



# MASTER SERVICES AGREEMENT

For Valto One Off Services

PUBLISH DATE: 23/04/2021

VERSION 1.0

Valto Limited

The following terms and conditions (**Terms**) apply to all transactions with Valto to the exclusion of all other terms and conditions, irrespective of the date of any alternative terms and conditions which may be sent to Valto.

## 1 Definitions and Interpretation

1.1 In these Terms, the following words have the following meaning (except where the context otherwise requires):

**Annuity Services:** means the services to be supplied by Valto to the Customer on an ongoing, renewable basis pursuant to a Contract, including support, back up and software licensing.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 8.30 am to 5.00 pm local UK time on any Business Day.

**Contract:** means the transaction-specific agreement, written or oral, between the Customer and Valto, comprising the Order and these Terms.

**Customer:** means the person, company, organisation or firm purchasing the Products and/or Services from Valto pursuant to a Contract.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Due Date:** means the date 30 calendar days after the date of the relevant invoice.

**EULA:** means the end user licence agreement applicable to the relevant Product, as stipulated by the Manufacturer of that Product.

**Fees:** means the sum payable by the Customer to Valto pursuant to a Contract.

**Force Majeure:** means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of fuel, water, power, transport, equipment or telecommunications service, or material required for the performance of the Contract, strike, lockout or boycott or other industrial action including those involving Valto's or its suppliers' workforce but excluding the Customer's ability to pay or circumstances relating to the Customer's inability to pay.

**Good Industry Practice:** means the degree of skill and care which it is reasonable to expect of a typical provider of services similar to the Services being provided under the relevant Contract.

**Hardware:** means any information technology and/or computer and communications hardware to be supplied to the Customer by Valto pursuant to a Contract.

**Intellectual Property Rights:** means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Manufacturer:** means the manufacturer, developer, distributor or licensor of the relevant Product, as applicable.

**Order:** means an ordering document completed by Valto and sent to the Customer for approval prior to concluding a Contract, setting out the Specification, scope, Fees and any other relevant details in respect of, and summarising any specific terms for, any Products and/or Services to be provided.

**Party:** means Valto and the Customer, together the **Parties**.

**Product:** means any Hardware, Software or other goods supplied by Valto to the Customer pursuant to a Contract.

**Service Level Arrangement or SLA:** the service level arrangements applicable to the Services, if any attached to the Order.

**Services:** means the services to be supplied by Valto to the Customer pursuant to a Contract, being (a) services provided on a case-by-case basis and (b) Annuity Services.

**Software:** means the pre-packed software or electronic licence supplied to the Customer by Valto pursuant to a Contract.

**Special Conditions:** means the special conditions as set out in the Order.

**Specification:** any specification for the Product and/or Service, including any related plans and drawings, that is agreed in writing by the Customer and Valto.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Valto:** means Valto Limited incorporated and registered in England and Wales with company number 10625574 whose registered office is at 10 Watergate Row, Chester, CH1 2LD and any successor assignee thereof.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 The Contract shall be binding on, and enure to the benefit of, the Parties to this Contract and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.9 A reference to **writing** or **written** includes fax and email.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 APPLICATION OF THESE TERMS**

- 2.1 These Terms apply to and form part of the Contract between Valto and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Valto otherwise agrees in writing.

- 2.3 No variation of these Terms, an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Valto.
  - 2.4 Each Order by the Customer to Valto shall be an offer to purchase Products and/or Services subject to these Terms.
  - 2.5 An Order may be withdrawn or amended by the Customer at any time provided that notice in writing of such withdrawal or amendment by the Customer is received by Valto before acceptance by Valto. If Valto is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
  - 2.6 Valto may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Products and/or Services shall arise, until the earlier of:
    - 2.6.1 Valto's written acceptance of the Order; or
    - 2.6.2 Valto supplying the Products and/or performing the Services or notifying the Customer that they are ready to be supplied and/or performed (as the case may be).
  - 2.7 Rejection by Valto of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
  - 2.8 Valto may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to provide the Products and/or supply Services and are incapable of being accepted by the Customer.
  - 2.9 Marketing and other promotional material relating to the Products and/or Services are illustrative only and do not form part of the Contract.
  - 2.10 Valto may, in its sole and absolute discretion, add to, modify or discontinue any of Products and/or the Services and make changes to the Specifications of Products or Services to conform to any applicable health and safety or legal requirement from time to time. However, this will not affect any Order agreed prior to any change or withdrawal of the relevant Product and/or Service.
  - 2.11 In the event of any discrepancy or conflict between the EULA, Order (including any matter-specific documents and general Specifications), other parts of a Contract or these Terms, the conflict shall be resolved with the earlier-listed document taking precedence over those documents listed later.
- 3 DELIVERY OF PRODUCTS**
- 3.1 Valto shall use its reasonable endeavours to deliver the Products to the premises stated in the Contract (and/or, in the case of electronic delivery of Products, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date estimated by Valto. For the avoidance of doubt, the Customer acknowledges that such delivery date is not guaranteed or of the essence, and Valto shall in no circumstances be liable to the Customer for any losses, damages or charges incurred by the Customer due to the late delivery of Products and/or Services.
  - 3.2 The Customer agrees that it will inspect the Products immediately upon delivery or collection and in all cases shall:
    - 3.2.1 not sign to accept the Products if the types/quantities of Products are incorrect or the Products and/or their packaging are damaged in any way; and/or
    - 3.2.2 inform Valto in writing within 48 hours of delivery of any damage, shortages, defects or non-delivery of the Products which was not apparent at the time of delivery/collection, and, where the Customer fails to do so, they shall be deemed to have accepted the Products.
  - 3.3 If the Customer fails to take delivery of or, where agreed, collect the Products or fails to give Valto adequate delivery instructions at the time stated for delivery (save for circumstances beyond the Customer's reasonable control or by reason of

Valto's fault) then without prejudice to any other rights or remedies available to it Valto may at its sole discretion:

- 3.3.1 store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or
- 3.3.2 sell the Products at the best price readily available and charge the Customer any shortfall below the Fees under the Contract.

#### **4 TITLE AND RISK**

- 4.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 4.2 Title to the Products shall not pass to the Customer until the earlier of:
  - 4.2.1 Valto has received cleared and full payment of the Fees for the Products and any other Products and Services (if applicable) that Valto has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and
  - 4.2.2 the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 4.4.
- 4.3 Until title to the Products has passed to the Customer, the Customer shall:
  - 4.3.1 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Valto's property;
  - 4.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - 4.3.2 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 4.3.3 notify Valto immediately if it becomes subject to any of the events listed in clause 14.1.2 and clause 14.1.3; and
  - 4.3.4 give Valto such information as Valto may reasonably require from time to time relating to:
    - 4.3.4.1 the Products; and
    - 4.3.4.2 the ongoing financial position of the Customer.
- 4.4 Subject to clause 4.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Valto receives payment for the Products. However, if the Customer resells the Products before that time:
  - 4.4.1 it does so as principal and not as Valto's agent; and
  - 4.4.2 title to the Products shall pass from Valto to the Customer immediately before the time at which resale by the Customer occurs.
- 4.5 At any time before title to the Products passes to the Customer, Valto may:
  - 4.5.1 by notice in writing, terminate the Customer's right under clause 4.4 to resell the Products or use them in the ordinary course of its business; and
  - 4.5.2 require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

#### **5 SERVICES**

- 5.1 Where Valto agrees to provide Services, any estimate or indication by Valto as to the number of man days or man hours required by Valto to undertake a specific task shall be construed as being an estimate only. Valto shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature suffered or incurred by the Customer where such estimate or indication is incorrect.
- 5.2 Unless stated otherwise, the Fees agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which Valto shall charge the Customer at its or its sub-contractors' (as applicable) then current rates, available on request.

- 5.3 Valto will normally carry out the Services during Business Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises at other times.
- 5.4 At the Customer's request, Valto may agree to provide Services outside Business Hours. However, this shall be subject to any reasonable additional Fees that may be made by Valto for complying with such request. Such Fees shall be agreed in writing prior to commencement of any work outside of Business Hours.
- 5.5 Valto expects that the Customer has adequate inspection, testing and approval processes and, on completion of any Services provided by Valto, the sign off by the Customer of such Services shall be considered the Customer's absolute acceptance of the satisfactory completion of such Services. In the event that the Customer has not confirmed their acceptance of the Services, nor raised any concerns about them, within 7 days of Valto notifying the Customer that the Services are complete, the Customer agrees it is reasonable for Valto to infer their acceptance and, where relevant, invoice for those Services.
- 5.6 No liability shall accrue to Valto as a result of any defects in the delivery of the Services unless:
- 5.6.1 a reasonably detailed inspection and testing procedure has been undertaken by the Customer to ascertain that the Services had been undertaken correctly and in full, and
- 5.6.2 such inspection would not have been expected to identify the defect-causing loss (due to the latent and uncheckable nature of such defect).
- 5.7 Where Valto agrees to provide support and/or maintenance Services in respect of Products supplied to the Customer, unless otherwise set out in the relevant Order this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the Customer's licensed users of such Products during Business Hours for the agreed period (limited to first line support only). If Valto is unable to resolve the query during a telephone call, the Customer may be required to contact the Manufacturer of the Product directly.
- 5.8 The Customer may from time to time wish to vary the scope of a Service. Valto will use reasonable commercial endeavours to accommodate that variation. Any changes in the Fees and/or timescales as a result of that variation shall be negotiated between the Customer and Valto, and where such negotiation has not concluded at the time the Customer confirms the variation is required, the Customer accepts any increase in work required pursuant to the variation shall be provided on a time and materials basis at Valto's or its sub-contractors' (as applicable) then current rates for the same, available on request.
- 5.9 Although Services are undertaken with reasonable skill and care, Valto cannot guarantee the accuracy of any advice, design or report.
- 6 SUPPORT SERVICES**
- 6.1 Where Valto provides support Services, unless otherwise stated in the relevant Order, the Services shall be provided during Business Hours.
- 6.2 Valto shall provide support Services in accordance with any applicable Service Level Arrangement.
- 6.3 All requests for support Services from the Customer must be made via email to [support@Valto.co.uk](mailto:support@Valto.co.uk) or telephone to 03335 779 009.
- 6.4 Upon receiving notification of an issue from the Customer, the issue will be logged as an incident with an allocated incident reference number. The incident reference number along with details of the incident will be notified to the Customer. Valto will use best endeavours to respond to calls for service within the time specified. However, Valto gives no guarantees or commitments regarding the length of time required for resolving incidents.
- 6.5 The Customer acknowledges and agrees that whilst Valto may advise on software licensing matters the Customer will be legally responsible and liable for maintaining, acquiring and proving that appropriate licensing agreements for all

software in use on their IT system(s) exist. Consequently, the Customer will be solely liable to pay any fees, fine or other costs associated with software licensing except for Software installed by Valto.

- 6.6 The Customer will provide Valto or its representative with unrestricted access to the system and will provide such further facilities and assistance as Valto may require to enable it to carry out the support Services. Valto will not be liable if it cannot provide support as a result of the Customer failing to provide such facilities or assistance.
- 6.7 The Customer is responsible for giving Valto the authority to deal with third party suppliers on the Customer's behalf. When such authority has not been provided, the support that can be offered by Valto may be limited.
- 6.8 Valto cannot guarantee that the remote connection to the Customer's system will always be available due to issues with the Customer's system or other external factors beyond the control of Valto.
- 6.9 Where the Customer has not used any support tokens for a period of six calendar months, Valto shall make contact with the Customer. In the event Valto's first attempt at contact is unsuccessful it shall make a second attempt followed by a third and final attempt. Should Valto's attempts at contacting the Customer be unsuccessful after the third attempt any unused tokens will automatically expire.
- 6.10 All Fees paid by the Customer in respect of support tokens are non-cancellable and non-refundable.

## **7. FEES AND PAYMENT**

- 7.1 The Fees payable by the Customer for the supply of Product(s) or Services shall be the price set out in the Order.
- 7.2 Valto may, by giving notice to the Customer at any time up to 7 Business Days before delivery, increase the price of the Product(s) or Services to reflect any increase in the cost of the Product(s) or Services that is due to:
- (a) any factor beyond Valto's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Product(s) or Services ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Valto adequate or accurate information or instructions.
- 7.3 Any increase in Fees for the Annuity Services
- 7.4 The price of the Product(s) and Services:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Product(s), which shall be invoiced to the Customer.
- 7.5 Unless otherwise agreed between the Parties, invoices will be raised and dated by Valto on or after the date of dispatch of the Products, or on or after commencement of the Services. Where both Products and Services are supplied against the same Contract, a separate invoice may be raised for each of those two elements.
- 7.6 The Customer shall pay each invoice submitted by Valto:
- (a) by the Due Date or in accordance with any credit terms agreed by Valto and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Valto, and
- time for payment shall be of the essence of the Contract.
- 7.7 If the Customer fails to make a payment by the Due Date or does not comply with an obligation under the Contract, then without limiting Valto's remedies under clause 14.1.4, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this

clause 6.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8 RETURNS POLICY**

8.1 Where returns are permitted by Valto's supply chain, Valto allows Customers to return unopened Products within 30 days of delivery; however, all returns are at Valto's sole and absolute discretion, will depend on Valto suppliers' returns policies and may be subject to reasonable restocking fees or other conditions. Other than in line with the relevant Manufacturer's 'dead on arrival' (**DOA**) policies or warranties, Valto will not accept returns with a value below £50.00.

8.2 Under no circumstances will Valto accept returns of opened Products unless those Products are faulty and the provisions of the remainder of this clause 8 are met. For the avoidance of doubt, no Software on which the seals have been broken can be returned. Software licences provided electronically (i.e. other than in physical format) are non-refundable.

8.3 In circumstances where return of Product(s) is permitted by Valto, it will issue a credit note to the Customer so the invoice for the relevant Product is deemed cancelled and, in the event a Customer has already paid for those Products, a refund will be granted.

8.4 The refund or replacement of faulty or defective Products is subject strictly to individual Manufacturer's DOA policies or warranty, available on request.

8.5 The Customer must observe the requirements of the Manufacturer's DOA policy and/or warranty, including notifying Valto of a defect in the Products within the required time limit.

8.6 Although Valto may make reasonable endeavours to troubleshoot any problems the Customer experiences with the Products, the Customer acknowledges that Valto is not the Manufacturer of the Products and that Valto may be contractually limited by that Manufacturer as to the extent of the assistance they are permitted to provide. Accordingly, the Customer may be required to contact the Manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation (which shall be retained by the Customer, along with any call/case reference numbers, and presented to Valto upon request).

8.7 In the case where it is established that Products are faulty or defective within the relevant Manufacturer warranty or DOA period, Valto's customer service department will arrange with the Customer to have the Products collected or returned. In some instances, the Manufacturer's warranties require the Customer to contact a repair agent directly. If this is the case, the Customer will be informed by Valto's customer service department and provided with the contact details for the relevant Manufacturer to discuss such collection or return.

8.8 Where Valto has indicated to the Customer that the return of a Product is permitted, the Customer is responsible for ensuring that the Products are returned to Valto (or the relevant third party) in their original packaging together with all disks, manuals, cables and any other peripherals, accessories, consumables and other parts or items with which they were boxed or inseparably supplied so as to ensure satisfaction of the Manufacturer's DOA policy and/or warranty stipulations (as appropriate), safe transit and ease of identification. The external packaging must not be damaged or defaced so it is recommended the goods are re-boxed for transport.

8.9 The Products will be tested on receipt. If no fault is found the Products shall be returned to the Customer at the Customer's cost. If a fault is found and the applicable Manufacturer's DOA period is exceeded, then the Products will be repaired and/or replaced under the terms of the Manufacturer's warranty, to the extent that such warranty remains in force at that time.

- 8.10 In the event that the Manufacturer's DOA cover and/or warranty have lapsed, expired, been invalidated or did not apply, Valto shall have no liability to the Customer for such Product(s).

## **9 CUSTOMER'S OBLIGATIONS AND WARRANTIES**

- 9.1 In order to enable the fulfilment by Valto of its obligations under a Contract, the Customer shall, at its own expense:
- 9.1.1 comply with, and use the Products and Services in accordance with these Terms and all applicable laws, and observe the requirements of Valto's Acceptable Use Policy as may be updated from time-to-time, and shall ensure users of the Products and Services are adequately trained to use them;
  - 9.1.2 promptly furnish Valto with co-operation, assistance and/or accurate and complete responses to requests for information (which shall include sufficient detail in that information);
  - 9.1.3 allow Valto or its subcontractors (as applicable) to exercise such right of entry as required over any relevant premises to deliver the Products and/or Services, provide Valto with any relevant policies and procedures in relation to such premises and take all reasonable precautions to protect the health and safety of those personnel whilst at that/those premises;
  - 9.1.4 unless otherwise provided by Valto, implement effective and appropriate backup and other procedures for the protection of its data; and
  - 9.1.5 comply with any additional or special responsibilities and obligations of the Customer specified in the Order.
- 9.2 The Customer warrants that:
- 9.2.1 it has the right, power and authority to enter into the Contract and grant to Valto the rights (if any) contemplated by the Contract;
  - 9.2.2 it will comply with and use the Products and Services in accordance with the Contract and all applicable laws;
  - 9.2.3 it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for Valto to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Products or Services to the Customer; and
  - 9.2.4 any information, documents, materials, data or other items supplied by the Customer in connection with the Contract shall be accurate and complete, and Valto's use of such shall not cause Valto to infringe the rights, including any Intellectual Property Rights, of any third party.

## **10 INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENCES**

- 10.1 The title to and the Intellectual Property Rights in the Product(s) and in the media containing such Product(s) does not pass to the Customer. The Customer is licensed to use such Product(s) in accordance with these Terms and the EULA applicable to those Product(s), and by entering into these Terms and any Contract pursuant to them, the Customer agrees to enter into and comply with the terms of such EULA(s).
- 10.2 Each Party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for the other Party to perform its obligations under the Contract. The Parties agree that all Intellectual Property Rights which existed prior to the date of the Contract in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights.
- 10.3 Valto (and/or their supply chain and subcontractors) shall own and be fully entitled to use in any way it deems fit any Intellectual Property Rights, including skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing any Services and any improvements made or developed during the course of Services. For the avoidance of any doubt, this shall include

any improvements or modifications to Products during the duration of the Contract. Nothing herein shall be construed or shall give effect to any transfer of right, title or interest in the Customer's or Valto's Intellectual Property Rights.

- 10.4 Save where the relevant EULA permits such copying, the Customer shall not, without Valto's prior written consent, copy or reproduce in any way the whole or a part of the user manual or any other documentation which has been supplied to the Customer relating to any Products or Services.

## **11 WARRANTIES**

- 11.1 To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or general law into these Terms or relating to the Products or the Services are excluded. Notwithstanding this, any Products supplied under these Terms will conform substantively to any Specifications given in relation to them and any Services provided under these Terms will be provided in a diligent and professional manner, with reasonable skill and care and in accordance with Good Industry Practice.
- 11.2 Valto warrants it has the right to provide or procure the provision of the Products and Services.
- 11.3 Valto does not warrant that the Customer's use of any Products or Services will be uninterrupted and error-free.
- 11.4 The only additional warranties which the Customer may receive are those which are given by the Manufacturer of such Products to the Customer and are subject to any relevant limitations and exclusions imposed by such Manufacturer.

## **12 GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY**

- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession; or
  - (d) defective products under the Consumer Protection Act 1987.
- 12.3 Subject to clause 12.2, Valto's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance of the Contract shall not exceed the Fees paid by the Customer in the last 12 months in respect of the Products or Services to which the claim(s) relate.
- 12.4 Subject to clause 12.2, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 12.5 The Customer shall indemnify and keep Valto indemnified in respect of any losses, costs, damages, claims and/or expenses incurred by Valto due to any claims by any third party arising out of any use of, access to or modification of the Customer's computer systems by Valto on the Customer's instructions and/or use of any materials supplied to Valto by the Customer (including, but not limited to, actions in line with clause 9.2.4). This indemnity shall survive termination or expiry of a Contract to which it relates.

- 12.6 Unless Valto undertakes Services with an expressly stated outcome of advising a Customer in writing on the Products and/or Services which it recommends to meet a particular requirement, the Customer acknowledges that it is relying solely upon its own skill and judgement, and not that of Valto, in determining the suitability of any Products and/or Services and their fitness for any general or specific purpose.
- 12.7 The Customer accepts that they are best placed to know what information may be relevant in respect of their existing and anticipated infrastructure/circumstances. Where Valto suggests potential Products, or undertakes Services, Valto shall not be liable for any advice, conclusions or reports which are erroneous or incomplete as a result of the Customer's (or their agent's) failure to supply complete and correct information, including any information which may be relevant but which has not been specifically requested by Valto (or their subcontractors).
- 12.8 This clause 12 shall survive termination or expiry of the Contract.
- 13 FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from Force Majeure. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days or more, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 14 TERMINATION**
- 14.1 Valto shall be entitled to terminate any Contract and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and on written notice to the Customer shall be entitled to cancel the undelivered or unperformed portion of the Contract between Valto and the Customer and deem that the whole of the Fees payable under the Contract or any other agreement shall be payable immediately in the event of:
- 14.1.1 any distress, execution or other legal process being levied upon any of the Customer's assets;
- 14.1.2 the Customer entering into any arrangement or composition with its creditors, committing any act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent company, or a receiver, manager receiver, administrative receiver or administrator being appointed in respect of the whole or any part of its undertaking or assets;
- 14.1.3 the Customer ceasing or threatening to cease to carry on business; or
- 14.1.4 any material breach of the Contract by the Customer (including a failure to pay any Fees due by the relevant Due Date) which is not capable of remedy or which it fails to remedy within 14 days, or other repeated breaches of the Contract by the Customer.
- 14.2 In the event of termination pursuant to clause 14.1 above Valto shall, for the avoidance of doubt, be entitled to:
- 14.2.1 recover as damages from the Customer all reasonable costs which Valto sustains due to such termination; and
- 14.2.2 where the Customer is being provided with ongoing Services, Valto shall be entitled to cease provision of those Services and invoice any Fees which would have been payable over the anticipated period of delivery of those Services.
- 14.3 In the event of such termination, should the Customer have failed to make payment in full for any Software, then the Customer shall immediately cease use of all Software (and any updates of same) and, at its own expense, remove from all computers, communications systems and other electronic devices under its control all copies of the Software (and updates) and return or destroy them (certifying in writing to Valto that such destruction has taken place).

14.4 Termination or expiry of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **15 DATA PROTECTION**

15.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 (Data protection) is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

15.2 Where the Customer intends to or might include personal data in its use of the Products and/or Services purchased from Valto, it will inform Valto prior to entering into a Contract with Valto. Where so informed, Valto will identify whether Valto or a third party is the processor for the purposes of the processing, communicate that to the Customer, and insofar as Valto processes personal data on behalf of the Customer, Valto will:

- a) process that personal data only on the documented written instructions of the Customer unless Valto is required by the laws of any member of the European Union or by the laws of the European Union applicable to Valto and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and other law that applies in the UK) to process personal data (**Applicable Laws**). Where Valto is relying on Applicable Laws as the basis for processing personal data, Valto shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits Valto from so notifying the Customer;
- b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, 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 personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to 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);
- c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- d) not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
  - (i) the Customer or Valto has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Valto complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) Valto complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- e) assist the Customer, at the Customer's cost, 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;
- f) notify the Customer without undue delay on becoming aware of a personal data breach;
- g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and immediately inform the Customer if, in the opinion of Valto, an instruction infringes the Data Protection Legislation.

15.3 The Customer consents to Valto appointing Datto as a third-party processor of personal data under the Contract. Valto confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15 and in either case which Valto confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Valto, Valto shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 15.

15.4 Without prejudice to the generality of clause 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Valto for the duration and purposes of the Contract so that Valto may lawfully use, process and transfer the personal data in accordance with the Contract on the Customer's behalf.

15.5 Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## **16 GENERAL**

### **16.1 Assignment and other dealings**

- (a) Valto may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Valto.

### **16.2 Confidentiality**

- (a) Each Party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 1.1(b).
- (b) Each Party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it

discloses the other party's confidential information comply with this clause 1.1(b); and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither Party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### **16.3 Entire agreement**

- (a) Together with the Order and any EULA, these Terms are the complete and exclusive agreement between the Parties with respect to the subject matter of a Contract and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

### **16.4 Waiver**

No failure or delay by a Party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **16.5 Severance**

If any provision or part-provision of these Terms 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 the Terms. If any provision of these Terms is deemed deleted under this clause 16.5 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **16.6 Notices**

Any demand, notice or other communication shall be in writing and may be served by hand or prepaid first-class post to the registered address of the intended recipient.

### **16.7 Third party rights**

No third party may enforce any provision of these Terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **16.8 Non solicitation**

The Customer will not solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of Valto professionally or otherwise directly associated with Valto during the term of the Contract or for a period of 12 months thereafter.

### **16.9 Governing law**

These Terms, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

### **16.10 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Term or its subject matter or formation.