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### 1 INTERPRETATION

#### 1.1

In these conditions the following words have the following meanings:-

**"Call Report"** means the itemised fax report produced by the Company containing details of the date, time, duration, cost and result of each transmission;

**"Client"** means the person, firm or company who purchases the services from the Company;

**"Client Materials"** means all documents (including without limitation diagrams, text, designs, pictures or other images and disks) information and materials provided by the Client or the Client's agents or employees (whether or not acting in the course of their employment) for transmission to any Target Group through the Communications Media or for any other purpose in connection with this Contract.

**"Communications Media"** means email, fax, text media (SMS) and voicemail services;

**"Company"** means Telfis Ltd;

**"Company Materials"** means all documents (including without limitation diagrams, text, designs, pictures or other images and disks) information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract or which are developed by the Company independently of the Contract;

**"Contract"** means any contract between the Company and the Client for the sale and purchase of Services, incorporating these conditions;

**"Delivery Report"** means the itemised email report produced by the Company containing details of the date, time, successes, failures, unsubscribes and result of each transmission;

**"Destination"** means the e-mail address, fax number or other reference information used in the Communications Media;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"PSTN"** means the public switched telephone network operated by BT or any other licensed public telecommunications operator;

**"Services"** means the transmission of the Client Materials via the Communications Media to the Target Group and/or design of materials to be transmitted via the Communication Media to the Target Group;

**"System"** means the system operated by the Company for the provision of the Services;

**"Target Group"** means the persons or Destinations to which the Client Materials may be sent.

1.2 References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine, include the feminine and the neuter, and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

## Fax Broadcasting Terms and Conditions

### 2

#### APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such terms and conditions being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 2.4 Each order for Services by the Client from the Company shall be deemed to be an offer by the Client to purchase Services subject to these Conditions.
- 2.5 No order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company performs the Services.
- 2.6 Any quotation is given on the basis that no contract will come into existence until the Company dispatches an acknowledgement of order to the Client as stated in condition 2.5. Quotations are valid for a period of 30 days from the date of quotation, provided that the Company does not withdraw it within such period.

### 3

#### CLIENT'S OBLIGATIONS

- 3.1 The Client represents and warrants that it shall:
- 3.1.1 ensure that the terms of its order and any applicable specification are complete and accurate;
- 3.1.2 if requested by the Company, provide a copy of the Client Materials prior to acceptance of an order on good quality paper of a specification adequate for its purpose;
- 3.1.3 ensure that the details of the Target Group provided by the Client are accurate and complete to a material extent, and in any event not less than 75% accurate;
- 3.1.4 ensure that the Client Materials comply with all statutes, rules, directives, guidelines and any other legal requirements and in accordance with the British Code of Advertising Practice;
- 3.1.5 observe and comply with the regulations and requirements of the Wireless Telegraphy Act 2006, the Communications Act 2003, the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Electronic Commerce (EC Directive) Regulations 2002, the Consumer Protection (Distance Selling) Regulations 2000 and all other relevant legislation, statutory instruments or Governmental or Municipal regulations in force from time to time and any directions made there under and ensure that neither it nor any of its agents or employees (whether or not acting in the course of their employment) causes the Company to be in breach of any of the same;
- 3.1.6 obtain and pay for all necessary licenses and consents in relation to the use of the Client Materials;
- 3.1.7 without prejudice to conditions 11 and 15, pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury or death to any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's or any of its agents' or employees' (whether or not acting in the course of their employment) fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Client in writing;
- 3.1.8 ensure and, upon the Company's request, provide written evidence to demonstrate that for all email and fax addresses supplied by the Client, recipients have opted in to receive information; and
- 3.1.9 not, without the prior written consent of the Company, at any time from the date of commencement of the Contract to the expiry of six months after the last date of supply of the Services solicit or entice away from the Company or employ (or attempt to employ) any person who is, or who has been, engaged as an employed, consultant or subcontractor of the Company in the provision of the Services.

### 4

#### COMPANY OBLIGATIONS

- 4.1 The Company shall use reasonable endeavours to provide and maintain the availability of the Services.
- 4.2 The Company will update the System from time to time with any prohibited Destinations provided from the Fax Preference Service or otherwise.
- 4.3 The Company will comply with the provisions of the Data Protection Act 1998 in the performance of the Services and shall be the "Data Processor" for the purposes of that Act.

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### 5

#### PERFORMANCE

- 5.1 The Services supplied under the Contract shall be provided by the Company to the Client from the date on which a written acknowledgement of order is issued by the Company or from such other date as the Company may agree in writing.
- 5.2 Unless otherwise agreed in writing by the Company the performance of the Services shall take place at the Company's place of business from time to time.
- 5.3 Any dates specified by the Company for performance of the Services are intended to be estimates only and time for performance shall not be made of the essence by notice from the Client. If no dates are specified, performance will be within a reasonable time of acceptance of the order.
- 5.4 The Company does not guarantee, warrant or represent that the Services will elicit any response from the Target Group.
- 5.5 The Company may in its sole discretion refuse to accept any order to transmit any Client Materials, including without limitation any such material which:
- 5.5.1 does not comply in all respects with the Company's obligations under any law, regulation, directive, guideline or code of practice;
- 5.5.2 differs in any material respect from the Client Materials previously approved by the Company; or
- 5.5.3 the Company considers being abusive, discriminatory or defamatory in any way.

### 6

#### NON-PERFORMANCE

- 6.1 The Call Report produced by the Company shall be conclusive proof of the performance of the Contract (or any part thereof) unless the Client can provide conclusive written evidence proving the contrary.
- 6.2 The Delivery Report produced by the Company shall be conclusive proof of the performance of the Contract (or any part thereof) unless the Client can provide conclusive written evidence proving the contrary.

### 7

#### SUSPENSION

- 7.1 The Company may at any time on the giving of reasonable notice (taking into account the reason for the suspension) suspend the Services, or part thereof, in any of the following circumstances:
- 7.1.1 if the Client breaches any
- 7.1.2 of the System is impaired or otherwise adversely affected by any act or omission of the Client; or
- 7.1.3 a technical failure or matters outside the direct control of the Company which prevents the Company from performing its obligations under the Contract for any reason; or
- 7.1.4 to enable improvements or modifications to be carried out to the System.
- 7.2 The Company shall have the absolute right to:
- 7.2.1 secure the removal from the System of any Client Materials which it reasonably believes to be in breach of these Conditions or any other terms of the Contract;
- 7.2.2 bar access to the Services if it reasonably believes any Client Materials are provided by the Client is in breach of these Conditions or any other terms of the Contract;
- 7.2.3 temporarily suspend or restrict the Services if the further use of the Services would cause or increase congestion in the System or the PSTN.

### 8

#### TERMINATION

- 8.1 The Contract shall automatically terminate without notice if the Company is permanently prevented from performing the Services because of the expiry or termination of any licensing agreement required by the Company or PSTN to provide the Services.
- 8.2 The Company may terminate the Contract at any time by notice if any sum due to the Company remains unpaid seven days after it becomes due.
- 8.3 Either Party may terminate the Contract at any time by written notice if the other party commits an irremediable breach of the Contract.
- 8.4 The Company may terminate the Contract at any time by written notice if it receives any complaint from a recipient of the Client Materials.
- 8.5 The termination of the Contract shall be without prejudice to the accrued rights of the either party arising prior to such breach.

### 9

#### VARIATIONS

- 9.1 The Company may, upon giving the Client reasonable notice (having regard to the cause of the variation) make amendments, additions or variations to the System or the Services that are either of a minor nature or are reasonably considered by the Company to be appropriate or necessary for the future provision or improvement of the System or the Services

### 10

#### PRICE

- 10.1 Unless otherwise agreed by the Company in writing, the price for the Services shall be the price set out in the Company's tariff from time to time in force at the Contract date and is exclusive of VAT.

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- 10.2 The Client accepts that distribution targets are flexible and agrees to pay for any additional distribution of the Client Materials pro rata at the tariff applicable to the Contract, subject to a maximum payment of 110% of the original Contract price.
- 10.3 Further to condition 3.1.3, where Target Group information is supplied by the Client and due to any inaccuracy of such information the Client Materials are transmitted to less than 75% of the Target Group, the Client undertakes that it shall pay the Company 75% of the price of the Contract notwithstanding the failure to achieve the corresponding level of successful transmissions.

### 11 PAYMENT

- 11.1 Payment of the price of the Services is due as stated on the front of the service Agreement. Time for payment shall be of the essence.
- 11.2 Payment shall be deemed to have been made until the Company has received cleared funds.
- 11.3 All payments payable to the Company under the Contract shall become due immediately on termination of this Contract despite any other provision.
- 11.4 The Client shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.
- 11.5 If the Client fails to pay the Company any sum due pursuant to the Contract then, without prejudice to any other right or remedy that the Company may have, the Client will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.6 If the Client wishes to dispute an invoice, they must do so in writing within seven days of the date of such invoice.
- 11.7 The Company may provide a 30 day credit facility to the Client subject to a satisfactory credit check.
- 11.8 The Company reserves the right to refuse an order if the Client has exceeded any agreed credit limit, or if the performance of such order would cause the Client to exceed the agreed credit limit.
- 11.9 The Company may use a debt collection agency to recover debts over 45 days old and the Client agrees to pay such fees and costs charged by any debt collection agency. The Client understands that such fees and costs may amount to 20% of the debt owed.
- 11.10 The Company may, without prejudice to any other right or remedy that it may have set off any liability of the Client to the Company against any liability of the Company to the Client.

### 12 SERVICE

- 12.1 The Company agrees to provide the quality of service provided by the PSTN from time to time for its customers generally.
- 12.2 The Target Group will be identified by the Company with reference to either:
- 12.2.1 the descriptors supplied (if any) by the Client; or
- 12.2.2 the information supplied by the Client.

### 13 LIMITATION OF LIABILITY

- 13.1 The following provisions set out the entire financial liability of the Company (including any acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 13.1.1 any breach of these Conditions or other term of the Contract;
- 13.1.2 any use made by the Client of the Services and any documents, products and materials developed by the Company in relation to the Services or any part of them; and
- 13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 The Company shall not be liable for any loss or damage arising as a result of any inaccuracies in the information contained in its database.
- 13.3 The Company shall not be liable for any loss or damage arising as a result of the inaccuracy of information supplied by the Client or the omission of relevant information by the Client or for any loss due to the content of the Client Materials.
- 13.4 The Company will not be liable for any loss suffered as a result of the Target Group (or part thereof) being inappropriate for the Client's purposes.
- 13.5 Any liability of the Company for non-performance of the Services shall be limited to performance of the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such non-performed Services.
- 13.6 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.7 In these Conditions excludes the liability of the Company for death or personal injury caused by the Company's negligence or for any damage or liability incurred by the Client as a result of the Company's fraud or fraudulent misrepresentation.

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13.8 to conditions 13.6 and 13.7 the Company shall not be liable for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13.9 Subject to conditions 13.6 and 13.7 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid for the Services.

### **14 INTELLECTUAL PROPERTY RIGHTS**

14.1 As between the Company and the Client, all Intellectual Property Rights and all other rights in the Company Materials shall be owned by the Company and all Intellectual Property Rights and all other rights in the Client Materials shall be owned by the Client.

### **15 LIABILITY FOR CONTENT AND BEHAVIOUR**

15.1 The Client shall ensure that the Client Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).

15.2 The Client shall indemnify the Company on demand against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.

15.3 The Client shall ensure that it does not use the Services (a) in any way that may injure or damage the Company or any third party (including without limitation causing damage to reputation) and/or (b) to send unsolicited or unauthorised bulk e-mail, spam, junk mail, chain letters or pyramid schemes to the members of any Target Group or any third party (Inappropriate Behaviour).

15.4 Shall indemnify the Company on demand against all damages, losses and expenses arising as a result of any action or claim arising as a result of the Client's Inappropriate Behaviour.

### **16 ASSIGNMENT**

16.1 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

16.2 The Company may assign the Contract or any part of it to any person, firm or company.

### **17 FORCE MAJEURE**

17.1 The Company reserves the right to defer the date of performance or to cancel the Contract or reduce the volume of the Services ordered by the Client (without liability to the Client) if it is prevented or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, interruption or failure of utility service, including but not limited to electric power, interruption or failure of network service, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, suppliers or service providers or inability or delays in obtaining adequate supplies of materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Client shall be entitled to give the Company notice in writing to terminate the Contract.

### **18 GENERAL**

18.1 Each right or remedy under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

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18.5 Formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### **19 COMMUNICATION**

19.1 Subject to condition 19.2 all communications between the parties about this Contract must be made in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

19.1.1 (in the case of communications to the Company) to its registered office or such changed address as shall be notified to the Client by the Company; or

19.1.2 (in the case of communications to the Client) to the registered office of the Client (if it is a company) or (in any other case) to any address of the Client set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Client.

19.2 A communication given by the Company under condition 5.1 may be validly given if sent by e-mail.

19.3 Communications shall be deemed to have been received:

19.3.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

19.3.2 if delivered by hand, on the day of delivery;

19.3.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission or otherwise on the next working day;

19.3.4 if sent by e-mail at the time the e-mail was sent.

19.4 Communications should be addressed to the Sales Director at the address specified overleaf.

19.5 To assist the Company in carrying out the Client's instructions accurately, to help the Company improve its service and in the interests of security the Company may monitor and/or record telephone calls with the Client. Any recordings remain the Company's sole property.

### **20 RETURNS AND REFUNDS POLICY**

20.1 The Client may cancel its order within 72 hours from receipt of the Company's acknowledgement of order. Upon any such cancellation the Client shall:

a) return to the Company any Company Materials that it has received

b) pay the Company the value of any Services provided up to the time of cancellation of its order

c) pay the Company a £100 charge to cover start up and cancellation administration costs

Subject to compliance with the above the Company shall reimburse the Client any amount which it has received from the Client on account of services not provided to the Client at the time of the Client's cancellation of its order.