



**AUTHORISED DEALER TERMS & CONDITIONS**

**AGREED TERMS**

**1. Definitions**

1.1 In this agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Customer:** a person who enters into a Customer Contract with Lily for the Services pursuant to an order solicited by the Dealer.

**Customer Contract:** Lily' then current standard form agreement for the provision of Services to end-users (including any rates, charges and tariffs applicable to the Services as may be varied or substituted from time to time by Lily).

**Introduction Date:** for each Prospective Customer, the date during the term of this agreement on which the Dealer, having obtained an order for the Services, first introduces such Prospective Customer to Lily.

**Member of the same group:** in relation to any party a company that is for the time being a holding company (as defined in section 736 of the Companies Act 1985 as amended by the Companies Act 1989) of that party or a subsidiary (as also defined in that section) of that party or of any such holding company.

**Prospective Customer:** a person to whom Lily has not at any time previously provided the Services and with whom Lily has not been in bona fide negotiations to provide the Services in the 12 months before the Introduction Date.

**Service Literature:** any brochure, tariff list, user guide, information leaflet and instructions published by or on behalf of Lily in connection with the provision of the Services.

**Services:** the telecommunications, IT and data services set out in Schedule 1, and as may be varied or substituted from time to time by Lily in accordance with the terms of sub-clause 5.3.

**Territory:** the United Kingdom, excluding the Isle of Man and the Channel Islands.

1.2 In this agreement and the schedules:

- (a) reference to persons shall include legal as well as natural persons and (where the context so admits) words importing the singular meaning shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter genders and vice versa;
- (b) reference to clause numbers and schedules shall be to those of this agreement unless the contrary is stated;
- (c) reference to this agreement shall include reference to any schedule and to this agreement as the same may be amended, novated or supplemented from time to time;
- (d) paragraph headings in this agreement are for convenience only and shall not affect its meaning or interpretation; and
- (e) reference to any statutory provisions shall be deemed to include references to any orders or regulations under such provisions.

**2. Appointment**



Lily hereby appoints the Dealer within the Territory to identify Prospective Customers, solicit from Customers and Prospective Customers orders for the Services and introduce them to Lily, subject to the terms and conditions of this agreement.

### 3. Commencement and Duration

This agreement shall commence on the date it has been signed by all the parties and shall continue for a period of 24 months (**Minimum Term**). At the end of the Minimum Term the agreement shall automatically continue and may be terminated by any party giving no fewer than 30 days' prior written notice to the other parties.

### 4. Dealer's Obligations and Undertakings

#### 4.1 The Dealer undertakes with Lily that it shall:

- (a) at all times use its best endeavours to promote and market the Services throughout the Territory and at all times work diligently to obtain orders;
- (b) in all correspondence and dealings relating directly or indirectly to the provision of the Services clearly indicate that the Dealer is acting solely as an authorised dealer of Lily;
- (c) not have any power to accept orders or make contracts on behalf of Lily and not make or give any promises, representations, warranties or guarantees with reference to the Services except such as are consistent with the Service Literature;
- (d) promptly notify Lily of all orders for the Services which it receives from Customers and Prospective Customers and within 5 working days of signature by each Prospective Customer submit to Lily the appropriate Customer Contract for acceptance by Lily. All orders shall be subject to acceptance by Lily in its sole discretion and the Services shall be provided by Lily solely pursuant to the appropriate Customer Contracts prepared and supplied by Lily and executed by the Customer or Prospective Customer and Lily. All invoices in connection with orders solicited by Dealer shall be rendered by Lily directly to the Customer or Prospective Customer;
- (e) cultivate and maintain good relations with Customers and Prospective Customers and ensure that they understand fully their contractual obligations under the appropriate Customer Contracts and that the Services may only be contracted for on such terms;
- (f) not without Lily' prior consent in writing distribute any other material in connection with the Services other than such material provided by, or previously approved by, Lily;
- (g) not without the prior written consent of Lily offer the Services at any price other than that for the time being set out in Lily' tariff list as current from time to time or as may otherwise be expressly agreed by Lily;
- (h) not impose any direct or indirect charges on any Customer or Prospective Customer without Lily' prior written consent;
- (i) not incur any liability on behalf of Lily or in any way pledge or purport to pledge Lily' credit;
- (j) promptly bring to the notice of Lily any information received by it which is likely to be of use or benefit to Lily in relation to the marketing of the Services and make it clear to all Customers and Prospective Customers that Lily will, before accepting any agreement, make all proper enquiry as to their credit worthiness;
- (k) immediately inform Lily of any changes in the Dealer's organisation or method of doing business which might affect the performance of its duties under this agreement;



- (l) observe all reasonable instructions given to it by Lily in relation to the promotion or marketing of the Services and in the absence of any such instructions act in such manner as it reasonably considers to be most beneficial to Lily' interests;
- (m) keep full and proper records of all enquiries from and dealings with Customers or Prospective Customers relating to the Services, such records being separate from those relating to matters not relating to the Services and allow the authorised representatives of Lily at all reasonable times to have access to its premises or systems for the purpose of inspecting such records;
- (n) from time to time upon written request of Lily report to Lily in writing in a form satisfactory to Lily, on all its marketing and promotional activities in relation to the Services and provide such other information from time to time which Lily may reasonably request;
- (o) at all times conduct business in a commercially reasonable and ethical manner, and to the extent that the Dealer makes any statements or representations to third parties with regard to Lily, the Services or the terms of this agreement, such statements or representations shall be true, accurate, and shall not be misleading;
- (p) notify Lily promptly of all enquiries or complaints regarding technical or operational issues with Lily' provision of the Services; and
- (q) not, and shall ensure that each Member of the same group does not, whether alone or jointly with or as agent of any person or company in the Territory, canvass, solicit or approach a customer of Lily or cause such a customer to be canvassed, solicited or approached in respect of services which compete with or are similar to Services that Lily is supplying to the customer.

4.2 The Dealer may, with Lily' prior written consent, delegate or sub-contract any of its rights and obligations under this agreement, provided that the delegate or sub-contractor may be required to enter into direct undertakings with Lily. If Lily accepts the appointment of a delegate or sub-contractor, the Dealer shall be responsible for the remuneration of them.

4.3 Nothing in this agreement shall prevent the Dealer from being engaged, concerned or having any financial interest in any other business, trade, profession or occupation during the term of this agreement provided that:

- (a) such activity does not cause a breach of any of the Dealer's obligations under this agreement; and
- (b) the Dealer shall not, engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of Lily, without the prior written consent of Lily.

4.4 The Dealer shall fully indemnify Lily against all liability, loss, costs and expenses which Lily may incur or be subject to in the event that the Dealer breaches any of its obligations hereunder or any of the terms of this agreement.

## 5. Rights And Duties Of Lily

5.1 Lily agrees that it shall at the commencement of this agreement and at its own expense supply the Dealer with a pack of materials which shall include such brochures, information leaflets, price lists, labels, stickers and notices as Lily shall consider in their opinion sufficient to promote the Services within the Territory provided that such material shall at all times remain the property of Lily.

5.2 In the event that Lily produces any new promotional or sales material during the continuance of this agreement, Lily shall provide the same to the Dealer free of charge.

5.3 Lily reserves the right in its absolute discretion:

- (a) to decline for any reason to accept any order sent to Lily through the Dealer save that in such event Lily will promptly notify the Dealer of its decision not to accept such an order but failure to notify the Dealer shall not be deemed to be proof of acceptance and no obligation to the Dealer shall be incurred by Lily in so declining to accept any order;



- (b) to give 30 days' written notice to the Dealer varying the provisions of Schedule 1 by the withdrawal, addition or change to the Services;
- (c) to give 30 days' written notice to the Dealer varying its tariffs for the Services;
- (d) to give 30 days' written notice to the Dealer varying the provisions contained in the Schedules in relation to the amount of commission payable to the Dealer pursuant to this agreement;
- (e) to take such steps itself as may seem necessary or expedient to promote the provision of the Services in the Territory; and
- (f) to appoint other dealers to market, promote and solicit orders for the Services in the Territory.

5.4 Lily shall, upon giving reasonable notice to the Dealer, have the right of access to the Dealer's sales, marketing and distributor plans to ensure that the Dealer, its directors, employees, servants, authorised agents or sub-contractors are conducting business in a commercially reasonable and ethical manner. For the avoidance of doubt, if Lily considers that the Dealer or its directors, employees, servants, authorised agents or sub-contractors have failed or are likely to fail to conduct business in a commercially reasonable or ethical manner, Lily shall be entitled to terminate this agreement forthwith without any liability whatsoever.

## 6. Commissions

- 6.1 Save as hereinafter provided Lily shall pay to the Dealer in consideration for its services to Lily under this agreement a commission calculated in accordance with Schedule 2 to this Agreement provided always that any Customer Contract shall have been entered into by Lily pursuant to orders placed through the Dealer and the sums on which commission is calculated shall exclude any tax or duty payable thereon by the Customer.
- 6.2 Unless otherwise specified in Schedule 2, payments of commission to the Dealer shall be made on or before the 60th day following the date on which Lily invoices the Customer for the Services. If, after 90 days from the date of such invoice, the Customer fails to make payment to Lily, Lily shall be entitled to recover in full from the Dealer any commission paid to the Dealer in respect of that Customer for the relevant period. In the event that the Customer makes payment to Lily after this 90-day period, Lily will then pay to the Dealer all commissions due in respect of that Customer. The Dealer acknowledges and accepts that no commissions shall be payable on invoices which require collection through the courts, a collection agency or similar third party.
- 6.3 Subject to sub-clause 6.11, upon termination of this agreement (except by reason of default or breach by the Dealer), Lily shall continue to pay the Dealer commission in accordance with Schedule 2 to this agreement in respect of any orders for Services received and accepted by Lily prior to the date of termination.
- 6.4 Lily' continuing obligation to pay commission in sub-clause 6.3 shall continue until such time as the earlier of:
- (a) in the case of any particular Customer, such Customer ceasing to be a customer of Lily; or
  - (b) in the case of all Customers, the Dealer or any Member of the same group canvassing, soliciting, approaching or causing to be canvassed, solicited or approached, in respect of telecommunications, IT and/or data services which compete with or are similar to the Services, any person who at the date of termination is, or within one year prior thereto was, a Customer or the representative of a Customer.
- 6.5 For the avoidance of doubt, no commission shall be payable to the Dealer in respect of any order received by Lily after termination of this agreement for whatever reason notwithstanding that the Dealer may have been responsible for, or concerned in obtaining, that order.
- 6.6 Upon termination of this agreement due to breach or default by the Dealer, the Dealer's entitlement to commission payments shall cease with immediate effect.
- 6.7 No claims for expenses incurred by the Dealer in the performance of its functions and duties under this agreement shall be allowed or reimbursed by Lily.



- 6.8 In the event that a dispute or difference of opinion arises between Lily and the Dealer or between dealers as to who was responsible for introducing a Customer or Prospective Customer to Lily, Lily' decision shall be final and binding. Lily undertakes that any exercise of its discretion under this clause shall be exercised reasonably and fairly.
- 6.9 In the event that Lily cancels a Customer Contract for any reason, Lily shall not be liable to the Dealer for any commission lost as a result of such cancellation. For the avoidance of doubt, the Dealer shall not cancel, attempt to cancel or otherwise interfere with any Customer Contract. If the Dealer cancels, attempts to cancel or otherwise interferes with a Customer Contract as aforesaid any obligation on Lily to pay any commission hereunder shall immediately terminate.
- 6.10 Lily shall be under an obligation to pay commission to the Dealer to the extent only that the Dealer actively promotes the Services and diligently obtains new orders. Where the Dealer fails to procure the minimum number of legitimate orders for the agreed Services as detailed in Schedule 1 of the Dealer Agreement in any 3-month period Lily shall be entitled to terminate the agreement for default and shall have no obligation to pay further commission to the Dealer.
- 6.11 Provided this agreement has continued for at least 3 months, Lily may at its option in lieu of paying continued commission following termination under sub-clause 6.3, pay the Dealer an amount calculated by reference to the amount of commissions paid in respect of Customers during the three-month period prior to termination, increased by a factor of 4.
- 6.12 Lily shall maintain and retain for a period of three years on an ongoing basis, true and accurate books of account and such information as may reasonably be required for calculation or verification of the amounts payable to the Dealer (excluding information on individual calls).

## 7. Confidentiality

- 7.1 The parties acknowledge that during the course of this agreement, any party (**Receiving Party**) may acquire information regarding any of the parties (**Disclosing Party**) or their affiliates, their business activities and operations or those of their customers and suppliers, and their trade secrets including without limitation their customer lists, prospective customers, rates network configuration, traffic volume, financial information, computer software, service, processes, methods, knowledge, research, development or other information of a confidential and proprietary nature (**Confidential Information**), which term shall also include all summaries, reports and analyses made by any of the parties or their respective advisers which contain or reflect such information.
- 7.2 Each party, as Receiving Party, agrees that:
- (a) it shall keep secret and confidential any Confidential Information and shall use the same degree of care in safeguarding the Confidential Information as it uses for its own Confidential Information of like importance, but no less than reasonable care.
  - (b) it shall not disclose, publish or communicate the Confidential Information to any third party;
  - (c) it shall use the Confidential Information only for the purposes of this agreement, and in particular in relation to the performance of any obligations and the exercise of any rights under it; and
  - (d) upon discovery of any disclosure or misuse of Confidential Information, the Receiving Party shall use all reasonable endeavours to prevent any further disclosure or misuse.
- 7.3 The Receiving Party may disclose the Confidential Information to:
- (a) those of its employees, officers, agents, professional advisers and consultants who need to know the same on the basis that such employees, officers, agents, professional advisers and consultants will keep the same confidential in accordance with the provisions of this clause 7;



- (b) as required by law, including by a court of competent jurisdiction or governmental or regulatory authority, provided, however, that in the event of a proposed disclosure pursuant to this sub-clause 7.3(b), the parties shall co-operate in good faith regarding the timing and content of any such disclosure.

7.4 The restrictions on use or disclosure of the Confidential Information will not apply to:

- (a) any information which is in the public domain (provided that this has not happened because of a breach of this agreement or any other duty of confidentiality);
- (b) any information which the Receiving Party already possessed prior to disclosure by the Disclosing Party and where the Receiving Party was at the time of such disclosure free to disclose that information to others;
- (c) any information independently originated by the Receiving Party or acquired by the Receiving Party from a third party in circumstances in which such party is free to disclose it to others;
- (d) any information which is trivial or obvious.

7.5 The Confidential Information shall remain the sole property of the Disclosing Party. The Disclosing Party may, at any time, request the Receiving Party to return, destroy or delete (in such manner that it cannot be recovered) all Confidential Information (including all copies) belonging to the Disclosing Party in the Receiving Party's possession or control.

7.6 For the avoidance of doubt, nothing contained in this agreement shall be construed as granting to or conferring upon the Dealer or the Owners any rights, by license or otherwise, express or implied, in any Lily Confidential Information, other than the right to use such information for the purpose of this agreement. The Dealer and the Owners also agree that the disclosure of any Lily Confidential Information by any of them does not of itself constitute any representation or warranty express or implied as to the accuracy and completeness of that information.

7.7 The provisions of this clause 7 shall survive termination of this agreement for a period of two years.

## 8. Liability

8.1 Neither party excludes or limits its liability under or in connection with this agreement for death or personal injury caused by its negligence, or for fraudulent misrepresentation, or in relation to any other liability that may not by applicable law be excluded or limited.

8.2 Subject to sub-clause 8.1, the liability of Lily to the Dealer in contract, tort or otherwise (including liability for negligence or breach of statutory duty) under or in connection with this agreement shall be limited to the sum of £100,000 in respect of any one cause of action or series of related causes of action and to the sum of £500,000 in respect of all causes of action (connected or unconnected) which arise in any period of 12 consecutive months.

8.3 Subject to sub-clause 8.1, Lily does not accept liability under or in relation to this agreement or its subject matter (whether such liability arises due to negligence, breach of contract or for any other reason) for any:

- (a) loss of profits;
- (b) loss of or damage to reputation;
- (c) loss of customers;
- (d) wasted management of other staff time;
- (i) losses or liabilities under or in relation to any other contract;
- (j) indirect loss or damage;



(k) consequential loss of damage; or

(l) special loss or damage;

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

8.4 Lily shall not be responsible for acts or defaults of the Dealer or the Dealer's employees or representatives and the Dealer shall indemnify Lily and keep Lily indemnified in respect of any and all costs, expenses, damages, claims and demands which may be made against or incurred by Lily in respect thereof.

8.5 Should any limitation or provision contained in this clause 8 be held to be invalid or unenforceable under any applicable law, it shall to that extent be deemed omitted.

## 9. Termination

9.1 Without prejudice to its other rights under this agreement, Lily and the Dealer shall have the right forthwith to terminate this agreement, if:

(a) the other party is in default in due performance or observance of any of its obligations under this agreement and (in the case of a remediable breach) fails to remedy the breach within a period of 30 days after receipt of written request to do so; or

(b) an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the other party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate or a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed of any of the other party's assets or undertaking or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation) or if any circumstances arise which entitle the court or creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.

9.2 Without prejudice to its other rights under this agreement, Lily shall have the right to terminate this agreement immediately by notice in writing to the Dealer and to claim for any resulting losses or expenses, if:

(a) the Dealer is guilty of any conduct which in the reasonable opinion of Lily is prejudicial to Lily's interests; or

(b) the Dealer, whether directly or indirectly, is involved with any unethical sales practices or in any way misleads Customers or makes any misrepresentation in respect of the Services; or

(c) the Dealer shall for any reason cease to be able to carry on business as dealer hereunder in the Territory or be prevented from carrying on such business.

## 10. Post-Termination

10.1 Upon termination of this agreement for any reason whatsoever or at any time prior to such termination at the request of Lily, the Dealer shall remove and promptly return to Lily or otherwise dispose of, as Lily may instruct, all material, including but not limited to, brochures, information leaflets, price lists, labels, stickers and notices and any other material, documents and papers of whatever kind sent to the Dealer and relating to the business of Lily which the Dealer may have in their possession or under their control.

10.2 Upon termination of this agreement for whatever reason:

(a) the Dealer shall cease to promote, market, advertise or solicit Customers and Prospective Customers for the Services; and



(b) subject as otherwise provided in this agreement and to any rights or obligations which have accrued prior to termination, neither Lily nor the Dealer shall have any further obligations to each other under this agreement.

10.3 The Dealer hereby covenants that it shall ensure that each Member of the same group does not, for a period of six months after the termination of this agreement whether alone or jointly with or as agent of any person or company in the Territory canvass, solicit or approach or cause to be canvassed, solicited or approached in respect of telecommunications, IT and/or data services which compete with or are similar to the Services any person who at the date of termination is, or within one year prior thereto was, a Customer or the representative of a Customer.

10.4 The Dealer shall take all such steps as are necessary to ensure that their officers comply with the provisions of sub-clause 10.3 as if they had accepted restrictions on those terms.

10.5 The Dealer acknowledges and declares that the restrictions in sub-clause 10.3 are reasonable in all circumstances as at the date of this agreement and accept that damages may not be an adequate remedy in respect of any breach of that sub-clause and that its provisions should be specifically enforceable.

10.6 The parties hereby agree and declare that if the restrictions in sub-clause 10.3 shall be judged by a court of competent jurisdiction to be void as going beyond what is reasonable in all the circumstances for the protection of Lily and is deleted or the period thereof reduced or the range of activities or area covered thereby reduced in scope then such restrictions shall be deemed to apply with such modifications as may be necessary to make them valid and effective and any such modification shall not thereby affect the validity of any other restrictions contained in this agreement.

10.7 The provisions of clauses this clause 10 and clauses 6, 7, 8, and 12 shall continue in force in accordance with their terms following termination of this agreement.

## 11. Status

11.1 The relationship of the Dealer to Lily will be that of independent contractor and nothing in this agreement shall render it an employee, worker, agent or partner of Lily and the Dealer shall not hold themselves out as such.

11.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Dealer shall be fully responsible for and shall indemnify Lily or any Member of the same group for and in respect of:

(a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the services hereunder or any payment or benefit received by the Dealer in respect of them, where such recovery is not prohibited by law. The Dealer shall further indemnify Lily against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Lily in connection with or in consequence of any such liability, deduction, contribution, assessment or;

(b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Dealer against Lily arising out of or in connection with the provision of the services hereunder, except where such claim is as a result of any act or omission of Lily.

11.3 Lily may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Dealer.

11.4 The Dealer warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

## 12. Trade Names, Trade Marks And Service Marks





- 12.1 Lily grants to the Dealer on the terms set out in this agreement a non-exclusive licence to use such trade names, trade marks or service marks as are owned by Lily and as may be specified by Lily in writing for the purposes of soliciting orders for the Services within the Territory, such non-exclusive licence to be co-terminus with this agreement.
- 12.2 The Dealer shall use such trade names, trade marks or service marks as may be specified in writing by Lily for the purposes of soliciting orders for the Services within the Territory in the form stipulated by Lily and shall observe Lily' reasonable directions regarding the use of such trade names, trade marks or service marks in all literature, publicity material, sales, promotions and advertising campaigns and the like, for which the Dealer shall submit details to Lily for prior written approval which approval shall not be unreasonably withheld or delayed.
- 12.3 If the Dealer wishes to use its own trade names, trade marks or service marks for the purposes of soliciting orders for the Services within the Territory, the Dealer shall ensure that any such trade name, trade mark or service mark is kept entirely separate from Lily' trade names, trade marks or service marks and no composite mark shall be permitted.
- 12.4 The Dealer undertakes that it will not use any trade names, trade marks or service marks of Lily other than those trade names, trade marks and service marks which Lily may specify in writing.
- 12.5 The Dealer recognises Lily' proprietary rights in its trade names, trade marks and service marks and undertakes not to do any act either alone or jointly with others which may jeopardise or in any way infringe Lily' title to such trade names, trade marks or service marks or which might invalidate any registration or application for registration of the same.
- 12.6 The Dealer shall give written notice to Lily as soon as reasonably practicable after it becomes aware of any use or proposed use by any other person, firm or company of a trade name, trade mark or service mark or other promotional advertising which might infringe Lily' trade names, trade marks or service marks.
- 12.7 Lily shall be entitled to take whatever steps it considers necessary in the case of infringement or alleged infringement of its trade names, trade marks or service marks and the Dealer will assist Lily to the extent that Lily may reasonably require to protect Lily' rights under this agreement and to contest any infringement, provided that Lily undertakes to reimburse the Dealer's reasonable costs in providing such assistance.
- 12.8 Upon termination of this agreement for any reason whatsoever the Dealer shall immediately cease to make use of Lily' trade names, trade marks or service marks and shall do and execute all such acts, deeds and things that Lily shall require for the purpose of cancellation of the non-exclusive licence granted under this agreement.
- 12.9 The Dealer acknowledges that its use of Lily' trade names, trade marks or service marks does not create for itself any rights in such marks and, if any such rights have been created, the Dealer undertakes to assign such rights to Lily on request.

### **13. Assignment**

- 13.1 The Dealer shall not assign, transfer or otherwise deal with all or any of its rights or obligations under this agreement without the prior written consent of Lily, which consent shall not be unreasonably withheld.
- 13.2 Lily shall have the right to assign, transfer or otherwise deal with all or any of its rights and obligations under this agreement to a Member of the same group upon notification to the Dealer.

### **14. Force Majeure**

- 14.1 Lily shall not be liable to the Dealer or be deemed to be in breach of this agreement by reason of any delay in performing or any failure to perform any of its obligations under this agreement if the delay or failure is due to any cause beyond Lily' reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded without limitation as being causes beyond the reasonable control of Lily or, as the case may be, Lily' sub-contractor:



- (a) act of God, weather conditions, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotaging, civil disturbance or requisition;
- (c) acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lockouts or other industrial actions or trade disputes, whether involving employees of Lily or a third party;
- (f) acts or omissions of any other telecommunications network operator or service provider; or
- (g) difficulty in obtaining raw material from the usual sources of supply.

In any such circumstance or in the event of any other matter beyond the reasonable control of Lily, Lily shall be entitled at its option to give notice to the Dealer declaring that Lily is unable to complete its obligations under this agreement as envisaged whereupon this agreement shall be deemed to be frustrated from the date of such notice.

14.2 Where there is any shortage of goods, materials, energy or labour, which cannot be remedied by the actions of Lily, Lily will endeavour to allocate available resources fairly between the Dealer and other agents and/or between its customers.

**15. Set-Off**

Without prejudice to any other right or remedy, Lily reserves the right to set off any amount owing to Lily at any time from the Dealer against any amount payable by Lily to the Dealer under this agreement

**16. Entire Agreement**

This agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by any party, whether oral or written, and, subject to sub-clause 5.3, this agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party hereto.

**17. Notices**

17.1 All notices, agreements and consents under this agreement:

- (a) shall be in writing; and
- (b) shall be sent to the address of the recipient set out in this agreement or to such other address as the recipient shall have notified to the other in accordance with this clause.

17.2 Any letter may be delivered by hand, first class pre-paid letter or fax. It shall be deemed to be delivered:

- (a) if sent by hand when delivered;
- (b) if sent by first class post 48 hours after posting; and
- (c) if sent by fax on the day it is faxed (provided a confirmatory copy of the fax is sent by first class post as soon as possible after the fax is sent).



**18. No Waiver**

Failure by either party to exercise or enforce any right conferred by this agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion. No waiver shall be effective unless given in writing and no waiver of a breach of this agreement shall constitute a waiver of any antecedent or subsequent breach.

**19. Severability**

In the event that a court or arbitral tribunal of competent jurisdiction determines that any part or provision of this agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this agreement.

**20. Counterparts**

This agreement may be executed in counterparts, each of which shall be deemed an original, but which taken together will constitute one and the same instrument.

**21. Contracts Rights Of Third Parties**

No term of this agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

**22. Governing Law and Jurisdiction**

This agreement shall be governed by and construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts.