



## TERMS AND CONDITIONS OF SUPPLY

### 1. DEFINITIONS

1.1. The following terms used in the Agreement shall have the meanings set out below:

**"Acceptance"** means Customer's approval of the Equipment or Software in accordance with the terms of the Agreement.

**"Acceptance Date"** has the meaning given to it in clause 11.

**"Acceptance Test(s)"** means those tests which are intended to determine if the Products and installation conform to the Specifications and the associated Equipment and Software Documentation, and meet any other criteria mutually agreed upon by Customer and Yorktel in a SOW to determine Customer's Acceptance of the Products. The Acceptance Test(s) and acceptance criteria shall be as described in the SOW or as otherwise designated in writing by the parties.

**"Agreement"** means the agreement between Yorktel and Customer formed by the execution of a SOW which incorporates these Terms and Conditions, the SOW, the SLA and any other document referenced in the same.

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in Ireland.

**"Change Order"** has the meaning given to it in clause 3.5.

**"Circuit"** means a digital data telecommunications service between the Yorktel point-of-presence and the Customer Location that includes one permanent virtual circuit connected to a network interface device on Customer's premises utilizing DSL, frame relay, ATM, leased line or other data communications technologies.

**"Content"** means the audio and video content transmitted using the Services.

**"Customer"** means a person or entity that issues an order for the purchase of Products and Services provided by Yorktel as identified in a SOW.

**"Customer Location"** means any Customer premises described in a Service Order Form.

**"Data Protection Legislation"** means, as binding on either party or the Products and/or Services: (i) the General Data Protection Regulation, Regulation (EU) 2016/679, (ii) the Data Protection Acts 1988 to 2018, (iii) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, (iv) any laws which implement or supplement any such laws, and (v) any laws that replace, extend, re-enact, consolidate or amend such laws.

**"Effective Date"** means the date stated in the SOW.

**"End User Licence Agreement"** means the applicable OEM's end-user licence agreement as may be updated by the OEM from time to time.

**"Equipment"** means all physical items of machinery and other physical equipment referenced in SOWs, Purchase Orders, Change Orders or other written instructions, and/or correspondence issued by Customer. The term shall include all equipment purchased by Customer pursuant to the Agreement.

**"Equipment Documentation"** means the written or other tangible media provided by Yorktel describing the Equipment and its operation (including instructions, listings, specifications, manuals, and user's guides).

**"Managed Services"** shall mean any combination of on-site staffing, on or off premise infrastructure and supporting software providing various meeting support functions including, but not limited to call scheduling, launching, monitoring of video calls, meeting support, event support, white glove concierge services, SLA monitoring and reporting.

**"OEM"** means an original equipment manufacturer or supplier of the Products other than Yorktel.

**"Product/s"** means any Equipment and Software purchased or licensed by Customer pursuant to the Agreement.

**"Proposal"** shall mean a formal offer from Yorktel to provide Products and/or Services and setting out Yorktel's prices for the Products and/or Services.



**"Purchase Order"** means a purchase order which is issued by the Customer to request the Products and/or Services from Yorktel and referencing the applicable SOW.

**"Service Order Form"** means a form describing the Services ordered by Customer that is signed by authorized representatives of Customer the form of which is set out in the applicable SOW.

**"Services"** means the services ordered by Customer as described in a Service Order Form, which may include, but is not limited to; (i) application services provided to Customer for the purpose of communications either over Yorktel provisioned telecommunication/cloud services or through Customer-provided telecommunication/cloud services; (ii) professional services, (iii) the Circuits, and (iv) Managed Services.

**"Site"** means the general physical location where the Equipment and/or Software are to be delivered, installed, and maintained.

**"SLA"** means Yorktel's service level agreement, as revised by Yorktel from time to time. The SLA as provided by Yorktel is incorporated herein.

**"Software"** means firmware, internal code and operating systems software associated with the Equipment, and other computer programs including any updates, modifications, enhancements, or new release for the same and includes all Software licensed by Customer pursuant to the Agreement as set out in the SOW.

**"Software Documentation"** means the written or other tangible media provided by Yorktel describing the Software and its operation (including instructions, listings, specifications, manuals, and user's guides).

**"SOW"** (Statement of Work) means the document signed by the parties which sets out the Products and/or Services to be provided by Yorktel to Customer and which incorporates and is subject to these Terms and Conditions.

**"Specifications"** shall mean Yorktel's and OEM's published specifications for Products and any specifications and performance capabilities of Products specified in the applicable SOW.

**"Yorktel"** means York Telecom Ireland Limited (dba "Yorktel"), company number 452634, with a registered office at 104 Lower Baggot Street, Dublin DO2 Y940, Ireland.

**"Telecommunications Provider"** means a regulated or non-regulated telecommunications carrier which provides Circuits.

**"Terms and Conditions"** means Yorktel's terms and conditions of supply as set out in this document.

**"Vendor"** shall mean an entity which is either an OEM or a distributor from which Yorktel may source Products and/or services.

1.2. In these Terms and Conditions:

- 1.2.1. a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
- 1.2.2. any phrase introduced by the terms *including*, *include*, *in particular* or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. GENERAL AGREEMENT

### 2.1. Terms and Conditions

These Terms and Conditions apply to and form part of the Agreement and are the basis upon which Yorktel agrees to sell, license, or provide the Products and/or Services to Customer. No terms and conditions endorsed on, delivered with, or contained in Customer's Purchase Order, correspondence or any other document shall form part of the Agreement unless otherwise agreed by Yorktel in writing.

Save as expressly provided for in this Agreement, no variation by Customer of these Terms and Conditions, to a SOW or otherwise to the Agreement shall be binding unless agreed in writing by Yorktel. Yorktel may revise these Terms and Conditions or the SLA from time to time without Customer's consent, provided that any such revisions shall not materially reduce Customer's rights or materially increase its obligations hereunder.

A mutually agreed SOW will be executed to address each specific project and shall be governed by these Terms and Conditions. A SOW shall contain a description of the work to be performed, charges, time schedules and other special terms and conditions applicable to that project. Unless otherwise agreed, each SOW shall form an individual contract entered into between the parties and shall become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party. Any deviations from the technical solution, price or delivery schedule offered by Yorktel shall be agreed by Yorktel in writing and shall be as set out in the SOW.

## 2.2. Term

The term of the Agreement shall be as set out in the SOW.

## 2.3. Order of Precedence

In the event of a conflict between the different parts of the Agreement, the following order of precedence shall apply in descending order:

- 2.3.1. subject to clause 3.5, a Change Order (if any);
- 2.3.2. the terms and conditions of the applicable SOW;
- 2.3.3. these Terms and Conditions; and
- 2.3.4. subject to clause 2.1, a Purchase Order.

## 3. PURCHASE ORDERS

- 3.1. Customer may request to purchase the Products and/or Services subject to the Agreement and by reference to the applicable SOW and Proposal by submitting a Purchase Order to Yorktel. Each Purchase Order will specify (a) the Proposal and/or SOW record number and date along with identification and quantities of the Products and/or Services requested; (b) requested delivery date, installation date, or other performance dates; (c) method of delivery; (d) delivery destination; and (e) any other information specific to such Purchase Order.
- 3.2. Yorktel may accept or reject a Purchase Order at its discretion. As soon as reasonably practicable after receiving a Purchase Order, Yorktel will advise Customer whether it accepts the Purchase Order and whether it will be able to provide the Products and/or Services requested by the dates requested. If Yorktel advises that it will not be able to meet such dates, Customer may, at its option, elect to (a) request Yorktel to expedite the Purchase Order at Customer's expense; (b) accept a later delivery or performance date; or (c) cancel the Purchase Order without cancellation charge.
- 3.3. A Purchase Order shall not be accepted and no binding obligation to supply any Products and/or Services shall arise until the earlier of (a) Yorktel's written acceptance of the Purchase Order, or (b) Yorktel delivering or performing the Products and/or Services.
- 3.4. These Terms and Conditions and the applicable SOW shall be deemed to be included in, to modify, and to govern any and all (a) Purchase Orders and Change Orders submitted by Customer regarding the Products and/or Services purchased or licensed under the Agreement; and (b) all acceptance documents, invoices, or other instruments issued by Yorktel regarding the same, whether or not such documents reference the Agreement.

## 3.5. Change Orders

Customer may from time to time request particular changes to be made to Purchase Orders or SOWs ("Change Orders"). If such changes will affect prices or other charges, and/or performance or delivery dates, such changes and any attendant cost adjustments will be effective upon written acceptance of the Change Order by Yorktel's and Customer's authorized representatives. Until a change is made in accordance with this section, Customer and Yorktel shall continue to perform the Agreement in compliance with its terms prior to any such change.

## 3.6. Cancellations

- 3.6.1. Customer may cancel any Purchase Order by giving written notice at any time ("Cancellation Notice"). In the event Customer issues a cancellation notice after delivery or supply of any Products and/or Services, Customer is responsible for payment of a fee calculated in accordance with the following: (i) Purchase Orders cancelled more than 10 Business Days prior to delivery of any part of the Purchase Order will be subject to a charge of 15% of the invoice value of the Purchase Order, and (ii) Purchase Orders cancelled 10 or less Business Days prior to delivery of any part of the Purchase Order will be subject to a charge of 50% of the invoice value of the Purchase Order. It is acknowledged by the Customer that such costs are a genuine pre-estimate of loss and shall not be construed as a penalty.<sup>1</sup>
- 3.6.2. Customer is responsible for payment of all costs, losses and expenses of Yorktel relating to any and all Products and/or Services which have been ordered by Yorktel for Customer that are non-returnable to the OEM including any restocking fees, shipping charges and taxes for any such Products and/or Services which can be returned and for any Products and/or Services provided up to the date of receipt of the cancellation notice.
- 3.6.3. Yorktel reserves the right to charge Customer an additional fixed fee to cover any costs associated with any delays in delivery or installation caused by Customer and arising in circumstances where Yorktel had not previously agreed in writing to such delay. Notice of delay provided with less than 5 Business Days' notice before the relevant date agreed by the parties in writing will incur up to 25% of invoice value; delays with less than 48 hours' notice before the relevant date agreed by the parties in writing will incur a charge of up to 100% of the invoice value. It is acknowledged by the Customer that such costs are a genuine pre-estimate of loss and shall not be construed as a penalty.<sup>2</sup>
- 3.6.4. Yorktel may at any time on serving written notice terminate any Purchase Order or suspend delivery of any Products and/or Services, and the balance of any price for Products and/or Services delivered but not paid for will immediately fall due if:
  - 3.6.4.1. the ability of Customer to accept the Products and/or Services is delayed for any reason;
  - 3.6.4.2. Customer becomes subject to any of the events set out in clause 19.1.

<sup>1</sup> **LKS Note:** We have included this change because otherwise the application of a cancellation fee may be construed as a penalty clause. Penalty clauses are not enforceable in Irish law.

<sup>2</sup> **LKS Note:** We have included this change because otherwise the application of such a late fee may be construed as a penalty clause.

#### **4. PRICING**

- 4.1. The prices, license fees, charges, and discount provisions (if any) applicable to any Products and/or Services ordered by Customer will be as stated by Yorktel in its Proposal and/or SOW (as applicable). The pricing provided will be valid for as long as stated in the Proposal or, if not stated, thirty (30) days from date of the Proposal.
- 4.2. Prices in a Proposal include the cost of normal packaging but exclude delivery, transit insurance (which are charged extra) and all applicable taxes. Installation, maintenance, and service charges (where applicable), including any preliminary or demonstration works, will be subject to separate charges as indicated in the Proposal and/or SOW. Should expedited delivery be agreed, an extra cost may be charged to cover any additional costs involved, or any fluctuation in currency or import/export duties.
- 4.3. Yorktel reserves the right to review and increase the prices, licence fees and charges applicable to the Products and/or Services:
  - 4.3.1. at the end of each year of the term stated in the SOW by giving the Customer not less than one month's notice in writing; and
  - 4.3.2. with immediate effect by notice in writing where there is an increase in the direct cost of Yorktel supplying the Products and/or Services which exceeds 5% and which is due to any factor beyond the control of Yorktel.

#### **4.4. Taxes**

Customer will pay any local sales, use, VAT, or similar taxes (excluding taxes on Yorktel's income or gross receipts) imposed or based on the sale, licensing, or provision of Products and/or Services under the Agreement on receipt of a valid invoice including such taxes.

#### **4.5. No Set-off**

Customer shall pay all sums that it owes to Yorktel under the Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

#### **5. DELIVERY AND SHIPPING**

- 5.1. Yorktel will use commercially reasonable efforts to deliver the Products on the delivery date(s) set forth in the applicable SOW.
- 5.2. All Products shall be packed for delivery in Yorktel's and/or OEM's standard containers, marked for delivery to the address specified by Customer, and delivered to a carrier or forwarding agent chosen by Yorktel or the OEM if the Product is delivered directly from the OEM to Customer. The Products shall be deemed delivered at the time such Products are passed to the carrier or forwarding agent chosen by Yorktel or the OEM.
- 5.3. All freight, insurance and other delivery expenses, as well as any special packing expenses, shall be borne solely by Customer.
- 5.4. Yorktel may deliver the Products in instalments. Any delay or defect in an instalment shall not entitle Customer to cancel any other instalment.
- 5.5. Yorktel shall not be liable for any delay caused by:
  - 5.5.1. Customer's failure to make the delivery location available for delivery of the Products;
  - 5.5.2. Customer's failure to prepare the delivery location in accordance with Yorktel's instructions as are reasonably required for the Products;
  - 5.5.3. Customer's failure to provide Yorktel with adequate instructions for performance or delivery or otherwise relating to the Products; and/or
  - 5.5.4. a Force Majeure Event.
- 5.6. Without prejudice to section 5.4, Customer may incur additional fees as a result of Customer's failures set out in sections 5.4.1 – 5.4.3 including the following: (a) the freight elevator is not available, (b) there are restricted hours for delivery, and (c) additional labor is required. Customer should identify any potential additional labor requirement at the time the Purchase Order is sent to Yorktel. It is further understood that Yorktel arranges delivery to Customer loading dock and that any and all additional fees incurred for inside delivery of the Products will be passed directly from Yorktel to Customer.
- 5.7. Customer shall be deemed to have accepted the Products unless written notice of rejection and reasons therefore are delivered to Yorktel within two (2) Business Days of Customer's receipt of such Products. Where Yorktel is to install the Products as part of the Services ordered by Customer, Customer shall provide secure storage for the Products upon delivery and throughout the installation process.
- 5.8. If Customer fails to accept delivery of the Products, Yorktel may, at its discretion, store and insure the Products pending delivery, and Customer shall pay all costs and expenses incurred by Yorktel in doing so.

#### **6. RISK AND TITLE**

- 6.1. Risk in the Products shall pass to Customer on delivery in accordance with section 5.2.
- 6.2. Title to the Products shall pass to Customer once Yorktel has received payment in full and cleared funds for the Products.
- 6.3. Until title to the Products has passed to Customer, Customer shall:
  - 6.3.1. hold the Products as bailee for Yorktel;
  - 6.3.2. store the Products separately from all other material in Customer's possession;
  - 6.3.3. take all reasonable care of the Products and keep them in the condition in which they were delivered;
  - 6.3.4. insure the Products from the date of delivery;
  - 6.3.5. ensure that the Products are clearly identifiable as belonging to Yorktel;
  - 6.3.6. not remove or alter any mark on or packaging of the Products;
  - 6.3.7. inform Yorktel immediately if it becomes subject to any of the events or circumstances set out in section 19.3.
- 6.4. If, at any time before title to the Products has passed to Customer, Customer informs Yorktel, or Yorktel reasonably believes, that Customer has or is likely to become subject to any of the events specified in sections 19.3, Yorktel may:
  - 6.4.1. require Customer at Customer's expense to re-deliver the Products to Yorktel; and
  - 6.4.2. if Customer fails to do so promptly, enter any premises where the Products are stored and repossess them.



## **7. EQUIPMENT AND WARRANTIES**

### **7.1. Equipment Warranties**

Yorktel makes the following warranties with respect to the Equipment:

- 7.1.1. Yorktel will flow down/transfer any OEM warranties to Customer from the applicable Acceptance Date for the warranty period stipulated by the OEM or such other warranty period set forth in the applicable SOW ("Warranty Period"). On the Acceptance Date the Equipment is, and will be during the Warranty Period, merchantable and in good operating condition and repair, free of defects in design, workmanship and material, including such defects as would create a hazard to life or property, and in conformity in all respects to and functioning properly in accordance with the Specifications, the associated Equipment Documentation.
- 7.1.2. As Customer's sole and exclusive remedy in respect of the Equipment, if the Equipment does not function as warranted in this section 7.1 during the Warranty Period and subject to the OEM's warranty exclusions, Yorktel will promptly repair or replace the Equipment or any part or component thereof without charge provided that Customer:
  - 7.1.2.1. serves a written notice on Yorktel within the Warranty Period;
  - 7.1.2.2. such notice specifies that some or all of the Equipment do not comply with section 7.1 and identifying in sufficient detail the nature and extent of the defects; and
  - 7.1.2.3. gives Yorktel a reasonable opportunity to examine the claim of the defective Equipment.
- 7.2. Yorktel shall not be liable for any failure of the Equipment to function as warranted in section 7.1:
  - 7.2.1. where excluded under the OEM's warranty conditions;
  - 7.2.2. where such failure arises by reason of wear and tear, wilful damage, negligence;
  - 7.2.3. to the extent caused by Customer's failure to comply with Yorktel's instructions in relation to the Equipment, including any instructions on installation, operation, storage or maintenance;
  - 7.2.4. to the extent caused by Yorktel following any specification, instruction or requirement of or given by Customer in relation to the Equipment;
  - 7.2.5. where Customer modifies any Equipment without Yorktel's prior written consent or, having received such consent, not in accordance with Yorktel's instructions; or
  - 7.2.6. where Customer uses any of the Equipment after notifying Yorktel that they do not comply with section 7.1.

## **8. SERVICES**

### **8.1. Provision of Services**

Yorktel will use commercially reasonable efforts to provide the Services with reasonable care and skill. Yorktel reserves the sole and exclusive right to determine the geographic area within which it provides Circuits and Services, and the rights to maintain, reconfigure or discontinue any Circuits, Services or other Product. If Yorktel intends to discontinue any of Customer's Circuits or Services, Yorktel will provide Customer with at least thirty (30) days' written notice before discontinuing such Circuits or Services, and Yorktel will refund to Customer a pro-rated portion of any pre-paid fees associated with such discontinued Circuits or Services. Customer understands that Yorktel performance is dependent in part on third-party actions and the actions of Customer. Accordingly, Yorktel shall have no liability under the Agreement to the extent it is unable to perform as a result of such actions or inactions, including Customer's failure to provision or maintain a Circuit with respect to a Service Order Form under which Customer is obligated to provide network connectivity. Unless otherwise expressly set forth in a SOW, provision of Circuits does not include access services to the Public Internet. Yorktel reserves the right to substitute Services that are different from, but substantially equivalent to, the Services ordered by Customer on a Service Order Form. If the Services necessary to meet Customer's requirements are subject to charges in addition to those set forth in a Service Order Form, Yorktel will notify Customer of any additional or increased charges and Customer shall have fourteen days to cancel the Service Order Form and avoid the additional or increased charges. Failure to cancel within such period will be deemed acceptance by Customer of the additional or increased charges.

### **8.2. Circuits and Services**

Yorktel will not supply any Circuits or Services until Customer has signed a Service Order Form. If necessary to providing the Services ordered by Customer, Yorktel will not provide any Services until it has supplied a Circuit or Customer has provided appropriate network connectivity. Yorktel will begin charging Customer for each Circuit or Service immediately following the Yorktel notification to Customer that such Circuit or Service has been provisioned and tested by Yorktel. Customer acknowledges that; a). the availability and installed speed of a Circuit may vary from the pre-qualified or ordered speed depending on several factors, including, without limitation, the condition and length of the copper wiring that comprises the Circuit and availability of Services to Customer Location where Services have been requested and, b). services that are not dependent upon circuit delivery are deemed active and billable upon notification to Customer that Services are activated and billing will not be deferred. Circuits provided by Customer are the sole responsibility of Customer and Yorktel maintains sole responsibility for service delivery up to the Yorktel demarcation point.

### **8.3. Customer Responsibilities.**



- a) **Generally.** Customer shall provide Yorktel with all information, cooperation and access that Yorktel reasonably requests (including, without limitation, information about and access to each Customer Location) as necessary or appropriate in performing the Services, including, without limitation, to allow installation and maintenance of each Circuit. Customer agrees to pay all taxes and other regulatory and governmental obligations, which amounts are payable and remitted by/through Yorktel on purchases of underlying telecommunications services from vendors of such services. Customer acknowledges and will inform all end users that Yorktel services do not include emergency services that may be available from other telecommunications services providers.
- b) **Content Rights.** Customer shall be solely responsible for obtaining, and for bearing all costs, obligations and liabilities associated with, any licenses, releases or waivers related to the Content required by any third party or any act or regulation of any government, and any necessary rebroadcast or retransmission rights or permissions.

#### 8.4. Use of Service

Customer may use the Services for its internal business purposes only. Resale or sub-contracting the Services to third parties is prohibited. Customer acknowledges that Customer's use of the Services pursuant to the Agreement does not authorize Customer to act as an agent of Yorktel with respect to the Services.

- 1) **Equipment.** Yorktel may supply new or recertified Customer premises Equipment ("CPE") as part of the Service. Recertified Equipment is Equipment that (a) may have been removed from its original packaging by Yorktel or returned to Yorktel by a customer after use, (b) is free from visible defects, and (c) is substantially equivalent in function and appearance to new units. Refurbished Equipment is previously-owned Equipment that has been remanufactured by the OEM or its agent, is free from visible defects, and is substantially equivalent in functionality to new units. Yorktel will repair or replace, in its sole discretion, any CPE that suffers from any OEM's defect. At the discretion of Yorktel, any Equipment that Yorktel provides as replacement Equipment may be new, recertified or refurbished. Yorktel shall have no obligation or liability in connection with any equipment not purchased or provided through Yorktel and configured by Yorktel, or for any abuse, reconfiguration, repair or misuse of any Equipment by any party (including, without limitation, Customer) other than Yorktel. Customer is responsible for the safety and security of any CPE. Customer shall provide proof of insurance with Yorktel as an additional named insured. Lost, damaged or non-returned CPE will be invoiced to Customer at the then-current replacement value.
- 2) **Support.** Yorktel shall be Customer's initial point of contact with respect to support for the Services. Yorktel shall use commercially reasonable efforts to provide first and second-level technical and engineering support to Customer for issues relating to the Services. Support contact information and escalation procedures will be provided upon the activation of Services or upon Customer request. Customer understands that Yorktel may, from time to time, need to interrupt Services for maintenance and other operational reasons, and that Customer shall not receive any credits or compensation for such scheduled interruptions. If commercially feasible, Yorktel will give Customer reasonable advance notice (via email or otherwise) of such interruptions. Yorktel provides Customer support through the Yorktel Service Desk, which is made available as outlined in the SLA. Yorktel utilizes a ticketing system that escalates problems to higher levels within the Yorktel Service Desk using automated triggers. The response time matrix for trouble calls can be provided upon Customer request. Customer contact will receive an outbound communication from the Service Desk at least once per day until a technical problem is resolved, or until the ticket is closed, whichever is earlier. It is the desire of Yorktel to respond to each inbound call as rapidly as possible, provided that the number of inbound requests per ticket does not negatively impact the ability of Yorktel to resolve issues. Lack of access to appropriate Customer resources or lack of cooperation by Customer to actively work through the Yorktel Service Desk or assist in the effort to resolve a service issue can cause delays in achieving resolution. Open trouble tickets for an unavailable or uncooperative Customer will be considered closed 48 hours after three unsuccessful attempts to communicate with Customer to resolve the problem are logged.

#### 8.5. Service Levels; Outage Credits

Yorktel warrants to Customer, and only Customer, that the Services shall perform substantially in accordance with the performance criteria set forth in the SLA. Yorktel shall have no liability if: (a) any Equipment has been subjected to physical or electrical stress, misuse, neglect, accident or abuse, or damaged by any external causes; (b) the Services or any Equipment has been repaired or altered by anyone other than Yorktel or Yorktel subcontractors or affiliates, without Yorktel express, prior written approval; (c) the Services or any equipment has been provided by someone other than Yorktel or Yorktel subcontractors or affiliates; or (d) the Services or any Equipment is used in violation of the Agreement or any instructions furnished by Yorktel. Yorktel sole obligation and Customer's sole and exclusive remedy for a breach by Yorktel of this section 8.5 and/or the SLA shall be to use reasonable commercial efforts to correct such failure, provided that (i) Customer promptly reports such failure as specified in the SLA; (ii) the failure can be reproduced or confirmed by Yorktel; and (iii) the cause of the failure is within the control of Yorktel. If a performance failure occurs that is within Yorktel control, and Yorktel is unable to correct such failure within the time periods set forth in the SLA, then, as Customer's sole and exclusive remedy, Yorktel will credit Customer's account with the amounts set forth in the SLA for the type of failure experienced by Customer, but only up to the amount paid by Customer for such Services in the month in which such failure occurred, as specified in the SLA. A single failure to meet the SLA shall not be a material breach of the Agreement. Except as provided herein and in the SLA, Yorktel shall have no liability in connection with the failure of any of the Services to meet any transmission speed, throughput rates or other performance criteria, or in connection with any unavailability of or interruption in the Services.





#### **8.6. Links to other Websites or Applications**

Yorktel's website and customer portals may contain links to other websites of interest. Customer is advised that Yorktel does not have any control over external websites or applications. Yorktel shall have no responsibility for the protection and privacy of any information which Customer and/or any of its personnel provide whilst visiting such sites and such sites or applications are not governed by Yorktel's privacy policy. Customer should exercise caution and look at the privacy policy applicable to the website and application in question.

#### **8.7. Links to other 3<sup>rd</sup> party Applications and Services**

Some services provided by Yorktel may be used with third party applications or services not provided directly by Yorktel. These services may be used by the use of a plug-in to a Yorktel application, through a Yorktel website or independently of any Yorktel website or application and service. Therefore, Yorktel cannot be responsible for the protection and privacy of any information which Customer provides whilst visiting such sites and such sites are not governed by Yorktel's privacy policy. Information pertaining to the privacy of these application and services should be collected from the third party provider.

8.8. Yorktel does not endorse or recommend any third-party websites, applications, services, products or information and Yorktel shall have no liability or responsibility for any such websites, applications, services, products or information.

8.9. The Services are provided at Customer's request and Customer is responsible for ascertaining that the Services are suitable for its own needs.

### **9. SOFTWARE**

#### **9.1. License**

Customer is licensed under the End User License Agreement and its terms provided by the OEM of any Software being purchased by or otherwise licensed to Customer pursuant to the Agreement. Where custom software or programming is created for Customer by Yorktel and subject to Customer's compliance with the terms of the Agreement; Yorktel grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable, paid-up license for the Software and associated Software Documentation furnished to Customer under the terms of the Agreement for the Customer's internal business purposes only. Yorktel does not transfer title to the Software and associated Software Documentation to Customer. Under this license, Customer is authorized to (a) use the Software Documentation on or in conjunction with the Equipment for which the Software was initially furnished or such other equipment as may be approved by Yorktel in writing; (b) copy the Software and the Software Documentation solely as required to support Customer's use of the Software, including copies for backup and archival purposes; (c) use the Software or copies of it on backup equipment when operation of the Software is temporarily interrupted on the Equipment; (d) disclose to third parties (provided they are advised of the conditions contained in the Agreement regarding use and confidentiality), execute, and display the Software as necessary to maintain the Equipment for which it was furnished. Customer agrees that (aa) it will not transfer or assign any license for operating Software; (bb) it will maintain the confidentiality of the Software in accordance with the Agreement; and (cc) it will not reverse assemble, reverse compile, or otherwise translate any Software.

#### **9.2. License Termination**

Where custom software or programming is created for Customer by Yorktel; Customer may terminate the license for specific Software at any time by giving written notice to Yorktel. Yorktel may terminate the license for specific Software if Customer fails to comply with its license obligations as set forth in the End User Licence Agreement and the Agreement and does not cure such failure within 30 days after notice from Yorktel.

#### **9.3. Software Warranties**

Yorktel makes the following warranties with respect to the Software:

1. The warranty period for the Software is 1 year from the applicable Acceptance Date or such other warranty period set forth in the applicable Statement of Work (SOW) (Software Warranty Period). On the Acceptance Date, the Software is, and will be during the Software Warranty Period, merchantable and free from significant programming errors and defects in design, workmanship, and material, and in conformity in all material respects to and functioning properly in accordance with the Specifications and associated Software Documentation and all software provided to Customer for evaluation. During the Software Warranty Period, (a) Yorktel will replace any copy of the Software that contains defects in the tangible media at Yorktel's expense, including shipping and handling costs; and (b) if Yorktel or Customer discovers one or more defects or errors in the Software or any other respect in which the Software fails to conform or function materially in accordance with the Specifications and associated Software Documentation or any warranty contained in this Subsection, Yorktel shall, at its expense, promptly correct such defect, error, or non-conformity by, among other things, supplying Customer with such corrective codes and making such additions, modifications, or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties contained in this Subsection. If Yorktel is unable to do so within 5 Business Days or the Software continues to exhibit defects, causing serious disruption of use and/or repeated periods of downtime, notwithstanding Yorktel's remedial or maintenance efforts, over a continuous period of 1 month or more, Customer may terminate the license for and return such Software and associated Equipment to Yorktel and Yorktel shall refund to Customer the full amount of the license fees in respect of such Software, and reimburse Customer for all inbound and outbound shipping and handling costs and other direct costs incurred by Customer in connection with such Software.



#### **9.4. Software Warranty Service**

During the Software Warranty Period, Yorktel shall provide warranty service, without charge, in accordance with; a) Yorktel's warranty as defined in the applicable SOW for custom software or, b) the OEM's warranty policy.

#### **9.5. Software Maintenance**

Yorktel will make maintenance services for the Software available to Customer for purchase. Such maintenance services will be provided in accordance with the terms and conditions specified in the applicable SOW. The charges for such maintenance services will be as set forth in the applicable SOW.

#### **9.6. Software Updates**

Yorktel will make available to Customer for purchase any updates, modifications, enhancements or new releases for the Software when the same are developed or published by Yorktel or an OEM and made generally available to other licensees of the Software. If such updates, modifications, enhancements or new releases are made generally available to other licensees at no charge, Yorktel will not charge Customer for them. Otherwise, Customer will pay Yorktel's prices then generally in effect for similarly situated purchasers of comparable quantities of similar software.

#### **9.7. Software Documentation**

Yorktel shall provide Customer with one (1) set of all Software Documentation in electronic or paper format relating to the version of the Software licensed to Customer if made available by the software OEM. For custom developed software by Yorktel; Yorktel will provide one (1) set of all Software Documentation in electronic or paper format.

### **10. INSTALLATION**

#### **10.1. Installation by Customer**

Products are generally considered, or specifically set forth, as "user installable" (i.e., replacement remote control devices, etc.) will be installed by Customer in accordance with the reasonable installation instructions furnished by Yorktel or the OEM of the Product.

#### **10.2. Installation by Yorktel**

Equipment or Product that is not "user installable" shall be installed by Yorktel, as set forth in the applicable SOW. Yorktel will provide qualified labor, and all materials, equipment, tools, and services, including all temporary structures, scaffolds, hoists, fuels, expendable supplies, and other facilities, and do all things reasonably necessary for proper installation.

### **11. ACCEPTANCE DATE AND ACCEPTANCE TESTS**

#### **11.1. Products Installed by Customer**

The Acceptance Date shall occur for Products installed by Customer on the day of receipt of the Products.

#### **11.2. Products Installed by Yorktel**

The Acceptance Date shall occur for Products installed by Yorktel upon the earlier of Customer's written acceptance (in the form requested by Yorktel) or 30 days after being delivered to the Site.

The Acceptance Date shall occur for installation performed by Yorktel, upon the earlier of receipt of Customer's written acceptance, or 30 days after successful completion of the installation Acceptance Test parameters fully described in the applicable SOW. Customer and Yorktel will perform the installation Acceptance Tests at the Site. If any part of the installation does not pass the Acceptance Testing, Yorktel shall have 10 days to take at its expense all reasonable actions (including correction, modification, adjustment, repair, or replacement of Products) necessary to make such part perform in accordance with the Specifications and Acceptance criteria. After completion of any such actions, the installation Acceptance Tests will be conducted again; if the installation still fails to pass the Acceptance Tests, to Yorktel will repeat the procedure set forth above at Yorktel's expense.

### **12. DISCLAIMER OF WARRANTIES**

12.1. Yorktel makes no warranty as to merchantability or fitness for a particular purpose other than the express warranties provided in the agreement. All warranties and conditions, whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

12.2. Yorktel makes no warranty with respect to any OEM Products which is covered by any applicable warranty an applicable OEM may provide separately to Customer.

### **13. INVOICING AND PAYMENT**

Except as otherwise specified in an applicable SOW, Yorktel will invoice Customer for the Products and/or Services, partially or in full, at any time following the execution of a SOW. Payment terms for Services are NET thirty (30) days from the date of the applicable invoice. Equipment shall be billed at the time the Equipment is shipped from OEM; payment terms are payment within thirty (30) days from date of invoice.





#### 13.1. Integration

Yorktel will invoice the Customer based upon the agreed payment terms in the Statement of Work. Where no such terms are stated in the SOW, Yorktel's standard integration payment terms are 50% upon receipt of Customer's Purchase Order, 30% upon delivery of the Equipment, either at the Customer Location or Yorktel's warehouse and final 20% upon Acceptance.

#### 13.2. Services

- 1) **Service Charges and Payment Terms.** Charges shall commence on the first day of the term stated in the SOW. Yorktel shall invoice Customer by either providing a paper invoice or an electronic invoice. Yorktel will bill Customer in advance for recurring charges and anticipated one-time charges, generally on the first day of the month. For new Services commencing during a month, the following month's invoice will reflect all charges associated with the installation and setup of such Services, prorated monthly charges for the month during which the Services commenced and the advance monthly charges for the following month. Payment shall be submitted to the remittance address listed on the invoice. Customer's payment shall be considered late if not received by Yorktel within thirty (30) calendar days following Customer's receipt of the applicable invoice.
- 2) **Cancellation and Disconnection.** If Yorktel cancels or disconnects a Circuit or Service for Customer's failure to make payment by the due date or other violation of the Agreement, Customer shall pay to Yorktel the following as liquidated damages: (i) the monthly fees for the balance of the remaining term or three months, whichever is greater; plus (ii) the full amount of all past due charges and interest thereon, if any; plus (iii) any disconnection, early cancellation or termination charges incurred and paid to third parties by Yorktel due to such cancellation or disconnection; plus (iv) any additional amount specifically set forth in a Service Order Form. In the event Customer fails to make a required payment for two or more months and/or fails to respond to any Yorktel notice, Customer shall be deemed to have cancelled the Circuit(s) and/or Service(s) and the foregoing liquidated damages shall be due and payable. The Parties agree that the liquidated damages are a good-faith estimate of the Yorktel damages and are not a penalty. Upon cancellation or termination, all termination fees and accrued charges are due immediately upon receipt by Customer.

#### 13.3. Time and Materials

Services performed on a time and material basis will be invoiced at the end of each month in which the relevant Services are performed and/or upon completion of the Services (at Yorktel's option). Extra charges may apply to service calls authorized by Customer which are outside normal office hours of coverage, or for other services such as, but not limited to, refurbishment and cosmetic enhancement. Such charges will be invoiced in accordance with Yorktel's then current commercial pricing and applicable business practices. Payment terms for such Services are NET thirty (30) days from date of invoice.

#### 13.4. Late Payment

Time for payment is of the essence. Where sums due under the Agreement are not paid in full by the due date, all unpaid charges will accrue interest at a rate of one and one-half percent (2.5%) per month, or the highest rate allowed by applicable law, whichever is lower, and Customer shall pay all collection costs incurred by Yorktel (including, without limitation, reasonable attorney's fees). Yorktel at its discretion may suspend the delivery of any of the Products and/or Services for overdue payment. If Customer has a bona fide, good faith dispute with any of the amounts on an invoice, Customer must pay, in accordance with the foregoing terms, all amounts not in dispute and provide Yorktel with a written request for a billing adjustment, together with all supporting documentation (in the form requested by Yorktel), within thirty (30) days after Customer's receipt of the applicable invoice. If Yorktel does not receive this information within this thirty (30) day period, Customer's right to a billing adjustment shall be waived.

### 14. LIABILITY

#### 14.1. Limitation of Liability

- 14.1.1. SUBJECT TO SECTIONS 14.1.2, 14.1.3 AND 14.2, THE TOTAL AGGREGATE LIABILITY OF YORKTEL AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES (IN THIS SECTION COLLECTIVELY "YORKTEL") TO CUSTOMER IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE AGREEMENT SHALL IN NO EVENT EXCEED (A) WITH RESPECT TO CLAIMS ARISING OUT OF OR CONNECTED WITH PRODUCTS OR SERVICES PROVIDED UNDER THE AGREEMENT, THE PRICE PAID BY CUSTOMER FOR SUCH PRODUCTS OR SERVICES, OR (B) IN ALL OTHER CASES, THE LESSER OF (I) £2500<sup>3</sup>, OR (II) THE AMOUNT PAID BY CUSTOMER FOR ALL PRODUCTS AND SERVICES PROVIDED UNDER THE AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE RELEVANT EVENT GIVING RISE TO THE CLAIM OCCURS.
- 14.1.2. UNDER NO CIRCUMSTANCE WILL YORKTEL BE LIABLE FOR ANY DAMAGES RESULTING FROM FAILURE TO MEET ANY DELIVERY SCHEDULE. IN NO EVENT WILL YORKTEL BE LIABLE FOR COSTS OF PROCUREMENT OR SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, BODILY INJURY, LOSS OF LIFE, OR REVENUES OR DIMINUTION IN VALUE, OR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, ENHANCED, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF OR RELATED TO THE AGREEMENT.

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<sup>3</sup> **LKS Note:** Consider changing £2500 to a euro amount for Irish customers.

14.1.3. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 14.1 SHALL APPLY REGARDLESS OF (A) WHETHER YORKTEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) WHETHER SUCH DAMAGES WERE FORESEEABLE, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTORY DUTY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) WHETHER THE REMEDIES UNDER THE AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER ALSO AGREES THAT THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN CUSTOMER, THE END USER AND YORKTEL, AND THE PRICE OF ANY PRODUCTS PURCHASED FROM YORKTEL REFLECTS SUCH ALLOCATION OF RISK.

14.2. Nothing in the Agreement shall limit or exclude either party's liability for:

- 14.2.1. death or personal injury caused by negligence;
- 14.2.2. fraud or fraudulent misrepresentation;
- 14.2.3. any other losses which cannot be excluded or limited by law.

## 15. INDEMNITY

### 15.1. Intellectual Property

15.1.1. Except as expressly stated in this section, no intellectual property rights of either party are transferred or licensed as a result of these Terms and Conditions.

15.1.2. All intellectual property rights in the Products and/or Services shall belong to and vest in Yorktel.

15.1.3. **Indemnity.** Yorktel will defend, at its own expense, any claim, suit or proceeding brought against Customer to the extent it is based upon a claim that any Product sold by Yorktel to Customer infringes upon any patent and copyright of any third party. Customer agrees that it shall promptly notify Yorktel in writing of any such claim or action and give Yorktel full information and assistance in connection therewith. Yorktel shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action. If Customer complies with the provisions hereof, Yorktel will pay all damages, costs and expenses finally awarded to third parties against Customer in such action. If a Product sold to Customer, or in Yorktel's opinion might be, held to infringe as set forth above, Yorktel may, at its option, replace or modify such Product so as to avoid infringement, or procure the right for Customer to continue the use and resale of such Product. If neither of such alternatives is, in Yorktel's opinion, commercially reasonable, the infringing Product shall be returned to Yorktel and Yorktel's sole liability, in addition to its obligation to reimburse awarded damages, costs and expense set forth above, shall be to refund the amounts paid for such Products by Customer.

15.1.4. **Limitations.** Yorktel will have no liability for any claim of infringement under section 15.1.1 or otherwise if Customer:

- 15.1.4.1. does not comply with the requirements of section 15.1.1 in relation to such claim;
- 15.1.4.2. makes any admission of liability or agrees any settlement or compromise of the relevant claim without the prior written consent of Yorktel;
- 15.1.4.3. does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of such claim;
- 15.1.4.4. does not, at Yorktel's reasonable request, provide Yorktel with such all reasonable assistance in relation to such claim including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of Customer;
- 15.1.4.5. uses the Products and/or Services in combination with any items not supplied by Yorktel.

15.1.5. **Entire Liability.** The entire liability of Yorktel to Customer or any subsequent purchaser or Products concerning infringement or intellectual property right, including but not limited to, patent, copyright and trade secret rights shall be as set out in this section 15.1.

15.1.6. Yorktel's obligations in this section 15.1 shall not apply to Products and/or Services modified or used by Customer or a third party other than in accordance with the Agreement or Yorktel's instructions. Customer shall indemnify Yorktel against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by Yorktel in connection with any claim arising from such modification or use.

### 15.2. Customer Indemnity and Insurance

15.2.1. Customer shall indemnify, and keep indemnified, Yorktel from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Yorktel as a result of or in connection with Customer's breach of any of Customer's obligations under clause 9.1, clause 16 and the EULA .

15.2.2. Customer shall have in place contracts of insurance to cover its obligations under the Agreement. On request, Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## 16. CONFIDENTIALITY AND GENERAL IP

16.1. Each party agrees that they may disclose to the other party ("Receiving Party"), during the course of the Agreement, business or technical information of a confidential nature ("Confidential Information") to the disclosing party ("Disclosing Party"). Confidential Information includes, without limitation, employee data, financial information not otherwise disclosed to the public, patent and patent applications, trade secrets, copyrighted information and other intellectual property, business and marketing plans, the identity of customers and suppliers, future products, product developments and other proprietary information. Any written document or other tangible material will be appropriately marked by the Disclosing Party to indicate whether it contains Confidential Information; however, information in the form of data transmitted electronically which falls within the list of examples above need not be appropriately marked to be Confidential Information and shall be protected pursuant to this provision. Except for data transmitted electronically as provided above, at the time of disclosure, the Disclosing Party will inform the Receiving Party about the confidential nature of any Confidential Information that is not in a written document or other tangible material form. Each party agrees not to use or disclose the Confidential Information of the other

party for its own benefit, or for the benefit of any third party, except as may be required in their performance under the Agreement. The Confidential Information shall not be treated as confidential, even if it is designated as such by the Disclosing Party if: i) it is or becomes available to the public without confidentiality restrictions through no unauthorized act of the Receiving Party; ii) is received from a third party who is not under an obligation of confidence to the Disclosing Party; or iii) is independently developed by employees or contractors of the Receiving Party who did not use the Confidential Information of the other party in the development. A Party shall not be in breach of this provision if it is required to disclose Confidential Information pursuant to a requirement of a governmental agency or law, provided such Party gives prompt notice to the Disclosing Party of such obligation to disclose such Confidential Information (to the extent legally permitted). The Agreement is the Confidential Information of the parties.

- 16.2. All of a party's Confidential Information is the exclusive property of such party and the furnishing of such party's Confidential Information to, or access to such items by, the other party and/or its subcontractors will not grant any express or implied license to or interest in such other party and/or its subcontractors relating to such Confidential Information except as required to perform the services pursuant to the Agreement. Upon request by the disclosing party at any time and from time to time and without regard to the default status of the Parties under the Agreement, the Receiving Party and/or its subcontractors shall promptly deliver to the Disclosing Party its Confidential Information in such format as specified by the Disclosing Party.
- 16.3. All right, title and interest in and to property, data (including personal data), information, equipment, supplies and materials provided by Customer or its affiliates (the "Customer Materials") shall remain at all times vested in Customer or its affiliates, and nothing contained herein shall be deemed in any way to transfer any ownership or other interest therein to Yorktel. Customer grants to Yorktel a non-exclusive, limited, fully paid license during the Term to use the Customer data for the sole purpose of performing Services for Customer in accordance with the terms and conditions of the Agreement and any SOW.
- 16.4. All right, title and interest in and to property, data, information, equipment, supplies and materials provided by Yorktel in the performance of the Services shall remain at all times vested in Yorktel, and nothing contained herein shall be deemed in any way to transfer any ownership or other interest therein to Customer. Yorktel grants Customer a non-exclusive, limited, fully paid license during the Term to use the Yorktel furnished data, software or IP for the sole purpose of utilizing the Services in accordance with the terms and conditions of the Agreement.
- 16.5. **Marks.** Customer shall retain all proprietary marks, legends and patent and copyright notices that appear on or in connection with the Equipment, Services, documentation and Confidential Information delivered to Customer by Yorktel and all whole or partial copies made by Customer thereof in accordance with the Agreement.

## 17. DATA PROTECTION

- 17.1. To the extent that Yorktel collects and uses personal data, such personal data will be treated as confidential in accordance with Yorktel's Customer Privacy Policy (<http://www.yorktel.com/privacy-policy/>) and secured in accordance with Yorktel's ISO27001 procedures.
- 17.2. In relation to the Agreement, the parties have undertaken due diligence on the activities to be performed under the Agreement and are satisfied that, at the time of entering into the Agreement:
  - 17.2.1. Yorktel will not process any personal data on behalf of the Client or in respect of any personal data over which Customer is a controller; and
  - 17.2.2. each party will independently act as a controller in respect of personal data obtained or used by them in connection with the Agreement.
- 17.3. Each party agrees that, in the performance of its respective obligations under the Agreement, it shall comply with the requirements of Data Protection Legislation and provide reasonable cooperation with the other party to the extent necessary for that party to demonstrate compliance.
- 17.4. If and to the extent that Yorktel processes personal data on behalf of Customer, the parties shall cooperate in good faith to agree any terms required by Data Protection Legislation.

## 18. RELATIONSHIP OF PARTIES

Customer and Yorktel acknowledge and agree that Yorktel is an independent contractor, and not an employee of Customer. No partnership or joint venture is intended to be created by the Agreement, nor any principal-agent or employer-employee relationship. Each party will have no authority to bind or otherwise incur liability on behalf of the other party, unless otherwise agreed in writing between Customer and Yorktel.

## 19. TERMINATION

### 19.1. Termination by Yorktel for Cause

Yorktel may terminate the Agreement at any time by written notice to the Customer if:

- 19.1.1. the Customer breaches or is in default of any obligation hereunder which breach or default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such breach or default (or such additional cure period as the Yorktel may authorize in writing);
- 19.1.2. Customer has failed to pay any amount due under the Agreement on the due date and such amount remains unpaid within thirty (30) days after Yorktel has given notification that the payment is overdue; or
- 19.1.3. any consent, licence or authorization held by Customer is revoked or modified such that Customer is no longer able to comply with obligations under the Agreement or receive any benefit to which it is entitled.

### 19.2. Termination by Yorktel without Cause



Yorktel may terminate the Agreement without cause on at least sixty (60) days written notice to the Customer. Both parties are required to fulfill obligations of existing work already in progress which will be governed by the Agreement until such obligations are met.

#### 19.3. Insolvency

Either party may terminate the Agreement at any time by written notice to the other party if the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed in relation to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

#### 19.4. Termination of the Agreement

Termination or expiry of the Agreement shall not affect any accrued rights and liabilities of Yorktel at any time up to the date of termination.

### 20. FORCE MAJEURE

In the event that either party is unable to perform any of its obligations (excluding any obligation on Customer to make payment) under the Agreement, or to enjoy any of its benefits because of (or if loss of the Products is caused by) natural disaster, actions, or decrees of governmental bodies or agencies, war, civil disturbances, epidemic, pandemic, terrorism or communication line failure not the fault of the affected party (a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Neither party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performing the Agreement which result from a Force Majeure Event. If the period of nonperformance exceeds 30 days from the receipt of notice of the Force Majeure Event, the party whose ability has not been so affected may by giving written notice terminate the Agreement or cancel, without cancellation charge, any unfulfilled Purchase Order(s). However, delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such Force Majeure Events.

### 21. NOTICES

Unless otherwise specified in the Agreement, all notices or other communications under the Agreement shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the following address:

If to Customer: **Primary Customer contact of record with Yorktel**

If to Yorktel: York Telecom Ireland Limited  
Attn: Accounting and Finance Department  
1-2 Cedarwood, Crockford Lane,  
Basingstoke, RG24 8WD,  
UK

Either party may change its notice information by giving notice to the other party of the change in accordance with this section. Any notice or other communication shall be deemed given no later than the date actually received. Unless otherwise provided in the Agreement, notice by courier, express mail, certified mail, or registered mail shall be deemed given on the date it is officially recorded as delivered by return receipt or equivalent. Notice by facsimile shall be deemed given at the time evidence of receipt is confirmed by the person to whom addressed.

### 22. ASSIGNMENT

Customer may not assign, delegate, or subcontract any of its rights or obligations under the Agreement except with the prior written consent of Yorktel. Any purported assignment, delegation, or subcontracting without such consent shall be null and void and a breach of the Agreement. In the event of any assignment, delegation, or subcontracting with such consent, Customer shall remain liable for performance of all of Customer's obligations under the Agreement.

### 23. WAIVER

No waivers given with respect to the Agreement shall be effective unless in writing and signed by the party granting the waiver. The failure of either party at any time to require performance by the other party of any provision of the Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of the Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under the Agreement.

### 24. SURVIVAL



Any terms of the Agreement, including warranties, indemnities, and confidentiality which, by their nature, extend beyond transfer of title to the Equipment, or the expiration or termination of the Agreement (or any part of it) shall survive, remain in effect until fulfilled and apply to the party's respective successors and assigns permitted by the Agreement.

## **25. INSURANCE**

Yorktel shall at all times during the term of any work executed under the Agreement maintain insurance, the types and levels within standard industry practice for the work being performed or as specifically set forth in a SOW.

## **26. SEVERANCE**

If any one or more of the provisions of the Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected.

## **27. BINDING ON SUCCESSORS**

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns permitted by the Agreement.

## **28. APPLICABLE LAW**

The Agreement shall be construed in accordance with the laws of Ireland. Any dispute arising out of or in connection with it or its subject matter are governed by and construed in accordance with the law of Ireland and will be subject to the jurisdiction of the Irish Courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.<sup>4</sup>

## **29. AUTHORITY**

Customer represents and warrants that it has full power and authority to enter into and perform the Agreement. Customer acknowledges that it has thoroughly considered the terms and conditions of the Agreement and had the opportunity to review it with legal counsel. Customer also acknowledges that, unless otherwise stated within the Proposal or SOW, the Agreement governs all Purchase Orders placed to Yorktel by Customer.

## **30. MISCELLANEOUS**

### **30.1. ISO-27001 Certified Information Security Management**

The Yorktel ISO-27001 Certified Information Security Management System deems some of the information that is commonly exchanged during customer support sessions as sensitive; requiring security treatment above and beyond normal email security. To support this requirement Yorktel supports the encryption of email via TLS tunnels between mail servers. Should Customer decline to leverage this capability Customer will be accepting the risk associated with the exchange of this information (e.g., internal IP addresses, video conference and audio conference details, etc.) via conventional electronic mail.

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## **31. ENTIRE AGREEMENT**

- 31.1. The Agreement, including these Terms and Conditions, any SOW and any other documents which may be added to the Agreement from time to time by agreement of the parties, constitutes the entire agreement between Customer and Yorktel with respect to the subject matter contained herein and supersedes any prior understandings, agreements, and proposals, oral and written, between the parties on such subject matter.
- 31.2. Each party acknowledges that it has not entered into the Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Agreement.
- 31.3. Nothing in the Agreement purports to limit or exclude any liability for fraud.

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<sup>4</sup> **LKS Note:** Whilst we have not deleted this sentence, Ireland has not ratified the UN Convention on Contracts for the International Sale of Goods.

<sup>5</sup> **LKS Note:** We have deleted Clause 30.2 because there is no equivalent legislation in Ireland to the Contracts (Rights of Third Parties) Act 1999. The doctrine of privity of contract, which applies in Ireland, excludes third party rights and dictates that a person must be a party to the contract in order to seek relief.