

XE2 STANDARD TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

This document sets out the terms and conditions between XE2 Ltd, a company incorporated in England (Registered Number 5033382) whose registered office is at John Loftus House, Summer Road, Thames Ditton, Surrey KT7 0QQ and the Customer (as defined below) in relation to the provision of Hosted Exchange Services and Applications. It applies in place of any earlier agreement or understanding between the parties.

It is hereby agreed as:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the words and phrases defined shall have the meanings defined therein and the following words and phrases shall have the following meanings:-

“Acceptance” means an advice by the Customer that they are satisfied with the installation of the Service;

“Additional Services” means the services offered from time to time by XE2 via XE2 Website or otherwise;

“Additional Services Proposal” means the proposal for Additional Services overleaf headed as such or if none, such other method of order as the Customer shall have placed and XE2 shall have accepted;

“Agreement” means:

For the Products agreed: the contract between XE2 and the Customer comprising the Proposal, the Proposal Acceptance, these Terms and Conditions, and any other special terms and conditions agreed in writing by the Parties;

“Charges” means all amounts payable by the Customer to XE2 as agreed in the Proposal Acceptance .

“Customer” means any business other than XE2 by whom or on whose behalf the Agreement is executed or otherwise entered into;

“Customer Apparatus” means any apparatus, and any software embodied therein not forming part of the Service (but which may be connected to the Service) and used by the Customer in conjunction with the Service in order to obtain or use the Service including without limitation personal computers, network interface cards and network interface adapters;

“Default Interest Rate” means 4 per cent per annum above the base rate of Barclays Bank plc from time to time;

“Due Date” means the due date for payment being 30 days from the date of invoice;

“Emergency” means any event or circumstances that results or could reasonably be expected to result in a risk of personal injury or death or material damage to property and, without prejudice to the generality of the foregoing and in relation to the Exchange Service, an event or circumstance defined as an Emergency in any Licence;

“Equipment” means any piece of hardware that the customer wishes to use as part of the service eg. PC's, Laptops, PDA's, Mobile Phones, Smart phones etc

“Exchange Service” means the messaging service provided by XE2 whereby the Customer may use the email, collaboration and messaging system as agreed with the Customer and defined in the XE2 proposal.

“Internet” means the global data network comprising interconnected networks using the TCP/IP (“Transmission Control Protocol/Internet Protocol”);

“Internet Address” means an Internet Protocol Address (IP Address);

“Law” means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which XE2 or the Customer is from time to time subject;

“Minimum Period” means twelve months from the Service Commencement Date;

“Outage” means an event or action not attributable to the act or omission of a Third Party or the Customer or arising at the request of the Customer which prevents or restricts the Service;

“Party” means: (i) For Exchange Service: the Customer or XE2; or
(ii) For the Additional Services: the Customer or XE2;

“Planned Outage” means an Outage in respect of which not less than 48 hours’ notice has been given to the Customer;

“Product” means the e-mail, collaboration and messaging system and where appropriate other Additional Products or Services agreed with the Customer and defined in an XE2 Proposal.

“Proposal” means the document prepared by XE2 that proposes the service that XE2 will write to define the service for the customer

“Proposal Acceptance” means the Customers formal response to XE2 Proposal, which is indicated by signing the Proposal in the place indicated as acceptance of the detail contained therein, or such other method as the Customer shall have communicated in writing, whether electronic or on paper and XE2 shall have accepted;

“Service” means the Exchange Service or any additional service provided by XE2 as detailed in the proposal

“Service Commencement Date” means the earlier of:
(i) the date the Service is available for use by the Customer;
(ii) the date the Customer first uses the Service; or
(iii) where appropriate, the date that Acceptance is advised.

“Site” means the site or sites detailed in the Proposal to which the Exchange Service shall be provided;

“Software” means the proprietary software supplied to the Customer by XE2 in connection with the Service;

“Survey” means any survey or other investigations carried out by XE2 or a Third Party that XE2 shall in its absolute discretion deem necessary prior to the provision of the Service;

“Target Service Commencement Date” means the target date (if any) the Parties agree the Service shall be ready for service as set out in the Proposal.

“Terms and Conditions” means these general terms and conditions applicable to the Product and the Additional Services;

“Third Party” means: (i) For the Service: a person other than the Customer or XE2;
(ii) For the Additional Services: a person other than the Customer or XE2

“Third Party Services” means services and facilities provided by Third Parties in conjunction with the Service;

“User Documentation” means such brochures, pamphlets and other documents, Materials or information, if any, in relation to the Exchange Services and maintenance thereof and/or any Software as XE2 may publish from time to time either on paper or on XE2 Website

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation supplemental thereto or replacing, modifying or consolidating it;

“Working Day” means Monday-Friday 08:00-17:30 excluding public and bank holidays in England and Wales.

“XE2” means XE2 Limited or any company which is a holding company or subsidiary of XE2 Limited and where appropriate, its employees, agents or sub-contractors.

“XE2 Website” means www.xe2.co.uk or such other address as is notified by XE2 to the Customer from time to time;

1.2 REFERENCES IN THE AGREEMENT TO:-

- 1.2.1** The "Customer" shall include its respective successors (whether by operation of law or otherwise) and permitted assigns;
- 1.2.2** "XE2" shall include their respective successors and permitted assigns and their respective employees and agents.

2. PROVISION

- 2.1** XE2 agrees to provide the Customer with the Service on the terms and conditions of this Agreement.
- 2.2** It is the Customers responsibility to inform XE2 as to whether they hold their own valid Outlook License, as XE2 will assume they do and will bill accordingly.
- 2.3** The Customer is responsible for obtaining all computer and other equipment or services necessary properly to use the Service. The Agreement does not include the provision of any telecommunications service necessary for connection to the Service and the Customer is responsible for obtaining an appropriate telecommunications service and for compliance with the terms and conditions applicable to that telecommunications service.
- 2.4** XE2 may allocate a password to the Customer to enable it to use the Service and the Customer shall be responsible and liable for all use of the Service through the Customer's password (whether authorised or otherwise, including without limitation all Charges incurred and any breaches of the terms of the Agreement). The Customer will keep its password confidential and will immediately notify XE2 if any unauthorised Third Party becomes aware of that password.
- 2.5** XE2 shall use all reasonable endeavours to connect the service so that the service shall be available by the target commencement date but shall have no liability whatsoever for any delay in so connecting the service where it has used reasonable endeavours to connect the service on time. An order may be cancelled by XE2 if it is not technically feasible to implement the service by the target commencement date.
- 2.6** The Customer agrees that it shall have installed such equipment required and that its equipment will be at least the minimum specification as advised by XE2 from time to time and that it has completed a virus check prior to connection of the Services.
- 2.7** Prior to installation of the service the Customer shall ensure that it takes all necessary steps to back up and secure its information and data and XE2 shall have no liability whatsoever for any loss or damage to such information or data or any other loss or damage incurred by the Customer as a result of installation of the Equipment and the Service where such loss could have been avoided by backing up the data or information or where such loss did not directly result from the negligence of XE2.
- 2.8** The Customer acknowledges that XE2 shall not be responsible for the repair and maintenance of Customer equipment.
- 2.9** Following connection and satisfactory user testing of the Exchange service the Customer shall advise their Acceptance. If in the opinion of XE2 the Customer delays in advising their Acceptance, XE2 shall assume, that as the service is operational, that the customer has accepted.
- 2.10** XE2 shall have no liability whatsoever where the Customer's inability to use the Service is due to incompatibility between the Customer's Equipment or the Service, or for any breakdown or failure in the Customer equipment, or for any incapability of the Customer equipment to use the Service.

3. CHARGES AND PAYMENT

- 3.1** In consideration for the provision by XE2 of the Service in accordance with the Agreement, the customer shall on or before the Due Date pay XE2 the Charges specified in the proposal (or where none, as set out in the Price Schedule)
- 3.2** XE2 shall give the Customer not less than 60 days' notice of any increases in Charges.
- 3.3** All Charges expressed to be payable under the Agreement shall unless otherwise stated be exclusive of VAT.

- 3.4** If the Customer shall fail to pay any amount due under the Agreement by the Due Date, XE2 shall be entitled to charge to and receive from the Customer interest in respect of any such amount outstanding as at the Due Date at the Default Interest Rate (whether before or after judgment). Such interest shall be payable from and including the day after the Due Date until and including the date of payment in full. Such interest shall accrue day by day (notwithstanding termination of the Agreement) and shall be compounded quarterly. The Customer shall reimburse to XE2 all costs and expenses (including legal costs) incurred in the collection of any overdue amounts and such costs and expenses shall continue to accrue notwithstanding termination of the Agreement.
- 3.5** Payment of all sums due to XE2 under the Agreement shall be made by the Customer in full (without any set-off or deduction whatsoever) by direct debit or at the sole discretion of XE2 by cheque, or by such other method as may reasonably be specified from time to time by XE2.
- 3.6** Where payment is made by direct debit, the Customer authorises XE2 to alter the Customer's direct debit instruction according to the relevant Charges from time to time applicable to the Services. XE2 will notify the Customer of any changes to such Charges. On proper termination of the Agreement the Customer shall be responsible for the cancellation of any direct debit instructions or other authorisations for periodic payment to XE2.
- 3.7** XE2 shall be entitled to carry out credit checks on the Customer. If at any time before or during the term of the Agreement the Customer fails to meet the standard of creditworthiness deemed acceptable by XE2, XE2 shall be entitled:
- 3.7.1** to terminate the Agreement, in whole or in part forthwith on written notice to the Customer;
- 3.7.2** to require the Customer to make such regular instalment payments in advance on account of any future charges as XE2 shall deem necessary;
- 3.7.3** to impose credit limits on the Customer in respect of charges and to suspend the Service at any time when such limits are reached until payment in full of such outstanding charges has been made; and
- 3.7.4** to impose such other measures on the Customer's right to use the Service as XE2 shall deem necessary.
- 3.8** In the event that the Customer does not act in accordance with XE2's instructions as provided above, XE2 shall be entitled to terminate the Agreement forthwith. XE2 accepts no liability for the accuracy or otherwise of information provided to it from credit reference agencies.
- 3.9** XE2 reserves the right to charge a deposit to secure amounts payable by the Customer hereunder. Such deposit may be applied by XE2 against any outstanding charges due by the Customer hereunder from time to time. No interest shall be payable on any such deposit.
- 3.10** In addition to the Charges the Customer shall be liable for all charges incurred from Third Parties while using the Service.

4. ACCEPTABLE USE OF THE SERVICE

- 4.1** Without limitation the Customer undertakes not to use or permit anyone else to use the Service:
- 4.1.1** to send or receive, use, possess, post, transmit or publish, any material which is offensive, abusive, illegal, of an indecent, obscene or menacing character, blasphemous or defamatory of any person;
- 4.1.2** in contempt of court or in breach of confidence, copyright, rights of personality, publicity or privacy or any other Third Party rights;
- 4.1.3** to cause annoyance, inconvenience or needless anxiety to any person;
- 4.1.4** in breach of this Acceptable Use Policy (paragraph 4)
- 4.1.5** to intercept or attempt to intercept any communications transmitted by way of a telecommunications system;
- 4.1.6** to breach or attempt to breach the security of another user without their prior consent;

- 4.1.7** other than in conformance with accepted Internet practices and practices of any connected networks; or
- 4.1.8** in any illegal or unlawful manner or for any illegal or unlawful purpose, or in any way which is contrary to Law.
- 4.2** If the Customer (or anyone other than the Customer, using the Customer's password, with or without the Customer's knowledge or approval) uses the Service in contravention of the Agreement, XE2 shall at its discretion be entitled to suspend the Service and/or terminate the Agreement.
- 4.3** XE2 reserves the right to block access to and/or to edit, refuse or remove any material which in its reasonable opinion it determines may give rise to a breach of Clause 4.1. Notwithstanding the aforesaid, XE2 shall monitor the Service for known viruses and spam heuristics and filter e-mails and will quarantine any such content as agreed with the Customer in the proposal.
- 4.4** Title, ownership rights and intellectual property rights in and to the content accessed using the Service is the property of the applicable content owner and may be protected by applicable copyright or other Law. The Agreement gives the Customer no rights to such content.
- 4.5** The Customer shall indemnify and hold harmless XE2 against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Service in contravention of the Agreement or the Law.
- 4.6** The Customer is not entitled to sell or agree to transfer to any Third Party any Service

5. LIMITATION OF LIABILITY

- 5.1** Save as otherwise provided herein , XE2 shall have no liability under the Agreement other than in respect of:
- 5.1.1** death or personal injury arising from its own negligence or that of its employees, agents or contractors while acting in the course of their employment by XE2;
- 5.2** Without prejudice to the generality of Clause 5.1, XE2 is excluded from all liability for loss or damage to the Customer or its business due to unauthorised access, breach of security or attack via the Internet and/or the Service to the Customer's business systems, data, information or other materials. It shall be the sole responsibility of the Customer to protect itself in such manner as it thinks fit from such unauthorised access, breach of security or attack.
- 5.3** XE2 shall not be liable in contract, tort (including liability for negligence), or otherwise for loss or damage, whether direct or indirect, of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

6. SOFTWARE

- 6.1** Intellectual property rights in the Software remain the property of XE2 or its licensors. The Customer agrees to comply with the terms of the Agreement and any licences of software required by the owner of any intellectual property rights in any of the Software for the protection of that software notified by XE2 to the Customer or appearing on screen as an integral part of the Service. If the Customer does not consent to any such licences of software, the Customer may terminate the Agreement subject and pursuant to Clause 8.4.2.
- 6.2** XE2 hereby grants to the Customer a non-exclusive revocable licence to use the Software in executable object code form only.
- 6.3** The licence granted to the Customer under the Agreement is personal to the Customer and may not be sub-licensed, transferred, assigned, or otherwise disposed of.
- 6.4** If the Customer uses the Software in any way which will result in the Customer being in breach of the Agreement or attempts to transfer, assign or otherwise dispose of the Customer's licence to use the Software that licence is terminated immediately.
- 6.5** The Software is protected by copyright law. The Customer may only use the Software in accordance with the Agreement and the terms of any individual agreements provided with the Software which the Customer will be obliged to accept before it will have access to certain Software. Unless otherwise stated in the terms of any agreements provided with the Software the Customer may not copy the Software, except to make a single copy for backup or archival purposes.

Any such copies shall be subject to the Agreement and shall contain all of the notices regarding proprietary rights as contained in the Software originally provided to the Customer. If the Customer receives its first copy of the Software electronically and a second copy on a tangible medium, the second copy may be used only for backup and archival purposes. This licence does not grant the Customer any right to any enhancement, reversion or update to the Software. Notwithstanding the aforesaid XE2 or its licensors may at any time make available and subject to the provisions of Clause 8.4.2 require the Customer to accept such enhancements, reversions or updates and may cease to distribute or license previous versions of the Software to the Customer. The Customer shall comply with the terms of the Agreement (and any other licence agreements governing such Software) in relation to such enhanced, reversion or updated Software as if it were the original Software. XE2 shall be entitled to charge the Customer on its then current standard pricing, terms and conditions for such Software and any enhancements, reversions and updates. The Customer may not lend, rent, lease or otherwise transfer the Software.

- 6.6** The Customer agrees not to attempt to reverse engineer, decipher, decompile or disassemble the Software or otherwise reduce it to human readable form or knowingly allow others to do so, except to the extent that applicable laws specifically prohibit such restriction and save that nothing in the foregoing shall restrict the Customer's reasonable and ordinary use of the Software. The Customer may not modify the Software or create derivative works of the Software. The Customer may not transmit or distribute the Software electronically or via the Internet.
- 6.7** Whilst XE2 or its suppliers have used reasonable efforts to minimise defects or errors in the Software and to check the Software for viruses, XE2 does not warrant that the Customer's use of the Software will be uninterrupted or that the operation of the Software will be error free, virus free or secure, or that the Software and the functions of the Software will be merchantable and will meet the Customer's requirements or that no Third Party's rights are infringed thereby. In addition, the security mechanism implemented by the Software has inherent limitations and the Customer shall have sole responsibility in determining that the Software sufficiently meets its needs.
- 6.8** XE2 warrants that the media containing the Software, if provided by XE2, is free from defects in material and workmanship and will so remain for ninety (90) days from the date the Customer acquires the Software.
- 6.9** Subject to Clause 6.10 below XE2's sole liability for any breach of the warranties in Clause 6.8 shall be, in XE2's sole discretion:
- 6.9.1** to replace the Customer's defective media or copy of the Software;
- 6.9.2** to advise the Customer how to achieve substantially the same functionality as described in the User Documentation with the Software through a procedure different from that set forth in the User Documentation; or
- 6.9.3** to refund the fee the Customer paid for the Software.
- 6.10** XE2's liability under Clause 6.9 shall be incurred only in the event that the Customer:
- 6.10.1** informs XE2 of the breach of warranty during the applicable warranty period;
- 6.10.2** returns the Software to XE2; and
- 6.10.3** provides evidence of the dates the Customer acquired the Software.
- 6.11** Repaired, corrected or replaced Software shall be covered by the warranties in Clause 6.8 for the period remaining under the warranty that covered the original Software, or if longer, for thirty (30) days after the date of shipment to the Customer of the replacement media or copy of the Software, or the date XE2 advised the Customer how to operate the Software so as to achieve the functionality described in the User Documentation.
- 6.12** The warranties contained in Clause 6 are the only warranties made by XE2. XE2 makes no other express or implied warranty relating to the performance, quality or fitness for a particular purpose of the Software. No XE2's agent or employee is authorised to make any modifications, extensions, or additions to this warranty.
- 6.13** The warranties contained in Clause 6 shall immediately be terminated if:
- 6.13.1** any modifications are made to the Software by the Customer during the warranty period; or
- 6.13.2** the media is subjected to accident, abuse, or improper use; or
- 6.13.3** the Customer violates the terms of the Agreement.

- 6.14** The warranties in Clause 6 shall not apply if the Software is used on or in conjunction with hardware or programs other than the unmodified version of hardware and programs with which the Software was designed to be used as described in the User Documentation.
- 6.15** The Service may comprise software, services, technical information, training materials or other technical data which are subject to the United States of America Export Control Regulations or the laws or regulations of another country. The Customer may not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations.
- 6.16** Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in the Federal Acquisition Regulations.

7. SUSPENSION OF SERVICES

- 7.1** XE2 may at its sole discretion elect forthwith to suspend provision of the Service until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing in the event that XE2 is entitled to terminate the Agreement, or in the event that:
- 7.1.1** XE2 exercises its rights under Clauses 6., 7.3 or 8.3; or
- 7.1.2** XE2 is obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative authority.
- 7.2** Any exercise by XE2 of its right of suspension in respect of an event referred to in Clause 7.1 shall not exclude XE2's right subsequently to terminate the Agreement.
- 7.3** In the event of an Emergency, XE2 may at its sole discretion interrupt or suspend its obligations hereunder for so long as the Emergency lasts (but no longer) without giving any notice to the Customer but shall notify the Customer as soon as reasonably practicable following the start of the interruption or suspension and shall use its reasonable endeavours to minimise the period of such interruption or suspension.
- 7.4** Where the suspension is as a consequence of a fault or omission caused by the Customer, the Customer shall reimburse XE2 for all reasonable costs and expenses incurred in connection with the implementation of such suspension and/or the re-commencement of the provision of the Services as appropriate.
- 7.5** The Customer shall have no claim against XE2 for any suspension of the Service pursuant to this Clause 7.

8. TERM, CANCELLATION AND TERMINATION

- 8.1** Save as otherwise agreed, the Agreement will commence on the earlier of the date of signature hereof by both Parties, (if appropriate) the date on which the customer completes any other acceptance procedure after having loaded the Software or the date on which the Customer starts using the Service, and continues for the Minimum Period and thereafter unless and until terminated upon either XE2 or the Customer giving to the other not less than 30 days' written notice expiring at any time after the Minimum Period.
- 8.2** Where prior to connection of the Service the Customer cancels the Agreement the Customer shall pay such cancellation Charges as may be published by XE2 from time to time in the Tariff Schedule or as agreed in writing by the Parties or where none are published or have been so agreed the Customer shall pay the full amount of Charges that would otherwise have been payable by the Customer until expiry of the Minimum Period.
- 8.3** XE2 shall be entitled to terminate forthwith if:
- 8.3.2** the Customer fails to make any payment when it becomes due or defaults in the performance or observance of any obligation under the Agreement or any other agreement with XE2 or a Group Company and (in the case of a remediable breach) fails to remedy the breach within a reasonable time specified by XE2 in its written notice so to do; or
- 8.3.3** the Customer is unable to pay its debts as they fall due or a voluntary arrangement is approved, or a petition for a bankruptcy order is presented or a bankruptcy order is made against the Customer or if (the Customer being a company) a voluntary arrangement is approved or an administration order is made, or a receiver or administrative receiver is appointed in respect of any of the Customer's assets or a resolution or petition to wind up the Customer is passed or presented (whether compulsory or voluntary) otherwise than for the

purposes of reconstruction or amalgamation, or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or obtain a winding-up order or if XE2 reasonably believes the Customer is unable to pay the Charges; or

- 8.3.4** XE2 is precluded from providing the Service by Law or by the decision of any competent judicial or regulatory authority; or
- 8.3.5** XE2 suspects on reasonable grounds that the Customer may have committed or be committing any fraud against XE2 or any Third Party; or
- 8.3.6** the Customer provides XE2 with any false, inaccurate or misleading information for the purpose of obtaining the Service; or
- 8.3.7** the Customer fails to meet the standard of creditworthiness as further set out in Clause 6.7 or if the circumstances set out in Clause 8.3 occur. Nothing in this Clause 8.3 shall limit XE2's ability to terminate the Agreement as set out elsewhere in the Agreement.
- 8.4** The Customer shall be entitled forthwith by written notice to terminate the Agreement:
- 8.4.1** if the Customer does not consent to any amendment or variation to the Agreement pursuant to Clause 13. Notwithstanding the aforesaid, continued use of the Service following the expiry of any notice given by XE2 pursuant to Clause 13 or failure to terminate the Agreement within 7 days of the date of XE2's said notice will be deemed to constitute acceptance of the Agreement as amended or varied and the Customer shall not be entitled to terminate the Agreement under this Clause 8; or
- 8.4.2** the Customer does not consent to the terms of any licences of Software pursuant to Clause 7.1. Notwithstanding the aforesaid, continued use of the Service or failure to terminate the Agreement will be deemed to constitute acceptance of the said licences of software and the Customer shall not be entitled to terminate the Agreement under this Clause 8; or
- 8.4.3** prior to the expiry of the Minimum Period provided the Customer shall have paid all Charges due and payable to XE2 hereunder together with all Charges that would have been due and payable to XE2 for the remainder of the Minimum Period.
- 8.5** The retrieval of customer data when the Agreement is terminated by either party will be at the sole cost of the customer which must be completed within a reasonable period of time.
- 8.6** The right to terminate the Agreement shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations, or liabilities accrued prior to termination.
- 8.7** If notice is given to terminate the Agreement, the Customer shall pay all Charges otherwise due up to the expiry of the notice. (including all Charges due and payable for the remainder of the Minimum Period, if any).
- 8.8** On termination of the Agreement the Customer shall immediately cease using the Service and the Software and shall destroy all copies of the Software in its possession. The Customer shall have no further right to use the Service or the Software or to access information stored as part of the Service.

9. INDEMNITY

- 9.1** The Customer shall indemnify XE2 against each loss, liability or cost incurred by XE2 arising out of:
- 9.1.1** any claims or legal proceedings arising from the Customer's use of the Service or use of the Service through the Customer's password which are brought or threatened by a Third Party against XE2; or
- 9.1.2** any breach of the Agreement by the Customer.

10. ASSIGNMENT

- 10.1** The Customer shall not assign or delegate or otherwise deal with all or any of its rights or obligations under the Agreement.
- 10.2** XE2 shall have the right to assign or otherwise delegate all or any of its rights or obligations under the Agreement to any person or entity.

11. FORCE MAJEURE

- 11.1** XE2 shall not be liable for any breach of its obligations under the Agreement where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including without limitation, by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law and accident (or by any damage caused by any of such events).
- 11.2** Where an event of force majeure as set out in Clause 11.1 above continues for more than three months either Party may terminate the Agreement by giving no less than 30 days' written notice to the other Party.

12. ENTIRE AGREEMENT, WAIVER AND SEVERENCE

- 12.1** The Agreement represents the entire understanding between the Parties in relation to the subject matter herein and supersedes and extinguishes all other agreements or representations made by either Party, whether oral or written.
- 12.2** No waiver by XE2 of any default of the Customer under the Agreement shall operate or be construed as a waiver by XE2 of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by XE2 to the Customer shall in any way release, discharge or otherwise affect the liability of the Customer under the Agreement.
- 12.3** If any provision of the Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.

13. VARIATION

- 13.1** XE2 reserves the right to amend or vary the Agreement from time to time by giving the Customer thirty days' written notice thereof provided always that notice of variations in the Charges shall be given in accordance with Clause 7.2. The Customer may terminate the Agreement subject and pursuant to Clause 8.4.1 if it does not wish to be bound by such amendments or variations.
- 13.2** XE2 may at any time improve, modify or otherwise alter the Service in the event that:
- 13.2.1** the services provided to XE2s by any of its partners is altered; or
- 13.2.2** in XE2's reasonable opinion the Services should be altered for reasons of quality of service or otherwise for the benefit of XE2's customers as a whole; or
- 13.2.3** technical or regulatory reasons so require; or
- 13.2.4** it is otherwise necessary or desirable to do so in the reasonable opinion of XE2.
- 13.3** XE2 may consent (such consent not to be unreasonably withheld or delayed) to a request by the Customer to vary the Services. Where consent is given the XE2 shall use reasonable endeavours to vary the Service in the timescales quoted to the Customer but shall have no liability whatsoever for any delay in so varying the Service. The Customer shall pay XE2 the Charges quoted or agreed in writing.

14. NOTICES

- 14.1** Unless otherwise stated within the Agreement, notices to be given to either Party shall be in writing and shall be delivered by hand, electronic mail (other than for the purpose of legal process), sent by fax with confirmation by post or pre-paid first class post to the Customer at the Customer's address or number specified in the Proposal or to XE2 at its address or number as specified in the Proposal or if none, at its registered address. Any such notice shall be deemed to have been made to the other Party on the day on which such notice ought to have been received in due course of hand delivery, first class post or facsimile transmission. Any communication by electronic mail shall be deemed to have been made on the Working Day on which the notice is first stored in the other Party's electronic mail-box.

15. DATA PROTECTION

- 15.1** XE2 may use any information supplied by the Customer for its own administrative and customer service purposes or for any other purpose required by Law. Without limitation XE2 shall be entitled to disclose information provided by the Customer to any debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider.
- 15.2** In order to maintain quality and for training purposes XE2 may monitor and record telephone conversations with the Customer.
- 15.3** Unless the Customer notifies XE2 in writing XE2 may:
 - 15.3.1** use information provided by the Customer for market research purposes or to supply the Customer with information about other products or services available from XE2 or its partners;
 - 15.3.2** provide information supplied by the Customer to Third Parties for market research purposes or to enable them to supply the Customer with information about their products or services;
 - 15.3.3** communicate information that describes the habits or usage patterns and/or demographics of the whole or a part of XE2's customer base (including the Customer) but does not describe or reveal the identity of any particular customer to any Third Party; or

16. GOVERNING LAW

- 16.1** The Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.
