

Union Street Standard Terms and Conditions ("Standard Terms") (agreement version 4.2)

Under the terms of this Agreement, the Customer whose details are set out in the Particulars, agrees to a licence from Union Street Technologies Limited the Software identified in the Particulars.

We will provide the Support together with any other Services itemised in the Particulars and any other Services not itemised in the Particulars but which We and You agree in writing will be provided under this Agreement.

You agree to pay to Us the Service Fee(s), the Usage Based Fee and the One-Off Charge(s) for the licensed Software and the Services.

This Agreement continues for the Minimum Term identified above, and is not capable of being terminated by You within this period, although it may be terminated by Us where a right to do so exists in the Standard Terms. Following expiry of the Minimum Term this Agreement may only be terminated in accordance with the Standard Conditions.

Your signature to this Agreement confirms agreement to observe and perform such terms and conditions and that You have been afforded the opportunity to read and consider such terms and conditions prior to signature. Please do not sign this Agreement until You are happy with and understand Your obligations to Us.

1 Definitions

1.1 The following terms shall have the following meanings (in addition to any terms defined in the Particulars):

"**Active**" – describes the state of the Software once it is live and has actively been used for its business purpose i.e. billing, provisioning etc

"**Agreement**" - this agreement between You and Us comprising the Particulars, the Standard Terms, the relevant Schedules, the Software EULA, and any other document referred to in the Standard Terms as being applicable to this Agreement from time to time.

"**Associate**" - has the meaning prescribed in section 435 of the Insolvency Act 1986.

"**Bureau Service**" - the provision of an out-sourced telecommunications billing service on behalf of a third party (e.g. a reseller, CP, carrier etc.).

"**Billing Database**" - the Microsoft SQL database used by the Software.

"**CDR**" - means Call Detail Records as commonly used by network operators to provide Communication Providers (CPs) details of usage by their end-user customers. In this context the term can also mean data related to other types of services, rentals, fixed charges or usage.

"**Concurrent Licensing**" – A method of licensing the Software, alternative to providing Licence Keys. The Software will communicate with Our licensing server which will determine how many concurrent copies of the software You may run or otherwise. Where concurrent licensing is used, You may install the Software on multiple machines within Your organisation but the number of instances of the Software that can be run simultaneously will be restricted. Concurrent Licensing is not available in web-based versions of the Software and Windows Desktop versions 2.8 (or above).

"**Control**" - in relation to a body corporate or a limited liability partnership, the power of a person to secure that the affairs of the body corporate or limited liability partnership, are conducted in accordance with the wishes of that person by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate or other entity or as a result of any powers conferred by the articles of association, members agreement or any other document regulating that or any other body corporate or other entity, and a "**Change of Control**" occurs if a person who controls any body corporate or limited liability partnership, ceases to do so or if another person acquires Control of it.

"**CP**" - Communications Provider.

"**Data Protection Legislation**": the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

"**Effective Revenue**" - Usage Based Fees are calculated from effective monthly revenue rather than actual monthly revenue. To calculate the effective revenue, We will consider any individual service/subscription charges that You bill to Your end-user customer that is greater than an agreed capping value to be capped at that value. All variable usage based charging (e.g. calls, data etc) that You bill to your end-user customer is considered to count towards the effective revenue in full. Unless specified otherwise in the Particulars the capping value is £500.00 per charge. For the avoidance of doubt, revenue includes services that may or may not actually be invoiced to end-user customers for example NGN rebates etc.

"**EMP**" - Equivalence Management Platform, which is the communication gateway provided by BT to receive and manage WLR3 orders.

"**Installation Date**" - the date of commencement of installation. A date agreed between the parties at project management stage.

"**KCI**" - notification messages sent from the BT EMP to 'keep customers informed'.

"**Licence Key**" or "**Keys**" - the unique data code required to be entered into a computer system upon which the Software is located to enable the Software to function. The Software will not perform any function or functions without the Licence Key. The term Licence Key refers to each and every Licence Key issued by Us to You during the continuation of this Agreement.

"**Loaders**" - mean data interpretation programs that allow the software to read CDRs.

“Minimum Charge” – the minimum monthly charge to be invoice by Us to You, applicable from the installation date, as indicated in the particulars. Please note that each line item in the particulars has its own minimum charge. Where the minimum charge has no value set, then the sum of the service fees applicable will in effect be the minimum charge.

“Minimum Term” – the minimum period of time for which this Agreement shall continue (subject to any earlier right of termination We may have under this Agreement) as stated in clause 7.2. You acknowledge You have no right to terminate this Agreement during the Minimum Term.

“Named User license” – is an exclusive license of rights assigned to a single named Software user. The user (**“User”**) will be set-up and administered within the Software. All web-based versions of the Software and Windows Desktop versions 2.8 (or above) work on the basis that the software is licensed to support a particular number of Named Users.

“Named User(s)” – Each User that is granted a Named User License.

“One Off Charge” – the sum shown in the Particulars as ‘one-off charges’ payable by You to Us in relation to the delivery and installation of the Software and any other one-off charges’ payable by You to Us (as particularised in Schedule 1) in respect of any Service(s) (other than Support) not itemised in the Particulars but which We and You agree in writing will be provided under this Agreement.

“Particulars” – the specific provisions detailed on the first page of this Agreement.

“Permitted Number” – the number of Named Users are permitted to install and use the Software, or the number of users that can simultaneously use the Software in the case of Concurrent Licensing.

“Salescheck” – A feature in the aBILLity billing platform that enables CPs to analyse and understand their margins and usage at any time during the billing process.

“Service” – the Support together with any other service(s) itemised in the Particulars and any other Services not itemised in the Particulars but which We and You agree in writing will be provided under this Agreement.

“Service Agreement” – any ancillary written agreement (if any) between Us and You, whether entered into contemporaneously with this Agreement or otherwise.

“Service Fee” – the monthly licensing/Support fee shown in the Particulars (and which varies according to Usage Thresholds) and payable by You to Us in consideration of Us licensing the Software and providing the Support to You and any other monthly fee (as particularised in Schedule 1) payable by You to Us in respect of any other Service not itemised in the Particulars but which We agree in writing to supply to You. Our core billing products are usually invoiced as a **Service Fee** plus a **Usage Base Fee** based on a percentage of the monthly Effective Revenue. In addition to our core products, We also provide some modules for a fixed monthly service fee. In the case of WLR3 (if relevant), Our service fee is based on a threshold number of orders or fault reports.

“Software” – the computer readable software programme identified in the Particulars together with all other software programmes and/or products that may be supplied by Us to You during the continuation of this Agreement. This term includes (where applicable but without imposing an obligation on Us to provide unless specifically otherwise agreed in writing) all modifications, up-grades, additional modules (if any) added to and any revised versions of the Software which may be made, and/or issued to You during the continuation of this Agreement, and also includes all instruction manuals, literature, logo(s) or other marks and/or written or computer readable material produced in respect of the Software whether before or after the date of this Agreement.

“Software EULA” – the licence agreement between You and Us which is provided with and/or forms an integral part of the Software without acceptance of which you are unable to use the Software.

“Standard Price List” – the price list published from time to time by Us, a copy of the price list as at the date of this Agreement is at Schedule 1.

“Support” – the support services as defined in Schedule 2 (excluding training) which We shall provide to You.

“UK Data Protection Legislation”: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

“Usage Based Fee” – a fee based on a percentage of the monthly Effective Revenue measured against Usage Thresholds as identified in Our Standard Price List applicable from time to time.

“Usage Threshold” – threshold levels (exclusive of VAT) against which the monthly Usage Based Fee is established. These are shown as “level A”, “level B” etc in the Standard Price List and are used to determine the rate to use to calculate the monthly fees. The recommended threshold level normally corresponds to the average monthly **Effective Revenue** to be calculated utilising the Software.

“Users” – Members of your organisation who have been given a login to enable them to access the software

“We” or “Us” or “Our” – Union Street Technologies Limited.

“WLR3” – Wholesale Line Rental 3 which is the third generation of the WLR product.

“You” or “Your” – the party identified as the Customer in the Particulars and which is entering into this Agreement with Us.

1.2 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force as at the date of this agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

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

2 Ownership of the Software

2.1 The Software and all intellectual property and other rights within the Software will at all times belong to Us.

3 Use of the Software

Where the Software is provided, You agree:-

3.1 to pay to Us in advance as from the date of this Agreement, the Service Fee. The Usage Based Fee is calculated based upon Your Effective Revenue calculated for the calendar month immediately prior to the month of Our invoice to You.

3.2 On termination of this Agreement, however this occurs, to remove the Software from Your computer systems and to confirm in writing to Us that You have not retained any copies of the Software.

4 Support Charges

4.1 Support is provided in accordance with clause 12. In consideration of the provision of such Support, You agree to pay to Us in advance the Service Fee.

5 Payment of Invoices

5.1 Subject to anything to the contrary stated in these Standard Terms, all invoices become due for payment by direct debit 14 days following the date of the invoice unless otherwise agreed by Us in writing or in the special instructions on the Particulars. The total One Off Charge(s), shall be paid with order (prior to installation) unless otherwise agreed by Us in writing or in the special instructions on the Particulars. The Service Fee or where relevant the minimum charge, is invoiced and is payable from the date of installation. The Usage Based Fee based on a percentage of the monthly Effective Revenue, is invoiced and is payable from the date the product is used to actually bill (or place orders for) end-users, subject to 5.1 above.

6 Expansion of business and the Usage Threshold

6.1 The Software is provided to You, for a Fee that is in part based upon a percentage of the monthly Effective Revenue billed to Your end-user customers. The actual percentage factor used is stated in the Particulars or in accordance with schedule 1. You acknowledge as a consequence of the nature of the design of the Software information is provided by the Software to Us in connection with the Software's usage. We are entitled to receive such information which is an integral element of this Agreement, enabling the establishing of the Usage Threshold. You will not in any manner attempt to prevent the transmission of such information to Us or attempt to interfere with, vary, alter or restrict such information whether in whole or in part.

6.2 The monthly Usage Based Fee shall be calculated in accordance with the Standard Price List applicable and the agreed Usage Threshold in the Particulars.

6.3 If the Usage Threshold stated in the Particulars is "Level A" and your Effective Revenue is greater than the Usage Threshold for Level A as stated in schedule 1, then this Agreement will automatically be upgraded to "Level B". Conversely this Agreement will revert back to "Level A" if the Effective Revenue falls below the Usage Threshold for Level A as stated in schedule 1. Automatic Upgrade does not occur between any other Usage Threshold Levels.

7 Duration.

7.1 This Agreement continues until terminated by either You or Us in accordance, with clause 7.5, clause 7.6 or otherwise under the provisions of clause 8.

7.2 This Agreement shall continue for the period of time ("**Term**") stated to be the minimum term in the Particulars ("**Minimum Term**") and thereafter, as extended in accordance with clause 7.4

7.3 Except only in the case of termination under clause 7.6, when the Minimum Term commences as from the date of installation of the Software, the Minimum Term shall commence upon the date when:

7.3.1 the Software/ Services are Active and are ready for service; and

7.3.2 You have paid all agreed setup charges and other fees due (at such time) from You to Us.

7.4 Unless You have given written notice complying with clause 7.5 to terminate this Agreement upon the expiration of the Minimum Term, or otherwise upon the expiration of a Renewal Term (as hereinafter defined) the Term shall automatically renew for an additional period of twelve (12) months ("**Renewal Term**") calculated as from the day immediately following the expiration of the Minimum Term or the expiration of the immediately previous Renewal Term (as the case may be).

7.5 Once the Software is active, either party is entitled to terminate this Agreement by giving the other not less than 3 calendar month's written such notice to expire upon the expiration of the Minimum Term, or (where the Term shall have been extended in accordance with clause 7.4) upon the expiration of the relevant Renewal Term. If appropriate notice complying with this clause 7.5 is not given, the Term shall be extended in accordance with clause 7.4.

7.6 Prior to the Software becoming active either party may terminate this agreement giving 1 weeks written notice to the other party. In such a case, You will pay to Us all the Service Fee Charges which would have become due but for such termination in respect of the period commencing upon the date of installation and expiring upon and including the last day of the Minimum Term.

8 Non-payment, Breach and Termination of this Agreement

8.1 Either party shall be entitled to terminate this Agreement at any time by giving the other written notice if: -

- 8.1.1 the other party commits a fundamental breach of the terms of this Agreement and/or the Service Agreement in respect of which (but without limitation) a breach of clause 6.2 of this Agreement shall amount to fundamental breach; or
- 8.1.2 the other party commits a breach of its obligations under this Agreement and/or the Service Agreement (including but not limited to failure to make any payment due under this Agreement which (in the case of a breach which is capable of remedy) is not remedied within the period of 30 days of receiving notice to that effect from the other party, or
- 8.1.3 the other party commits a breach of this Agreement in respect of which notice has previously been given to rectify a materially similar breach in the past; or
- 8.1.4 the other party becomes the subject of a bankruptcy order or commit an act of insolvency or makes an arrangement or composition with or assignment for the benefit of its creditors or a receiver or administrator is appointed over some or all its assets or an event analogous to use events occurs in respect of Your assets in the jurisdiction of Your residence and/or incorporation.

8.2 We shall be entitled to terminate this Agreement at any time by giving written notice to You if:

- 8.2.1 You breach any term of the Software EULA; or
- 8.2.2 You cease to be contactable, or fail to respond to any of our enquires or requests, or fail to provide instructions, in each case for a continuous period of not less than 30 days; or
- 8.2.3 You do anything else, or fail to do something required of You under this Agreement, which has the effect of preventing or frustrating our ability to provide the Services in accordance with this Agreement; or
- 8.2.4 Where you are a company, or a limited liability partnership and there is a Change of Control.
- 8.2.5 Where You fail to abide by our Policy for Unacceptable Behaviour and Actions on a repeated basis. Please see our policy on our website <https://www.unionstreet.uk.com/policy-for-unacceptable-behaviour-and-actions/>.

8.3 If this Agreement:

- 8.3.1 expires or is terminated by either party for any reason, You will (in the case where You host the Software on infrastructure controlled by You), delete the Software and any back-up versions of the Software from all computer systems and data storage devices owned or under Your control and confirm in writing (if requested in writing by Us) that this has occurred;
- 8.3.2 expires or is terminated by either party for any reason, You will no longer be entitled to use the Software;
- 8.3.3 expires or is terminated by either party for any reason, You will remain liable for any breach of this Agreement which occurred prior to termination;
- 8.3.4 is terminated by Us during the Minimum Term under clause 8.1 or under any of clauses 8.2.1, 8.2.2 or 8.2.3, then without prejudice to any other rights We may have, You will pay to Us all Service Fees plus the average Usage Based Fee which would have become due but for such termination in respect of the period commencing with the date of termination to and including the last day of the Minimum Term such Fees may (at Our discretion) be discounted by 5 per cent per month to reflect the benefit to Us of early receipt;
- 8.3.5 expires or is terminated by either party for any reason, We shall, at Our option, but subject to clause 18.6.5, and without any liability to You, delete or return to You, all of Your data and information in Our possession at that time and any copies thereof, except to the extent that We, at Our sole discretion, consider it necessary or desirable for Our own purposes or interests to keep a record and/or copies of such data and information.

8.4 Without limiting all other rights We may hold if You are in breach of the terms of this Agreement We are entitled to render the Software ineffective and incapable of use by either:

- 8.4.1 not providing any License Key required by You; and/or
- 8.4.2 rendering any License Key previously provided ineffective; and/or

8.4.3 Disabling the Licensing for Named Users or in the case where the Software is licensed using Concurrent Licensing, We may suspend the license.

8.5 We are entitled, without the need to give You any form of prior notice, to render the Software ineffective by Disabling the Named Users or withholding the Licence Key or suspending the concurrent licensing or removing Your access to the Software, where any sum of money payable by You under this Agreement is overdue for payment including (but without limitation) any sum which may be payable by You in accordance with clause 6.

9 Your obligations to Us in addition to payment

9.1 You agree to permit Us and Our representatives and those authorised by Us to have reasonable access to all premises owned or controlled by You both during and following termination of this Agreement for the purposes of installation of the Software, inspection of all computer systems and data storage devices for the purposes of verification of compliance by You with the terms of this Agreement and the Software EULA.

9.2 You will observe at all times the terms of the Software EULA.

9.3 You will only use the Software for the purpose(s) indicated by You to Us prior to the date of this Agreement and in respect of which We have confirmed that the Software is capable of performing such use/functions. We give no warranty (express, implied or otherwise) as to the Software's performance and/or capabilities other than those confirmed in writing by Us to You prior to or during the continuation of this Agreement or otherwise confirmed in writing within any documentation produced by Us (including all instruction manuals, and literature issued with the Software).

9.4 Where the software is to be installed on your computer (on premises), You will provide Us with unrestricted access of Your computer systems on the Installation Date for the purposes of installation and, subject to Your payment of any applicable One-Off Charges stated in the Particulars, demonstration of the Software. It is Your responsibility both on the Installation Date and thereafter to ensure Your computer system is fully functional on the Installation Date and appropriate members of Your staff are available on the agreed training date. We are not required to make further visits to train on the use of the Software to those who do not attend the initial demonstration.

9.5 Only You and any Associate of Yours, are permitted to use the Software and only then in connection with Your or Your Associate's business. Your rights under this Agreement are personal to You and are non-transferable. You are strictly prohibited from providing the Software or any copy of it to any third party other than an Associate or to use the Software to provide services to any third party outside Your and Your Associate's usual area of business, whether or not You receive payment for such services.

9.6 Unless agreed in writing by Us, You are prohibited from using the Software to provide a Bureau Service for any other company, body, firm or individual carrying on business in the telecommunications industry.

9.7 You will not attempt nor permit others to de-compile, reverse-engineer or disassemble the Software or any part of the Software nor make any duplicate copies of the Software with the exception "back up" copies which shall be retained solely for the purposes of re-installation of the Software on Your computer system.

9.8 You will not attempt to make any changes to the billing database, such as adding fields, triggers, stored procedures, views or attaching other tables. We have no obligation to support the Software where external changes have been made, or attempted by anyone other than a service engineer duly appointed by Us.

9.9 You will not use nor attempt to use the Software by more than the Permitted Number of Named Users (or unnamed users in the case of concurrent licensing).

9.10 You are responsible for the maintenance of the continuity and quality of all data utilised within the Software. We provide the Software for Your use, We are not responsible in any manner for the data that you utilise within or the method of input of data into the Software.

9.11 Where the software is installed on your computer (on premises), You are responsible for implementation of appropriate back up procedures for data within the Software and all other prudent disaster recovery procedures.

9.12 Where the software is installed on your computer (on premises), You acknowledge that the performance and support of all computer hardware upon which the Software is used, is entirely Your responsibility. We have no liability nor obligation to You, for failure within or the inability to operate, the Software caused, in whole or in part, by operational defects originating from the performance of the computer hardware upon which the Software is used.

9.13 Where the software is installed on your computer (on premises), You should ensure that your computer operates with the current supported versions of certain Microsoft products, specifically SQL Server, Windows Desktop and Windows Server. Union Street are only able to provide full support of the software when it is used in conjunction with Microsoft product versions that are supported by Microsoft itself on a 'current minus 1' basis. To clarify, current minus 1 means that we will provide full support on our software when used all Microsoft versions currently supported by Microsoft as well as the one immediately before that.

9.14 You are responsible for ensuring that your organisation is correctly licensed for all software which may be used by You in conjunction with or in association with the Software, including by way of standard example but without limitation, Microsoft Exchange, SQL and IIS. Where We host Your software You will also require Window Server CALs and Windows Remote Desktop CALs.

9.15 From time to time, it is likely that We will provide You with new CDR Loaders or amend existing Loaders. If so, We will test Loaders before shipping but it is not always possible to check every possible scenario. You acknowledge that when a loader is used for the first time, it is Your responsibility to thoroughly check that it is working correctly and to report any defect immediately to Us (which can be done using the Salescheck feature in aBILLity). You should not send out bills until You are satisfied that the data has been correctly imported.

- 9.16 You should use the Salescheck feature every time You perform a bill run, prior to despatching invoices. Any incorrectly rated services or loss making calls will be identified by Salescheck giving You the opportunity to correct the data. Unless We are providing a Bureau Service, it is entirely Your responsibility to check Your billing data and ensure that it is correct.
- 9.17 You are responsible for managing and maintaining your own users (logins). You are responsible to ensure that your users take care to prevent unauthorised access to the software. In particular, if one of your users leaves your organisation, you are responsible for ensuring that their user account is disabled or deleted.
- 9.18 We will not tolerate unacceptable behaviour and actions towards Our staff and You acknowledge that We have no obligation to assist You whilst Your behaviour is unacceptable. Please see our policy on our website <https://www.unionstreet.uk.com/policy-for-unacceptable-behaviour-and-actions/>.

10 Charges

- 10.1 You will pay to Us the One-Off Charge on the date of signing of this Agreement, or as per the special instructions in the particulars.
- 10.2 Should You cancel a training course or a prearranged visit by Us to Your premises at less than 48 hours notice or should a visit be aborted due to insufficient preparations on Your behalf including inability of Us to access Your computer system or inability to properly and effectively access the Software upon or from Your computer system, You will to pay Our standard cancellation fee from time to time which is the cost of the training course or in the case of a site visit, not less than £350.
- 10.3 Our Fees are payable in advance so that they are received by Us on the due date by way of cleared funds. You will pay the monthly Fees by Direct Debit unless otherwise agreed in the Particulars.
- 10.4 Our Fees remains payable until this Agreement is properly terminated whether or not You are using the Software.
- 10.5 Notwithstanding any other remedy We may have if any Service Fee, Usage Based Fee, One Off Charge and/or any other payment under the Services Agreement (if any) is not paid within 30 days from its due date You will pay to Us interest on the balance due calculated at the rate of 2% above the base rate of Barclays Bank plc from the date of invoice until the date of receipt by Us of cleared funds. Where it is necessary for Us to commence any action against You in connection with any breach of the terms of this Agreement You will in addition pay to Us all costs and expenses of such action on a full indemnity basis.
- 10.6 All amounts due under this Agreement are stated exclusive of Value Added Tax or any like sales tax charged (where applicable).

11 Hosting and Bureau Services

- 11.1 If it has been agreed in the Particulars (or otherwise agreed in writing between You and Us) that Your billing platform is hosted by Us, We shall use reasonable endeavours to ensure the hosting service in so far as it is utilising communications facilities within Our ownership or control:
- 11.1.1 is available for use at all times except for temporary inaccessible due to routine maintenance and/or up-grade or improvement works; and
- 11.1.2 is robust and capable of use; and
- 11.1.3 is hosted at a reputable and reliable hosting facility; and
- 11.1.4 is protected from viruses and that data is backed up on a daily basis,
- provided that We shall not have any liability to You other than to use such reasonable endeavours, and specifically no liability of whatsoever nature which may arise from (directly or indirectly) the failure to perform such criteria unless We have specifically agreed in writing to accept such a liability.
- 11.2 If it has been agreed in the Particulars (or otherwise agreed in writing between You and Us) that We provide a Bureau Service, We will use reasonable endeavours to collect and import carrier data and resolve rejected calls. We are not liable for any delays caused by the network operators or any 3rd party or delays caused by You where there is a reasonable request by Us for information (including any billing related activity for example, approval of invoices.). You are responsible for maintaining the accuracy of Your customer data and tariffs and as such We cannot be held responsible for any errors in billing caused by inaccuracies. Where You wish to change or add a product or carrier which involves configuring a new type of CDR or data feed, then You must provide us a minimum of 5 working days' notice.
- 11.3 The Fees payable by You to Us in respect of Hosting and Bureau Services are set out in Schedule 1.

12 Support

- 12.1 Support shall be provided for the duration of this Agreement, or for such other period stated in writing by Us to You. The Fee payable by You to Us for the Support is included in the licensing/Support Service Fees set out in the Particulars.
- 12.2 The specific services comprised within Support shall be dependent upon whether We have agreed to provide You with the 'Standard' or 'Premium' (formerly Platinum) level of Support.
- 12.3 During the period We have agreed to provided Support, You shall provide Us with uninterrupted remote access to the computer system upon which the Software is located and all computer screens connected to such system. Remote access shall occur via the internet using a virtual private network connection with both database utilised by the Software and Your computer screens, Windows Terminal Services (Remote Desktop). We have no obligation to provide any form of Support unless We are able to effect such remote access.

- 12.4 Where You request rectification of a purported defect or inability to perform, within the Software, which
- 12.4.1 subsequently transpires to be a fault or defect for which We are not responsible; or
- 12.4.2 We are unable to obtain remote access to Your computer system, database and/or computer screens,
- We shall be entitled to charge the appropriate rates in accordance with the Standard Price List for the time taken in attending or attempting to attend, to Your request.
- 12.5 We shall use reasonable endeavours to observe any agreed service criteria as set out in Schedule 2, provided that We shall not have any liability to You other than to use such endeavours. Specifically, no liability shall be incurred by Us if any such criteria is not performed unless, We have specifically agreed in writing to accept such liability.
- 12.6 Our obligation to provide Support shall be suspended where any sum of money due from You to Us is overdue for payment including (but without limitation) any sum which may be due to Us in accordance with clauses 4, 5, 6 and 10.
- 12.7 If You have opted for Premium (formerly Platinum) Support as defined in schedule 2, We offer a service level guarantee. Union Street will use reasonable endeavours to meet this SLA targets at least 90% of the time (excluding Low impact issue or multiple reports of the same event). If in any given 3 month rolling period, this is not the case, then Union Street will compensate You by way of credit note for 20% of that part of the monthly Service Fee payable in respect of the Support for the previous calendar month. For Support incidents relating to CDR Loaders, this guarantee will only be valid if a full specification is provided from the carrier. We cannot be held responsible for any delays caused as a result of obtaining information or clarification from a third party (e.g. the carrier).
- 12.8 Support is provided between 09:00 - 17:00 Monday to Friday (UK time) excluding public holidays, unless specified otherwise in writing by us.
- 13 WLR3 Service**
- If it has been agreed in the Particulars (or otherwise agreed in writing between You and Us) that We will provide WLR3 Services, then the following provisions shall apply.
- 13.1 Subject to earlier termination of this Agreement, the WLR3 Service shall be provided for the Minimum Term, or for such other period as agreed in writing by Us and You.
- 13.2 Where WLR3 Service is provided by Us, We shall use reasonable endeavours to ensure the WLR3 service in so far as it is utilising communications facilities within Our ownership or control:
- 13.2.1 is available for use at all times except for temporary inaccessible due to routine maintenance and/or up-grade or improvement works; and
- 13.2.2 is robust and capable of use; and
- 13.2.3 is hosted at a reputable and reliable hosting facility,
- provided that We shall not have any liability to You other than to use such reasonable endeavours, and specifically no liability of whatsoever nature which may arise from (directly or indirectly) the failure to perform such criteria unless We have specifically agreed in writing to accept such a liability.
- 13.3 We have no obligation to provide WLR3 Services where any sum of money due to Us is overdue for payment including (but without limitation) any sum which may be due to Us in accordance with clause 6 where the Usage Threshold is exceeded by You.
- 13.4 Service Fees payable by You to Us for the provision of WLR3 Services are set out in Schedule 1 and shall commence from the date that You first connect to the live BT Openreach EMP.
- 14 Obligations on the part of Us to You**
- 14.1 We confirm to You that We are the owners of the Software and We are able to enter into this Agreement with You.
- 14.2 We confirm that the Software is able to perform the specific functions We have stated in writing to You either prior to or during the continuation of this Agreement. We do not give any warranty, confirmation or other assurance in connection with the ability of the Software to perform any other function. Our obligations in this respect are governed by Your use of the Software and the computer system on which it is located. We do not give any warranty nor confirmation that the capabilities of Your computer system are such as to enable the Software to function, nor that the Software will not conflict with (either to the extent of being unable to function or being unable to perform specific functions) other computer software used or stored by You. All computer systems are subject to hardware malfunction and interference with software through what is commonly known as computer "bugs" or "viruses", We are not liable to You if You are unable to use the Software arising from such computer hardware defect, malfunction or failure or the affect on the Software of any computer bug or virus. It is Your responsibility to maintain computer virus protection and maintenance and renewal of Your computer systems.
- 14.3 If the software is not hosted by Us, We will use all reasonable endeavours to install the Software on a computer in Your premises on the Installation Date however shall not be liable for any loss which may arise if We are prevented from attending Your premises on such date, in which case We will arrange with You a reasonably appropriate alternative date.
- 14.4 We will use reasonable endeavours to provide Support to the extent required by this Agreement.

14.5 To the extent required by this Agreement, We will use reasonable endeavours to provide those Services (other than Support) as set out in the Particulars (if any) or which You and Us agree in writing will be included under this Agreement (if any).

15 Intellectual Property

15.1 All intellectual property within the Software is at all times (irrespective of the basis upon which the Software is provided to You) the property of Us, the right to Use the Software is governed by the Software EULA.

15.2 Where You may provide suggestions, ideas, functions, know-how or other comment in connection with the Software, its use, performance or otherwise:

15.2.1 where these may subsequently lead to amendment, adjustment or alteration of the Software in any way, all such suggestions, ideas, functions, know how or other comments and all associated amended, adjusted and altered Software (and in each case, all intellectual property rights in the same) shall vest in Us and You shall not acquire any title, intellectual property rights or other proprietary rights in any of the same, and You hereby waive all moral rights to which You could or may otherwise be entitled under English law or under the law of any other jurisdiction worldwide in or to, any intellectual property rights which but for this clause 15.2 may have been acquired by You; and

15.2.2 We shall be entitled to use any such suggestions, ideas, functions, know how or comments in any Software (or any other software products) We supply without any obligation, financial or otherwise, to You.

15.3 USE OF AGGREGATE DATA. You agree that Union Street may collect, use and disclose quantitative data derived from the use of the software for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify any Customer or its users.

16 Liability and Limitation of Liability Provisions

16.1 Nothing in this Agreement shall exclude Our liability for death or personal injury caused by Our negligence.

16.2 In so far as the Software is unable to function to any specification/performance criteria indicated by Us to You in writing prior to the date of this Agreement as a consequence of any computer virus present within the manufacturing process of the Software and/or internal malfunction within the Software source code and/or design, We will use all reasonable endeavours to remove such virus and/or correct such malfunction. Except as stated in clause 16.1 We will have no further liability of whatsoever nature (whether direct or indirect) whether under the terms of this Agreement or otherwise.

16.3 Under no circumstances shall We will be liable to You for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill, toll fraud or anticipated savings, even if You had advised Us of their possibility.

16.4 We give no warranty as to the accuracy or completeness of all or any dialling code tables, charge group and call class tables and other data related to the rating of services.

16.5 We will not be liable to You for any losses arising from any inability to utilise the WLR3 Service however this may arise and whatever effect this may have upon You. You acknowledge that We host the WLR3 Service communication gateway in a secure hosting centre with a reputable hosting company however the resilience of the various communications media utilised by the WLR3 Service is affected by factors beyond Our control and within the ownership of third parties over whom We can not exercise any form of control.

16.6 You also acknowledge that if for any reason, the WLR3 gateway is unavailable, BT will only resend KCI notifications for up to 15 minutes after which time they will be permanently lost. You will hold Us completely harmless against any liability or consequences arising from the loss of any KCI notification.

16.7 We accept no responsibility for the accuracy, completeness and quality of any information provided in the form of notifications, KCIs, CDRs or other forms of notification issued by BT or any other third party. It is Your responsibility to ensure the validity and completeness of such information.

16.8 We are not responsible for any service provision implemented by You or any third party (including but not limited to BT) to Your customers whether utilising the WLR3 Service or otherwise, nor any errors made by You or any third party in the provision of such services including errors made within the use of the WLR3 Service including those within directory entries for Your customers which may result in no or in incorrect services being provisioned removed or omitted or may incur You in cost liability to BT or any such third party.

16.9 You acknowledge that the WLR3 gateway enables You to obtain confidential information/data about end-user installations. You are responsible to ensure that You have the appropriate consent of any such end-user prior to accessing such information/data. You hold Us entirely harmless in respect of any claim arising from the mis-use of such information/data or any failure to gain the correct consents.

16.10 You acknowledge that the Fraud Manager module (Line Guard) is provided only on the basis that it is designed to help You detect fraud (phreaking) and mis-use of Your telecoms service, but We do not make any warranty that it will detect and prevent fraud. You hold Us entirely harmless in respect of any claim arising from fraud, toll fraud or mis-use that affects Your customers, regardless of whether it was detected by the Fraud Manager module or not.

16.11 Where Your billing platform is self-managed, and an auto CDR download facility has been provided by Us, You acknowledge that it is entirely the responsibility of You to check the CDR data that You have imported on a regular basis and make sure that You have a complete set of imported CDRs prior to sending out bills to end-users. We cannot and will not be held responsible for any missing CDR files.

- 16.12 Where a Bureau Service is provided by Us, You acknowledge that it is entirely the responsibility of You to carefully check the proformas invoices produced and the monthly summary reports provided by Us and make sure that the billing totals are as expected.
- 16.13 Union Street are not responsible for any breach of data security caused by unauthorised use of your users login accounts, or any malicious act to disrupt the security, integrity or operation of the software.
- 16.14 Without limitation to the foregoing under no circumstances shall Our liability to You whether arising directly or indirectly from a breach or series of breaches of this Agreement exceed in total the cumulative sum of all payments (exclusive of VAT) made by You under this Agreement in the 12-month period prior to the occurrence of the event or events giving rise to such a claim.

17 Non-solicitation

- 17.1 You acknowledge that, during the course of provision of Services, You will make, maintain and develop personal knowledge of, or influence over, and valuable personal contacts with, Our staff and contractors. You hereby undertake to Us that You will not, during the course of this Agreement, or for a period of 12 months after its termination, directly or indirectly on Your own behalf or on behalf of any other person, concern, undertaking firm or body solicit or endeavour to entice away from Us any employee, officer, consultant, or service management employee of Ours (**Relevant Person**) or employ, engage, assist in or procure the employment or engagement of any Relevant Person by any other person, concern, undertaking, firm or body corporate. In the event of any breach of this clause 17.1 by You, You shall, in addition to any other remedy We may have at law, pay liquidated damage to Us in the sum of 25% of the annual salary of the Relevant Person or £10,000 if the Relevant Person is a consultant (plus any applicable VAT) such sum being acknowledged by the parties as a realistic pre-estimate of the loss We will suffer as a consequence of a breach of this clause 17.1. Without prejudice to the foregoing, You shall indemnify Us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Us arising out of or in connection with Your breach of this clause 17.1.

18 Data Protection

- 18.1 In this Agreement, "**Personal Data**", "**Personal Data Breach**", "**Processing**", "**Data Controller**", "**Data Processor**", "**Pseudonymising**", "**Supervisory Authority**" and "**Data Subject**", have the same meaning as set out in the Data Protection Legislation. For the purposes of this clause 18, "**Customer Personal Data**" means:
- 18.1.1 all Personal Data collected by Union Street on behalf of the Client;
- 18.1.2 all Personal Data delivered or otherwise made available by the Customer to Union Street; and
- 18.1.3 all Personal Data created by Union Street from the information in sub clauses 18.1.1 and 18.1.2 in this definition,
- but excluding Shared Personal Data (as defined below) and any other Personal Data in respect of which Union Street is a Data Controller.
- 18.2 For the purposes of the Data Protection Legislation, the parties agree that, to the extent that the Customer instructs Union Street to process Customer Personal Data on the Customer's behalf (including the instructions in clause 18.4), Union Street is the Data Processor and the Customer is the Data Controller.
- 18.3 For the avoidance of doubt, to the extent that a party (a **Data Discloser**) discloses to the other party (a **Data Recipient**) the names, and contact details of the Data Discloser's officer(s) and/or employee(s) (**Shared Personal Data**) for the purposes of communications and/or the service of notices between the parties (**Agreed Purpose**) under or in connection with this Agreement, each party agrees that they shall each be a data controller for the purposes of such Shared Personal Data, and accordingly such Shared Personal Data shall not be subject to this clause 18.
- 18.4 The Customer hereby instructs Union Street to process the types of Customer Personal Data, in relation to the categories of Data Subject, for the purposes and duration, set out in clause 18.4, and to the extent necessary or desirable for the proper performance of the following Services by Union Street (to the extent that Union Street provides such Services to the Customer under this Agreement):
- 18.4.1 the Bureau Service;
- 18.4.2 Support which involves routine maintenance of the Software; and
- 18.4.3 Software installation,
- but, without prejudice to:
- 18.4.4 any other documented instructions from the Customer to Union Street from time to time (which may include documented requests by the Customer to Union Street to provide items of Support other than routine maintenance); and/or
- 18.4.5 any requirement by Union Street under Applicable Laws to otherwise process that Customer Personal Data.
- 18.5 The subject-matter and duration of the Processing, the nature and purpose of the Processing, the types of Customer Personal Data, and the categories of Data Subjects are as follows:
- 18.5.1 the subject-matter of the Processing under this clause 18 is: the Customer Personal Data as defined in clause 18.1;

- 18.5.2 types of Customer Personal Data include: names, telephone numbers, email addresses, address details, account details, bank and payment details in each case relating to End Customers (as defined below) and/or staff contacts within End Customers (as defined below);
- 18.5.3 categories of Data Subject include: the Customer's customers (**End Customers**) and/or staff contacts within End Customers;
- 18.5.4 scope, nature and purpose of Processing by Union Street includes: using the Customer Personal Data in order to provide, to the extent relevant to this Agreement:
- (a) the Bureau Service to the Customer (including using the Customer Personal Data to generate monthly bills on behalf of the Customer for sending to the End Customers),
 - (b) the installation of the Software (including the migration of Customer Personal Data as part of such installation) and the use of such installed Software and the Customer Personal Data by the Customer itself to enable the Customer to create bills for their End Customers;
 - (c) the Support, including routine maintenance of the Software and any other items of Support requested by the Customer from time to time (which may include accessing, copying, aggregating or otherwise compiling Customer Personal Data and/or recovering or otherwise rectifying corrupted or lost Customer Personal Data); and
 - (d) any other reasonable purposes notified by the Customer to Union Street from time to time.
- 18.5.5 Duration of processing: the duration of this Agreement, and such period following termination of this Agreement until the Customer Personal Data is returned or destroyed in accordance with clause 18.8.5 but subject to any requirement under Applicable Law to store or otherwise process the Customer Personal Data for any longer period.
- 18.6 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18.6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 18, **Applicable Laws** means (for so long as and to the extent that they apply to Union Street) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 18.7 Without prejudice to the generality of clause 18.6, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Union Street for the duration and purposes of this Agreement.
- 18.8 Without prejudice to the generality of clause 18.4, Union Street will, in relation to any Customer Personal Data processed by Union Street on behalf of the Customer in connection with the performance by Union Street of its obligations under this Agreement:
- 18.8.1 process that Customer Personal Data only on the documented instructions of the Customer from time to time (including the instructions in clause 18.4), unless Union Street is required by Applicable Laws to otherwise process that Customer Personal Data. Where Union Street is relying on laws of a member of the European Union or European Union law as the basis for processing that Customer Personal Data, Union Street shall promptly notify the Customer of this before performing that processing required by the Applicable Laws unless those Applicable Laws prohibit Union Street from so notifying the Customer;
- 18.8.2 ensure that all personnel who have access to and/or process that Customer Personal Data are obliged to keep that Customer Personal Data confidential;
- 18.8.3 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of that Customer Personal Data and against accidental loss or destruction of, or damage to, that Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, Pseudonymising and encrypting that Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to that Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 18.8.4 not transfer any of that Customer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or Union Street has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) Union Street complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to that Customer Personal Data that is transferred; and
 - (d) Union Street complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of that Customer Personal Data;
- 18.8.5 at the written direction of the Customer, delete or return that Customer Personal Data and copies thereof to the Customer on termination of the Agreement (unless Union Street is required by Applicable Law to store that Customer Personal Data) provided that if the Customer has not so directed Union Street to delete or return said Customer Personal Data by the date this Agreement terminates, the Customer shall be deemed to have instructed Union Street to promptly delete all such Customer Personal Data on termination of the Agreement in which case Union Street shall accordingly delete all such Customer Personal Data (unless Union Street is required by Applicable Law to store the Customer Personal Data); and
- 18.8.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 18, and where appropriate, make available to the Customer all information necessary to demonstrate Union Street's compliance with this clause 18.8, and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer (provided that any such audit must be carried out in accordance with Union Street's Information Security Management System and Policy and any such auditor must agree to be bound by an appropriate Non-Disclosure Agreement).

- 18.9 Each party will notify the other party as soon as is reasonably practicable if it becomes aware of a Personal Data Breach relating to either party's obligations under this Agreement.
- 18.10 Union Street shall not appoint any third party processor of Customer Personal Data under this Agreement unless:
- 18.10.1 the Customer has provided its prior written consent to the appointment in question; and
 - 18.10.2 Union Street has entered into a written agreement with that third-party processor incorporating terms which are substantially similar to those set out in this clause 18.
- 18.11 Without prejudice to the generality of clause 18.6 and clause 18.7, where the Customer instructs Union Street to process any of the special categories of Personal Data (as such term is provided for in the Data Protection Legislation), the Customer shall ensure that it is permitted, in accordance with the Data Protection Legislation, to lawfully process and transfer that Personal Data to Union Street for the duration and purposes of this Agreement, provided that any instruction by the Customer to Union Street to process any special categories of Personal Data, will be considered by Union Street on a case by case basis and Union Street shall have no obligation to accept such an instruction or to process such data. The Customer hereby undertakes not to transfer or disclose any Personal Data falling within the special categories of Personal Data to Union Street:
- 18.11.1 where it is not permitted, in accordance with the Data Protection Legislation, to lawfully process and transfer that Personal Data to Union Street for the duration and purposes of this Agreement; or
 - 18.11.2 if Union Street has not accepted the instruction to process that Personal Data.
- 18.12 Union Street shall not have any liability to the Customer for any losses, damages, fines penalties or other consequences incurred by the Customer, caused directly or indirectly by:
- 18.12.1 Union Street deleting Customer Personal Data in accordance with clause 18.8.5;
 - 18.12.2 Union Street's Processing of Customer Personal Data (including where that Processing infringes the Data Protection Legislation) but only to the extent that the Processing in question was in accordance with the Customer's instruction and in order to comply with those instructions.
- 18.13 Each party agrees to indemnify, and keep indemnified and defend at its own expense, the other party, against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable, due to any failure by the indemnifying party or its employees or agents to comply with this clause 18 provided that:
- 18.13.1 this indemnity is subject to the exclusions and limitations of liability set out in clause 16;
 - 18.13.2 this indemnity shall not apply for the benefit of the Customer in respect of any losses, damages, fines penalties or other consequences incurred by the Customer but which are excluded under clause 18.12.
- 18.14 Taking into account the nature of the Processing by Union Street and the information available to it, Union Street will assist the Customer, by appropriate technical and organisational measures, insofar as this is possible, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. In particular, in the event that the Customer requires a copy of the Customer Personal Data (or any part of it) held by Union Street, it shall submit a written request to Union Street. Upon receipt of such request, Union Street will as soon as is reasonably practicable (ordinarily within 30 days of receipt of the request), provide a copy of the Customers Personal Data, as requested by the Customer, in a CSV format only.

19 General

- 19.1 This Agreement shall be governed by and interpreted in accordance with the Laws of England.
- 19.2 This Agreement is a complete and exclusive statement of the agreement between you and us. The terms of this Agreement supersede any prior agreement between both parties.
- 19.3 You may not assign this agreement without the consent of Us. Such consent will not be unreasonably withheld but We shall be permitted to impose such conditions in connection with the issue of such consent to assignment as We deem appropriate.
- 19.4 Both You and We submit to the exclusive jurisdiction of the Courts of England.
- 19.5 No variation to the terms of this Agreement shall be valid unless in writing and signed by authorised signatories of both parties.