

**TERMS AND CONDITIONS
HARDWARE ONLY**
(VALID FROM FEBRUARY 2018)

Currys  PCWorld
BUSINESS

Carphone Warehouse
— **BUSINESS** —

 Dixons
Carphone

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings unless this Agreement states otherwise:

"Affiliate" shall mean a Partner who introduces Prospective Customers to CPW for the sale of Products by CPW;

"Agent" means any individual engaged by the Partner in the provision of the Services, including Telephone Advisors;

"Agreement" means these terms and conditions and the Partner Application and any schedules thereto;

"Anti-Corruption Laws" means the Prevention of Corruption Acts 1889 to 1916 and the UK Bribery Act 2010;

"Applicable Laws" means all laws, regulations, orders, rules, guidance, directions, judgments, directives, industry agreements or determinations in force from time to time applicable to a party and relevant to this Agreement including but not limited to the Act and the Consumer Protection (Distance Selling) Regulations 2000, all statutory and regulatory requirements (including The Unfair Commercial Practices Directive (2005/29/SC)) and all codes of practice relating to the provision of the Services, (including the Advertising Standard Authority Code of Advertising), laws relating to Value Added Tax and laws relating to sanctions or embargoes;

"Brand Guidelines" shall mean CPW's brand guidelines the current version of which are set out in Schedule 1, as may be amended or updated by CPW from time to time;

"Business Day" means a day (other than a Saturday, Sunday or a public holiday in England) when the banks are open for business;

"Business Purchaser" means a corporate business purchaser of Currys PC World Business Goods;

"Commencement Date" means the date of the Partner Application;

"Confidential Information" means all financial, business and technical or other data and all other information (whether written, oral or in electronic form or on magnetic or other media) concerning the business and affairs of a party (or if that party is CPW, the business and affairs of CPW or any member of the CPW Group) and any other information of a confidential nature that the other party obtains, receives or has access to as a result of the discussions leading up to or the entering into or the performance of this Agreement;

"CPW" means either Dixons Retail Limited, trading as Currys PC World Business, a company registered in England under company number 03847921, whose registered office address is at 1 Portal Way, London W3 6RS, for purchases of Currys PC World Business Goods and services or The Carphone Warehouse Limited trading as Carphone Warehouse Business, a company registered in England under company number 2142673, whose trading address is 6th Floor, Merck House, Seldown, Poole, BH15 1TW, (with registered office at 1 Portal Way, London, W3 6RS and company no. 2142673) for purchase of Wholesale Goods and other Goods;

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"CPW Group" means CPW, its holding companies and ultimate holding companies and any of their respective subsidiaries whether direct or indirect from time to time, and shall include Dixons Carphone Plc and its subsidiary companies from time to time, "subsidiary" and "holding company" having the meanings ascribed to those terms in section 1159 of the Companies Act 2006;

"CPW Intellectual Property Rights" means any Intellectual Property Rights owned by, licensed to or otherwise used by CPW;

"CPW Website" means CPW's website found at <http://partners.carphonewarehouse.com> and any other website which CPW may notify in writing to the Partner from time to time;

"Customer" means a person who has completed a Customer Order (save where such Customer Order is a Reject);

"Customer Order" means an order for a Product obtained by the Partner from a Customer;

"Customer Services" means such support services (if any) forming part of the Services provided to Customers;

"GDPR" means the General Data Protection Regulations;

"Good Industry Practice" means the exercise of that degree of reasonable skill, diligence, prudence and foresight which would be expected from a skilled and experienced provider of services similar to the Services, seeking in good faith to comply with its contractual obligations;

"Goods" means mobile devices, electronic and electrical goods, accessories and any such other goods as may be offered by CPW to the Partner from time to time under either the CPW Business brand or under the Currys PC World Business brand;

"Intellectual Property Rights" or **"IPR"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Jointly Branded Advertising Materials" means any advertising material jointly created by CPW and the Partner in accordance with clause 15.11, including but not limited to point of sale displays, stands and signage, technical brochures and other materials to be used by Partner in connection with the promotion, advertising or sale of the Goods;

"Order" means a Customer Order and/or a Purchase Order;

"Partner" means the person named as such in the Partner Application and will include Affiliates Wholesalers and Business Purchasers, as relevant;

"Partner Application" means the application form completed by the Partner to which these terms and conditions apply ;

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"Partner's Branding" means the name, trademarks (registered or otherwise) and logos owned by or licensed to the Partner (other than by CPW);

"Partner's Website" means the Partner's URL specified as such in the Partner Application or as otherwise agreed in writing by the parties;

"Personal Data" means any personal data (as defined in the GDPR) being processed pursuant to this Agreement;

"Premises" shall have the meaning given in clause 6.3;

"Price Book" means a publication issued and/or database made available by CPW from time to time, that lists, amongst other things, the Prices, procedures and/or conditions on which Goods are supplied by CPW;

"Prices" means the prices for the Products as set out from time to time in the Price Book or as otherwise provided to the Partner by CPW;

"Products" means Goods and other contracts and products offered by CPW to the Partner in accordance with this Agreement;

"Prospective Customer" means a person who may become a Customer;

"Purchase Order" has the meaning given in clause 5.1;

"Qualifying Criteria" means those criteria defined as such in the description of the Services;

"Reject" means any Customer Order that is rejected by CPW in accordance with CPW's standard processing procedures;

"Services" means the services provided by the Partner to CPW which may include (but are not limited to) marketing and sales of Products to Customers, online selling of Products and Customer Services as agreed by CPW from time to time in writing;

"Special Order" means a Purchase Order for Goods which CPW is required to order specifically for the Partner or which CPW otherwise doesn't ordinarily stock or includes any customisation or variations or design specified by the Partner or is otherwise classified as a special item;

"Specific Terms" means any terms of this Agreement labelled as such, which shall only be applicable to Business Purchasers (i.e. business purchasers of Currys PC World Business Products);

"Telephone Advisors" means individuals engaged by the Partner in the provision of the Outbound/Inbound Services and/or the Customer Services;

"Term" means the term of this Agreement as set out in clause 2;

"TUPE Regulations" means the Transfer Of Undertakings (Protection Of Employment) Regulations 2006;

"VAT" means value added tax or any similar sales tax;

"Wholesale Goods" means Goods to be sold by CPW trading as CPW Business to a Wholesaler in bulk quantities pursuant to this Agreement; and,

"Wholesaler" means a corporate wholesale purchaser of Wholesale Goods.

- 1.2 Words in the singular include the plural and vice versa and words in one gender include all genders.
- 1.3 The table of contents and headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 The words "including", "for example" and "in particular" (or similar) shall not limit the generality of any preceding words.
- 1.5 A reference to a party includes its successors in title and permitted assigns.
- 1.6 A "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality).
- 1.7 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it..
- 1.8 A reference to clauses, schedules and appendices is to clauses of and schedules and appendices to this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.
- 1.9 Any reference to a Partner in this Agreement, shall also be deemed to be a reference to a Wholesaler and/or a Business Purchaser, as applicable. All terms and conditions of this Agreement shall apply to a Partner, Wholesaler or Business Puchaser, expect where specifically stated otherwise.
- 1.10 In the event that there is any conflict between the provisions of this Agreement then the following order of precedence shall apply:
 - 1.10.1 these Terms and Conditions;
 - 1.10.2 Schedules 1 – 3;
 - 1.10.3 The Appendices; and
 - 1.10.4 The Partner Application.
- 1.11 In addition, where any Specific Terms conflict with any of the other terms applicable to the Partner pursuant to this Agreement, the Specific Terms shall prevail in respect of a Business Purchaser.

2 TERM

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This Agreement shall commence on the Commencement Date and shall remain in force unless and until terminated pursuant to clause 21.

3 APPOINTMENT

- 3.1 CPW is a business to business reseller. In buying from CPW, Partner agrees that they are buying Goods or Services only for business purposes. The liability and warranty provisions set out CPW's responsibilities to the Partner in more detail, but as a business customer, purchases the Partner makes from CPW will not benefit from the statutory protection available to consumers under the Sale of Goods Act 1979 (as amended) and related legislation.
- 3.2 This Agreement shall apply to the Partner who shall be acting in either of the following capacity:
- 3.2.1 as a non-exclusive representative to either (i) market and promote the Products and introduce Customers to CPW and to provide support to Customers; (ii) market, promote and sell Goods to Customers; (iii) provide the Services on the terms and conditions of, and in accordance with, this Agreement; or,
 - 3.2.2 the non-exclusive Wholesaler; or,
 - 3.2.3 the Business Purchaser,
- as shall be specified on the Partner Application.
- 3.3 CPW does not undertake to procure Services exclusively from the Partner.
- 3.4 The Partner shall agree to use its reasonable endeavours to promote the Products and to procure Customers for the Products.

4 THE PARTNER'S OBLIGATIONS TO CPW

- 4.1 At all times during the Term the Partner shall:
- 4.1.1 perform (and will procure that any employee, agent, subcontractor, partner or similar party shall provide) all of the Partner's obligations under this Agreement in accordance with Good Industry Practice, any customer service or other requirements reasonably specified by CPW from time to time;
 - 4.1.2 co-operate with CPW's reasonable directions, particularly –where applicable– with regard to standards and quality of promotion and service and any bulletins issued by CPW from time to time;
 - 4.1.3 ensure that any services and products (other than the Products) provided by the Partner comply with all relevant statutory and regulatory requirements, are not obscene, gratuitous or defamatory or encourage conduct that would constitute a criminal offence or otherwise violate any applicable law;
 - 4.1.4 where applicable, ensure that it meets any key performance indicators notified to it by CPW from time to time; and
 - 4.1.5 comply with any and all Applicable Laws.

- 4.2 In addition, at all times during the Term the Partner shall notify CPW immediately in the following events:
- 4.2.1 immediately notify CPW of any breach of any of its obligations under this Agreement or any matter giving rise to any event under clause 21.1;
 - 4.2.2 any existing or prospective significant change in its circumstances, including a change in control, a change of management (for example a material change to your board), and a deterioration in its financial position;
 - 4.2.3 any claim made or threatened against the Partner which is relevant to or arises in connection with this letter, including by:
 - 4.2.3.1 any manufacturer of the Goods or person acting on behalf of such manufacturer; or
 - 4.2.3.2 any Business Purchaser or user of the Products; or,
 - 4.2.3.3 any governmental or quasi governmental body; or,
 - 4.2.4 any breach by the Partner or any person acting on its behalf of any provision of this letter or of any applicable law.
- 4.3 If, in the reasonable opinion of CPW, the Partner has breached any provision of clause 4.1 the Partner shall immediately remove any offending services or product or material or content and shall take such steps as CPW may reasonably require (and at the Partner's expense) in order to restore the reputation of CPW. This shall not prejudice any claim CPW may have against the Partner.
- 4.4 Where applicable, the Partner shall co-operate with CPW and comply with all of its reasonable directions, particularly with regard to standards of promotion, quality, service and marketing which may be advised by CPW to the Partner from time to time. In particular the Partner agrees to utilise all point of sale material supplied by CPW and to provide in advance to CPW for its prior approval any copies and samples of advertising, publicity, promotional and material concerning the Products and to employ qualified staff as will properly provide for sales, advisory, installation, repair and after sales service of the Products.
- 4.5 Any sale leads passed to the Partner by CPW are to be used only for the purpose of obtaining business customers for the Products as directed by CPW and use of sales leads by the Partner for any other purpose will entitle CPW to (and without prejudice to any other rights under this Agreement or at law) terminate this Agreement.
- 4.6 The Partner shall not make any representations or warranties in respect of the Products without CPW's prior written consent nor incur any liability on behalf of CPW and shall in no way make any unauthorised, false or misleading representations or statements regarding the Goods and/or Services.
- 4.7 The Partner shall attend and shall ensure its staff attends such training as is necessary and at the Partner's cost to fulfil the Partner's obligations under the Agreement, or as required by CPW.
- 4.8 This Agreement shall not be deemed to create any partnership or employment relationship between the parties. The Partner shall act as principal on its own account in all circumstances and shall not hold itself out as the agent of CPW or purport to act on CPW's behalf in dealing with third parties.

- 4.9 Where applicable, the Partner must take such steps as may be reasonably required to assist Customers to obtain updates issued of any software or hardware comprised in the Products sold at any time by the Partner. The Partner shall inform Customers of the availability, if applicable, of CPW's network of service centres.
- 4.10 The Partner may resell non-new Goods to a customer outside of the European Economic Area (EEA). Unless specifically agreed with CPW, the Partner may not resell new Goods to a customer outside of the European Economic Area (EEA) or otherwise place the Products on the market outside the EEA.

5 ORDER ACCEPTANCE

- 5.1 CPW is under no obligation to accept any Order placed by the Partner or to offer the Partner any credit.
- 5.2 Partner must decide before ordering whether the Products are suitable for their needs; CPW does not accept any responsibility for assisting the Partner with this decision.
- 5.3 Goods are subject to availability and may vary from those advertised by CPW.
- 5.4 All orders placed by the Partner for Goods whether by email, online, in writing or oral (each a "**Purchase Order**") shall constitute an offer to CPW, under this Agreement, subject to availability of the Goods and to acceptance of the Purchase Order by CPW's representative. Any quotation given by CPW does not constitute an offer capable of acceptance. This Agreement shall apply in respect of all contracts for the supply of Goods of any nature whatsoever by CPW to the Partner.
- 5.5 CPW shall be entitled to reject any Purchase Order for any reason in particular, but without limitation, if the Partner is in breach of any of the provisions of this Agreement. No payments shall be liable to be made to the Partner in connection with any Order that is rejected.
- 5.6 Although CPW shall make reasonable checks to avoid errors occurring, CPW reserves the right to cancel or refuse Orders for items shown on the Currys PC World Business website with an incorrect price or with any other incorrect information. No contract shall be made with the Business Purchaser until CPW have dispatched the Order. Where CPW have made a mistake, the Business Purchaser shall be given the option to either: (i) cancel its Order and obtain a refund of any sums paid in advance; and/or (ii) place the Order again at the correct price/on the correct terms.
- 5.7 All Purchase Orders are accepted and Products supplied subject to this Agreement only. No terms or conditions put forward by the Partner shall apply.
- 5.8 The Partner shall be responsible for ensuring the accuracy of the Purchase Order and for giving CPW any necessary information to enable CPW to perform its obligations under the Agreement.

6 DELIVERY



- 6.1 Any dates given for delivery are estimates only and CPW shall not be liable for any delays. Time for delivery shall not be of the essence. CPW will use reasonable endeavours to notify the Partner if it believes that its performance is likely to be delayed for any reason. CPW shall not be liable to the Partner where its performance of the contract is delayed because of the Partner's acts and omissions or those of the Partner's employees, agents or contractors.
- 6.2 CPW reserves the right to make delivery by instalments. In such event this Agreement shall apply to each delivery as though it were the subject of a separate contract and failure by CPW to deliver any one or more installments or any claim by the Partner in respect of any one or more installments shall not entitle the Partner to treat the Purchase Order as repudiated.
- 6.3 If CPW agrees to make delivery to the Partner or its nominee (including a Customer) such delivery shall be effected to the address of the Partner or its nominee stated in the Purchase Order (or as otherwise agreed) ("**Premises**").
- 6.4 Subject to clause 6.12, the Goods shall be at the Partner's risk from arrival of the Goods to the Premises or from the time the Partner collects the Goods from CPW (whichever is the earlier).
- 6.5 Title in the Goods shall remain with CPW until CPW has received payment in full for all Goods whatsoever supplied to the Partner, together with VAT, interest payable and all other amounts due from the Partner to CPW under any contract or arrangement. Until payment in full has been made the Partner shall (i) hold the Goods in a fiduciary capacity for CPW separate from any other assets; (ii) not remove any branding or identifying marks; (iii) comply with the provisions of clause 6.10; (iv) not sell, transfer, charge, mortgage, pledge or grant any lien over, the Goods;(v) clearly mark the Goods as CPW's property.
- 6.6 The Partner may sell the Goods by way of bona fide sale in the course of business but may not otherwise deal with, sell, part with possession of or otherwise dispose of or handle any of the Goods sold hereunder until title has passed to the Partner in accordance with clause 6.5 above.
- 6.7 CPW may at any time immediately revoke the Partner's power of sale by written notice if the Partner is in default for longer than seven days in the payment of any sum whatsoever due to CPW or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Partner in favour of CPW is dishonoured on presentation for payment or if CPW has reasonable grounds for doubting the Partner's solvency. Furthermore, the Partner's power of sale shall automatically cease where CPW has a right to terminate in accordance with clause 21.1.
- 6.8 Should CPW revoke the Partner's power of sale, the Partner will place the Goods at the disposal of CPW who shall be entitled on reasonable prior notice to enter the Premises for the purpose of collecting the Goods or any of it. The Partner will bear the cost of CPW removing any such Goods from the Premises.
- 6.9 Where any of the Goods is sold to a third party before title to it has passed to the Partner, that sale will constitute a sale by the Partner of CPW's property and accordingly the Partner will hold CPW's part of the proceeds of that sale on trust for CPW. In such circumstances CPW shall be legally and beneficially entitled to proceeds of sale and the Partner's shall pay any proceeds into a separate bank account or otherwise shall ensure that all such proceeds are kept by or on the Partner's behalf in a separate and identifiable

form for CPW's sole benefit. In particular, but without prejudice to the generality of the foregoing, the Partner shall not pay the proceeds of sale into any bank account which is overdrawn.

- 6.10 Until full title has passed to the Partner or until the Goods have been sold to a third party under clause 6.9 above the Partner shall at all times keep the Goods comprehensively insured in an amount at least equal to their full replacement value against any loss, damage or destruction and shall bear any costs or levies on export or import. The policy shall bear an endorsement recording CPW's interest and the Partner shall produce a copy of such policy on demand from CPW.
- 6.11 The Partner shall inspect the Goods on delivery or collection as the case may be. Unless the Partner shall deliver written notice to CPW within seven (7) days of delivery or expected delivery to the effect that the Goods are not those ordered, or are damaged or subject to shortage, the Partner shall be deemed to have accepted the Goods. If the Partner shall give written notice as aforesaid, it shall comply with CPW's instructions concerning the return or retention for inspection of such Goods which shall be at the Partner's risk until back in the possession of CPW. In no event shall the Partner be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Partner to reject the same. For the purpose of this clause the Business Purchaser shall inform the CPW Customer Services Department by telephone on 0344 561 6789.
- 6.12 If the Partner fails to collect the Goods, give adequate delivery instructions or accept delivery when tendered (as the case may be) the Goods shall be at the Partner's risk and CPW may:
- 6.12.1 claim payment;
 - 6.12.2 store the Goods until actual delivery and charge the Partner for the costs of storage;
 - 6.12.3 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Partner for the excess over sums owing by the Partner or charge the Partner for any shortfall; or
 - 6.12.4 terminate the Purchase Order and/or the Agreement.
- 6.13 Until such title in the Goods has passed to the Partner as aforesaid the Partner must immediately notify CPW if any Goods within its possession are stolen, lost, damaged or tampered with. For the purpose of this clause, time shall be of the essence.

In addition to other terms contained in this Agreement, the following Specific Terms shall apply to purchases of Currys PC World Business Products

- 6.14 CPW shall be entitled to charge the Business Purchaser for all deliveries. Orders received by 4 pm on a Business Day shall be normally processed the same day. Orders placed at weekends or bank holidays shall normally be processed the next Business Day. Goods in stock shall normally be delivered within two Business Days after processing. Standard delivery shall be made to suitable ground floor reception or store areas. The Business Purchaser shall notify CPW in advance of any special delivery requirements and these shall incur an additional charge. CPW shall use its reasonable endeavours to meet delivery

slots agreed with the Business Purchaser. However CPW shall not accept any liability to the Business Purchaser for any delay. CPW shall use reasonable endeavours to notify the Business Purchaser of any delivery delays and reconfirm a new delivery time with the Business Purchaser.

In addition to other terms contained in this Agreement, the following Specific Terms shall apply to purchases of Currys PC World Business services

6.15 The Business Purchaser shall inspect the Goods on delivery or collection as the case may be. Unless the Business Purchaser shall deliver written notice to CPW within fourteen (14) days of delivery or expected delivery to the effect that the Goods are not those ordered, or are damaged or subject to shortage, the Business Purchaser shall be deemed to have accepted the Goods

6.16 The Business Purchaser will:

- allow reasonable access to the site and ensure the site is a safe environment;
- properly maintain the equipment and software and regularly back up data;
- not make any unauthorised modifications to the software or services provided by CPW;
- provide to CPW all relevant information about its business in a timely and accurate manner and notify CPW of any changes to it affecting CPW's ability to deliver the Products;
- keep any CPW equipment left with or loaned to the Business Purchaser safe and secure and return the same to CPW on demand;
- - check and sign for all deliveries by CPW of required equipment, keep the equipment safe and ensure its availability for the services to be carried out.

6.17 CPW shall:

- perform any services with reasonable skill and care using appropriately qualified, trained and experienced engineers;
- not copy, adapt or part with possession of any of CPW's confidential information;
- not warrant the services or any additional services will cause the Business Purchaser's equipment or software to operate without interruption or error;
- not have any liability for any such interruption or error which is caused directly or indirectly by any equipment or services not supplied by CPW.

6.18 Any services to be supplied by CPW to the Business Purchaser pursuant to this Agreement do not include services required due to:

- failure by the Business Purchaser to properly maintain or operate the equipment or software;

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- modification of the equipment or software by anyone other than CPW;
- transportation or relocation of the Business Purchaser's equipment or software;
- any defect in equipment or software not supplied by CPW; or,
- failure to allow CPW proper access to the Business Purchaser's equipment or software.

7 CANCELLATION AND RESCHEDULING

- 7.1 Save in respect of any Special Order, any request by the Partner for cancellation of any Purchase Order or for rescheduling of deliveries will only be considered by CPW if made on the same day as the Purchase Order is placed where the Goods are subject to next day delivery or, otherwise at least 2 Business Days before dispatch of the Goods the subject of the Purchase Order, and shall be subject to acceptance by CPW at CPW's sole discretion, and subject to a reasonable administration charge therefore by CPW.
- 7.2 The Partner shall not be entitled to cancel or reschedule any Special Order unless agreed otherwise by CPW.

8 EMPLOYEES

- 8.1 Partner shall be solely responsible, as between the parties, for making any appropriate PAYE deductions for tax and national insurance contributions ("**Contributions**"), from the remuneration which any Agents are paid for performing the Services. the Partner agrees to indemnify and keep indemnified, CPW and all other members of the CPW Group, from and against all liabilities, penalties, damages, claims, actions, proceedings, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by CPW or another member of the CPW Group which may be made by the relevant authorities or any Agent in respect of any Contributions or similar payments relating to the provision of the Services by the Partner and/ or any Agent.
- 8.2 Without prejudice to clause 33, nothing in this Agreement shall be deemed to imply that the relationship between CPW and the Partner or between CPW and any Agent is that of employer and employee or worker.
- 8.3 Neither party intends that either the entering into of this Agreement or the termination thereof shall operate so as to transfer the contracts of employment of any employee from one party to the other. However, should the TUPE Regulations apply in respect of this Agreement and/or the Services, then the Partner shall, or where the Partner is not the employer, it shall use its best endeavours to procure that, full and accurate details of each of the employees to whom the TUPE Regulations apply (the "Transferring Employees") and any other information which CPW may reasonably require relating to the Transferring Employees, is provided to CPW either by the Partner or by the employer of the Transferring Employees as appropriate.
- 8.4 In the event that the contracts of employment or any liability arising in respect of any Transferring Employees shall be transferred from the Partner to CPW whether by operation of law or otherwise, then the Partner shall indemnify (and keep indemnified) CPW against all damages, claims (including without limitation claims for redundancy, unfair and wrongful dismissal) costs, awards, penalties, fines, (including without limitation any liability to tax) and expenses which CPW may suffer, sustain, incur, pay or be put to by

reason or on account of or arising from the transfer of such Transferring Employees from the Partner (or any other employee) which by virtue of the TUPE Regulations is deemed to be as a result of an act or omission of either party or any claim or other legal recourse by all or any of the Transferring Employees (or any other employee) in respect of any fact or matter concerning or arising from their employment whether arising under common law, statute or otherwise including but not limited to all payments and benefits accrued due to the Transferring Employees during any period provided that and subject to CPW making any claim pursuant to this clause within 1 year of the date of termination of this Agreement.

9 CPW'S RIGHTS AND OBLIGATIONS TO THE PARTNER

9.1 CPW undertakes that it will:

9.1.1 where applicable, provide the Partner with all reasonably necessary documents, data, information, products and/or materials relating to the Products within sufficient time to enable the Partner to provide the Services in accordance with this Agreement;

9.1.2 where applicable, without imposing any financial obligation on CPW provide such advice, assistance and co-operation as the Partner may reasonably request in order to perform the Services; and

9.1.3 use reasonable endeavours to process Customer Orders in accordance with its standard processing procedures.

9.2 The Partner shall have no authority to commit CPW and CPW shall be under no obligation to accept any Customer Order and the credit checking policy used by CPW from time to time shall be at CPW's sole discretion.

9.3 For the avoidance of doubt, CPW shall be under no obligation to make further Products available to the Partner to market, promote or sell on the terms of this Agreement and CPW shall be entitled to withdraw any of the Products at any time. CPW shall use its reasonable endeavours to provide thirty (30) days' notice or, where not practicable, as much notice as possible to the Partner of any withdrawal.

9.4 Where the Partner is acting as an Affiliate CPW will promote the Products directly to Potential Customers introduced to CPW by the Affiliate and CPW will conclude all orders for Products directly with the Potential Customer.

9.5 CPW may cancel outstanding Orders for Goods and/or suspend any Order or this Agreement immediately (without liability to the Partner) if any of the following events happen:

9.5.1 the Partner fails to make any payment due to CPW by the time it is due;

9.5.2 the Partner have given any false or misleading information to CPW or is (or CPW has have any reasonable suspicion that the Partner or any of its directors, officers or group companies) is infringing any applicable law;

9.5.3 The Partner is insolvent or subject to any insolvency process or action by or arrangements with creditors;

- 9.5.4 The Partner's use of the Products is likely to cause the whole or part of the Products to be interrupted, damaged, rendered less efficient or in any way impaired;
- 9.5.5 The Partner is in material breach of this Agreement;
- 9.5.6 In the event where the site, equipment or software used for the purpose of quotation is changed; or,
- 9.5.7 In the case of a Business Purchaser, in the event where the cancellation provisions under any leasing arrangement entered into by the Business Purchaser are invoked by the relevant leasing company.

10 WARRANTY

- 10.1 Except where Goods are non-new Goods (as these shall be subject to the terms of clause 10.3), CPW shall sell the Goods with the benefit of the manufacturer's warranty (if any) subject to the terms and conditions of such warranty and CPW shall have no further liability to the Partner.
- 10.2 Any manufacturer's warranty shall not apply:
 - 10.2.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Partner;
 - 10.2.2 in respect of any defect arising from fair wear and tear, willful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow CPW's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without CPW's approval;
 - 10.2.3 in respect of sales of non-new Goods; and
 - 10.2.4 in respect of any matter regarded as a fault due to a modification, alteration, or replacement required by a change in the requirements of any governmental or regulatory society, institute, authority or other body.
- 10.3 Non-new Goods are sold on an "as-is" basis and shall be subject to the relevant CPW conditions of sale and warranty as specified by CPW at the time of Order. The provisions of clauses 10.4 to 10.8 shall not apply to non-new Goods.
- 10.4 If a fault arises within 30 days of the date of delivery of the faulty Goods (the "**Warranty Period**") CPW shall replace or repair free of charge the Goods (or the part in question), subject to the manufacturer's warranty.
- 10.5 CPW shall refund to the Partner the price of the Goods (or a proportionate part of the price) where CPW receives a refund from the manufacturer of the price but otherwise CPW shall have no further liability to refund the Partner.
- 10.6 For any Goods for which the fault arises after expiry of the Warranty Period the Partner shall be responsible for the cost of carriage and insurance in respect of all Goods returned by the Partner to CPW for repair or replacement. In the case of valid warranty claims CPW shall refund any such reasonable costs.

- 10.7 CPW reserves the right to levy a surcharge in the event of returned Goods being found not to be defective.
- 10.8 Except as otherwise set out in this Agreement, on delivery the Goods shall conform in all material respects with any description CPW have specifically provided to the Partner; however the Partner agrees that CPW shall not provide any warranties themselves in respect of the Goods, and that all other warranties and representations, whether express or implied, by statute, common law or of any other kind are hereby excluded to the maximum extent permitted by law. CPW does warrant that the Goods are suitable for sale in any country other than the UK. If the Partner wishes to sell the Goods outside the UK, it is for the Partner to ensure that the Products comply with the laws of, do not infringe any third party rights, and are otherwise suitable to be sold in any country other than the UK.

Specific Terms applicable to purchases of Currys PC World Business Products

- 10.9 CPW will accept returns of faulty goods notified to CPW within 30 days of delivery, subject to the terms of the manufacturer's warranty. After 28 days the Business Purchaser will need to contact the manufacturer directly. The CPW Customer Services department is available to advise the Business Purchaser in this regard and can be reached by telephone on 0344 561 6789. CPW sometimes monitors or records telephone calls for training and security purposes.
- 10.10 Should the Business Purchaser intend to return Goods in accordance with the terms and conditions of this Agreement, the Business Purchaser shall obtain a returned merchandise authorization ("**RMA**") from CPW's Customer Services Department which can be reached by telephone on 0344 561 6789. The RMA will be valid for 28 days. CPW will then arrange for collection of the relevant Goods, which must be available for collection in their original packaging together with all accessories and manuals. CPW shall not accept unauthorised returns which do not have an RMA.
- 10.11 In the event where the Business Purchaser is authorized to return Goods, it shall ensure that the Goods returned are in 'as new' condition and have not been used, installed or had any data input on them. The Business Purchaser shall ensure that it has backed up and/or removed its data as appropriate. CPW shall not be responsible for any data that is lost or left on equipment.
- 10.12 CPW shall not accept returns of special purchase items, consumables, opened packaged software (unless it is faulty), pre-loaded/down-loaded software licences (unless faulty) or Goods that the Business Purchaser has agreed in advance are non-cancellable or non-returnable (unless faulty).
- 10.13 In the event where the Business Purchaser is dissatisfied with any services provided by CPW pursuant to this Agreement, the Business Purchaser shall promptly notify CPW in writing, (and in any event, within 30 days of completion of the Services) and CPW's sole liability to the Business Purchaser shall be to re-perform any defective services at no additional cost to the Business Purchaser.
- 10.14 Without prejudice to the terms of clause 16 below, the remedies in this clause 10 represent the Business Purchaser's sole and exclusive remedies in respect of any issues the Business Purchaser may experience with the Products provided by CPW.

10.15 In the event the Business Purchaser purchased domestic appliances and other goods designed for domestic use, any use of such goods for commercial purposes may invalidate the manufacturer's warranty.

11 PRICES

11.1 CPW shall offer the Products at such prices and on such conditions as are stated in this Agreement (including in accordance with any specific manufacturer's requirement as may be set out in the schedules to this Agreement from time to time) and/or CPW Website and/or as otherwise notified to the Partner from time to time.

11.2 Catalogues, price lists, and other advertising literature or material as used by CPW are intended only as an indication as to price and the range of Products offered and no prices, descriptions or other particulars shall be binding on CPW and any typographical, clerical or other error or omission shall be subject to correction at any time without liability on the part of CPW.

11.3 'Recommended Retail Price' (or similar statement) for any Goods as recommended stated in a price book or any other document is shown for guidance only. The Partner is entitled in its sole discretion to determine the price at which it offers Goods for sale to Customers and Prospective Customers.

11.4 For all online orders by the Partner CPW shall pay for the cost of delivery to the Premises. For all Purchase Orders all prices are given by CPW at the time of the Purchase Order on an ex-works basis and, unless otherwise agreed, the Partner is liable to pay for the cost of delivery.

11.5 CPW may by giving notice to the Partner at any time before delivery increase the price of the Products to reflect any increase in the cost to CPW, which without limitation, shall include any of the following circumstances:

11.5.1 where the Partner has requested any variation whatsoever to the quantity, capacity, form, content, style or description of the Products, or has requested an earlier or a later delivery date; or

11.5.2 where steps are required to be taken by CPW to comply with any statutory provisions from time to time in force; or

11.5.3 where increases are made in the price charged to the Partner of any Products bought in from outside suppliers so as to enable CPW to fulfill the Agreement; or

11.5.4 where the supply of the Products is suspended, varied or otherwise delayed by the Partner, including without limitation, any delay caused by any failure to provide CPW with sufficient information to enable CPW to satisfy its obligations under the Agreement.

11.6 All prices are exclusive of Value Added Tax and any similar taxes which are payable in addition.

11.7 Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Goods manufactured in the United States of America to the current export rules and regulations of the United States Department of

Commerce in force from time to time and regardless of any disclosure made by the Partner to CPW of an ultimate destination for any Goods, the Partner will not export or re-export directly or indirectly any Products without first obtaining all such written consents or authorisations as may be required by any applicable regulations.

12 PAYMENT

12.1 All invoices for Products will processed and applied against a Partner's account in accordance with CPW's Standard Terms of Account set out below and as amended from time to time by CPW.

12.2 For the purposes of this clause 12, Standard Terms of Account are as follows:

Invoice Prefix	Transaction Type	Payment Terms
201	Automated Hardware Invoice	28 days from invoice date provided a credit limit is agreed
202	Automated Hardware Credit	Applied to account immediately
205	Manual Invoice	Applied to account immediately
206	Manual Credit	Applied to account immediately

12.3 Payment will be due to CPW each week there is a debit balance on the Partner's account.

12.4 For Wholesale Sales and unless agreed otherwise by CPW, the Partner shall pay for the Goods, in full, at least 24 hours prior to delivery of the Goods.

12.5 Subject to the terms of clause 12.6 below, purchases of Currys PC World Business Products can be paid by bank transfer, cheque, and most types of credit cards. Credit card and debit card payments are taken at the point of Order, not on dispatch of Goods. CPW shall only accept cash payments at point of sale in the relevant Currys PC World store.

12.6 Purchases of Currys PC World Business Products on credit must be paid for by 30 days from the invoice date. CPW may withdraw the option to pay on credit at any time and for any reason. If the Business Purchaser fail to pay an invoice when due then, in addition to any other right or remedy which may be available to CPW, all invoices will become due and payable, (whether outstanding or not). CPW may share customer credit history information with relevant credit agencies. CPW also reserves the right to run a credit check with a relevant credit agency, and to validate any credit card account holder or delivery address details if it give the Business Purchaser credit (available credit information shall be accurate within the last 24 hours).

12.7 CPW shall be entitled at any time and without notice to the Partner to set off any liability of the Partner to CPW against any liability of CPW to the Partner (but only if such liability of CPW is due and payable). Any exercise by CPW of its rights under this clause shall be without prejudice to any other rights or remedies available to CPW under this Agreement or otherwise.

12.8 Where CPW, in its reasonable opinion, considers the Partner to be a credit risk it may require the Partner to provide personal guarantees, a cash bond or CPW may impose a credit limit or other payment terms (including but not limited to bringing forward the due date for any invoices in respect of Goods or requiring prepayment for such Goods).

- 12.9 Under the Late Payment of Commercial Debts (interest) Act 1998 CPW shall be entitled to exercise its statutory right to charge interest and a compensation fee on all invoices overdue.

13 SALES AND MARKETING

- 13.1 Unless agreed otherwise, the Partner shall not undertake any activity regulated by the Financial Services Authority in connection with any services provided by CPW or any member of the CPW Group, including but not limited to promoting, administering and advising on contracts of insurance and shall only act as an introducer in relation to insurance forming part of the Products, as specifically agreed and instructed by CWS.
- 13.2 The Partner will not intentionally or negligently act in any way or make any omission that would, in the opinion of CPW (in its absolute discretion) bring CPW Group or the business of CPW Group into disrepute in any manner or otherwise damage the brand or reputation of CPW Group.
- 13.3 The Partner will conduct a service review and support call ("Support Call") with each Customer on a quarterly basis (or at such other intervals as may be agreed). The Partner shall provide CPW on a quarterly basis with a report detailing the outcome of the Support Calls, any Customer feedback and any remedial plans agreed with the Customer in relation to the feedback.
- 13.4 The Partner acknowledges and agrees that the contract for the sale to the Customer of the Goods is between Partner and each Customer (save where the Partner is an Affiliate in which case is between CPW and the Customer) and Partner must not in any way suggest otherwise.
- 13.5 The Partner warrants that:
- 13.5.1 if it is acting as a Wholesaler, its primary business activity has been for the last three years, the distribution of products of a similar nature to the Goods;
 - 13.5.2 It is registered as a duly incorporated company or equivalent;
 - 13.5.3 the Services will be performed with reasonable skill and care;
 - 13.5.4 it has all requisite corporate power and authority to enter into this Agreement and all related agreements and the entering into and performance of its obligations under this Agreement has been duly authorised by all necessary corporate action on its part;
 - 13.5.5 it has obtained all consents, permits, permissions and licences necessary to enable it to perform its obligations under this Agreement;
 - 13.5.6 it currently complies with and in the performance of this Agreement it shall comply with all Applicable Laws, including but not limited by not supplying any products into any country which is subject to trade restrictions affecting either of CPW or the Partner;
 - 13.5.7 it shall comply with CPW's Anti-Bribery policy as updated from time to time;

- 13.5.8 it is not a party to any contracts or other arrangements, where the performance or non-performance of its obligations could reasonably be expected to hinder or prevent the performance of its obligations under this Agreement;
- 13.5.9 there are no actions, suits proceedings or regulatory investigations pending or threatened against it or any member of its Group that might be reasonably expected to have an adverse effect on the performance of its obligations under this Agreement;
- 13.5.10 the Partner has not been subject to any claim by HMRC or any equivalent authority in any jurisdiction in respect of Missing Trader Intra-Community fraud ("MTIC") or any similar matters in any other jurisdiction and none of the Partner's customers have been subject to any claim by HMRC or any similar authority in any jurisdiction in respect of MTIC or any similar matters in any other jurisdiction;
- 13.5.11 all Personal Data used by the Partner in the provision of the Services has been obtained legally and where data has been obtained from a third party, the Prospective Customer or a Customer has given consent to that third party for their data to be passed on to third parties for marketing purposes; and
- 13.5.12 it will provide CPW with a copy of its VAT certificate (if any) or letter headed paper on request and will notify CPW of any change to any VAT registration.

14 RECORDS AND AUDIT

- 14.1 The Partner shall keep accurate client account books relating to its customers which shall include details of all shipping records in relation to the Products (including but not limited to the destination of specific batch numbers or IMEI numbers) and more generally such records as are required to document the calculation of the charges payable under this Agreement ("Records").
- 14.2 The Partner shall also procure that its customers (other than end users) will keep accurate client account books relating to their customers, which shall include details of all shipping records in relation to the Goods, including the destination of batch numbers and specific IMEI numbers.
- 14.3 The Partner shall at the request (and cost) of CPW permit representatives of CPW (including any of its advisors or auditors) at any reasonable time during normal business hours on fourteen (14) days prior notice to enter their premises, to carry out a stock audit and to inspect and take copies of any of the Records for the purpose of verifying the accuracy of any amount due under this Agreement at any time during the Term and for six (6) years thereafter.
- 14.4 In addition the Partner shall permit CPW (including any of its advisors or auditors) to enter their premises and access their systems and personnel at any time in order for CPW to fulfil any legally enforceable request by any regulatory body or to verify that the terms of this Agreement are complied with.
- 14.5 The Partner will cooperate and procure cooperation by its personnel with such audit. CPW will ensure that any third party acting on its behalf does so under obligations of

confidentiality, and that any audit is conducted in a manner intended to cause as little disruption to the Partner's business activities as is reasonably possible whilst not prejudicing the ability of the audit to fulfil its purpose in a timely way (taking into account the seriousness and urgency of the concerns relevant to such audit).

15 INTELLECTUAL PROPERTY

- 15.1 All rights, including Intellectual Property Rights and database rights, in and used in connection with the Products, the Personal Data and all other material and data supplied to the Partner by CPW pursuant to this Agreement or supplied by Prospective Customers or Customers to the Partner ("Rights"), are and shall remain vested in CPW absolutely who may use the same as it so wishes and grant licences in respect thereof as it so wishes.
- 15.2 The Partner hereby assigns to CPW, with full title guarantee free from all encumbrances all present and future right, title and interest it may acquire in any such Rights. The Partner shall at CPW's request from time to time (and notwithstanding termination) sign and execute such documents and do all such acts and things and provide such information and assistance as CPW may reasonably require for the purposes of obtaining or confirming to CPW all rights and title to the Rights and for the purpose of asserting protections in or defending any interest in the Rights.
- 15.3 Partner acknowledges that its right to use the CPW Intellectual Property Rights is only as expressly set out in this Agreement. Partner acknowledges and agrees that its use of the CPW Intellectual Property Rights pursuant to this Agreement does not give Partner any rights, title or interest in the CPW Intellectual Property Rights except the right to use the CPW Intellectual Property Rights as expressly permitted by this Agreement, and that all goodwill in or associated with the CPW Intellectual Property Rights, including any goodwill generated by or arising through Partner's activities under this Agreement accrue for the benefit of, and belong exclusively to, CPW or any other party nominated by CPW.
- 15.4 From time to time, Partner may be permitted to use CPW Intellectual Property Rights. In using CPW Intellectual Property Rights, Partner must:
- 15.4.1 comply with the CPW Brand Guidelines;
 - 15.4.2 ensure that each reference to and use of CPW Intellectual Property Rights is in accordance with any written instructions from CPW or CPW;
 - 15.4.3 observe any marketing guidelines and directions regarding the use of CPW Intellectual Property Rights notified by CPW particularly in respect of all advertising materials, websites and signage;
 - 15.4.4 submit details of any use of CPW Intellectual Property Rights to CPW at the address notified to Partner for prior approval at least ten (10) Business Day's before use by Partner. CPW may refuse any use in its absolute discretion.
- 15.5 Partner must not:
- 15.5.1 Alter, destroy, cover or remove any of CPW Intellectual Property Rights ; or

- 15.5.2 Affix its own trade mark (or that of a third party), either in addition to or in place of any existing CPW Intellectual Property Rights affixed to any Products or packaging supplied by or on behalf of CPW or CPW under this Agreement; or, .
- 15.5.3 licence, permit or otherwise authorise any third party to use CPW Intellectual Property Rights.
- 15.6 Partner must immediately inform CPW if Partner becomes aware of any improper or wrongful use by any person of CPW Intellectual Property Rights.
- 15.7 Partner must not do, cause or authorise to be done, anything which may impair, damage or be detrimental to the reputation or goodwill associated with CPW, Products, or the CPW Intellectual Property Rights, which may adversely affect the value or validity of CPW Intellectual Property Rights or which may bring CPW Intellectual Property Rights into disrepute or which may jeopardise or invalidate any registration or application of registration of the CPW Intellectual Property Rights or CPW's title to the CPW Intellectual Property Rights.
- 15.8 Partner must not use, register, attempt to use or attempt to register any name or any combination of names the same as or similar to "Carphone Warehouse Business", or any other trade name of the CPW Group or any confusingly similar name or mark in its business, including any website domain name, trade name or company name without first having obtained the prior written permission of CPW which may be refused in CPW's absolute discretion. Partner agrees to comply with all reasonable conditions and instructions (if any) that CPW may attach to the granting of such permission.
- 15.9 Partner must not register, anywhere in the world, CPW Intellectual Property Rights or any other trade mark which, in CPW's opinion, is identical or confusingly similar to the CPW Intellectual Property Rights.
- 15.10 If, for the purposes of Partner performing any of its obligations under this Agreement, it is necessary for Partner to use any software provided by CPW ("Software"), then CPW shall grant to Partner a non-exclusive, non-transferable licence to use the Software in accordance with CPW's direction and licence terms and solely for the purpose of fulfilling Partner's obligations under this Agreement. Partner acknowledges and agrees that, to the maximum extent permitted by applicable law, CPW disclaims all warranties, conditions or terms, whether express or implied, including implied warranties, conditions or terms of satisfactory quality or fitness for a particular purpose with respect to the Software, any installation of the Software and any accompanying documentation. Partner acknowledges and agrees that CPW will not have any liability for any loss of, damage to, or corruption of, data caused by the installation and/or use of the Software by Partner. Such licence will automatically terminate at the same time that the Partner's appointment under this Agreement is terminated for any reason.
- 15.11 During the term of this Agreement, CPW may approve and agree from time to time for the Partner and CPW to produce Jointly Branded Advertising Materials. Where CPW obtain such agreement and approval from CPW to produce Jointly Branded Advertising Material the following will apply:
- 15.11.1 the responsibility for costs of production and distribution of such Jointly Branded Advertising Materials will be agreed at the time;

15.11.2 either CPW or Partner (the "Creator") must submit all elements of the Jointly Branded Advertising Materials to the other (the "Recipient") for its approval;

15.11.3 if the Recipient rejects any element of the Jointly Branded Advertising Materials submitted by the Creator for approval, the Creator will work with the Recipient to resolve any outstanding issues and continue to resubmit such Jointly Branded Advertising Materials until:

15.11.3.1 the Recipient gives its approval; or

15.11.3.2 the Recipient notifies the Creator that the re-submitted Jointly Branded Advertising Materials do not comply with the Recipient's reasonable requirements in which case the parties will not proceed with the Jointly Branded Advertising Materials.

15.11.3.3 each of CPW and Partner must approve the use of its intellectual property and each will have absolute discretion to refuse the use of its intellectual property in the Jointly Branded Advertising Materials; and

15.11.3.4 each of Partner and CPW shall grant the other party a non-exclusive licence to use the other party's intellectual property for the purposes of producing Jointly Branded Advertising Materials subject to each party's compliance with the approval process set out above and any other conditions imposed by a party. Such licence will automatically terminate at the same time the Partner's appointment under this Agreement is terminated for any reason.

15.12 If at any time during the term of this Agreement the Partner becomes aware that any of the material and data supplied to the Partner by CPW pursuant to the Agreement is in breach of any applicable law or regulation or infringes the Intellectual Property Rights of any third party or that the Intellectual Property Rights in any material or data supplied by CPW to the Partner pursuant to this Agreement are being infringed by any third party then the Partner agrees to immediately notify CPW in writing and the Partner shall make no comment or admission to any third party in respect of such matter.

15.13 The Partner warrants that the Partner's Branding is not in breach of any third party's intellectual property rights and, without prejudice to any other right or remedy available to CPW, the Partner will indemnify CPW and the CPW Group against all claims, actions, damages, proceedings and related costs and expenses incurred by CPW as a consequence of such a breach.

16 INDEMNITIES AND LIMITS OF LIABILITY

16.1 Subject as expressly provided in this Agreement all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

16.2 Save as otherwise expressly provided in this Agreement, the following provisions set out CPW's entire liability for any act or omission whether in contract, misrepresentation, pre-contractual misrepresentation, fraudulent misrepresentation, tort (including negligence) or otherwise howsoever arising.

- 16.3 CPW's liability to Partner for fraud, fraudulent misrepresentation or for death or personal injury cause by CPW's negligence shall not be limited.
- 16.4 Without prejudice to clause 16.3 above, CPW shall not be liable to the Partner for any increased costs, expenses, loss or corruption of data, use, profits, loss or damage to goodwill, business, reputation, contracts, revenues or failure to achieve anticipated savings, or any type of special (in each case whether such loss is deemed direct or indirect and howsoever arising including breach of contract or negligence), indirect or consequential loss of any kind (including loss or damage suffered by the Partner as a result of a claim alleged or an action brought by a third party) even if such loss were reasonably foreseeable or CPW had been advised of the possibility of the Partner incurring the same.
- 16.5 Without prejudice to clause 16.3 above and subject to clause 16.4, CPW's aggregate liability for all claims relating to or in connection with this Agreement shall be limited to the amount paid by the Partner for the Goods.
- 16.6 The Partner acknowledges it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by CPW.
- 16.7 The Partner agrees to indemnify and keep indemnified, CPW and all other members of the CPW Group, from and against all liabilities, penalties, damages, claims, actions, proceedings, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by CPW or any other member of the CPW Group arising out of or in connection with any breach of this Agreement, any infringement of any legal obligation (or by CPW where the liability arose in relation to any act or omission by the Partner), by the Partner, any claim by any customer or end user relating to the Products and any claim against CPW relating to the misappropriation by the Partner or any third party of any Value Added Tax (or any equivalent tax in any other country) relation to the Products (including, without limitation, any charges, deductions or otherwise made by CPW pursuant to the terms of this Agreement), whether incurred during the Term of this Agreement or thereafter.

17 INSURANCE

- 17.1 The Partner shall effect and maintain in force with a reputable insurance company during the Term, insurance as is customary (as to type and levels) for a skilled and experienced provider of services similar to the Services.
- 17.2 The Partner shall, on the written request of CPW from time to time, provide a certificate signed by the Partner's insurer or such insurer's appointed agents confirming that the Partner is insured in accordance with this clause 17.
- 17.3 The Partner shall during the term of this Agreement and for a period of six (6) years thereafter:
- 17.3.1 administer the insurance policies and the Partner's relationship with its insurers in accordance with Good Industry Practice; and
 - 17.3.2 do nothing to invalidate any insurance policies or to prejudice the Partner's entitlement under the insurance policies.
- 17.4 The Partner shall ensure that its contractors, subcontractors and agents are insured in the same manner as set out in this clause 17.

- 17.5 The Partner shall notify CPW immediately if any of the insurance policies set out in clause 17.1 become invalid or are cancelled.

18 CONFIDENTIALITY

- 18.1 Neither party shall disclose Confidential Information to any third party and shall only release the Confidential Information to those of its directors, officers or employees who need to know it strictly for the purpose of exercising or performing that party's rights and obligations under this Agreement (the "**Purpose**"). Each party shall treat the other party's Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information. The receiving party warrants that these measures provide adequate protection against unauthorised disclosure, copying or use.
- 18.2 The receiving party shall make no commercial use of the Confidential Information or use it otherwise than for the Purpose.
- 18.3 Confidential Information may be disclosed if and to the extent:
- 18.3.1 it is required by law, by any securities exchange, court order or other authority of competent jurisdiction or any regulatory or government authority to which the receiving party is subject;
 - 18.3.2 the receiving party considers it necessary to disclose the information to its professional advisers, auditors or bankers provided that it does so on terms protecting the information;
 - 18.3.3 the information has entered the public domain through no fault of the receiving party;
 - 18.3.4 the information was previously disclosed to the receiving party without any obligation of non-disclosure; or
 - 18.3.5 the disclosing party has given its consent in writing
- provided that in any of the circumstances specified in clause 18.3.1 and clause 18.3.2 the receiving party shall give the disclosing party, if possible, not less than 10 Business Days' notice of such disclosure.
- 18.4 The receiving party shall not make copies or reproductions of Confidential Information except to the extent reasonably necessary, and all copies made shall be dated and shall be the property of the disclosing party. The receiving party shall keep accurate and up to date records of any copies or reproductions and a list of any of the parties set out in clause 18.3.2 above. All Confidential Information and copies shall be returned to the disclosing party within 30 days of receipt of a request from the disclosing party.

19 DATA PROTECTION

- 19.1 The provisions of this clause 19 shall apply whenever Personal Data shall be processed as part of this Agreement. For the purpose of this Agreement, and if applicable, the Partner shall be a Data Processor and CPW shall be the Data Controller in relation to the Personal Data. As a result, the Partner shall comply with the obligations placed on it as a data

processor by the GDPR and nothing in the Agreement shall relieve the Partner of such obligations.

- 19.2 All Personal Data which relates to CPW, its employees, its customers or any other person in respect of which CPW is a data controller shall at all times be and remain the property of CPW. The terms Data Controller, Data Processor, Process, Personal Data, and other defined terms in this clause shall be as defined in the GDPR.
- 19.3 Where applicable, the Partner shall Process the Personal Data which is set out in and for the purposes set out in Schedule 4.
- 19.4 The Partner shall assist CPW in providing subject access and with allowing data subjects to exercise their rights under the GDPR.
- 19.5 The Partner shall provide reasonable assistance, at CPW's cost (such costs to be agreed with CPW in advance) and on reasonable notice, with any data protection impact assessments.
- 19.6 Where the Partner is required to collect 'consent' from a data subject under this Agreement it shall ensure such consent is freely given, specific, informed and contains an unambiguous indication of the data subject's wishes by a statement or by a clear affirmative action which signifies agreement to the processing of personal data relating to him or her.
- 19.7 The Partner agrees to only use the Personal Data for the legitimate purposes of performing its obligations under, and carrying out the services specified in this Agreement.
- 19.8 In relation to the Personal Data, the Partner will act only on written instructions from CPW given from time to time. For the avoidance of doubt, if the Partner is ever unsure as to the parameters of the instructions issued by CPW it will as soon as reasonably practicable revert to CPW for the purpose of seeking clarification or further instructions.
- 19.9 The Partner shall ensure that the Processing of Personal Data is subject to appropriate measures (including organisational and technical measures) to ensure the security of the Personal Data is appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. In assessing the appropriate level of security, the Partner shall take into account the risks from processing, in particular from a Personal Data Breach. When looking at what is appropriate the Partner shall take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 19.10 The Partner shall not subcontract or outsource the processing of any of the Personal Data to any third party without the prior written consent of CPW and without having put in place a written contract with the sub-processor which complies with the requirements of GDPR.
- 19.11 The Partner will also take reasonable steps to ensure the reliability of any of its employees, sub-contractors and agents who have access to the Personal Data and ensure that they process data in compliance with the GDPR. ensuring in each case that access is limited to those individuals who need to know / access the relevant Personal Data, as necessary for the purposes of this Agreement. In any event, the Partner shall ensure that all persons acting on its behalf to Process Personal Data are subject to appropriate obligations of confidentiality.

- 19.12 The Partner shall within a reasonable time of written request from CPW submit such information as is necessary to demonstrate compliance with its obligations relating to Personal Data under this Agreement. Such compliance shall include the requirement for the Partner to cooperate with any audit and inspections carried out by CPW or by an independent, suitably qualified representative of CPW acting subject to obligations of confidence. If it prefers, the Partner may nominate an appropriate independent, suitably qualified auditor, and CPW shall accept such auditor unless it can show it has good reason not to accept the nomination. Such audits shall be carried out on reasonable notice and at CPW's request, and shall be on the basis that the audit shall be conducted so as to respect the confidentiality of the other clients of the Partner and so as to not unnecessarily disrupt the Partner's business. The Partner shall provide any other information that is needed to ensure that the parties are complying with the GDPR.
- 19.13 The Partner shall promptly notify CPW without undue delay and upon the Partner or any sub-processor becoming aware of a Personal Data Breach affecting the Personal Data, providing CPW with sufficient information to allow CPW to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the GDPR. The timing of the Partner's report must in any case be prompt enough so as to allow CPW a reasonable time to assess the report and act on it within the 72 hours which CPW has in which to submit its own report.
- 19.14 The Partner shall not transmit any data to any country or place outside the European Economic Area without the express prior written consent of CPW. If requested to do so by CPW, the Partner agrees to promptly execute and procure that any sub-contractor used by it promptly executes an approved form set of data transfer model clauses to ensure that all overseas data transfers comply with the provisions of applicable law.
- 19.15 The Partner shall promptly delete (and confirm deletion in writing) or return securely all copies of personal data processed by it pursuant to this Agreement at the point of termination or expiry of this Agreement provided that the Partner may retain Personal Data where it is legally required to do so and then only to the extent and for such period as required by law.
- 19.16 The Partner shall indemnify and hold harmless CPW and its employees from and against any loss, claim, damage or liabilities (or action in respect thereof that may be asserted by any third party) that may result from the use by the Partner of the Personal Data other than in accordance with this clause and will reimburse CPW for all expenses (including legal fees) incurred by CPW in connection with any such action or claim.

20 FORCE MAJEURE

- 20.1 A party, provided that it has complied with the provisions of clause 20.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control which shall not include any labour disputes or industrial action of the party seeking to rely on this clause or companies in the same group of companies as such party or the non-performance by suppliers or subcontractors in the same group of companies as the party seeking to rely on this clause ("**Force Majeure Event**").
- 20.2 The corresponding obligations of the other party will be suspended to the same extent as those of the party first affected by the Force Majeure Event.

20.3 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:

20.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

20.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

20.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

20.4 If the Force Majeure Event prevails for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate this Agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

21 TERMINATION

21.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time after the happening of any of the following events:

21.1.1 the other party commits a material breach of any of the terms set out in this Agreement provided that where such breach is capable of remedy the other party has been advised in writing of the breach and has not rectified it within thirty (30) days of receipt of such advice; or

21.1.2 the other party summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts, has a receiver, manager or administrative receiver appointed over any of its assets, undertaking(s) or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is subject to an event analogous to any of the foregoing; or

21.1.3 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

21.2 CPW may terminate this Agreement with immediate effect by giving written notice to the Partner at any time:



- 21.2.1 following a change of control of the Partner (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - 21.2.2 in the event that any licence, permission or authorisation necessary for the provision of the Products by CPW is revoked.
- 21.3 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, CPW may terminate this Agreement for convenience on giving the Partner not less than 30 days' written notice.

22 CONSEQUENCES OF TERMINATION

- 22.1 All rights and obligations of the parties shall cease to have effect immediately on termination of this Agreement except that termination shall not affect:
- 22.1.1 the accrued rights and obligations of the parties at the date of termination;
 - 22.1.2 the right to claim damages for losses whenever they occur provided they arise out of an event occurring on or before termination of this Agreement; and
 - 22.1.3 the continued existence and the validity of the rights and obligations of the parties under any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.
- 22.2 On termination of this Agreement the Partner must:
- 22.2.1 within seven days send to CPW, or otherwise dispose of in accordance with CPW's directions, all marketing guidelines, advertising materials and Customer Order's in the Partner's possession;
 - 22.2.2 immediately cease to promote, market or advertise the Products; and
 - 22.2.3 immediately cease using the CPW Intellectual Property Rights;
 - 22.2.4 return all Product's in its possession or control at that time; and
 - 22.2.5 return Products provided to Partner for demonstration purposes.

23 NON-SOLICITATION

- 23.1 The Partner shall not during the Term of this Agreement or for a period of two years thereafter intentionally attempt to solicit or entice away from CPW or assist any person in soliciting or enticing away from CPW any Customer who has been acquired pursuant to this Agreement.
- 23.2 Unless agreed otherwise CPW shall not at any time:
- 23.2.1 enter into a direct agreement with any Customer who has been acquired pursuant to this Agreement for the provision of Goods; or
 - 23.2.2 contact any Customer,

save that the provisions of this clause 23.2 shall not apply to any Customer procured by an Affiliate.

24 DISPUTE RESOLUTION

- 24.1 Subject to either party's rights and remedies under and in accordance with this Agreement including under clause 21, prior to initiating any proceedings in the English courts, the parties may agree to follow the procedure set out in this clause 24 to settle all disputes in relation to this Agreement ("Disputes"). If so, the Partner shall not contact any person other than those referred to below either within CPW or the CPW Group in relation to Disputes and either party may trigger the application of this clause 24 by serving notice in writing of any such Dispute ("Dispute Notice").
- 24.2 If a Dispute remains unresolved after a period of thirty (30) days after the service of a Dispute Notice, either party shall be free to pursue whatever remedies are available to them at law, provided that nothing in this clause 24 shall prevent either party at any time, in cases where injunctive, declaratory or other equitable relief is required, from commencing proceedings and pursuing its claims before the courts of England and Wales in accordance with clause 36.
- 24.3 All rights of the parties in respect of the Dispute shall be and remain fully reserved, and shall be strictly confidential and shall be conducted "without prejudice" to any subsequent proceedings.
- 24.4 If a Dispute is resolved pursuant to this clause 24, CPW and the Partner shall create a written memorandum of their agreement in relation to the Dispute which shall be signed by both CPW and the Partner and following which the parties shall, as soon as reasonably practicable, execute such documents and do such things to give effect to such agreement.
- 24.5 For the avoidance of doubt, nothing in this clause 24 precludes either party from exercising its rights at law, or otherwise pursuant to this Agreement, at any time.

25 PREVENTION OF CORRUPTION

With respect to any transaction or business effected in connection with this Agreement, the Partner hereby confirms that it will comply with Anti-Corruption Laws and neither the Partner or any of its direct or indirect owners, directors, officers, employees, or agents has or will pay, offer, promise to pay or authorise the payment of, directly or indirectly, any bribe, gift, monies, financial or other advantage or anything else of value in violation of Anti-Corruption Laws. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, CPW may terminate this Agreement effective immediately if it makes a good faith determination that the other party or any person acting on its behalf with respect to this Agreement has breached the covenant contained in this clause and/or otherwise has committed a violation of the Anti-Corruption Laws or caused the other, its officers, directors, employees and/or affiliates to be in violation of the Anti-Corruption Laws.

26 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person other than one of the parties hereto under the Contracts (Rights of Third Parties) Act 1999 and no party can declare itself a trustee of its rights under this Agreement for the benefit of any third party.

27 ENTIRE AGREEMENT

- 27.1 This Agreement and any documents referred to in it sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement and the parties agree that the terms of this Agreement shall prevail over any purchase order, order acceptance, or terms and conditions .
- 27.2 Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties promises and terms contained or expressly referred to in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

28 ASSIGNMENT

- 28.1 Except as set out in clause 28.2, no party may assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, or sub-contract any of its obligations under it, without the prior written consent of the other party.
- 28.2 CPW may on prior notice to the Partner assign its rights and obligations pursuant to this Agreement to a third party.

29 CHANGES TO TERMS

- 29.1 CPW shall be entitled to vary any of the terms of this Agreement for any reason at any time. Any variations will be posted on CPW's Website.
- 29.2 Partners should consult CPW's Website regularly for the latest version of this Agreement and the latest Price Book.
- 29.3 Any Order placed on the Currys PC World Business website shall constitute the acceptance of the latest version of the terms of this Agreement.

30 SUSPENSION

- 30.1 CPW shall have the right at any time to suspend provision of the Products if CPW has reasonable cause to believe that the Partner is in material breach of any of its obligations under this Agreement.
- 30.2 Following such suspension, CPW may request copies of any documents used by the Partner in the performance of the Services.

31 SEVERANCE

To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

32 WAIVER



- 32.1 Any right, power or remedy of a party under or pursuant to this Agreement or by law shall not be capable of being waived otherwise than by an express waiver in writing signed by an authorised representative of the relevant party.
- 32.2 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

33 NO PARTNERSHIP OR COMMERCIAL AGENCY

- 33.1 The parties confirm that they have considered the Commercial Agents (Council Directive) Regulations 1993, including the Schedule thereto (the "Regulations") and agree that the Regulations do not apply to this Agreement. Accordingly, CPW shall have no liability to the Partner and/ or the Agents. The Partner and / or the Agents shall therefore have no claim against CPW for any payment in respect of minimum notice, compensation, or indemnity under or pursuant to the Regulations, whether for loss of income, loss of agent rights, loss of goodwill or any analogous loss, upon the termination of this Agreement howsoever caused.
- 33.2 Without prejudice to clause 33.1 above, if and to the extent that the Regulations may nevertheless be found to apply, it is agreed that, upon termination of this Agreement otherwise than by reason of the Partner's breach, the Partner shall be entitled to be indemnified rather than compensated, if and to the extent that the Partner is otherwise able to prove such entitlement under the Regulations. For the avoidance of doubt, in no circumstances shall the Partner have any right to compensation under the Regulations.
- 33.3 For the avoidance of doubt, the terms "Affiliate" is a defined term for the purposes of this Agreement and, shall in no way be taken to constitute a partnership between the parties.

34 COSTS

Each party will pay their own costs and expenses incurred in connection with the entering into of this Agreement.

35 NOTICES

Any notice to a party under this Agreement shall be in writing in the English language, signed by or on behalf of the party giving it and shall be delivered personally, by pre-paid first class post, (or airmail, if abroad), prepaid recorded delivery (or international equivalent) to the address of the party appearing at the beginning of this Agreement (in the case of CPW to its trading address), or as otherwise notified in writing from time to time. A notice shall be deemed to have been served at the time of delivery, if delivered personally, or 48 hours after posting for an address in the United Kingdom and 5 Business Days after posting for any other address.

36 GOVERNING LAW AND JURISDICTION

- 36.1 Any right, power or remedy of a party under or pursuant to this Agreement or by law shall not be capable of being waived otherwise than by an express waiver in writing signed by an authorised representative of the relevant party.

- 36.2 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law.
- 36.3 The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement, its subject matter or formation.

SCHEDULE 1

CPW Brand Guidelines

Where Partner is entitled to use CPW Intellectual Property Rights in accordance with the Agreement, Partner must:

1. strictly abide by and observe CPW's instructions, requirements, directions and specifications regarding colour references and style guides for reproduction of any of CPW Intellectual Property Rights , and in particular Partners must abide by and observe any extranet through which Partners will have access to any applicable guidelines and branded material as notified to Partners from time to time);
2. only apply CPW Intellectual Property Rights to materials that comply with CPW's written approval;
3. ensure any trade mark/copyright notice specified by CPW (or such other notice as CPW may in writing require) is affixed adjacent to the CPW Intellectual Property Rights or in any other position as CPW directs on all material using or incorporating all or any part of the CPW Intellectual Property Rights ;
4. not use CPW Intellectual Property Rights in juxtaposition or in conjunction with any other symbol, logo, mark or other means of identification or merchandising, except with the prior written approval of CPW;
5. not use CPW Intellectual Property Rights in a partial or fragmentary form but always in its complete form as depicted in accordance with CPW's written instructions (unless otherwise agreed in writing by CPW);
6. if cropping CPW Intellectual Property Rights , only do so in accordance with the cropping guide (as notified to Partners from time to time);
7. if using the CPW logo, ensure that the Partner Branding remains dominant, with the CPW logo being no more than 60% in size of the Partner logo;
8. not use CPW Intellectual Property Rights on any product or other material (including stationery, business cards or correspondence or any other form of written communication) unless prior written approval is obtained from CPW;
8. not use the CPW Intellectual Property Rights otherwise than as permitted by the Agreement or in any manner that would be in contravention of any law, regulation or applicable standard except in accordance with CPW's written instructions;
9. not cause or permit anything which may challenge, damage or endanger the CPW Intellectual Property Rights or CPW's title to the CPW Intellectual Property Rights or assist or allow any other person to do so except in accordance with CPW's written instructions;
10. not register or attempt to register any part of the names or words forming part of the CPW Intellectual Property Rights or any work substantially identical or deceptively similar to as or as part of a business name or corporate name;

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11. not register or attempt to register any part of CPW Intellectual Property Rights or any name, word, mark, design, emblem, visual representation or slogan substantially identical with or deceptively similar to as or as part of a trade mark or design;
12. not represent that it has any right, title or interest in CPW Intellectual Property Rights or in any application for registration of it or in any fraudulent, obvious or colour imitation of it other than pursuant to the rights expressly granted by this Agreement; and
13. not use any name, word, mark, design, emblem, visual representation or slogan similar or capable of being confused with any part of CPW Intellectual Property Rights .

Any material produced by the Partner containing CPW Intellectual Property Rights which does not meet the CPW Brand Guidelines set out in this Schedule 1 will not be approved by CPW and any unauthorised use will be considered to be a breach of the terms of this Agreement.

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SCHEDULE 2

FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR "APPLE" PRODUCTS

In this Schedule 2, (the "**iPhone Supplement**") CPW sets out the additional terms upon which:

- (a) CPW will sell Apple Devices to the Partner for re-sale to customers in accordance with the provisions of the Agreement;
- (b) CPW will sell Apple Accessories to the Partner for re-sale to customers.

1. DEFINITIONS

The additional capitalised terms used in this Schedule 2 are defined in Appendix 1 to this Schedule 2.

2. SCOPE OF THIS SCHEDULE

- 2.1 The relationship between the Agreement and this Schedule 2 shall be as follows:
 - (a) the Agreement shall be amended by this Schedule 2 in respect of:
 - (i) the sale by CPW to the Partner of Apple Devices; and
 - (ii) the procuring of iPhone Customers by the Partner;
 - (b) the Agreement shall continue unamended by this Schedule 2 in respect of the matters governed by the Agreement that are not explicitly amended in this Schedule 2;
 - (c) in the event that any provision in this Schedule 2 deals with a matter that is explicitly dealt with in the Agreement:
 - (i) the terms of this Schedule 2 shall have precedence in respect of the matters described in paragraph 2.1(a); and

- (ii) the terms of the Agreement shall apply unamended in all other matters.
- 2.3 the Partner will distribute and resell Authorized Products in Authorized Locations only. The Partner will not distribute and resell Authorized Products in any other locations without CPW's prior written consent (unless required to do so by applicable law).
- 2.4 CPW may terminate this Schedule 2 without liability the Partner: (i) on not less than 3 months' prior written notice at any time in its sole discretion or (ii) immediately on notice if Apple terminates CPW's authorisation to sell Authorized Products to the Partner for any reason.
- 2.5 The parties agree that it shall be a condition of this Schedule 2 that the provisions of this Schedule 2 may be enforced directly by Apple subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.1 The parties agree that any variation, amendment or modification to the terms of this Schedule 2 or any of them or the rescission, cancellation or termination by agreement of this Schedule 2 which might extinguish or alter Apple's right under this paragraph to directly enforce any or all of the provisions of this Schedule 2 will require the prior written consent of Apple save in respect of the Trading Package.
- 2.5.2 Save as expressly provided in this paragraph, the parties intend that no person (other than Apple) who is not a party to this Schedule 2 shall have any right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Schedule 2.
- 2.5.3 Save as expressly provided in this paragraph, notwithstanding that any term of this Schedule 2 may be or become enforceable by a person (other than Apple) who is not a party to it, the terms of this Schedule 2 or any of them may be varied, amended or modified or this Schedule 2 may be rescinded, suspended, cancelled or terminated by agreement in writing between the parties to this Schedule 2 (in each case) without the consent of any such third party.
- 2.5.4 the Partner acknowledges and agrees that it has no contractual rights whatsoever against Apple under this Schedule 2 or otherwise in respect of the subject matter of this Schedule 2.
- 2.6 For the avoidance of doubt, except as provided in paragraph 8, the Partner shall not provide customer care to iPhone Customers and the Partner shall not invoice such customers and/or collect the iPhone Customer debt.
- 2.7 To the extent permitted by applicable law, the Partner shall take appropriate steps to ensure that it does not sell Apple Devices to any Business Purchaser who intends to export them for sale outside of the UK.

Because the UK is in the European Economic Area (“EEA”), the parties acknowledge that the restrictions imposed on sales of Apple Devices within the EEA:

- (a) shall not prevent the Partner from making “active” sales (as defined in the European Commission’s Guidelines on Vertical Restraints (2000/C29/01) accompanying European Commission Regulation (EC) No. 2790/1999 on the application of Article 81(3) of the EC Treaty to categories of vertical agreements and concerted practices (the “Guidelines”)) of Apple Devices to any other carrier, reseller, or end customer located within the EEA except within Belgium, Germany, Hungary, Ireland, Netherlands, Romania, and Spain, where “active” sales (as defined in the Guidelines) are permitted only to the appointed exclusive carriers for so long as they are exclusive; and
- (b) shall not prevent the Partner or any Approved Company from making “passive” sales (as defined in the Guidelines) of Apple Devices to customers in any other EEA country, including responding to unsolicited requests from those customers.

3. PARTNER’S OBLIGATIONS

- 3.1 Partner agrees to, and to ensure that each Approved Company shall, promote and resell Authorized Products in a professional and competent manner and in accordance with this Schedule 2 and the instructions of CPW (for the avoidance of doubt, such instructions may relate to, but shall not be limited to, any matters which effect the customer experience as well as matters relating to Partner’s point of sale arrangements and retail space allocations). Partner will train and maintain a sufficient number of capable personnel, certified by CPW, who will provide knowledgeable assistance to customers and potential customers in connection with the Authorized Products. Apple and/or CPW will provide Partner’s training team with product information that describes the features of Apple Devices.
- 3.2 Partner will not make any representations, warranties, or guarantees with respect to Authorized Products that are inconsistent with Apple’s literature or training materials or engage in other behaviour that could adversely affect Apple’s goodwill.
- 3.3 Partner will use its best endeavours to promote the Authorized Products. Apple or CPW will provide design direction and approve how Authorized Products will be displayed in Authorized Locations. Partner will bear the cost of in-store display fixtures used to promote Authorized Products.
- 3.4 Partner agrees that it will not modify any Authorized Product in any way, including but not limited to a way that alters its appearance or functionality without CPW’s prior written approval. Partner will include all packaging, labels, and in-box materials intact, as shipped from CPW, with each Authorized Product sold and will not remove, obfuscate, or add any mark to any Authorized Product or related material. Partner will distribute software that is incorporated in or packaged with an Authorized Product solely in connection with the authorized sale of such product and will have no other rights with respect to such software.

- 3.5 Partner will comply with CPW's and/or Apple's inventory reporting, inventory return, and other practices and procedures, which are attached as Appendix 2 to this Schedule 2, and which may be modified by CPW from time to time. During the term of this Schedule 2 and for two years thereafter, Partner shall procure that CPW and/or Apple may inspect the Authorized Locations and related facilities and review all relevant records during regular business hours for the purpose of verifying Partner's compliance with the terms of this Schedule 2 and, upon CPW's and/or Apple's reasonable request, Partner will provide such requesting party copies of any relevant records, financial statements, and other documents.
- 3.6 Partner will promptly report to CPW and Apple any import or suspected import, by a third party, of any Authorized Product bearing Apple Marks which have not been distributed or marketed by Apple for sale in the UK as far as and as soon as Partner is aware of such import or such suspected import.
- 3.7 Partner may not bundle Authorized Products with other third-party products without CPW or Apple's prior written permission. "Bundle" means to combine Authorized Products and third-party products for sale at a single price.
- 3.8 Throughout the term of this Schedule 2, Partner will use its best endeavours to maximize sales of Authorized Products, through all Authorized Locations.
- 3.9 Marketing
- 3.9.1 Partner must obtain CPW and Apple's prior written approval before it releases, places, or distributes any corporate communication or marketing material that mentions Apple, an Apple product, CPW or this Agreement or includes an image of an Apple Device, including any advertising or direct marketing targeted at iPhone Customers. Partner agrees to provide all such communications and materials to CPW and Apple in time for review and comment.
- 3.9.2 During the term of this Schedule 2 and for two years thereafter, Partner shall not implement, without Apple's prior written consent, any marketing campaign or program that is targeted at iPhone Customers, including any campaign or program that encourages iPhone Customers to switch from an Apple Device to another handset. This paragraph 3.9.2 is not intended to preclude Partner from running television ads, print ads, radio ads, billboards, or other forms of general marketing that may reach iPhone Customers as part of the general public, provided that such marketing is not specifically targeted at iPhone Customers.
- 3.10 As a fundamental term of this Schedule 2, Partner shall not make, permit, allow, be complicit in or acknowledge any other public announcements relating to the subject matter of this Schedule 2. Any breach of this paragraph shall constitute a fundamental breach incapable of remedy and CPW shall be entitled to immediately terminate this Schedule 2 on notice to Partner and enforce all rights available to it including claiming damages.

- 3.11 CPW shall be entitled to disclose the terms of this Schedule 2 to Apple at any time without breaching any obligations of confidentiality.
- 3.12 CPW is solely responsible for specifying Service Plans, including plan features, rates and associated terms and conditions. Partner agrees that, continuing throughout the term of this Schedule 2:
- (a) Partner shall offer iPhone Customers who purchased an iPhone via Partner or potential iPhone Customers, all such Service Plans as may be specified by CPW from time to time, which may include Service Plans offered to consumer customers, Service Plans offered to business customers and pre-pay Service Plans; and
 - (b) Partner will encourage customers to add Apple Devices to any existing corporate or business plan at the existing price including any discounts, rebates, or other incentives, unless otherwise specified in writing by Apple and CPW.

An iPhone Customer will remain an iPhone Customer for so long as he is using an Apple Device on a Service Plan, even if he extends or changes his service plan or selects a different Apple Device from time to time.

- 3.13 Except as expressly described in this Agreement, Partner shall treat iPhone Customers like other customers in all respects, including, without limitation, providing them the same level of service and extending the same offers and promotions.
3. The maximum retail price at which Partner can resell an Apple Device shall be notified by CPW in writing from time to time. Partner or the applicable Approved Company will be solely responsible for determining the price it charges customers when reselling any Apple Device, below the maximum retail price.
- 3.17 Notwithstanding anything to the contrary in this Schedule 2, Partner shall not be required to resell any Apple Devices at negative prices (i.e. below £0).
- 3.18 In the event that Apple elects to fund additional subsidies or other incentives in relation to an Apple Device, Partner shall offer such additional subsidies or other incentives to customers who purchase such Apple Device through the Partner.
- 3.19 Partner agrees that it shall offer its sales staff commission payments and/or other sales incentives in relation to Apple Devices that are the same as or better than the total commission payments and/or other sales incentives it offers its sales staff on any other handsets distributed by or on behalf of Partner.

4. PROPRIETARY RIGHTS

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Prior to any use whatsoever, Partner hereby agrees to contract with Apple for a licence to use Apple's trade marks in relation to the promotion and sale of Authorized Products through this Agreement. Except as expressly permitted in such licence, Partner agrees not to use any Apple trademark, service mark, logo, trade dress, design, "look and feel" (e.g., the design and layout of Apple's retail stores or websites, or the name under which Partner does business), in any manner whatsoever, or act in any manner that implies an endorsement of Partner by Apple.

5. AFTER SALES

5.1 Authorized Product Warranty

5.1.1 Partner understands that Apple will extend its standard warranty to customers who purchase an unmodified Authorized Product from Partner. Apple will be solely responsible for defining its end-user warranty and how it fulfils its warranty obligations. Partner must provide a copy of Apple's standard limited warranty and end-user software license to any customer or potential customer who requests one. Partner must also provide each customer who purchases an Authorized Product a receipt or invoice showing the customer's name and address, and the date and location of sale. Partner agrees that should Apple direct CPW that such receipts must also show Apple's then current limited warranty and Authorised Product serial number, Partner shall be required to promptly add such details to the receipts.

5.2 Partner Additional Warranties

5.2.1 Partner may offer additional warranties in connection with Authorized Products, provided that it clearly notifies customers that such additional warranties are offered by Partner, not Apple, that Partner bears all costs associated with such additional warranties, and that Partner indemnifies Apple and CPW with respect to such additional warranties as set forth below.

5.3 Apple Phone Support

5.3.1 Partner acknowledges that Apple and CPW call centers will provide complimentary Customer Support regarding Apple Devices, during the period specified in the service-related materials included with the Apple Device (if any).

5.4 Phone Support

5.4.1 Partner will also provide complimentary low-level Customer Support on CPW's instructions from time to time regarding Authorized Products and related Apple software and services to iPhone Customers who contact a Partner call center and will help iPhone Customers requesting higher-level Customer Support regarding Authorized Products or related Apple software or services to access Apple and/or CPW's call centers through a warm telephone call transfer, automated call routing, or other agreed escalation.

- 5.4.2 Notwithstanding the above, Partner shall provide such Customer Support as CPW may specify from time to time.
- 5.5 Web Support
- 5.5.1 Partner will ensure that Partner's website will provide links to Apple's website to allow iPhone Customers easy access to Customer Support regarding Authorized Products and related Apple software and services.
- 5.6 Warranty Repairs
- 5.6.1 Partner acknowledges that Apple and/or CPW will provide iPhone Customers with complimentary Covered Repairs during the warranty period.
- 5.6.2 Partner shall ensure that any iPhone Customer seeking warranty repairs assistance shall be routed to an CPW call centre or Apple call center via the agreed channel, unless otherwise directed by Apple or CPW.
- 5.7 Service Dispatch and Repair Status
- 5.7.1 Partner acknowledges that Apple may, in its sole discretion, authorize certain Authorized Locations, CPW or any approved third party to perform Service Diagnosis and, if necessary, Facilitate Repairs for Same Unit Service or Exchange Service. In the event that Apple so determines: (i) Partner will agree to perform Service Diagnosis and Facilitate Repairs, or to use CPW or such approved third party to perform Service Diagnosis and Facilitate Repairs and (ii) if applicable, Apple will make training materials available to such Authorized Locations to help Partner perform Service Diagnosis and Facilitate Repairs. Any Partner costs related to Service Diagnosis and Facilitate Repairs of Apple Devices purchased by Partner will be the sole responsibility of Partner. Such Authorized Locations or other approved third party will utilize Apple-designated systems and processes to Facilitate Repairs. Partner will use Apple's web-based repair status tool to assist iPhone Customers seeking Authorized Product repair status information.
- 5.8 Extended Service Contract
- 5.10.1 Partner will offer Apple's extended service contract for sale in all Authorized Locations if Apple elects to add the extended service contract to the Apple Price List.
- 5.9 No Other Warranty
- 5.9.1 NEITHER APPLE NOR CPW MAKES ANY OTHER WARRANTY TO PARTNER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE AUTHORIZED PRODUCTS. APPLE AND CPW SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, TERMS, UNDERTAKINGS, OBLIGATIONS AND

REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW.

6. INDEMNITY

If Apple or CPW promptly notifies Partner and gives Partner sole control, Partner will defend any claim or threatened claim and indemnify Apple or CPW as the case may be against damages finally awarded or paid in settlement of any claim or threatened claim (including reasonable fees of attorneys or other professionals) arising out of the acts or omissions of Partner or its employees or agents, or any Approved Company or its employees or agents.

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Appendix 1 to Schedule 2

Definitions

Whenever capitalized in this Schedule 2 or in any of its Appendices:

"**Accessory**" means any Apple-branded accessory for an Apple Device, including without limitation any carrying case, headset, belt-clip, battery charger, rechargeable battery pack, car kit, hands-free option, or antenna, on Apple's Price List.

"**Apple**" means Apple Sales International.

"**Apple Device**" means any Apple-branded mobile cellular phone on Apple's Price List and which Partner purchases from CPW.

"**Apple Marks**" means trademarks, service marks, logos, and product names owned by or licensed to Apple and used on and in connection with the Authorized Products on the Apple Price List.

"**Apple Price List**" means the price list provided by Apple from time to time showing the purchase price for Authorized Products.

"**Authorized Location**" means any retail store, outlet, direct channel or website that has been approved by CPW and remains so approved from time to time.

"**Authorized Product**" means any such Apple Device or Accessory as CPW shall notify to Partner from time to time.

"**Covered Repair**" means a repair or replacement covered by Apple's standard end-user warranty, or if purchased by the iPhone Customer, Apple's extended service contract.

"**Customer Support**" means information to help iPhone Customers answer questions about the product or service, including troubleshooting, answers to frequently asked questions, and instructions regarding product features. For purpose of this Schedule 2, tier 1 Customer Support means information to help iPhone Customers troubleshoot Authorized Products or related Apple software and answer lower level questions or frequently asked questions.

"**Exchange Service**" means Apple's process whereby Apple may provide a replacement Apple Product to the iPhone Customer upon receipt of the original Authorized Product that is subject to the service request.

"**Facilitate Repairs**" means to capture an Authorized Product, order necessary service parts and/or repairs, dispatch the Authorized Product to an Apple Repair Depot using a Recovery Box, and return the repaired or replacement Authorized Product to the iPhone Customer.

"**iPhone Customer**" means anyone using an Apple Device.

"**Recovery Box**" means a package designed to hold an Authorized Product or loaner unit for the purpose of secure shipment to or from an Apple Repair Depot.

"**Same Unit Service**" means Apple's process whereby the Authorized Product that is subject to the service request is dispatched to an Apple Repair Depot, examined, repaired or replaced, and returned to the iPhone Customer.

"**Service Diagnosis**" means Apple's process for diagnosing potential service issues with Authorized Products, including "no trouble found" screening, basic troubleshooting, and failure symptom and cure diagnosis.

Appendix 2 to Schedule 2
Apple Sales Practices and Procedures

1. Definitions

Capitalized terms in this Appendix 2 are defined in Appendix 1, which is incorporated by this reference.

2. Sales and Inventory Reporting

2.1 Reporting Requirements

Partner will, submit sales and on-hand inventory reports to CPW using the guidelines listed below. At CPW's request, records supporting these reports will be made available to CPW within five Working Days. Partner's reports will consolidate sales and inventory information for all Authorized Locations. Compliance with all sales and inventory reporting guidelines, including meeting all deadlines, is required.

2.2 Sales Reporting

Partner will, or will procure that an Approved Company will, provide a weekly sales report listing Authorized Products sold by Partner during the previous week. The report will include:

- Authorized Product numbers;
- Apple serial numbers (upon Apple's request);
- Invoice dates; and
- Ship-to addresses, including zip code.

2.3 Inventory Reporting

The weekly report will include Authorized Products in Partner's inventory at the end of the previous business week. The report will contain an itemized list of serialized and non-serialized Authorized Products in inventory and include Authorized Product numbers and quantity on-hand.

2.4 Sales and Inventory Reporting Deadlines

Reporting of sales and inventory information for each week (Sunday-Saturday) is due by 12:00 PM (local time) on Monday the following week. If Monday is a banking holiday, the report is due on Tuesday or in any case the first Working Day of the week. For longer bank holidays CPW or Apple will communicate a detailed calendar with reasonable notice.

2.5 CPW Report Contact Information

If Partner encounters technical difficulties in the reporting process, Partner should immediately advise CPW.

Appendix 3 to Schedule 2
General Terms and Conditions

1. Confidentiality

CPW and Apple will mutually agree on any public announcements regarding the existence or subject matter of this Schedule 2.

The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Schedule 2 or their relationship in relation to the purchase and resale of Authorised Products.

2. Independent Parties

Partner acknowledges that it is an independent contractor fully responsible for its acts, omissions in relation to this Schedule 2 and Partner agrees to indemnify CPW against any loss suffered or liabilities or expenses incurred as a result of such acts, omissions or defaults. Other than as expressly set out in this Schedule 2:

- (a) Partner shall not in any correspondence or dealings, hold itself out or represent itself as being part of Apple, or any subsidiaries, holding companies or subsidiaries of those holding companies or as an employee, agent, representative, franchisee or partner of or to a joint venture with Apple; and
- (b) Partner acknowledges that Partner has no authority or power to bind, or to contract or negotiate in the name of, or to incur any debt or other obligation on behalf of, or to create any liability against, Apple in any way or for any purpose.

3. Independent Efforts and Similar Products

Nothing in this Schedule 2 will impair either party's right to use, market, purchase, develop, or manufacture, directly or indirectly, alone or with others, products or services competitive with those offered by the other. Each party shall retain the right to perform work and provide products and services for others during the term of this Schedule 2.

4. Audit rights

Each party agrees to maintain all appropriate books and records reasonably required to verify its monthly reports for a period of three years after the end of the relevant calendar month. Apple and/or CPW (the "auditing party") may appoint an independent auditor to review Partner's records no more than once per quarter to confirm that the audited party has satisfied its payment obligations under this Schedule 2. Audits must be conducted during normal business hours, in a manner that does not unreasonably disrupt the audited party's normal business operations, in accordance with generally accepted audit procedures, and not on contingency. The auditing party must give the audited party written notice of the date, time, scope, and purpose of the audit at least 72 hours before beginning the audit. The audited party will ensure that an employee who is knowledgeable with relevant records and business practices is available to facilitate any audit.

If an audit finds that a party underpaid, that party will, within 30 days after such finding, submit a corrected monthly report and pay the full amount due together with interest thereon from the date payment was due until the date actually paid at the Interbank Offer Rate prevailing in the country of payment (i.e., EURIBOR for countries using the Euro currency as the official currency and LIBOR for the UK) on

the date the audit concluded multiplied by 1.5. If an audit discloses that the audited party underpaid by more than 2%, the audited party will also reimburse the auditing party for the cost of the audit within 30 days after such finding. If an audited party disputes the results of any audit, it may, within 30 days after receiving the results of the audit, and after written notice describing the scope and purpose of the audit, conduct its own audit using an independent auditor not on contingency.

**SCHEDULE 3
FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR "RIM" PRODUCTS**

1 RIM Payment Obligations

1.1 The Partner confirms that RIM does not now nor will it during the course of the agreement between CPW nor during the course of the agreement between the Partner and CPW have any payment obligation to CPW or the Partner, nor will it have any such obligation upon termination of the Partner's right of distribution. To the extent that any such payment obligation is imposed on RIM (whether by operation of law or otherwise) the Partner hereby irrevocably waives the right to receive such payment.

2 Liability Of Rim

2.1 Except in the case of the following exceptions:

- (a) the infringement or misappropriation of the other party's Intellectual Property Rights;
- (b) breach of confidentiality;
- (c) personal injury or death arising from RIM's negligence;
- (d) fraud by RIM; and/or
- (e) breach of RIM's obligations to the extent arising under section 12 Sale of Goods Act 1979, section 2 Sale and Supply of Goods and Services Act 1982, Section 2(3) Consumer Protection Act 1987 or exclusions described in paragraphs 2.2 to 2.9 of this Schedule 11;

(collectively the "**Express Exceptions**") in no event shall RIM be liable to the Partner for any indirect, special, incidental, exemplary or consequential damages (including lost profits) directly or indirectly arising out of or in connection with the transactions contemplated by this Agreement whether or not such damages could reasonably be foreseen or their likelihood disclosed. In particular, RIM shall not be liable to the Partner for an infringement (or alleged infringement) of the intellectual property of a third party to the extent that such infringement relates to: (a) use of any of the RIM Products and/or RIM Services in combination with software, hardware, equipment, applications or services not supplied by RIM; (b) information, data or programs furnished by CPW, CPW or the Partner in the course of the supply of the RIM Products or RIM Services; (c) actions taken by RIM at the request of CPW or the Partner; (d) alteration of the RIM Products and/or RIM Services other than by RIM; (e) failure of CPW or the Partner to use replaced or modified RIM Products and/or RIM Services provided by RIM in order to avoid such infringement; (f) use of the RIM Products and/or RIM Services in a manner for which it was not designed; (g) breach of intellectual property in which , CPW or the Partner has a direct or an indirect interest (including without limitation, CPW or the Partner is a licensee of that intellectual property); or (h) infringement (or alleged infringement) arising as a result of the use of the RIM Products or RIM Services outside of the United Kingdom or as a result of roaming not in compliance with this Agreement that is authorised or facilitated by CPW or the Partner.

2.2 Except for the Express Exceptions, the aggregate liability of RIM to the Partner and its affiliates (and their respective directors, officers, employees and independent contractors shall not exceed the greater of:

- (a) 125% of the amount that the Partner has paid CPW in respect of RIM Products in the twelve months immediately preceding the incident giving rise to the liability; and
- (b) three million five hundred thousand United States Dollars (US\$3,500,000).

2.3 The limitations, exclusions and disclaimers set out in this paragraph 2 shall apply in respect of RIM whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, negligence, strict liability or any other kind of civil or statutory liability connected with or arising out of this Agreement.

2.4 The limitations, exclusions and disclaimers set forth in this paragraph 2 shall not apply only if and to the extent that the laws of a competent jurisdiction requires liabilities beyond and despite these limitations, exclusions and disclaimers.

- 2.5 The exclusions and limitations of liability contained in this Agreement shall apply regardless of whether the loss or damage was foreseeable or otherwise or whether RIM or the Partner notifies the other of the possibility of greater loss.
- 2.6 RIM shall in no circumstances (whether before or after termination of this Agreement) be liable to the Partner or any Customer for any loss of data and the Partner and/or Customer shall at all times keep adequate backup copies of the data and programs held or used by or on behalf of the Partner and/or Customer.
- 2.7 Notwithstanding anything to the contrary contained in this Agreement, in no event will RIM be liable for any royalties, losses, claims, damages or settlements that relate to the provision of airtime services (including wide area wireless network, wireless local area network, satellite services and internet services) provided for the use of the RIM Products, third party products (including applications, software, technology, products or services) or third party BlackBerry enabled handhelds.
- 2.8 The limitations, exclusions, and disclaimers set out in this Agreement shall apply to RIM and its affiliated companies as well as RIM's and such affiliated companies directors, officers, employees, and independent contractors acting in the course of their engagement with RIM.

3 Customer Warranties

- 3.1 RIM shall have no responsibility or liability for any warranty given to a Customer that is not explicitly provided for under RIM's then current warranty provided to Customers and RIM's then current standard licences (in whatever form or medium) provided by RIM in connection with the RIM Products and services provided in relation thereto (including, without limitation, the 'BlackBerry Software Licence Agreement') ("**RIM Licences**").

4 RIM Intellectual Property

- 4.1 The Partner shall not promote, market, distribute, sell or otherwise make available RIM Products, or provide services for RIM Products, and/or services provided by RIM ("**RIM Services**") outside of the United Kingdom. The Partner shall promptly notify CPW and RIM of requests to supply RIM Products and/or RIM Services for installation or use outside of the United Kingdom, and unless otherwise expressly agreed to in writing by RIM and CPW, the Partner shall not make the RIM Products and/or RIM Services available to any person that it knows, or reasonably ought to know, will install or use the RIM Products and/or RIM Services outside of the United Kingdom. However, notwithstanding anything to the contrary in this Agreement nothing shall prevent the Partner from making "passive" sales of RIM Products, or services for RIM Products, and/or RIM Services to customers in other member states of the European Economic Area ("**EEA**"), including responding to unsolicited requests from those customers. Where any sales in the preceding sentence are made, the Partner shall ensure that:

- (a) the RIM Licenses applicable for the territory in which the Customer is supplied the RIM Products is provided to the Customer with the RIM Products or RIM Services;
- (b) the RIM Products and RIM Services are supplied to the Customer in compliance with applicable laws (including without limitation those laws applicable in the Customer's EEA member state);
- (c) it shall comply with its obligations set out in this Agreement with respect to any RIM Products and RIM Services sold outside of the United Kingdom;
- and
- (d) the Customer is made aware that CPW will not provide 3 Services in connection with the RIM Products to Customers who are normally or primarily resident outside the United Kingdom.

For the purposes of ensuring the Partner's compliance with paragraphs (a) – (d) above, and on the basis that the information provided will not be used for any purpose other than ensuring the Partner's compliance with this Agreement, the Partner will provide CPW and RIM with a monthly report outlining the number of RIM Products and RIM Services that it has sold to Customers outside of the United Kingdom in the preceding calendar month and detailing the quantities of RIM Products and RIM Services sold in each EEA member state. The Partner shall not promote, market, distribute, sell or otherwise make available:

- (i) RIM Products, or provide services for RIM Products, and/or RIM Services outside of the EEA; or
- (ii) the 3 Services to Customers outside the United Kingdom;

and the Partner shall promptly notify CPW and RIM of requests to supply RIM Products and/or RIM Services for installation or use outside of the EEA, and unless otherwise expressly agreed to in writing by CPW and RIM, the Partner shall not:

- (I) make the RIM Products and/or RIM Services available to any person that it knows, or reasonably ought to know, will install or use the RIM Products and/or RIM Services outside of the EEA; and/or
- (II) promote or make available the 3 Services to any Customer it knows, or reasonably ought to know, is primarily resident outside the United Kingdom.

4.2 Except as expressly agreed to in writing by CPW and RIM, the Partner shall distribute RIM Products as packaged by CPW and RIM with all packaging, notices, disclaimers, license agreements and other materials intact as shipped from CPW. If the Customer indicates it is not willing to accept RIM's Licenses terms and conditions after delivery but prior to installing the software (within the meaning of RIM's Licences), and returns that software, all accompanying documentation and packaging and proof of purchase to the Partner in compliance with RIM's Licenses, the Partner shall refund to the Customer all monies paid to the Partner for that software media (as well as, if the software media being returned is the desktop software or handheld device software, any monies paid for handheld devices purchased in conjunction with the software media and returned at the same time) in accordance with RIM's Licenses.

4.3 Unless otherwise expressly agreed to in writing by CPW and RIM, the Partner acknowledges that RIM is providing only English documentation. Any translation or localisation obligations relating to the RIM Products and/or the English documentation, to comply with local legal, regulatory or other requirements shall be the Partner's responsibility and shall be performed by the Partner at the Partner's cost and only in accordance with the terms and conditions described in this Agreement.

4.4 The Partner shall:

(a) not engage in threatening, deceptive, tortious, offensive, misleading, obscene, illegal, or unethical practices that may be detrimental to RIM or to the RIM Products (including any software) or RIM Services or to any other RIM Products or services and any representations the Partner makes about RIM and its RIM Products or services shall be fair and accurate;

(b) not make any representations, warranties, or guarantees to Customers concerning the RIM Products (including any software) and/or any RIM Services without RIM's prior express written authorisation, or make any representations, warranties, conditions or guarantees to Customers that RIM specifically precludes and the Partner agrees to indemnify CPW and RIM for any costs, damages, judgments or liability incurred by CPW and/or RIM as a result of the Partner making such representation, warranty, condition or guarantee;

(c) comply at its sole expense with all applicable federal, national, state, provincial, and local laws and regulations in marketing the RIM Products and RIM Services and in performing its duties with respect to the RIM Products (including any software) and RIM Services, including, without limitation, those tax, foreign exchange, the transfer of money, anti-mafia or anti-terrorist laws specific to the market, as well as any laws regarding the Partner, data protection and privacy and shall promptly notify CPW and RIM of any changes thereto which

would impact on the relationship between the Partner, CPW and RIM or the performance of this Agreement;

(d) not represent that any RIM Product (including any software) or RIM Service is designed or licensed for use in circumstances where the failure of such RIM Product or RIM Service is likely to result in significant risks to health or safety, where fail-proof delivery of time-specific information is required, or in otherwise hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems;

(e) without limiting the generality of paragraph 4.4(a) above not sell or represent refurbished or used RIM Products as "new" RIM Products;

(f) not sell, authorise or facilitate the sale or license of software that has not been certified by RIM as being compatible with the RIM Products, or of accessories that have not been approved by RIM;

(g) not engage in business practices, promotions or advertising which may be injurious to the reputation or business goodwill of RIM;

(h) upon receiving notice of removal of a RIM Product and/or RIM Service pursuant to this Agreement, stop marketing and distribution of such RIM Product and/or RIM Service as specified in such notice until such time as the Partner, CPW and RIM acting reasonably address how they are going to deal with such affected RIM Products in the Partner's inventory;

(i) not promote, market, distribute any Competitive Wireless Email Solution or load facilitate or acquiesce in any third party loading, any Competitive Wireless Email Solution on RIM handheld devices; and

(j) not use or permit or acquiesce in any third party using any RIM trade or other marks (including, without limitation, trademarks, trade names, service marks or logos) ("**RIM Marks**") in any way (including, without limitation, as part of any press releases, products, services, domain name, company name, marketing, and/or promotional materials) without: (i) the express written authorisation from RIM; (ii) the Partner complying with, the obligations under paragraph 4.5; and (iii) the Partner doing so in compliance with the latest version of the 'BlackBerry Branding Guidelines' as produced by RIM from time to time.

4.5 The Partner shall not use or duplicate the RIM Products (including any software) or RIM Services (including any that are subject to evaluation) or the documentation provided by RIM or any other RIM products, services or documentation for any purpose other than as specified in this Agreement, or make such RIM Products (including any software), services or documentation available to unauthorised third parties. Unless otherwise specified in this Agreement, the Partner may only use the RIM Products and RIM Services for internal or demonstration purposes if the Partner acquires the RIM Products and RIM Services specifically for internal or demonstration use. Any RIM Products used for demonstration purposes may not be resold as a "new" RIM Product. Resale of any demonstration RIM Products as a "new" Product by the Partner shall be deemed to be a material breach of this Agreement. The Partner shall not modify or permit the RIM Products (including any software) to be modified unless expressly agreed to by CPW and RIM.

4.6 The Partner acknowledges that RIM does not authorise, endorse, or recommend the use of any third party applications with RIM handheld devices. The Partner further acknowledges and agrees that RIM shall have no responsibility or liability for any third party application or any third party websites, software, content or other products or services (individually or collectively a "**Third Party Deliverable**") and RIM shall be relieved from any obligation to repair or replace a damaged RIM handheld device and from any liability for any damage or harm caused by a Third Party Deliverable to the extent that a Third Party Deliverable causes or contributes to such damage. Nothing in this paragraph will preclude RIM from exercising any rights it may have at law or in equity with respect to the continued use of any Third Party Deliverable in conjunction with the RIM Products. For clarity, and without limiting the Partner's obligations under this Agreement, the Partner acknowledges and agrees that approval by RIM of a

Third Party Deliverable or any marketing activities relating to a Third Party Deliverable (including without limitation, inclusion of any references to a Third Party Deliverable in or on the point of sale box or in any other documents or materials) will not relieve the Partner of its obligations under this paragraph or otherwise.

- 4.7 The Partner shall not modify the copyright notices on or associated with the RIM Products, RIM Services, documentation, RIM marketing materials or other literature or materials, or any portion thereof, provided by or on behalf of RIM or CPW to the Partner or Customers. For clarity, the Partner acknowledges and agrees that nothing herein transfers any title or ownership interest RIM has in any literature, materials or documentation, however provided to the Partner or Customer referenced in the preceding sentence.
- 4.8 The Partner shall not use RIM Marks unless it has received express written authorisation from CPW and RIM and only then in strict compliance with the "BlackBerry Branding Guidelines" as modified from time-to-time by RIM. The Partner acknowledges that it has not acquired, and will not acquire, any ownership rights in any of the RIM Marks. The Partner agrees that it will not use any RIM Marks in a manner likely to cause confusion with, dilute or damage the goodwill, reputation or image of RIM or RIM's products or services. The Partner agrees not to use any RIM Marks as a feature or design element of another logo or trademark. Upon request by RIM, the Partner shall supply RIM with specimens of its use of any RIM Marks and will use commercially reasonable endeavours to execute or obtain execution of, the instruments that may be appropriate to register, maintain or renew the registration of any RIM Marks in the United Kingdom. The use of any RIM Marks by the Partner does not transfer to the Partner any further right, title, or interest in or to any of the RIM Marks and all such use and associated goodwill will inure to the benefit of RIM. The Partner shall not register, attempt to register or lay common law claim to any RIM Marks or any mark confusingly similar with a RIM Marks. The Partner hereby acknowledges that the maintenance of the reputation and quality associated with the RIM Marks requires the highest quality and utmost uniformity with respect to products and services associated with the RIM Marks. RIM may inspect the Partner's use or display of the RIM Marks from time-to-time to ensure that such use or display is in accordance with the terms of this Agreement. The Partner shall permit CPW or RIM or their authorised agent(s) to inspect and monitor the Partner's goods and/or services, to determine and verify that the RIM Marks are being used in accordance with the terms of this Agreement. Should the Partner fail to comply with this provision and fails to cure such non-compliance after written notice by RIM, in addition to any other remedies that RIM may have, RIM may terminate the Partner's right to use the RIM Marks with immediate effect.
- 4.9 The Partner acknowledges that its use of any RIM marketing materials, white papers, and any other product related materials made available to CPW and subcontractors from RIM or its authorised agent ("**RIM Marketing Collateral**") is limited to the use licensed in this Agreement and that the Partner has not acquired, and will not acquire, any ownership rights therein. The Partner agrees that it will not use any RIM Marketing Collateral in a manner likely to cause confusion with, dilute or damage the goodwill, reputation or image of RIM or RIM's products or services. The use of any RIM Marketing Collateral by the Partner does not transfer to the Partner any further right, title, or interest in or to the RIM Marketing Collateral and all such use and associated goodwill will inure to the benefit of RIM. The Partner hereby acknowledges that the maintenance of the reputation and quality associated with the RIM Marketing Collateral requires the highest quality and utmost uniformity with respect to products and services associated with the RIM Marketing Collateral. In order to maintain the reputation associated with the RIM Marketing Collateral, the Partner agrees that it will not amend or deface in any way the RIM Marketing Collateral. RIM (or its authorised agent) may inspect the Partner's use or display of RIM Marketing Collateral from time-to-time to ensure that such use or display is in accordance with the terms of this Agreement. Should the Partner fail to comply with this provision and fails to cure such non-compliance within a commercially reasonable period of time not to exceed thirty (30) days after written notice by RIM, in addition to any other remedies that RIM may have, RIM may terminate the Partner's right to use the RIM Marketing Collateral with immediate effect.

- 4.10 The Partner acknowledges that, subject to the rights granted herein, RIM and CPW retain all right, title and interest, including, without limitation, intellectual property, in and to their respective products or services. The Partner will include in any of its products or services that incorporate or consist of the products or services of CPW or RIM applicable copyright, trademark and other proprietary rights notices. The Partner acknowledges that the RIM Products and RIM Services and any product prototypes contain valuable trade-secrets and other intellectual property of RIM. Neither the Partner nor anyone acting on behalf of the Partner, including its employees, independent contractors or agents shall acquire any intellectual property related to the RIM Products (including any software), the RIM Services, or product prototypes, including without limitation any such patents, industrial designs, master works, copyright, trade-secrets, or mask works. No ownership, right, interest or title in or to the RIM Products (including any software), RIM Services, or product prototypes will transfer to the Partner nor to anyone acting on the Partner's behalf under this Agreement.
- 4.11 Should the Partner fail to comply with the provisions of paragraphs 4.7 to 4.10 or with the then-current branding guidelines of either CPW or RIM as may be modified from time-to-time, then upon receipt of such non-compliance from CPW or RIM (as the case may be), if the Partner fails to cure such non-compliance, within a commercially reasonable timescale then CPW or RIM (as the case may be) may exercise any remedies (including those relating to termination) it may have. This remedy does not preclude CPW or RIM from any other remedy which it may have whether under this Agreement, in law, or in equity, including, but not limited to injunctive relief or a claim for damages subject to any limitations specified in this Agreement. In addition to the foregoing, in the event that the Partner does not comply with the "BlackBerry Branding Guidelines", CPW and/or RIM may immediately discontinue shipment of RIM Products and/or provision of RIM Services until such time as the Partner cures the non-compliant activity; provided however that the discontinuance of such shipment or provision of RIM Services shall not relieve the Partner from paying the full value of any orders it has placed, or paying for any RIM Services provided hereunder.
- 4.12 Except as expressly permitted by RIM, the Partner will not: (i) sell, rent, sublicense, distribute, assign or otherwise transfer any rights to the RIM Products (including any software) or RIM Services without RIM's express prior written consent; (ii) disclose results of any benchmark or similar tests of any RIM Product (including any software) to any third party without RIM's express prior written consent; (iii) modify, translate or otherwise create derivative works of the RIM Product (including any software); or (iv) delete or otherwise destroy the software without RIM's express prior written consent. The Partner acknowledges and agrees that any distribution of RIM's software and/or sale of the media on which the software is distributed by the Partner is subject to the Customer accepting the terms of the RIM Licenses. The Partner will make commercially reasonable endeavours to promptly notify CPW and RIM of any violation of the preceding sentence or any violation by any Customer of any of the RIM Licenses of which it becomes aware.
- 4.13 Except to the extent that RIM is expressly precluded by law from prohibiting these activities, the Partner shall not, and shall use reasonable commercial endeavours to ensure that Customers do not: (i) alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, reproduce, or reverse engineer all or any portion of the RIM Products (including any software) or RIM Services or attempt to do so; or (ii) permit, authorise, or acquiesce in, any other person engaging in these activities, or attempting to do so; or (iii) use the RIM Products (including any software) or RIM Services or any information contained therein or otherwise provided by RIM for the purposes of developing, or having developed any products or services competitive with any of RIM's products or services. Should it become known to the Partner that a Customer has attempted to modify, reproduce or reverse engineer the RIM Products (including any software) or RIM Services or any part thereof, the Partner shall immediately notify CPW and RIM and shall direct such Customer to cease and desist in the activity and to contact CPW and RIM directly.
- 4.14 The Partner shall comply with such latest version of the 'BlackBerry Branding Guidelines' as supplied by CPW or RIM to the Partner from time to time.

5 DATA PROTECTION AND PRIVACY POLICY

- 5.1 The Partner agrees that, with respect to any information or data of any kind that personally identifies (or that can be used, together with other information or data, to personally identify) a Customer and which relates solely to the purchase and/or supply of RIM Products and/or RIM Services and which is not any data collected from the Customer for the purposes of the setting up and/or provision of 3 Services ("**End User Data**"), it shall comply with all applicable privacy legislation in the performance of its obligations hereunder in relation to such Customer.
- 5.2 Without limiting the Partner's obligations under paragraph 5.1, the Partner shall comply with its own publicly disseminated privacy policy with respect to all End User Data collected directly by the Partner ("**Direct Recipient**") or received from CPW, CPW or RIM ("**Subsequent Recipient**") in connection with this Agreement.
- 5.3 A Subsequent Recipient shall use the same or better standard of care to safeguard the Direct Recipient's End User Data as it uses to safeguard its own End User Data, but in all instances no less than a reasonable standard of care taking into consideration the principle of applying such appropriate organisational and technical measures as necessary to comply with applicable law. A Subsequent Recipient may disclose the Direct Recipient's End User Data: (A) only to the following parties if they have a need to know the Direct Recipient's End User Data and only if they have entered into a confidentiality agreement with the Subsequent Recipient with terms that afford no less protection to the End User Data than the terms of this Agreement: (i) the Subsequent Recipient's parent, subsidiaries, or affiliates; and (ii) the Subsequent Recipient's and the Subsequent Recipient's parent's subsidiaries, and affiliates' employees who have a need to know the End User Data in order to fulfil the Subsequent Recipient's obligations under this Agreement; and (B) only on the express condition that the Subsequent Recipient is vicariously liable for the failure of any of the parties that have had access to the End User Data through the Subsequent Recipient, to comply with the Subsequent Recipient's obligations herein.
- 5.4 A Subsequent Recipient may extract the personally identifiable information from the Direct Recipient's End User Data and aggregate such data ("**Aggregate End User Data**") to use the Aggregate End User Data for its own internal purposes. A Subsequent Recipient may, without identifying the Direct Recipient in any manner, disclose such Aggregate End User Data to a third party or the public. A Subsequent Recipient may disclose the identity of the Direct Recipient when disclosing such Aggregate End User Data to a third party or the public only with the prior express written consent of the Direct Recipient.
- 5.5 A Subsequent Recipient may disclose the Direct Recipient's End User Data, if compelled by legal process. Except as prohibited by law, under such a circumstance, the Subsequent Recipient will: (i) promptly notify the Direct Recipient to permit the Direct Recipient to seek a protective order or take other appropriate action; and (ii) cooperate in the Direct Recipient's endeavours to obtain a protective order or other reasonable assurance that confidential treatment will be afforded to the Direct Recipient's End User Data. A Subsequent Recipient may disclose to a third party any End User Data received from the Direct Recipient without legal process, the consent of, or notice to the Customer to the extent necessary to respond to an emergency that threatens the life, health or security of an individual, or to protect CPW's network (in the case of CPW) or the access to services provided by RIM (in the case of RIM) and the Products (in the case of CPW) and, if required by law, the Subsequent Recipient shall inform the Customer in writing without delay of the disclosure.
- 5.6 Except as expressly specified in this paragraph 5 or as otherwise expressly agreed to in writing by CPW and RIM, a Subsequent Recipient's obligation of strict confidence with respect to the Direct Recipient's End User Data shall last in perpetuity, regardless of termination or expiration of this Agreement.

6 Termination Of Agreement Between RIM And CPW

- 6.1 Notwithstanding anything to the contrary set out in this Agreement, this Agreement shall immediately terminate insofar as it relates to RIM Products or RIM Services upon termination of the supply agreement entered into between RIM and CPW. Such termination will occur automatically without notice to the Partner.

7 Marketing Approvals

- 7.1 The Partner agrees not to use any of the RIM Marks, nor refer to any of the RIM Products or RIM Services in any advertisements, press releases, promotional materials and such other materials as may be publicly distributed by CPW or any Partner without the prior written consent of RIM.

8 International Roaming – Compliance With Laws

- 8.1 In addition to the other provisions of this Agreement relating to obtaining the necessary licences, consents and authorisations, if CPW permits the Partner to advertise, market and/or communicate directly or indirectly to Customers the international roaming capabilities of the RIM Products (and any related software and accessories) the Partner must first ensure that, before advertising, marketing and/or communicating to Customers the international roaming capabilities to and from any particular country, it has certified to RIM (on a country by country basis) (with a copy to CPW) that it has obtained all required licences and other authorisations required for import, use, export and/or re-export of the in connection with such roaming under the laws and regulations of the national and/or other (sub-national and/or supranational) government authorities with authority over the country(ies) and/or territory(ies) from which those RIM Products are being exported or to which they are being imported (collectively, the "**Government Authority(ies)**"). The Partner is not required to provide RIM with the certification specified above if the advertising, marketing or communication to Customers of the international roaming capabilities for the RIM Products (together with any software, and/or accessories) does not specify any country(ies).
- 8.2 The Partner shall ensure that each Customer who purchases a RIM Product (including any software and/or accessories) is warned that that RIM Product may include encryption software that is subject to domestic and foreign legal restrictions that restrict export, import and use of the RIM Product (including software, and/or accessories) and that the Customer is not permitted to roam to any country with the RIM Products unless advised by CPW that such international roaming is permitted to that country. The Partner shall not advise Customers that roaming is permitted for any particular country unless CPW has confirmed that the Partner has satisfied the requirements of paragraph 8.1 above with respect to that country. The Partner shall not facilitate or allow the advertising, marketing and/or communications (directly or indirectly to Customers) of the international roaming capabilities for the RIM Products (including software and accessories) except in compliance with this paragraph 8.

SCHEDULE 4 - Description of and Instructions for the Processing of Personal Data

Description of the Processing Activities

The processing of Personal Data is as follows *[provide a description of the subject matter and nature of the processing, including any systems used to store and process Personal Data; obligations of the Partner and any rights of CPW with regards to the Personal Data]:*

.....
.....
.....

Data subjects

The Personal Data concern the following categories of Data Subjects:

Purposes of the Processing

The Processing is necessary for the following purposes:

Categories of data

The Personal Data processed fall within the following categories of data: