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Terms & Conditions

The following is a plain English and friendly description of our “Terms & Conditions” of business. In this document, “We”, “Us” or “Xiria” refers to Xiria Ltd and “You” or “Your” refers to you, our customer, or a third party acting on your behalf. Xiria reserves the right to amend these Terms and Conditions from time to time. The latest version will be published on the Xiria website.

Addresses and Contacts

The registered offices of Xiria and the address for all correspondence is:

Unit 2a
Stanhope Gate
Stanhope Road
Camberley
Surrey
GU15 3DW

Contact Details

Telephone (Main): 01252 933633
Technical Support: 01252 933633 (Option 1)
support@xiria.co.uk
Accounts: accounts@xiria.co.uk

Company Registration Number: 8673536

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1. Definitions and Interpretation

1.1. In these Terms and Conditions, ("Terms and Conditions"), except where the context otherwise requires, the following words and expressions shall have the following meanings:

1.1.1. **Agreement:** means the agreement for the goods and services to which these Terms and Conditions form part of together with the Purchase Order and/or any Service Level Agreement relating to the Service and as further described in our Service Level Agreement document;

1.1.2. **Associated Company:** means any company which is from time to time a subsidiary or holding company of a party;

1.1.3. **Charges:** the charges payable for the good and services as set out in a Purchase Order;

1.1.4. **Co-Location (Co-Lo):** the environment containing the physical building, power, cooling, bandwidth and security;

1.1.5. **Customer:** the person or entity who purchases goods or services from Xiria;

1.1.6. **Fault:** A material defect, fault or impairment in a service or device, which causes an interruption in the provision of the service.

1.1.7. **Goods:** the goods being supplied, installed and maintained for the Customer, as set out in the Purchase Order;

1.1.8. **Intellectual Property Rights:** all patents, copyrights and related rights, database rights, design rights, trademarks, service marks, trade names, rights in undisclosed or confidential information (such as knowhow, trade secrets and inventions (whether patentable or not) and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;

1.1.9. **Managed Environment:** An environment providing physical containment for rack components, the environment including the physical building, power, cooling, bandwidth and security is fully managed.

1.1.10. **Manufacturer:** the person or entity who manufactures the goods;

1.1.11. **Manufacturer Warranties:** the standard warranties provided by the Manufacturer in relation to its Goods;

1.1.12. **Minimum Spend:** means the minimum amount of monthly spend the Customer has committed to spend on goods and/or services as detailed in the Contract or Purchase Order;

1.1.13. **Minimum Term:** means the period specified in the Purchase Order, Service Agreement and/or this Terms & Conditions document from the date of commencement.

1.1.14. **Normal Business Day:** Every day excluding Saturdays and Sunday and national holidays in England.

1.1.15. **Normal Business Hours:** 09:00 to 17:30, Monday to Friday excluding national holidays in England.

1.1.16. **Normal Support Hours:** 09:00 to 17:30, Monday to Friday (9x5) excluding national holidays in England.

1.1.17. **Price:** means the price for the goods and/or services set out in the Contract or Purchase Order;

1.1.18. **Purchase Order:** means an order placed by the Customer with Xiria detailing, amongst other things, the goods and associated services that the Customer wishes to receive, the Charges and Service Tariffs which the Customer will be charged, and a Minimum Spend;

1.1.19. **Rack Space:** A managed area within a data centre providing containment for network and server components such as physical servers, network switching, storage devices and firewalls.

1.1.20. **Service Level Agreement (SLA):** means the document which sets out the levels of service you can expect from Xiria and what will happen if we fail to meet our service levels. The SLA should be read in conjunction with these Terms & Conditions and also your Monthly Managed Services Invoice, which identifies the Services you have purchased and the items supported.

1.1.21. **Services:** means the services which Xiria have agreed to provide the Customer, as detailed in the Monthly Managed Services Invoice.

1.1.22. **Services Agreement:** is the document that defines the services to be delivered by Xiria to the customer. Any variations to these standard Terms and Conditions will be stated therein.

1.1.23. **Specification:** the description or details of the Equipment and Services as set out in a Purchase Order.

1.1.24. **Standard Allocation:** this is the allowance as defined in your support and/or services agreement. Breach of your standard allocation will incur additional charges.

1.1.25. **Virtualised Environment:** A computer system comprising multiple components - such as server, networking, and storage - which is running on a hardware platform. The virtualised environment allows for scale out expansion and resources are shared between the virtual members.

1.1.26. **Virtualised Machine:** A virtualised machine (Server or Client) referred to as the "Guest" is a software version of the machine.

1.1.27. **Working Day:** See Normal Business Day.

1.2. In these Terms and Conditions (except where the context otherwise requires):

1.2.1. any reference to a Condition is to the relevant clause of these Terms and Conditions;

1.2.2. headings are included for convenience only and shall not affect the construction or interpretation of the Agreement;

1.2.3. the singular includes the plural and vice versa;

1.2.4. words importing a particular gender or number do not exclude other genders or numbers; and

1.2.5. references to any statute, statutory provision or statutory instrument include a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it all as from time to time amended, consolidated or re-enacted.

1.3. These Terms and Conditions apply to and govern the supply of all goods and services by Xiria to the Customer to the exclusion of all other terms (unless expressly agreed by Us in writing).

2. Terms and Conditions (Inc. Acceptable Use Policy AUP)

2.1. Xiria services may only be used for lawful purposes. Transmission of any data through the network or use of any part



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of the network in violation of any UK law or regulation is prohibited. Data stored on our platform by you must be legal and you are responsible for obtaining licenses and consents, including copyrights, performing rights and any other relevant intellectual property rights.

- 2.2. Whilst on Xiria's premises or working remotely with access to Xiria systems, you must treat all information (verbal, written or electronic) as confidential and not retain or disclose it at any point unless written authorisation has been given by Xiria.
- 2.3. As a business to business service provider, we expect network traffic to be related to normal business activities. Accordingly, use of Xiria services is subject to your reasonable use, any data transfer, uploading, downloading, advertising, transmission, distribution of software, programmes, products, or services, causes of spam, initiation of ping flooding, denial of service attacks, or piracy of software, which has a directly detrimental effect to Xiria's network, services, or other customers, may be contrary to reasonable use. These Terms and Conditions, together with our SLA's, form our Acceptable Use Policy (AUP).
- 2.4. We will suspend or terminate the services if you materially breach the Terms & Conditions or fail to remedy any material breach within a reasonable period of being asked to do so.
- 2.5. Xiria expects you to take reasonable steps to protect your own network with provisions including, but not limited to, firewalling and anti-virus services. In many cases, Xiria will be the provider of these if included in your Services Agreement.
- 2.6. Traffic through Xiria's network is provided subject to any restrictions put in place by our upstream network partners. This may include, but is not limited to, traffic prioritisation, filtering or monitoring.
- 2.7. Any liability by Xiria shall be limited to the remainder of any fees paid for services less any deductions for charges incurred. Xiria shall not be liable for failure to perform its contractual obligations if such failure results from force majeure, act of god, governmental act, fire, explosion, accident, industrial dispute, or any other cause beyond Xiria's reasonable control. In no event shall Xiria be liable for indirect or consequential loss (including loss of profits) arising from any breach of the services.
- 2.8. Except by our own written agreement, we have no responsibility for any goods, services, information, software, or other data you obtain when using the Internet.
- 2.9. All fees and rentals are subject to our prevailing prices, which are amended from time to time and may be effective from your next billing period and are subject to VAT at the prevailing rate.
 - 2.9.1. Where a contract term of more than one year has been agreed, prices will be subject to periodic reviews and the resulting price increases will be applied each year on the anniversary of the commencement of the contract.
- 2.10. Quotations and proposals provided by Xiria are valid for fourteen days from the date of issue and are subject to final survey, technical appraisal, and any excess construction charges.
- 2.11. If any of the information provided by you and required by us to provide the services changes, including any changes to your payment and contact details, you must inform us as soon as reasonably possible in writing or by email to accounts@xiria.co.uk and you must follow up with a confirmation phone call.
- 2.12. When we issue you with usernames and passwords, they are essential for secure use of the services and you must take reasonable steps to ensure that you keep these confidential and secure and that you use them in accordance with any relevant instructions.
- 2.13. If you request us to re-issue usernames or passwords, we will only provide these to a known destination primarily by phone following relevant security checks.
- 2.14. If we think, in our reasonable discretion, that there has been a breach of security or misuse of the services, we may change or suspend your password and then notify you of this change.
- 2.15. Resale of services through our network is only permitted with our written agreement.
- 2.16. Any Internet Protocol (IP) numbers allocated by Xiria to you shall at all times remain the property of Xiria, you may use these IP numbers for the duration of the services. Where a block of IP's is allocated, the first and last IPs in the block are usually reserved and are not usable.
- 2.17. Complaints should, in the first instance be made in writing to support@xiria.co.uk and followed up with a confirmation phone call. This will then be reviewed by a senior member of the support team. In the event that this course of action does not bring about a satisfactory conclusion, the matter will be referred to the management team.
- 2.18. These Terms & Conditions and any associated contract (Services or Support, and SLA's) any dispute or claim arising out of or in connection with them or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms & Conditions and any associated services contract or its subject matter or formation (including non-contractual disputes or claims).
- 2.19. No Terms or Conditions hereof shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the party issuing the same.

3. Payment Terms and Methods

- 3.1. You shall pay the costs expressed in the invoice for Goods and/or Services provided by us. Additionally, you shall reimburse us for all expenses reasonably incurred by us providing the Goods and/or Services. We shall invoice you for such expenses at the time we supply you with an invoice under condition 3.7. or sooner.
- 3.2. For any high value order (i.e. over £3,000), we reserve the right to request a minimum order down payment of up to 50% of the total order value. In this situation, the order will not be processed until the payment is received. We may cancel or defer commencement of providing the Goods and/or Services until:
 - 3.2.1. We receive the deposit from you; and
 - 3.2.2. We receive from you any amount pursuant to condition 4.7.3.
- 3.3. We may revise the rates shown on the invoice by giving you reasonable notice of the revision.
- 3.4. Service orders may be subject to a credit check.
- 3.5. All orders are exclusive of VAT at the prevailing rate, packaging, carriage, delivery costs and insurances unless stated in writing to the contrary.
- 3.6. Payment is due as per the payment terms stated on the invoice.
- 3.7. We shall issue our invoice to you:
 - 3.7.1. Monthly in advance on the 1st day of every month for any one off or recurring services you have with us.



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- 3.7.2. At point of delivery to you for any Goods.
- 3.8. We provide electronic invoices by email. You will need to provide us with a suitable email address for this purpose.
- 3.9. Methods of payment include Direct Debit and BACS. We do not accept payment by Cheque.
- 3.10. You must make all payments due to us in Pounds Sterling or such other predominant form of currency used in England at the time payment is due.
- 3.11. Recurring monthly services must be paid by Direct Debit.
- 3.12. Minimum monthly fees of £20 plus VAT apply, otherwise the Services will be billed annually in advance.
- 3.13. Hardware and software remain the property of Xiria and title stays with Xiria until full and final payment has cleared our bank account.
- 3.14. Without prejudice to any other right or remedy that we may have, and excluding any amounts in dispute (3.16), if you fail to pay us on the due date, we may:
- 3.14.1. Levy any charges as a result of payment defaults. Additionally, you will be subject to bank charges, handling fees and reconnection fees.
- 3.14.2. Charge interest on such sum from the due date for the payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgement and we may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.14.3. Suspend or terminate all Services and the provision of Goods due under the Contract and/or Agreement without incurring any liability to you until payment has been made in full.
- 3.15. If we are unable to collect regular or ongoing payments (where these apply) we will advise you as soon as possible and you are obliged to respond and make payment within a reasonable time. Failure to do so, or if we are unable to contact you at the usual billing address, may result in suspension of services as per 3.14.3. Continued default of payment will result in the termination of your services and any other Xiria services, which will then incur charges and fees as above.
- 3.16. Our direct debit payment processing takes place at the point of invoice. If you dispute any invoice, you will notify Xiria in writing as soon as practicably possible to accounts@xiria.co.uk after receipt of the invoice. You are not entitled to withhold: (a) payment of any amount not in dispute; and/or (b) any payment to Xiria on the grounds that you have a dispute with other parties e.g. your end users, your customers or your other suppliers.
- 3.17. You must make all payments due to us under the Contract and/or Agreement without any deduction whether by way of a set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you.
- 3.18. Time for payment shall be of the essence of the Contract and/or Agreement.
- 3.19. All sums payable to us under the Contract and/or Agreement shall become due immediately on its termination, despite any other provision. This condition 3.19 is without prejudice to any right to claim for interest under the law, or any such right under the Contract and/or Agreement.
- 4. Lead Time, Minimum Contract Term, Billing Periods and Cancellation**
- 4.1. The Goods and/or Services supplied under the Contract and/or Agreement shall be provided by us, our agents, sub-contractors or suppliers, to you from the date specified in the Agreement or other such date agreed between us.
- 4.2. The lead time will be specified at time of order and may be subject to external requirements beyond our control.
- 4.3. Services are provided for a minimum term as listed below, except where agreed differently on the Contract and/or Agreement.
- 4.4. To cancel a service, you must give notice of at least the cancellation period, as per the table below. This notice period must end after the minimum term and must be in writing or email, followed by a confirmation phone call.
- 4.5. Services are billed monthly. The minimum term is at least the minimum period. Refunds are not permitted for cancellations during the billing period and a cancellation (cease) fee may be applied.
- 4.6. The Minimum Term means the minimum term for billing e.g. 12 months means you must pay for at least 12 months not including the lead time or any unbilled or credited periods.
- 4.7. Early termination can only be effected, subject to the following conditions:
- 4.7.1. The basis on which the contract, agreement or provision of goods and/or services is deemed to be "substandard" or "not as described" as agreed by both parties in writing.
- 4.7.2. At least 50% of the minimum contracted term has passed.
- 4.7.3. The full cancellation notice period is given, as per the table in section 4.14.
- 4.8. If less than 50% of the contract term has elapsed, Xiria has the right to invoice the customer for at least 50% of the total contract value, to be paid by the customer as per Xiria's billing terms.
- 4.9. Subject to condition 3.13, if less than 100% of the goods have been provided, Xiria will remove the goods and will retain full ownership of the goods.
- 4.10. Subject to 4.9, Xiria reserves the right to provide no refund or remuneration in respect of the goods removed.
- 4.11. If condition 3.13 has been met, and 100% of the goods have been provided, Xiria will have no legal right to repossess the goods.
- 4.12. Condition 4.11 is considered null and void in circumstances where money is owed to Xiria in respect of outstanding payments, fees, charges and/or expenses for other goods and/or services provided by us.
- 4.13. If goods and/or services have been paid for upfront, or in advance and the contract is terminated early, subject to condition 4.7, Xiria is not obliged to provide any refund unless the cancellation is within 30 days of the issued purchase order or signed quotation.
- 4.14. Following is a list of the Minimum Terms, Billing Periods and Cancellation Notice.



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Name of Service	Minimum Term (months)	Billing Period	Cancellation Notice (months)
IT Support	12	Monthly	3
Cloud Computing	12	Monthly	3
Cyber Security	12	Monthly	3
Business Continuity and Backup	12	Monthly	3
Co-location Rack Space	12	Monthly	3
Connectivity – Ethernet	36	Monthly	3
Connectivity – Broadband	12	Monthly	3
Telephony (VoIP)	12	Monthly	3
Mobile Services	12	Monthly	1

5. Fault Reporting and Technical Support

- 5.1. The precise nature of support provided is as set out in the Contract and/or Agreement.
- 5.2. Any products, hardware, services or other programs not specified in the agreement and/or contract are not supported by Xiria. We will attempt to provide support on a "best endeavours" basis but provide no guarantees of being able to resolve the fault. In these circumstances, Xiria will not be held liable for a breach of SLA.
- 5.3. You may report a fault by the support contact details listed earlier in this document. We will endeavour to restore the services as soon as possible.
- 5.4. Occasionally, we may suspend the services where necessary for operational reasons such as repair, scheduled maintenance or improvement of the services or because of an emergency major service outage. Except in the event of an emergency, we will try to give you as much notice as possible of any periods of downtime of the services by posting information on our website and, where practical, by email to your main account contact(s).
- 5.5. Provision of Technical Support and the hours of operation are as set out in the Service Level Agreement document.
- 5.6. Xiria Standard Support Service is incorporated in all Unlimited Support Agreements, unless otherwise specified in the Support Agreement.
- 5.7. Xiria Standard Support Service includes the following:
 - 5.7.1. An unlimited number of calls, emails or self-service ticket requests to our Service Desk, via the contacts listed earlier in the document.
 - 5.7.2. Pro-active monitoring services are usually deployed within a customer's environment allowing an early warning of system failures. If applicable, this will be detailed in your Support Agreement.

6. Remote and On-Site Support

- 6.1. In accordance with our SLA:
 - 6.1.1. Remote support will be provided by Xiria using a combination of telephone support and remote access support tools, which Xiria undertakes to provide to the customer.
 - 6.1.2. Support requests can be initiated via telephone, email or self-service ticket via our service desk. All support calls to Xiria will be logged against the relevant contract number, allocated a unique reference number and a severity rating.
 - 6.1.3. Once allocated a severity rating, Xiria will initiate all reasonable endeavours to deal with the fault within our SLA.

- 6.2. The customer acknowledges that some faults will not be capable of resolution within the specified response times or through remote support. In particular, some problems will be a result of matters beyond Xiria's control (including, without limitation, inherent defects in software or defects in hardware) and others will necessitate on-site help. In cases where a fault is not capable of resolution by remote support Xiria will recommend the next course of action to the customer and once such advice is given, a case will be deemed to have been closed.
- 6.3. Using Xiria's Professional Services Automation (PSA) tool the progress of all outstanding calls will be monitored through to resolution or to a point where Xiria recommends a course of action beyond remote support.
- 6.4. If Xiria requires further information from the customer, the customer will be notified, and the call will be flagged as on hold until such information is received.
- 6.5. Where the customer has entered into a Support Agreement with Xiria, we will provide support on a 24/7 x 365 basis.

7. Cloud Computing: Virtual Servers and Co-location

- 7.1. We, or our agents, subcontractors or suppliers, are responsible for providing power, cooling, physical security and network services to the hosted environment.
- 7.2. We are responsible for the hardware across our shared hosting platform or when provided on a rental basis, such as dedicated servers and firewalls.
- 7.3. You are responsible for the configuration and installation of any applications even if provided under rental by us, unless otherwise covered under a Contract and/or Agreement.
- 7.4. You are responsible for data migration, software patches, fixes, updates, data security and protection against all forms of viruses (including but not limited to viruses, trojans, malware and spyware) unless otherwise stated in your Agreement with us.
- 7.5. Bandwidth, power usage and remote hands are monitored and are subject to additional charges where the standard allocation is exceeded.
- 7.6. Dedicated and/or shared hardware providing virtualised environments and other hardware supplied by Xiria under a rental agreement remain the property of Xiria at all times.
- 7.7. Software provided by us will likely be provided on a rental basis and remain the property of Xiria or our suppliers. Microsoft SPLA is subject to Microsoft's SPLA Terms & Conditions and may be updated from time to time.

8. Your Obligations

- 8.1. Prior to our performance of the Contract, you shall provide us with all relevant information in connection with the proposed us of any

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Goods and the purpose for which you require the Service in order that we may advise you as to the Goods and/or Service that may be appropriate to you provided that, in the absence of any fraudulent misrepresentation, we shall have no liability for the failure of any Goods or Services to carry out any specialised requirement that you may have.

- 8.2. You must provide us, our employees and agents with such access to your property as is reasonably required to provide the Services and deliver the Goods.
- 8.3. You must ensure that all your equipment is in good working order and suitable for the purposes for which it is used in relation to the Services, compatible with any Goods that are supplied and conforms to all relevant United Kingdom standards and requirements.
- 8.4. As per 18.1, either party must not, without prior written consent, at any time from the date on which the Contract is executed to the expiry of six months after the last date of supply of the Services and/or Goods, solicit or entice away from or employ or attempt to employ any person who is, or has been, engaged as an employee by the other party in the provision of the Services and/or Goods.
- 8.5. As referenced in 18.2, any consent given by us in accordance with condition 8.4 shall be subject to you paying to us a sum equivalent to 20% of the current annual remuneration of our employee or, if higher, 20% of the annual remuneration to be paid by you to that employee.

9. Risk and Title in the Goods

- 9.1. The Goods are at your risk from the moment that they are delivered or (if sooner) brought into your property or premises.
- 9.2. Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to it in respect of:
 - 9.2.1. the Goods; and
 - 9.2.2. all other sums which are, or which become due to us from you on any account.
- 9.3. Until ownership of the Goods has passed to you, you must:
 - 9.3.1. hold the Goods on a fiduciary basis as our Bailee;
 - 9.3.2. store the Goods (at no cost to us) separately from all other goods belonging to you or any third party in such a way that they remain readily identifiable as our property;
 - 9.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.3.4. maintain the Goods in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us; and
 - 9.3.5. hold the proceeds of the insurance referred to in clause 9.3.4 on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 9.4. Your right to possession of the Goods shall terminate immediately if:
 - 9.4.1. you have a bankruptcy order made against you or makes an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (if you are a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent

voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in The Corporate Insolvency and Governance Act 2020), or a resolution is passed or a petition presented to any court for your winding up or for the granting of an administration order for you, or any proceedings are commenced relating to your insolvency or possible insolvency; or

- 9.4.2. you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe/performance any of your obligations under the Contract or any other contract between you and us, or you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or you cease to trade; or
- 9.4.3. you actually or purport to encumber or in any way charge any of the Goods.
- 9.5. We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.
- 9.6. You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.

10. Quality of Goods and Warranty

- 10.1. Where we do not manufacture the Goods, we will endeavour to transfer to you the benefit of any warranty or guarantee given to us.
- 10.2. We warrant that (subject to the other provisions of these conditions) upon delivery the Goods will:
 - 10.2.1. be of satisfactory quality within the meaning of the Consumer Rights Act of 2015;
 - 10.2.2. be reasonably fit for the purpose that the Goods were most obviously made for; and
 - 10.2.3. be reasonably fit for any particular purpose for which the Goods are being bought if you had made known that purpose to us and we confirmed in writing that it is reasonable for you to rely on our skill and judgement in our identification of specific Goods to fulfil that purpose.
- 10.3. We shall not be liable for a breach of any of the warranties in clause 10.2 unless:
 - 10.3.1. you give written notice of the defect or its being unsuitable for a particular purpose to us, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when you discover or ought to have discovered the defect or its being unsuitable for a particular purpose (as the case may be); and
 - 10.3.2. we are given a reasonable opportunity after receiving the notice of examining such Goods and you (if asked to do so by us) return such Goods to our place of business for the examination to take place there.
- 10.4. We shall not be liable for a breach of any of the warranties in clause 10.2 if:
 - 10.4.1. you make any further use of such Goods after giving notice pursuant to clause 10.3.1; or



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10.4.2. the defect arises because you failed to follow our and/or the manufacturers oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.4.3. you alter or repair such Goods without our written consent.

10.5. Subject to clauses 10.3 and 10.4, if any of the Goods do not conform with any of the warranties in clause 10.2 we shall at our option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata price specified for those Goods in the Contract provided that, if we so request, you shall return the Goods or the part of such Goods which is defective to us immediately.

10.6. If we comply with clause 11.5 we shall have no further liability for a breach of any of the warranties in clause 11.2 in respect of such Goods and any Goods so replaced will belong to us.

11. Supply and Installation of Equipment

11.1. Unless otherwise agreed in writing by us, delivery of the equipment shall take place at the Customer's place of business and Xiria will use all reasonable endeavours to deliver, install and commission the equipment by dates agreed between the parties but accepts no liability for any failure to do so. Any dates specified by us for delivery, installation and commissioning of the equipment are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified in the Purchase Order, delivery shall be within a reasonable time.

11.2. Should the Customer postpone delivery (or installation and commissioning as the case may be) of any equipment for a period in excess of 30 days from the said agreed dates, Xiria shall be entitled to adjust any price for delivery and or the equipment.

11.3. Unless otherwise agreed in writing by us, the Customer shall have no right to inspect the equipment prior to delivery.

11.4. While we may be willing at times to make any necessary arrangement for installation and commissioning of equipment with another network provider at the Customer's request, Xiria does not accept responsibility for any failure on the part of that network provider or their agents and that those arrangements form no part and are expressly excluded from any Agreement.

11.5. Xiria warrants to the Customer that the equipment will be supplied, installed and maintained with due skill and care to the standards of a competent supplier and maintainer of equipment and in accordance with any regulatory requirements.

11.6. The Customer warrants that (if applicable) the Customer's existing equipment (if any) is in proper working order and complies with all applicable standards and approvals so as to enable Xiria to supply and continue to supply the services.

11.7. We may deliver the equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement.

11.8. Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Customer to repudiate or cancel any other Agreement or instalment.

11.9. If for any reason the Customer fails to accept delivery of any of the equipment when they are ready for delivery or Xiria is unable to deliver the equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

11.9.1. risk in the equipment shall pass to the Customer.

11.9.2. the equipment shall be deemed to have been delivered; and

11.9.3. Xiria may store the Equipment until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

12. Hiring of Equipment

12.1. In the event that Xiria agrees to loan any equipment to the Customer or the Customer hires or leases the Equipment through a third party, the Customer agrees:

12.1.1. that Xiria or its appointed agent shall install the equipment at the Customers site or premises;

12.1.2. the equipment shall at all times remain the property of Xiria and at all times when the ownership of the equipment is in question, the Customer shall advise any third party that the equipment is the property of Xiria; and

12.1.3. the Customer shall be responsible for the equipment whilst it is in the Customer's custody and shall indemnify Xiria against any loss or damage to the equipment together with all costs associated with returning the equipment to Xiria.

13. Subcontractors and Subcontracting

13.1. Xiria may work as a subcontractor themselves. In this instance, you authorise Xiria to engage your customer on your behalf.

13.2. If Xiria or our subcontractors need to engage with your customer on your behalf, we will, where possible, make you aware.

13.3. The Customer shall not sub-licence, assign or transfer in any way any of the Agreement or any benefits or interests arising under the Agreement on a temporary or permanent basis without the prior written consent of the other Party.

13.4. Notwithstanding condition 13.3, Xiria shall be entitled to assign, novate, sub-contract or transfer all of its rights and/or obligations hereunder (including the Software Licence) under this Condition. We may engage the services of third parties to aid in connection with the services to be provided under this agreement.

13.5. Xiria will endeavour to ensure all subcontractors are suitably accredited and will require proof as such.

14. Warranty and Liability

14.1. Subject to clause 10, this clause 14 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and subcontractors) to you in respect of:

14.1.1. any breach of the Contract;

14.1.2. any use made by you of the Services, the Goods or any part of them; and

14.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

14.2. We warrant that we will perform the Services with reasonable care and skill. All other warranties, representations, conditions and terms, whether express or implied statutory or otherwise are, to the fullest extent permissible by law, excluded from the Contract.

14.3. Nothing in these Conditions or the Purchase Order limits or excludes our liability for:



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- 14.3.1. death or personal injury resulting from our negligence; or
- 14.3.2. for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us; or
- 14.3.3. for any liability incurred by you as a result of any breach by us of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 14.3.4. Subject to condition clause 14.3, the following conditions apply:
 - 14.3.4.1. We shall not be liable for:
 - 14.3.4.1.1. loss of profits; or
 - 14.3.4.1.2. loss of business; or
 - 14.3.4.1.3. depletion of goodwill and/or similar losses; or
 - 14.3.4.1.4. loss of anticipated savings; or
 - 14.3.4.1.5. loss of goods; or
 - 14.3.4.1.6. loss of contract; or
 - 14.3.4.1.7. loss of use; or
 - 14.3.4.1.8. loss of corruption of data or information; or
 - 14.3.4.1.9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 14.3.5. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the contract is set out in section 20 of this document.

14.4. Our liability to any person not party to the Contract shall be limited or excluded to the fullest extent permitted by law.

15. Drawings and Literature

- 15.1. All drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They will not form part of the Contract. We do not accept liability for any errors or omissions in our written materials and we reserve the right to change drawings and/or specifications without notice.
- 15.2. The property, copyright and all other intellectual property rights in all inventions, designs, drawings, specifications, processes, documents, drawings, plans, photographs, illustrations prepared and other digital and printed matter and submitted to you or evolved during or as a result of work carried out pursuant to the Contract shall be owned solely by us. You shall not communicate any part of them to any third party without our written consent.

16. Consumer Protection (Distance Selling) Regulations 2000

- 16.1. These Regulations do not apply where:
 - 16.1.1. you have instructed us in a face to face meeting; or
 - 16.1.2. you are a limited company; or
 - 16.1.3. we are providing the Services to you in the course of your business.

16.2. In some circumstances the Regulations allow a "cooling off" period of 7 working days in which you can cancel your agreement with us for legal services.

16.3. You agree that:

16.3.1. we may start work for you and incur costs on your behalf within the 7 working days "cooling off" period. *This will affect your right to cancel under the Regulations (see below);* and

16.3.2. our work for you is ongoing and may not be completed within 30 days.

16.4. Where you receive these terms and conditions (or agree them over the Internet) prior to us beginning to provide the Goods and/or Services, you will not be entitled to cancel your agreement with us where we have started work within the "cooling off" period.

16.5. Where you have instructed us by telephone in circumstances in which we routinely enter into contracts for the supply of goods and/or services at a distance (i.e. not a one-off submission of instructions by telephone), you are entitled under the Regulations to cancel the Contract within 7 working days after receipt of these terms and conditions or completion of the work (whichever is sooner).

17. Assignment and Third Parties

- 17.1. You may not assign the Contract and/or Agreement without our prior written consent (such consent not be unreasonably withheld, conditioned or delayed).
- 17.2. The Contract and/or Agreement is made for the benefit of you and us and (where applicable) your and our respective successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

18. Non-Solicitation of Staff

- 18.1. As per 8.4, both parties undertake that they will not, for a period of six months after the completion of work under this agreement, engage the services of the other party's employees or subcontractors, unless prior written consent is provided by the other party.
- 18.2. Any consent given by us in accordance with 18.1 and 8.4, shall be subject to the terms set out in 8.5.

19. Confidentiality

- 19.1. Xiria acknowledges that information disclosed to it by the customer during the course of this agreement may be confidential, and accordingly, Xiria undertakes that it will not disclose any such information identified as confidential (unless it is already in the public domain), to any third party.
- 19.2. The customer undertakes that it will not disclose any information communicated to it by Xiria, which is identified as confidential (unless it is already in the public domain), to any third party.

20. Limitation of Liability

- 20.1. The parties agree that Xiria's liability for any loss or damage resulting from the non-performance by Xiria of its obligations under this agreement or otherwise shall (subject to clauses 20.2 and 20.3 below) be limited to £10,000,000.
- 20.2. Xiria's liability for death or personal injury resulting from negligence shall not be limited.

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- 20.3. Xiria shall not be liable to the customer for any indirect loss or damage or special, incidental or consequential damages howsoever arising of whatever nature including (without limitation) loss of profit or loss of contracts.