no remedy conferred by any term of this Contract is intended to be exclusive of any other remedy available under this Contract or at law. Each and every remedy is cumulative and is in addition to each and every other remedy available under this Contract or existing at law (whether in equity, by statute, at common law or otherwise).

20. SEVERANCE

- 20.1** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

21. LAW AND JURISDICTION

- 21.1** This Contract and all matters arising from it are governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the courts of England.