

GENERAL TERMS AND CONDITIONS - INTERNET CONNECTIVITY

1. NATURE OF AGREEMENT

- 1.1. These Terms and Conditions should be read in conjunction with a completed Service Order, which sets out the Services, pricing and other details specific to the contract between the Customer and Morcan. Signature of a Service Order on behalf of both Customer and Morcan creates a legally binding Agreement. Morcan will not be bound by any Service Order until it is accepted and signed by Morcan. The Agreement overrides and excludes any other terms, including any terms stipulated, or purported to be incorporated or referred to by the Customer (including in any of the Customer's purchase order documentation), or in any negotiations and any course of dealing established between the parties, or otherwise. In the event of a conflict between the provisions of any documents comprising the Agreement, the conflict shall be resolved in the following order of priority:
 - 1.1.1. Service Order;
 - 1.1.2. Any applicable Service Schedule as referred to in the Service Order;
 - 1.1.3. These Terms and Conditions;
 - 1.1.4. Any schedules, annexes, appendices or attachments to the Service Order, other than a Service Schedule and these Terms and Conditions;
 - 1.1.5. Any other documents expressly incorporated by or with Morcan's approval in writing into the Agreement. Customer is responsible for the accuracy of all information provided by it, including as contained in Service Orders.
- 1.2. All quotations are deemed to be subject to these Terms and Conditions. Quotations shall be valid for 14 days unless otherwise stated on the quotation. Morcan reserves the right to withdraw or amend any quotation at its discretion prior to the Agreement.
- 1.3. Morcan reserves the right to cancel, withdraw or amend (including by increasing the Charges in respect of) any Service Order (or these Terms and Conditions or any other terms applicable to the same) in whole or part at any time before or following the entry into of the Agreement by notice to the Customer where:
 - 1.3.1 Products or services are withdrawn or orders are rejected by any supplier; or
 - 1.3.2 The supplier increases the charges for products or services to Morcan, including any increase by reference to the Customer's power or other consumption in relation to the Services;
 - 1.3.3 The terms on which any supplier provides products or services are amended or updated;
 - 1.3.4 Specifications of products or services are varied by the supplier;
 - 1.3.5 Required to reflect process changes, including in respect of data protection/privacy.
 - 1.3.6 There is any Change in Law:
 - a. that results in an increase in the cost to Morcan of providing all or any of the Services;
 - b. such that Morcan is no longer entitled by Law to sell/supply all or any of the Services ordered to the Customer in the jurisdiction in which the same have been ordered or are to be delivered;
 - c. and the impact of the change or its implementation is such that tariffs, levies, taxes, imposts or duties or trade barriers are imposed upon or increased in respect of the sale, licensing or provision of all or any of the Services from the

jurisdiction from which the same are supplied to the jurisdiction in which they are to be delivered or accessed;

- d. and the impact of the change or its implementation is such that Morcan's ability to deliver all or any of the Services is hampered or likely to result in any delay; or
- e. and the cancellation, withdrawal or amendment is required to comply with such Change in Law.

1.4 The Customer warrants and confirms that it is entering into the Agreement, and that the Services are to be provided solely for the purposes of the Customer's business and not as a consumer.

2. DEFINITIONS

"Affiliate" in relation to any body corporate means any subsidiary or holding company of that body corporate or any subsidiary of any such holding company and for the purposes of this definition the terms "subsidiary" and "holding company" shall have the meanings given to them by section 1159 Companies Act 2006.

"Agreement" means the legally binding contract between the Customer and Morcan comprising:

- a. The Service Order signed by Customer and Morcan;
- b. These Terms and Conditions;
- c. Any schedules, annexes, appendices or attachments to the Service Order; and
- d. Any other documents expressly incorporated by or with Morcan's approval in writing into such contract.

in each case as amended from time to time in accordance with the terms of the Agreement.

"Business Day" means any day Monday to Friday excluding public, bank and statutory holidays in England.

"Business Hours" means 0830 to 1730 on a Business Day.

"Change in Law" means any change in any Law or the introduction of any new Law, whenever occurring.

"Charges" means all fees, rates, charges and expenses and other amounts payable by the Customer to Morcan under the Agreement in respect of the Services, and the price for any equipment supplied by Morcan.

"Customer" means the person identified as the Customer on the Service Order.

"Customer Data" means any data or information (including any personal data relating to the staff, customers or suppliers of the Customer) provided by or on behalf of the Customer to Morcan, which is stored or otherwise processed by Morcan as part of the Services under the Agreement.

"Customer Equipment" means any hardware (including cabinets and racks) or other equipment, software/system or means of communication or connectivity provided by or on behalf of the Customer.

“Customer Site(s)” or “Customer Site” means the site, premises or other location owned or occupied by the Customer and/or its End-Users at or in respect of which Services are to be provided as set out in the Service Order, or as otherwise may be accepted in writing by Morcan.

“Confidential Information” means all data, information, and material in any medium or format relating to the business, customers, suppliers, licensors, employees, officers, finances, systems or affairs of the Disclosing Party or its Affiliates (including Morcan Know How where Morcan is the Disclosing Party) that is or has been (before, on, or after the Effective Date) disclosed by or on behalf of the Disclosing Party to the Receiving Party under or in connection with the Agreement, whether orally, electronically, in writing or otherwise (including by observation), including copies of such information.

Data Protection Laws means all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation(as amended); the Data Protection Act 2018; any other applicable legislation relating to personal data.

“Disclosing Party” means the party making disclosure of Confidential Information.

“Effective Date” means the date specified as such in the Service Order signed by Morcan, or if no date is specified the date on which the Service Order is signed by Morcan.

“End-Users means Customer’s end-users, clients, agents or any other third parties who utilize or access the Services or Equipment.

"Equipment" means any equipment, device, software or other tangible material supplied by Morcan to the Customer, as part of, and/or comprised within, the provision of a Service.

"Event of Insolvency" means in relation to a person: (a) a liquidator, provisional liquidator, receiver, administrative receiver, administrator or similar officer being appointed over any of the assets or business of that person; (b) that person entering into a scheme of arrangement or composition with or for the benefit of its creditors generally; (c) that person entering into any reorganisation, moratorium or other administration with or for the benefit of that person's creditors generally or any class of its creditors; (d) that person adopting a resolution or proposing to adopt a resolution to wind itself up or being or being deemed to be insolvent; or (e) any similar or analogous event happening with respect to that person under the national, state or local laws of any other jurisdiction.

“Force Majeure Event” means:

- a. Act of God or public enemy, acts of terrorism, civil war, riots or commotion, war, military action (or preparation for the same), imposition (or threat of imposition) of sanctions or embargo or a breaking-off of diplomatic relations;
- b. An epidemic or a pandemic;
- c. Natural events or disasters of any kind including storms, lightning, flood, drought, other extreme weather conditions, earthquake/seismic activity;
- d. Any law made or any action taken by any state, government or public authority (including revocation or refusal of licences or permissions);
- e. Collapsing buildings, fire, explosion, malicious acts, vandalism or accident, failure or non-availability of public networks, electricity or other utilities, accident or breakdown of machinery, damage or disruption to cables or infrastructure, unavailability of supplies;

- f. Any labour dispute, strike, industrial action or lockout; or
- g. Any other cause, event or circumstance affecting the performance by a party of its obligations under the Agreement which is beyond its reasonable control.

“Initial Term” means in respect of each Service the initial period from and including the Service Commencement Date during which that Service is to be provided as set out in the Service Order, subject to earlier termination in accordance with the Agreement.

“Intellectual Property Rights” means any of the following rights:

- a. Patents, trademarks, service marks, logos, trade dress, get-up, trade, business or domain names, rights in designs, copyrights and related rights including rights in computer software and databases, database rights, topography rights;
- b. Rights in inventions, know-how, trade secrets and other confidential information; and
- c. Any other intellectual property or similar proprietary rights which may exist at any time in any part of the world;

in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them, and where applicable any goodwill in any of the above.

“Law” means:

- a. Any law, statute, regulation, by law, ordinance or subordinate legislation in force from time to time;
- b. The common law as applicable to the parties to the Agreement from time to time;
- c. Any binding court order, judgement or decree;
- d. Any legally binding industry code or standard.

“Malicious Activity” means sending/distributing Viruses or information regarding the creation/distribution of Viruses, pinging, flooding, mail bombing, or denial of service attacks, or other activities that disrupt the use of or interfere with the ability of others to effectively use networks, systems, services, software or equipment.

“Morcan” means whichever of Morcan Limited (registered in England no. 04205110) of 3rd Floor, 86-90 Paul Street, London EC2A 4NE or its Affiliates is shown as the Morcan contracting entity on the Service Order.

“Morcan Know How” means general ideas, working methodologies, general knowledge and experience, processes, techniques, tools or internal processes or systems, source code, systems, platforms, solutions, know-how, data, documents, reports, records, works of authorship or creative works, specifications, system concepts, designs, samples, models, plans, sketches or drawings or other materials which have been or are acquired or developed by or on behalf of Morcan or its Affiliates or their respective suppliers or licensors before, on or after the Effective Date and any modifications, enhancements or derivatives of any of the same.

“Receiving Party” means the party receiving Confidential Information.

“Relief Event” has the meaning given to that term in clause 12.3.

“Renewal Period” means the period(s) specified as such in the Service Order, or if no period is

specified the period during the Service Term following the Initial Term.

"Requested Service Commencement Date" means the date specified in the Service Order upon which the Customer would wish the Service to commence, which shall be no earlier than the expiry of any lead time notified by Morcan to the Customer.

"Services" means the services provided by Morcan and/or its licensors, suppliers and contractors as set out in the Service Order (as may be amended from time to time in accordance with the Agreement).

"Service Commencement Date" means the date that the Service is first activated for use by the Customer; or where applicable, such later date as may be notified by Morcan.

"Service Order" means the written request by the Customer for the Services submitted on a Morcan approved service order form (or in such form as may be accepted by Morcan from time to time) which has been accepted by Morcan.

"Service Schedule" means the schedule containing the service description and applicable additional terms and conditions for the provision of the specific Service ordered by the Customer as the same is referred to in the relevant Service Order.

"Service Term" means in relation to each Service the period from the Service Commencement Date to the date of termination or expiry of the Agreement in respect of that Service (including any renewal periods).

"Tail Circuit" means the Morcan procured physical connection (local access circuit) from a Customer Site to the nearest Morcan network point of presence.

"Taxes" means all taxes, imposts, duties, levies, or fees of any kind payable to any governmental, fiscal or taxing authority in the United Kingdom or elsewhere and includes value added, sales and similar taxes. The definition of Taxes includes any penalties, additions, fines or associated interest. The words **Tax** and **Taxation** and similar expressions will be interpreted in accordance with this definition.

In the Agreement words denoting the singular include the plural and vice versa; words denoting any gender include all genders; references to a **month** means a calendar month, and **monthly** shall be interpreted accordingly; reference to a **person** includes a corporate or unincorporated body (whether or not having separate legal personality); any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time; any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and any phrase or list introduced by the words **including**, **includes**, **in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words. **Writing** or **written** includes email.

3. SERVICES AND DURATION

- 3.1. Morcan shall provide, and the Customer shall receive the Services on the terms and conditions set out in the Agreement. The Agreement takes effect on the Effective Date subject to clause 1.3.

- 3.2. The provision of each Service and the Initial Term for each Service shall commence on the Service Commencement Date for that Service.
- 3.3. At the expiration of the Initial Term and subject to Clause 3.5, unless otherwise specified in the Service Order the term of the Agreement shall automatically renew and continue unless and until terminated by either party giving at least thirty (30) days' notice to the other, such notice to expire no earlier than the end of the Initial Term (or the end of the then current fixed Renewal Term, if applicable).
- 3.4. Where requested by Morcan, access to equipment and software installed at any Customer Site may include remote access. Where Morcan agrees to provide Services in respect of Customer Sites outside the United Kingdom such Services shall be provided remotely, unless otherwise specifically agreed in writing by Morcan, and shall be subject to additional Charges. For all Services provided on-site at any Customer Sites outside central London Underground zones 1 and 2, travelling time (at Morcan's then standard hourly rate) and travel and subsistence expenses shall be chargeable to the Customer.
- 3.5. Hardware and Software Maintenance. Where the Service provided by Morcan includes the maintenance of equipment or software provided under a Service Order ("Maintenance Services") such maintenance and/or monitoring of the services shall be provided for 12 months from the Service Commencement Date (the "Maintenance Period") unless otherwise stated in the Service Order.

4. BILLING AND PAYMENT

- 4.1. If the Service does not meet the technical specifications contained in the applicable Service Schedule or is otherwise in material non-compliance with this Agreement, then the Customer shall notify Morcan of such non-compliance within 2 Business Days of the Service Commencement Date. If the Customer fails to provide such notice, then the Customer shall be deemed to have accepted the Service. If the Customer does provide such notice, Morcan will test the service for non-compliance.

- 4.2. Credit Approval

Morcan may, at any time, where it reasonably believes that the financial situation of the Customer may adversely affect the Customer's ability to pay the Charges during the Service Term, require the Customer to make a pre-payment for the Services to a maximum of 6 months' recurring Charges. The Customer shall provide such requested pre-payment within 5 Business Days of the request and Morcan shall not be required to provide or continue to provide (and may by notice to the Customer suspend without liability) any Service until such advance payment has been obtained.

- 4.3. Invoices and Payment

- 4.3.1. The Customer shall pay the Charges in accordance with the Agreement. Unless otherwise specified in the Service Order the payment currency is British Pounds (GBP). Except as provided otherwise in the Service Order:
 - a. Initial set-up, installation or other non-recurring charges and charges for any

Equipment supplied or licensed software, each as shown in the Service Order, will be invoiced in advance and shall be due and payable upon the date shown on the invoice. Charges for additional supplies of Equipment or software shall be due and payable in advance of delivery;

- b. Weekly/monthly/quarterly/annual or other recurring Charges for Services will be billed in advance as provided in the Service Order and shall be due and payable in full on the due date for payment as shown on the invoice for the same (or if no due date is shown on the invoice within 14 days of the date of the invoice).
- 4.3.2. Charges for additional hours/services/maintenance, engineering or repair works, travel and expenses over those covered in the Charges described in (b) and ad hoc charges shall be payable monthly in arrears and shall be due and payable within 14 days of the date of the invoice.
- 4.3.3. The Customer shall pay each invoice in full and in cleared funds without any deduction, set off or withholding and free of currency exchange costs, or bank charges. To the extent that any deduction or withholding is required by applicable Law, the Customer shall make and account properly to the relevant authorities for the deduction or withholding, and Customer shall increase the amount of such payment to ensure that Morcan receives the amount it would have received had no deduction or withholding been required. The Customer will be responsible for all Charges incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services. Morcan may, but is not obliged to, detect unauthorised or fraudulent use of the Services.

4.4. Taxes

All Charges are quoted exclusive of Taxes, which shall be payable in addition by the Customer at the same time as the charges to which they relate.

4.5. Interest

If the Customer fails to make any payment due to Morcan under the Agreement by the due date for payment, then, without limiting Morcan's other remedies Morcan may charge (and the Customer shall pay) daily interest on late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period beginning on the date on which payment is due and ending on the date payment is actually made (unless and then only to the extent otherwise prohibited by Law). Additionally, the Customer agrees to reimburse Morcan on demand for reasonable costs incurred in connection with the recovery and collection of any unpaid amounts under the Agreement, including legal and other advisers' fees and court costs and any interest or other sums payable to its suppliers in respect of amounts paid late by the Customer .

4.6. Adjustment to Charges

Notwithstanding any other provision to the contrary Morcan may increase all or any of the Charges applicable to any Service provided under the Agreement at any time in the following events/circumstances:

- 4.6.1. Where provided in the Service Order; or
- 4.6.2. Where any third-party supplier or service provider increases its charges to Morcan, Morcan shall be entitled to increase the relevant Charges by an amount equal to

- the increase in charges payable by Morcan to the relevant third party supplier/service provider by giving not less than fourteen days' written notice to the Customer; or
- 4.6.3. In the event of any Change in Law occurring that results in an increase in the cost to Morcan of providing all or any of the Services, Morcan shall be entitled to increase the Charges by a reasonable amount to reflect the increased cost to Morcan of providing the Services as a result of that Change in Law by giving not less than twenty-eight days' written notice to the Customer; or
- 4.6.4. Without limiting its rights under clauses 4.6.1 to 4.6.3, 4.6.5 or 4.6.6 Morcan may increase the Charges in relation to any Renewal Period by not less than 30 days' notice to the Customer; or
- 4.6.5. As a result of a Relief Event. Morcan shall be entitled to bill for the Service (or each phase thereof if subject to a Roll- Out Plan) from the originally anticipated delivery date for that Service(or phase) (irrespective of actual delivery) if the failure or delay in delivery is due to a Relief Event and shall otherwise be entitled to invoice Customer and recover additional Charges to reflect any additional costs, expenses, charges(including third party costs or charges) or liabilities incurred by Morcan arising in connection with, or as a result of the Relief Event: or
- 4.6.6. Any Force Majeure Event,or any act or omission of any third party beyond Morcan's reasonable control.

5. DELIVERY OF SERVICE

5.1. Delivery

Morcan shall endeavour to provide the ordered Service ready for use on the Requested Service Commencement Date (or in relation to any roll-out the proposed Service Commencement Date for each phase as provided in the Roll-Out Plan) but gives no guarantee or other assurance of any kind in respect of the same and shall not be in breach of the Agreement or have any liability in respect of any failure to do so, or for any delay in delivery or activation. Time shall not be of the essence.

5.2. Roll-Out Plan

Depending upon the nature and complexity of the Services to be delivered, Morcan and the Customer may agree a roll-out plan for the Services, such agreement to be recorded in writing, which shall set out the proposed delivery phases for each installation and delivery phase of the Service (the "Roll-Out Plan").

5.3. Roll-Out: Billing and Delivery

If the Service is the subject of a Roll-Out Plan, then each phase of such plan shall have a separate Service Commencement Date, and the Charges set out on the Service Order (or as the same may be set out in the Roll-Out Plan (as the case may be)) for each phase of the Services shall invoiced and payable in accordance with clause 4.

5.4. Relief Event

Without limiting any of its other rights or remedies Morcan may (without liability) revise any anticipated delivery dates due to any delay caused by:

- 5.4.1. Any Relief Event, or any Force Majeure Event, including any act or omission of any third party beyond Morcan's reasonable control; or
- 5.4.2. Delays associated with the procurement of a Tail Circuit.

5.5. Tail Circuits

If a Tail Circuit is required for the delivery of a Service, the Customer agrees that:

- 5.5.1. The Tail Circuit(s) will be manufactured and provided by a third party operator (the "Provider");
- 5.5.2. The Tail Circuit(s) will be supplied pursuant to the terms and conditions of, and any service level undertakings given by the Provider. Morcan gives no warranty or assurance of any kind in respect of the Tail Circuit(s);
- 5.5.3. Any rights, remedies, credits or service the Customer may have or be entitled to regarding the Tail Circuit are limited to those rights, remedies, credits or service given by the Provider;
- 5.5.4. The Provider's estimated costs for the Tail Circuit are incorporated within the Charges and are subject to survey of the Customer Site by the Provider and may be subject to increase, any such increase to be passed on to the Customer in its entirety. Such survey may also necessitate a postponement of the delivery date. If any such changes are required, Morcan shall notify the Customer of such changes as soon as reasonably possible and, upon request, shall provide the Customer with supporting documentation evidencing such changes;
- 5.5.5. Where the Service Order indicates that a Tail Circuit is to be provided by the Customer ("Customer Tail Circuit"), then the Customer will procure and be solely responsible for the Customer Tail Circuit. Morcan will have no liability whatsoever in respect of the provision or functioning of a Customer Tail Circuit and the Customer will indemnify and hold Morcan harmless for any claims, costs, expenses, liabilities, damages and losses arising from the provision, functioning or otherwise in respect of any Customer Tail Circuit.

5.6. Criteria for delivery

- 5.6.1. In relation to any Service including a DSL access circuit ("ADSL Circuit") to a Customer Site, the Customer hereby acknowledges and agrees that the following criteria must be met:
 - a. The Customer Site must have a PSTN line from British Telecommunications plc ("BT") and the local BT exchange for such site must have been upgraded to provide an ADSL service;
 - b. There is a suitable metal path facility available to the Customer Site that can be shared with the existing PSTN line and that no incompatible line services are present on the PSTN line. Incompatible products include but are not limited to 30k loop, private circuit, ISDN, Home/Business Highway, Red ABC, RedCare, DACS, Featurenet 5000 services, FeatureLine Hunt Groups, metre pulse facility and/or PBX extension or AUX lines; and
 - c. The Customer's telephone line must meet BT's line quality criteria from time to time. The Customer acknowledges that its line may also have specific quality problems which limit service or bandwidth availability.

5.6.2. The Customer agrees and acknowledges that, in relation to any Service comprising an SDSL line, an additional condition for delivery is that the Customer Site to which such line is to be delivered must have, as at the date of the Agreement for such Customer Site, an unused metal path facility suitable for the delivery of such connectivity.

5.7. DSL line rate availability

In relation to any Service including an ADSL Circuit, where the specified Customer Site is not able to receive the line rate specified on the Service Order due to one of the criteria set out in Clause 5.6 not being fulfilled, Morcan shall notify the Customer. Other than in relation to the ADSL MAX service (where the relevant availability regime is set out on the Service Order), if a lower line rate is available and if the Customer agrees to such rate within 2 Business Days of such notification, Morcan shall, subject to the signing of a new Service Order to replace the original order, provide such lower line rate. In the event Morcan is not able to offer such a lower rate or the Customer fails to notify Morcan within such period, the Service Order in relation to such ADSL Circuit (as the case may be) only will be cancelled with immediate effect without any liability to Morcan. The Customer acknowledges and agrees that the line rate of the Service may not be constant and may be reduced by factors such as network usage during peak times, line quality and the distance of the Customer Site from the local BT exchange. The Customer acknowledges that in installing an ADSL Circuit (or an SDSL connection) at a Customer Site, there may be a temporary loss of analogue over the telephone line while the installation is carried out.

5.8. The Customer is responsible for:

- 5.8.1. ensuring compliance with all Laws, instructions and health and safety requirements relating to the Equipment and for obtaining all wayleaves, consents, approvals, servitudes, rights of way and any similar rights in relation to any premises required for the purpose either of installing, maintaining, repairing connections or, on termination of the Agreement, removing the Equipment and, if necessary, any fibre installed;
- 5.8.2. providing and maintaining, at its own expense, the level of power (including necessary fittings, connections and installations), heating and air conditioning necessary to maintain the proper environment for the Equipment on the Customer Sites; and
- 5.8.3. providing Morcan and its suppliers/contractors with access to any premises owned, controlled or occupied by the Customer or End User in respect of a Service in order to install, provide, maintain, repair, replace or cease the Services (including, where required, a letter authorising access to those premises from the owner or occupier (as the case may be) of those premises).

5.9. Failure to meet delivery criteria

In the event that the Customer Site fails to meet any of the criteria set out in Clause 5.6, 5.7 or 5.8 or installation or delivery is delayed as a result of any Relief Event, then, without limiting clauses 4.6, 5.4 or 12.3 or any other right or remedy of Morcan, the Customer shall be liable to pay any and all costs and expenses incurred by Morcan (or to which it is committed) in relation to its attempted delivery or installation together with an

administrative charge of 15% (exclusive of VAT).

5.10. Equipment

The Customer acknowledges and agrees that:

- 5.10.1. Title to all Equipment remains with Morcan, except as expressly provided in a Service Order;
- 5.10.2. The Customer shall not, and shall not permit others to, move, rearrange, disconnect, remove, repair, or otherwise tamper with any Equipment, without the prior written consent of Morcan;
- 5.10.3. The Equipment shall not be used for any purpose other than that for which Morcan provides it;
- 5.10.4. The Customer shall take such actions as are reasonably directed by Morcan to protect Morcan's interest in the Equipment and shall keep the Equipment free and clear from all liens, claims and encumbrances;
- 5.10.5. The Customer bears the entire risk of loss, theft, destruction or damage to the Equipment placed on the Customer Site (except for damage caused by Morcan);
- 5.10.6. In no event will Morcan be liable to the Customer or any other person for interruption of Service or for any other loss, cost or damage caused by or related to improper use, or maintenance of the Equipment by the Customer or its agents or representatives;
- 5.10.7. If the Equipment was manufactured by a third party, then any manufacturer warranties with respect to the Equipment will to the extent reasonably possible be passed on to the Customer by Morcan and any rights or remedies the Customer may have regarding the performance or compliance of the Equipment are limited to those rights provided by the manufacturer of the Equipment;
- 5.10.8. Morcan shall not be responsible for any changes to the Service that cause the Equipment to become obsolete or require modification or alteration;
- 5.10.9. The Customer agrees to permit Morcan and its suppliers to remove the Equipment from any Customer Site after termination or expiry for any reason of the Agreement or the Service in relation to which the Equipment was provided; and
- 5.10.10. The Customer shall be solely responsible for the installation, operation, maintenance, use and compatibility (including any interface) of any equipment or software not provided by Morcan and Morcan shall have no responsibility or liability in connection with the same.

5.11. Non-use of Service

If, notwithstanding the delivery of a Service and the achievement of its Service Commencement Date, at any time during the Service Term, the Customer ceases to use the Service or part thereof for a prolonged period of time, Morcan reserves the right, subject to prior notice being given to the Customer, to suspend the Service (or part thereof, as the case may be) in order to prevent alarms being activated on its network or that of the Provider.

5.12. Engineering Charge

Morcan may raise an engineering charge calculated by reference to its or its contractor's then prevailing standard rates/charges if:

- 5.12.1. Morcan's approved engineer is called out because of incidents/faults that are found upon examination not to be incidents/faults with the Equipment or the Service (including faults or incidents due to power supply fluctuations or incidents on another network system or apparatus to which the Equipment is connected);
- 5.12.2. Morcan arrange an appointment for an engineer to attend the Customer Site but the Customer fails to provide access to the Customer Site or cancels for any reason other than for Morcan's breach; or
- 5.12.3. The fault is not covered by Morcan's warranty with the relevant third party manufacturer.

Morcan will invoice the Customer for the engineering charge at any time after the engineering charge is incurred and the Customer will pay the engineering charge in accordance with the payment terms set out in the Agreement.

6. INTELLECTUAL PROPERTY

6.1. Licence

All Intellectual Property and other proprietary rights in the Service, Morcan Know How, or in any other documents, software or other materials provided by Morcan or its suppliers/licensors to the Customer shall vest and remain vested in Morcan (or its suppliers/ licensors). Subject to payment of the Charges the Customer will have a non-exclusive, non-transferable, non- sublicensable, revocable licence to use such materials solely for its own internal use to the extent necessary to use the Service (**Permitted Purpose**) but for no other purpose. Such licence shall not entitle the Customer to claim title to, or any ownership interest in, the software (or any derivations or improvements thereto) and the Customer will execute any documentation reasonably required by Morcan to document Morcan's (or its supplier's or licensor's) existing and continued ownership of, or right to, the documents/software/materials. All static IP addresses are provided on a rental basis and remain the property of Morcan or its licensors/suppliers. Where software is provided by Morcan or its suppliers/licensors to enable use of the Service Customer must access the Services only via use of that software unless otherwise specifically permitted in writing by Morcan.

6.2. Restrictions

If Morcan or its suppliers or licensors provide the Customer with any software in connection with the Service, the Customer agrees that it will not and will not permit others to:

- 6.2.1. Copy, modify reverse engineer, decompile or disassemble the software save to the extent that it cannot be prohibited from so doing under applicable Law;
- 6.2.2. Sell, lease, license or sub-license the software;
- 6.2.3. Create, write or develop any derivative software or any other software program based on the licensed software or any Confidential Information of Morcan;
- 6.2.4. Circumvent any security measures inherent in the Services; or
- 6.2.5. Take any action prohibited by the owner of the software.

The Customer will comply with any third party terms in force from time to time made known to the Customer that apply to the use of the software or Services and hereby agrees

to indemnify Morcan and hold it harmless in respect of (and shall pay on demand) all losses, liabilities, awards, damages, claims, costs and expenses (including any fines, and legal and advisers' fees and expenses) that may be suffered or incurred by Morcan as a result of any breach by the Customer of this clause 6.

7. CUSTOMER OBLIGATIONS

7.1. Use of Service

The Customer warrants that it shall conduct its operations and shall use the Service in a manner that does not interrupt, impair or interfere with the operation of Morcan's or its suppliers' networks or the use of the same, or their respective business operations. The Customer shall comply at all times with any reasonable operating procedures and/or interconnection requirements of Morcan as may be notified to the Customer from time to time.

7.2. Assistance and access

The Customer agrees to cooperate with and assist Morcan in carrying out Morcan's obligations under the Agreement, including without limitation, providing Morcan and its agents, representatives, suppliers and contractors access to the Customer Sites to the extent reasonably requested by Morcan for the installation, connection, inspection and scheduled or emergency maintenance or removal of Equipment or otherwise as reasonably necessary in relation to the Service. The Customer shall obtain and maintain all permissions, consents, approvals, certificates, licences and authorities (of whatever nature) necessary for the access to, receipt and use of the Services and for the access to the Equipment by Morcan and its representatives, contractors and suppliers.

7.3. Laws

The Customer shall comply with all Laws applicable to the access, receipt and use of the Services provided under the Agreement.

7.4 Use and content

Without limiting its obligations under clause 7.3 the Customer will not use or access (or permit the use or access of) the Services or any Equipment:

- 7.4.1. For any Malicious Activity or in a manner or for a purpose that is discriminatory, offensive, abusive, obscene, pornographic, indecent, menacing, malicious, a nuisance or defamatory;
- 7.4.2. To send, receive, upload, download, store, display or use any material which is discriminatory, offensive, abusive, obscene, pornographic, indecent, menacing, malicious, a nuisance or defamatory, or which is in breach of confidence or privacy, or an infringement of any other third party right, including the Intellectual Property Rights of any person;
- 7.4.3. To send or provide unsolicited advertising or promotional material or "spam" or to knowingly receive responses from such material or "spam" sent by the Customer or any third party acting on its behalf, or to solicit, collect or harvest in a surreptitious manner any personal data of any other person;

- 7.4.4. In an unlawful manner (including for any fraudulent or other criminal purpose or for any terrorist activity) or in contravention of any Laws or licence conditions, third party rights or any reasonable instructions of Morcan from time to time regarding the use of any Service; or
- 7.4.5. to make or attempt to make false or hoax calls to emergency services;
- 7.4.6. In a manner or for a purpose that interferes with or harms the Equipment, or Morcan's infrastructure or network, or that of any third parties; or
- 7.4.7. in any way which, in Morcan's reasonable opinion, is or is likely to be detrimental to the provision of services to you or any of Morcan's customers, or to Morcan's business and/or reputation.

7.5 Indemnity

The Customer shall indemnify and hold Morcan harmless in respect of (and shall pay on demand) all losses, costs, claims, actions, liabilities and expenses (including legal and other advisers' fees) of any nature that may be suffered or incurred by Morcan or any of its other customers, contractors or suppliers or their respective personnel as a result of:

- 7.5.1. A breach by the Customer of any of its obligations under clause 7.3 or 7.4;
- 7.5.2. Any:
 - a. death or personal injury; or
 - b. loss, damage or destruction to Equipment or Morcan or third party systems, networks, infrastructure, data, or other property caused by the Customer or its employees, or its other personnel, contractors or representatives or by Customer Equipment;
 - c. The use of the Services by the Customer or its End-Users;
 - d. Claims of third parties for any loss or misuse of data by the Customer or its end-users (save to the extent that such claims have arisen as a direct result of breach by Morcan of its obligations under the Agreement).

7.6 Monitoring and reporting

For the avoidance of doubt, Morcan does not monitor, and will have no liability for the contents of, any Client Data, materials or communications transmitted by virtue of the Services. Morcan shall be entitled to report the Customer and provide information relating to the Customer (including Client Data), and information relating to the Customer's use of the Services to the relevant authorities, regulators and law enforcement agencies in the event of any breach by the Customer of clause 7.1 or 7.2, or at any other time if legally required to do so.

8. CONFIDENTIAL INFORMATION

8.1. Disclosure and Use

The Receiving Party shall:

- 8.1.1. Keep Confidential Information of the Disclosing Party confidential and not disclose the Disclosing Party's Confidential Information to any third party except with the prior written consent of the Disclosing Party or in accordance with this clause 8; and
- 8.1.2. Only use the Disclosing Party's Confidential Information to exercise its rights or perform its obligations under the Agreement and not for any other purpose.

8.2 Permitted Disclosure

The Receiving Party may disclose the Disclosing Party's Confidential Information to its directors, officers, employees and professional advisers (and Morcan may disclose it to its Affiliates, suppliers, licensors, sub-contractors or other third parties in order to enable Morcan to provide the Services), who have a need to know such Confidential Information in connection with this Agreement. The Receiving Party shall be responsible for ensuring that any such persons to whom it makes disclosure comply with this clause 8.

8.3 The obligations set out in clause 8.1 and 8.2 shall not apply in respect of information that:

- 8.3.1. Can be evidenced to have been in the Receiving Party's possession at the time of disclosure to it and without restriction as to confidentiality;
- 8.3.2. Is or becomes generally available to the public through no breach of the Agreement or other wrongful act by the Receiving Party;
- 8.3.3. Can be evidenced to have been received from a third party without restrictions; or
- 8.3.4. Is independently developed by the Receiving Party without regard to the Confidential Information of the Disclosing Party.

8.4 The Receiving Party may disclose Confidential Information of the Disclosing Party as required to comply with Laws, the requirements of a government or regulatory authority, or orders of a court of competent jurisdiction, provided that (insofar as legally permissible) the Receiving Party:

- 8.4.1. Gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy; and
- 8.4.2. Discloses only such Confidential Information as is required to comply.

8.5 The obligations of the parties under clauses 8.1 to 8.4 shall survive the expiry or termination of the Agreement (however arising) for 3 years, save that the Customer's obligations in respect of Morcan Know How shall continue without limit in time and the Customer's obligations in relation to the Confidential Information of any Morcan supplier, contractor or licensor shall continue beyond such 3 year period for as long as Morcan remains under obligations of confidentiality in respect of such information.

8.6 Nothing in this clause 8 shall prevent Morcan or its suppliers from using any skills, techniques, processes, ideas or know-how gained during the performance of the Agreement for such business purposes as it sees fit, to the extent that this use does not result in a non-permitted disclosure of the Customer's Confidential Information or an infringement of the Customer's Intellectual Property Rights.

8.7 Neither Party shall make or issue any announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Party provided that these restrictions shall not apply to any announcement that is required by any Law, applicable securities exchange, supervisory, regulatory or governmental body.

9. TERMINATION AND SUSPENSION

9.1. Suspension by Morcan

- Without prejudice to any of its other rights or remedies Morcan may immediately by notice to the Customer restrict or suspend all or any of the Services, without any liability to the Customer (including to pay service credits):
- 9.1.1. To carry out maintenance. Morcan shall give such advance notice of suspension for this purpose as is reasonably practicable in the circumstances;
 - 9.1.2. During any period during which any overdue sums are due to it from the Customer;
 - 9.1.3. If there is, or Morcan reasonably believes there is the likelihood of:
 - a. A breach of any of the Customer's obligations under the Agreement (including clauses 5, 7 or schedule 2); or
 - b. A threat to the security or integrity of, or risk of damage to the Services or Morcan's, its customers', suppliers' or any other person's equipment, infrastructure, systems, premises or services;
 - 9.1.4. Where Morcan is obliged to comply with any Law or an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; or
 - 9.1.5. Where all or any part of the Services is suspended by a supplier.
- 9.2. Morcan shall have no liability or responsibility to the Customer or otherwise whatsoever for, or for any consequences of, such suspension. The Customer hereby agrees to indemnify and hold Morcan harmless in respect of (and shall pay on demand) all claims, losses, liabilities (including fines and penalties), damages, and expenses that may be suffered or incurred by Morcan as a result of or in connection with any such suspension. Following suspension of Services for non-payment, Morcan is not required to reinstate Services to the Customer until the Customer has paid in full all Charges then due, including any late fees, interest charges, and any cost of reinstating the Services. Morcan shall have the right to charge for any extra expenses or additional work resulting from such suspension, which shall be for the Customer's account. The Customer shall remain liable to pay the Charges during any period of suspension pursuant to clause 9.1.
- 9.3. Morcan may terminate the Agreement with immediate effect by written notice to the Customer:
- 9.3.1. If the Customer materially breaches its obligations under the Agreement and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from Morcan to remedy such breach; or
 - 9.3.2. An Insolvency Event affecting the Customer occurs; or
 - 9.3.3. If the Customer breaches any of its obligations under clause 7 or schedule 2; or
 - 9.3.4. If any Charges or other sums payable by the Customer are not paid on the due date and the Customer does not remedy that breach in full within 7 days after receipt of written notice from Morcan to remedy the same; or
 - 9.3.5. If required to do so by Law or by order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority; or
 - 9.3.6. If Morcan has restricted or suspended the Services under clause 9.1.2 or 9.1.3; or
 - 9.3.7. In the circumstances described in clause 1.3.
- 9.4. Expiry or termination of the Agreement in whole or part shall be without prejudice to the accrued claims or rights of either party as at termination. When the Agreement expires or terminates as a whole or in respect of any Service:

- 9.4.1. Morcan will immediately stop providing and Customer shall cease using the Service(s) and all licences granted to the Customer shall immediately cease.
- 9.4.2. The Customer must immediately return to Morcan (or as Morcan directs) in good condition all Equipment and other property of Morcan or its suppliers or licensors. In the event that the Customer fails to return all Equipment, then the Customer shall allow Morcan or its representatives or supplier(s) reasonable access, without charge, to its premises to recover the Equipment and Supplier Systems. Morcan may charge the Customer for all costs incurred in repossessing or acquiring replacement Equipment which the Customer has failed to return to Morcan or which are returned to Morcan in a damaged or defective condition.
- 9.4.3. The Customer shall pay Morcan on demand: (a) Charges for all Services rendered through or relating to the period up to and including the date of expiry or termination (including for work in progress); (b) any termination fees and termination costs as provided in the Service Order, and shall further reimburse Morcan on demand for any third party cancellation/termination charges associated with the Services terminated. On termination of Services if the parties agree that Services are to be migrated to another supplier, the Customer acknowledges that there may be a migration fee chargeable dependent on the Services supplied. Should there be a migration fee relating to the Service provided, the Customer agrees to pay such migration fee to Morcan prior to the migration of the Services. An example might be the migration cost of a domain name registered on the Customer's behalf or an ADSL line to a new supplier. Such migration charges shall be notified by Morcan to the Customer and are subject to change from time to time.

10. INDEMNIFICATION, EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 10.1. The limitations and exclusions in this clause 10 apply in respect of all claims, causes of action and liabilities (including any liability of Morcan for the acts and omissions of its employees, agents, subcontractors and Affiliates) arising under or in connection with the Agreement or the Services, whether arising in contract (including under indemnity), tort (including negligence), breach of statutory duty, restitution, misrepresentation, or otherwise.
- 10.2. Morcan does not exclude or limit its liability to the Customer:
 - 10.2.1. For death or personal injury caused by its negligence;
 - 10.2.2. For its fraud or fraudulent misrepresentation;
 - 10.2.3. For breach of any condition as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 10.2.4. For any other liability to the extent that it cannot be limited or excluded by law.
- 10.3. Subject to clause 10.2 Morcan shall not in any circumstances be liable to the Customer for any of the following losses or damages howsoever caused and even if such losses and/or damages were foreseen, foreseeable or known, or that party was advised of the possibility of them in advance:
 - 10.3.1. Any indirect, special or consequential loss or damage; or

- 10.3.2. Any loss of business or business opportunity, loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of anticipated savings, loss of, damage to, or corruption of data, loss of or damage to goodwill, in each case whether such losses are direct, indirect, special or consequential.
- 10.4. Subject to Clauses 10.2, 10.3 and 10.5, in no event shall Morcan's aggregate liability under or in connection with the Agreement or the Services in respect of all claims and liabilities arising in each Year, exceed the total amount actually paid by the Customer to Morcan under the Agreement in the preceding Year, or in relation to liability arising in the first Year the amount payable to Morcan during such Year. For the purposes of this clause 10.4 a **Year** shall mean a period of 12 months commencing on the Effective Date of the Agreement or any anniversary thereof, and the date on which a claim or liability arises will be the date on which the breach or event giving rise to the claim or liability occurred. The Customer acknowledges that the pricing of the Services reflects the intention of the parties to limit Morcan's liability as provided in this clause 10.
- 10.5. Service credits applicable to Morcan's non-performance, if any, as described and calculated pursuant to the applicable Service Schedule are the Customer's exclusive remedy in respect of any failure, delay or lack of performance by Morcan in providing the Service. The Customer shall not be entitled to credits during or in respect of any period in which it is past due on amounts owed to Morcan.
- 10.6. The Customer agrees to defend, indemnify and hold harmless Morcan, its Affiliates, suppliers, licensors and agents from any claims, liabilities, losses, damages and expenses, including legal fees, arising out of or relating to:
- The use of the Service by the Customer or its end- users;
 - Claims of third parties seeking damages for any loss or misuse of data by the Customer or its End-Users; and/or
 - Any claim by any of the Customer's End-Users in relation to the Services.
- 10.7 Morcan shall have no liability to any of the Customer's End-Users in relation to the Service and the Customer shall indemnify Morcan for any and all costs, damages, liabilities and expenses arising out of, or relating to, any claim by any such End-User or third party.

11. WARRANTIES

- 11.1. Morcan will exercise reasonable skill and care in carrying out its obligations under the Agreement. Except as specifically provided otherwise in the Agreement:
- 11.1.1. The Services and the Equipment are provided on an "as is" and "as available" basis;
 - 11.1.2. Morcan (to the extent permitted by law) excludes any other warranty, representation, terms and/or conditions of any kind, including those relating to quality, suitability, efficacy, non-infringement or fitness for a particular purpose;
 - 11.1.3. Morcan expressly disclaims any representation or warranty and gives no assurance of any kind that the Services or the Supplier Software or Equipment will be error free, secure or uninterrupted; and
 - 11.1.4. No advice or information given by Morcan, its Affiliates or contractors shall create a warranty or assurance of any kind.

12. FORCE MAJEURE AND RELIEF EVENTS

- 12.1. Morcan shall not be liable for any delay or failure to perform its obligations under the Agreement due to a Force Majeure Event.
- 12.2. If Morcan or any of its suppliers/contractors suffers a Force Majeure Event which materially affects the provision of the Services and continues for more than 60 days either party may terminate this Agreement by not less than 10 Business Days’ notice to the other party. Where the Customer terminates the Agreement under this clause 12 it shall reimburse any third party costs which Morcan is liable for as a result of the termination.
- 12.3. If Morcan’s performance of any of its obligations under the Agreement is prevented, hindered or delayed by any act or omission of the Customer, its Affiliates, agents, contractors, suppliers, consultants or employees, or if any assumption contained in the Service Order is untrue or incorrect, or in respect of any consequences arising as a result of Morcan, or its personnel, agents, representatives, consultants or sub-contractors following the instructions of any the Customer’s personnel (each a **Relief Event**), Morcan shall not be liable for any costs, charges, liabilities or losses sustained or incurred by the Customer that arise directly or indirectly from such Relief Event and Morcan shall be relieved of its obligations to provide the Services (including any obligation to meet Service Levels or to pay service credits) to the extent performance of such obligations is impeded by such events. The Customer acknowledges that such prevention or delay may result in additional Charges for the Services.

13. MISCELLANEOUS

13.1. Assignment

Morcan may transfer, assign or sub-contract the whole or any part of its rights and obligations under the Agreement. The Customer agrees that it will not assign, sub-contract, sell, transfer, lease, licence or charge by way of security any of its rights or obligations under the Agreement without Morcan’s prior written consent.

13.2. Notices

A notice given to a party under or in connection with the Agreement shall be in writing and sent to the party at the address set out in the Service Order, or as may have otherwise been notified in writing in accordance with this clause to the other party in advance of the notice to be served.

The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time

Delivery by hand or courier.	At the time the notice is left at the address, save that if not delivered on a Business Day receipt is deemed to take place at 9.00 am on the next Business Day.
Pre-paid first class registered or recorded delivery post or, for service to a foreign jurisdiction by registered airmail post.	9.00 am on the second Business Day after posting or 9:00am on the 5 th Business Day after posting if sent to a foreign jurisdiction.
Email	On the day sent, subject to receipt by the sender of confirmation of successful transmission.
All references to time are to local time in the place of receipt.	

13.3. Data Protection

Each party shall comply with the obligations that apply to it under Data Protection Laws. The provisions of Schedule 2 to the Service Order (Data Protection) shall apply.

13.4. Governing Law and Jurisdiction

The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England and Wales. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales, but any order or judgement may be enforced by either party through the competent courts or authorities in any jurisdiction.

13.5. Entire Understanding

The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees to the fullest extent permitted by law that it has not entered into the Agreement in reliance on, and shall have no claim or remedies in respect of any statement, representation, warranty, or assurance of any kind, whether statutory, express, implied or otherwise (including those relating to quality, suitability, efficacy, non-infringement or fitness for a particular purpose or any representation, warranty or condition from course of dealing or usage of trade) that is not expressly set out in the Agreement. Save that this clause shall not apply to exclude or limit any liability for fraud or fraudulent misrepresentation.

13.6. Modifications

Save for any amendments made as permitted in accordance with any other provision of the Agreement (including clause 1.3) no variation of the Agreement shall be effective unless agreed in writing by both parties.

13.7. Surviving Terms

All terms and conditions of the Agreement which by their nature are intended to survive termination of the Agreement, including clauses 1,4,5.1,5.5,5.8 to 5.10 (inclusive),6 to 8(inclusive),9.2,9.4,10 to 13(inclusive) (together with those other clauses, the survival of which is necessary for the interpretation or enforcement of this Agreement) shall so survive.

13.8. Severability

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

13.9. Waiver

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.10. No Third Party Beneficiaries

No person other than a party to the Agreement shall have any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce it save that any Morcan Affiliate may enforce any of the provisions of this Agreement directly on its own account and suppliers/licensors shall be entitled to enforce their respective terms as referred to in clauses 5.5, 6.2 and the rights of access under clause 9.5.2 directly against the Customer. The parties may amend or terminate the Agreement without the consent of any person who is not a party to it.

13.11. Independent Contractors

The parties are independent contractors. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party.

13.12. Counterparts

The Agreement may be executed in counterparts, all of which taken together shall constitute one instrument. This Agreement may also be executed and delivered by facsimile or as a .pdf attached to email and such execution and delivery will have the same

force and effect of an original document with original signatures. No counterpart shall be effective until each party has executed at least one counterpart.