



Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

In these Conditions unless the context otherwise requires the following words shall have the following meanings:

Agreement: these Conditions, the Service Agreement and all other documents referred to in the Service Agreement (including without limitation any specification, price list, or schedule of services), which together form the contract between the Parties relating to the provision of the Services by Tivoli;

Auto Enrolment Costs: such amount as agreed between the Parties that represent the additional costs payable by Tivoli as a result of any obligations placed on Tivoli from the provisions set out in Chapter 1 of Part 1 of the Pensions Act 2008;

Conditions: these conditions, the Service Agreement and all other documents referred to in the Service Agreement (including without limitation any specification, price list, or schedule of services);

Customer: the customer named in the Service Agreement;

Customer Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;

Customer Material: all documents, information and materials provided by the Customer relating to the Services, (including without limitation, computer programs, data, reports, specifications, drawings, maps, plans, diagrams, designs, pictures or other images, tapes, disks or other devices or records embodying information in any form);

Display: means that equipment identified as such in the agreement;

Force Majeure: any cause preventing Tivoli from performing any or all of its obligations under these Conditions which arises from or is attributable to acts, events, omissions or accidents beyond Tivoli's reasonable control including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of Tivoli or any other person) failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, pandemic, fire, flood, storm, tsunami, inclement weather or default of suppliers or subcontractors;

Index: the index of average earnings or, in the event of such index ceasing to be published, such other index as may reasonably be regarded as a suitable measure of the rate of increase of average earnings;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 rights, topography rights, moral 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;

Tivoli: means Tivoli Group Limited, a company registered in England under company number 11120774, and whose registered office is at Ground Floor, The Dovecote, Crewe Hall Farm, Old Park Road, Crewe, Cheshire, England, CW1 5UE;

Tivoli Documentation: includes all documents, products and materials developed by Tivoli in relation to the Services in any form, (including without limitation, computer programs, data, reports, specifications, drawings, maps, plans, diagrams, designs, pictures or other images, tapes, disks or other devices or records embodying information in any form);

Tivoli Equipment: any equipment, including tools, systems, cabling or facilities, provided by Tivoli or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;

Parties: Tivoli and the Customer;

Premises: the premises or site referred to in the Service Agreement;

Price: the price payable for the Services as detailed in the Service Agreement, or in the event of no Service Agreement the agreed price between the parties, such sum becoming payable within 25 days of the date of each completed service.

Replacement Value: means the full cost of replacing the Display at the time the loss is sustained;

Service Agreement: means the document containing the details of the Services, pricing, schedule of rates, customer details and other relevant information stipulated in these Conditions;

Service Levels: the service levels set out as part of the Services or otherwise in the Service Agreement;

Services: the goods and services to be provided by Tivoli under these Conditions as set out in the Service Agreement, together with any other goods and services which Tivoli provides or agrees in writing to provide to the Customer;

Start Date: the start date (if any) specified in the Service Agreement.

Term: The minimum period specified in the Agreement.

- 1.1. In these Conditions unless the context otherwise requires:
 - 1.1.1. headings shall not affect the interpretation of these Conditions;
 - 1.1.2. any reference to a statutory provision shall include references to that provision as from time to time modified or re-enacted (save to the extent that modifications or re-enactments made after the date of the Agreement impose any new or extended liability or restriction on Tivoli or the Customer);
 - 1.1.3. any reference to a person includes any person, firm or company or other legal entity;
 - 1.1.4. the singular includes the plural and vice versa and any gender includes any other gender.

2. BASIS OF SUPPLY

- 2.1. The terms of these Conditions prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.



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- 2.2. In the absence of any express acceptance of these Conditions by the Customer, the making of any payment or allowing Tivoli staff to enter the site and start the Services shall constitute acceptance of these conditions by the Customer.
- 2.3. The Services supplied under these Conditions shall be provided by Tivoli to the Customer from the Start Date.
- 2.4. Tivoli reserves the right to make any changes to the Services which are required to conform with any applicable statutory or regulatory requirements or which do not materially affect their quality or performance.
- 3. TIVOLI'S OBLIGATIONS**
- 3.1. Tivoli shall use reasonable endeavours to provide the Services to the Customer, in accordance in all material respects with the Service Levels.
- 3.2. Tivoli shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and that have been communicated to it by the Customer, provided that it shall not be liable under these Conditions if, as a result of such observation, it is in breach of any of its obligations under these Conditions.
- 3.3. Save in the case of Displays sold by Tivoli to the Customer, as part of the Services, Tivoli will repair or replace any Display as necessary provided that the Customer is not in default of any of its obligations under this Agreement, and such a repair or replacement is not necessitated as a result of:
 - 3.3.1. Wilful or careless damage, negligence, mishandling, tampering or any unauthorised repairs by or on the part of the Customer, its employees, subcontractors or agents; or
 - 3.3.2. Vandalism.
- 3.4. Visit the Customer's premises as identified in the Agreement as necessary during the term of this Agreement at times mutually convenient to both Tivoli and the Customer to maintain the displays;
- 3.5. Unless the Agreement identifies that the Agreement is for maintenance only, or in the case of plants which are 2.5 meters or more in height, replace any plants as and when necessary. Where Tivoli is unable for any reason to replace a particular plant with the same variety of plant, Tivoli shall be entitled at its sole discretion to replace that plant with such other plant as it considers appropriate. Be responsible for any damage or loss of any Display;
- 4. CUSTOMER'S OBLIGATIONS**
- 4.1. The Customer shall:
 - 4.2. Provide access for Tivoli representatives to carry out its Services at any reasonable time or as specified in the Agreement;
 - 4.3. Provide all facilities at the premises that Tivoli may reasonably require to carry out the Services;
 - 4.4. Fully follow and comply with the plant and display care instructions given by Tivoli, its employees or agents;
 - 4.5. Permit Tivoli to make an additional charge for any wasted journeys as a result of the Customer's failure to allow access
 - 4.6. Permit Tivoli to make an additional charge for any visits or call outs which are required as a result of the customers failure to observe the care instructions given by Tivoli, its employees or agents; and
 - 4.7. Maintain an ambient temperature of 14C (58F) in the room or area in which any plant Displays containing live plants are sited.
 - 4.8. To keep all Displays away from sources of heat and/or fire.
 - 4.9. Not sell, part with possession or, pledge or otherwise dispose of any Display. The Customer shall take no action inconsistent with Tivoli's ownership of the Displays;
 - 4.10. Insure the Displays in the joint name of Tivoli and the Customer for its Replacement Value against all risk of loss or damage;
 - 4.11. Immediately notify anyone claiming possession of the Display(s) that it belongs to Tivoli;
 - 4.12. Comply with all statutory and safety requirements relating to the use of the Display(s);
 - 4.13. Notify Tivoli immediately of any damage, destruction or loss to or of any Display;
 - 4.14. Not at any time permit any Display to be removed, repaired or maintained other than by Tivoli or its authorised representative;
 - 4.15. Not remove any labels or signs indicating that the Display(s) belong to Tivoli
 - 4.16. Co-operate with Tivoli in all matters relating to the Services;
 - 4.17. Provide Tivoli, its employees, agents and sub-contractors, in a timely manner and at no charge, access to the Premises, office accommodation, utilities, data and other facilities and resources as requested by Tivoli or required for delivery of the Services;
 - 4.18. Provide, in a timely manner, such Customer Material and other information as Tivoli may request and ensure that it is complete and accurate in all material respects;
 - 4.19. Be responsible (at its own cost) for preparing and maintaining the Premises for the supply of the Services, and informing Tivoli of all of its obligations and actions under this clause
 - 4.20. Unless otherwise agreed in writing, be responsible for identifying, monitoring, removing and disposing of any hazardous materials from the Premises in accordance with all applicable laws, before and during the supply of the Services at those premises and informing Tivoli of all of its obligations and actions under this clause 4.1.5;
 - 4.21. Inform Tivoli of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises;
 - 4.22. Ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards and requirements;
 - 4.23. Unless Tivoli have specifically agreed in writing to do so, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of Tivoli Equipment, the use of Customer Material and the use of the Customer Equipment in relation to Tivoli Equipment, insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
 - 4.24. Keep and maintain Tivoli Equipment in good condition and in accordance with any Tivoli instructions notified by Tivoli in writing from time to time and shall not dispose of or use Tivoli Equipment other than in accordance with Tivoli's written instructions or authorisation.
 - 4.25. It is the responsibility of the Customer to ensure that all information provided to Tivoli by or on behalf of the



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Customer to enable Tivoli to specify the Services and calculate the price for the Services is, and remains, accurate. If the information provided to Tivoli prior to the Start Date is incorrect on the Start Date, Tivoli reserves the right, acting reasonably, to vary the specification and/or the price for the Services.

- 4.26 If Tivoli's performance of its obligations under these Conditions is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees (including without limitation any failure to comply with any of the obligations in clause 4.1):
- 4.27. Tivoli shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay;
- 4.28 Tivoli reserves the right to charge the Customer for the performance of the Services prevented or delayed and for any costs and expenses incurred by Tivoli due to the prevention or delay, in addition to the price referred to in the Service Agreement.
- 4.29 The Customer shall not, without the prior written consent of Tivoli, at any time from the Start Date to the expiry of six months after the termination or expiry of these Conditions, solicit or entice away from Tivoli or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Tivoli in the provision of the Services.
- 4.30 The Customer shall not ask Tivoli employees, agents or subcontractors to carry out tasks or services which are not included in the Proposal.
- 4.31 The Customer shall at all times:
 - 4.31.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 - 4.32.2 comply with Tivoli's Ethics, Anti-bribery and Anti-corruption Policies, in each case as Tivoli or the relevant industry body may update them from time to time (Relevant Policies);
 - 4.33.3 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate;
 - 4.34.5. within two months of the Start Date, and annually thereafter, certify to Tivoli in writing signed by an officer of the Customer, compliance with this Clause 4.3.1 by the Customer and all persons associated with it. The Customer shall provide such supporting evidence of compliance as Tivoli may reasonably request.

5. PRICE AND PAYMENT

- 5.1. The Customer shall pay the charges and the expenditure incurred by Tivoli as set out in the Service Agreement. Or in the event of no Service Agreement the agreed price between the parties, such sum becoming payable within 25 days of the date of each completed service.
- 5.2. Tivoli reserves the right, by giving written notice to the Customer at any time, to increase the price referred to in the Service Agreement to reflect any increase in the cost to Tivoli which is due to any factor beyond the control of Tivoli (such as, without limitation, changes in legislation, any foreign exchange fluctuation, currency regulation,

increased fuel charges, alteration of duties, significant increase in the costs of labour, increase in the National Minimum Wage or other local minimum wage requirement), any change in the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Tivoli adequate information or instructions.

- 5.3. Notwithstanding condition 5.2 the price for the Services shall be increased with effect from each anniversary of the Start Date in agreement with the Customer. Such increase shall be such reasonable amount taking into account all relevant factors including, without limitation, the factors referred to in condition 5.2 and shall not be less than the percentage (if any) by which the figure last published in the Index prior to that anniversary shall have increased over the figure of the Index at the last review (or, in the case of the first review, over the Index at the Start Date).
- 5.4. All prices quoted to the Customer exclude VAT, which Tivoli shall add to its invoices at the appropriate rate.
- 5.5. Unless otherwise specified in the Service Agreement the Customer shall pay each invoice submitted to it by Tivoli, in full and in cleared funds, within 25 days of the date of invoice (the 'Due Date'). Time for payment shall be of the essence of these Conditions.
- 5.6. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Tivoli on the due date, Tivoli may:
 - 5.6.1. suspend all Services until payment has been made in full; and/or
 - 5.6.2. terminate these Conditions immediately on written notice.
- 5.7. All sums payable to Tivoli under these Conditions shall become due immediately on its termination, despite any other provision. This clause 5.7 is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.
- 5.8. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Tivoli by the Due Date, Tivoli may claim interest under the Late Payment by Commercial Debts (Interest) Act 1998.
- 5.9. Tivoli may, without prejudice to any other rights it may have, set off any liability of the Customer to Tivoli against any liability of Tivoli to the Customer.
- 5.10. On receipt of a written demand by Tivoli, the Customer unconditionally and irrevocably agrees to pay in good time to Tivoli (at a frequency to be agreed between the Parties) the Auto Enrolment Costs.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. As between the Customer and Tivoli, all Intellectual Property Rights and all other rights in the Tivoli Documentation shall be owned by Tivoli. Subject to clause 6.2, Tivoli licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Tivoli Documentation and the Services. If these Conditions are terminated or expire, this licence will automatically terminate.
- 6.2. The Customer acknowledges that, where Tivoli does not own Tivoli Documentation, the Customer's use of rights in the Tivoli Documentation is conditional on Tivoli obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Tivoli to license such rights to the Customer.



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- 6.3. Where the Customer agrees to Tivoli using the Customer's names, logos and/or trademarks in connection with Tivoli's performance of the Services, the Customer licenses all Intellectual Property Rights in such names, logos and trade marks to Tivoli free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable Tivoli to use them in connection with its performance of the Services.

7. WARRANTIES AND LIABILITY

- 7.1. This condition 7 sets out the entire financial liability of Tivoli (including any liability of Tivoli for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of any breach of the Agreement; any use made by the Customer of the Services or any part of them; and any representation, statement or tortious act or omission arising under or in connection with the Agreement.
- 7.2. Tivoli warrants that it will provide the Services with reasonable skill and care and in accordance with the Service Levels.
- 7.3. Save as expressly provided in these Conditions Tivoli gives or makes no warranty, representation, term or condition of any kind concerning the Services or the Tivoli Documentation. All warranties, representations, terms and conditions implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these Conditions.
- 7.4. Tivoli shall not be liable to the Customer, where any alleged breach or defect relates to non-compliance with the Service Levels, unless:
- 7.4.1. the Customer gives details of the alleged breach or defect to Tivoli in sufficient time for Tivoli to investigate the alleged breach or defect; and
- 7.4.2. Tivoli is given a reasonable opportunity after receiving details of the defect of re-performing the Services.
- 7.5. Tivoli shall not be liable to the Customer, where the alleged breach or defect relates to anything other than that referred to in condition 7.4, unless:
- 7.5.1. the Customer gives written notice of the alleged breach or defect to Tivoli as soon as reasonably practicable; and
- 7.5.2. Tivoli is given a reasonable opportunity after receiving the notice of re-performing the Services.
- 7.6. Subject to condition 7.8, Tivoli shall not under any circumstances whatsoever be liable to the Customer for;
- 7.6.1. any pure economic loss, loss of profit, loss of business, loss of enjoyment, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information, in each case whether direct, indirect or consequential; or
- 7.6.2. any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Conditions.
- 7.7. Under no circumstances whatsoever shall Tivoli be liable for acts or neglect of its employees, servants and/or agents which fall outside the duties expressly assigned to them by Tivoli. The Customer must not give instructions to or request Services to be supplied by Tivoli other than to the person(s) duly appointed by Tivoli to receive instructions from the Customer from time to time. For the avoidance of doubt, this clause 7.7 shall apply to wilful misconduct and criminal acts of employees, servants and/or agents of Tivoli.

- 7.8. Nothing in these Conditions excludes or limits the liability of Tivoli for death or personal injury caused by Tivoli's negligence, or for fraudulent misrepresentation.
- 7.9. Tivoli's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to the charges payable by the Customer for the Services during the preceding 12 months or £1 million in the aggregate, whichever is lower.
- 7.10. The Customer acknowledges that:
- 7.10.1. it has placed no reliance on any statement or representation whether oral or written made by Tivoli or on its behalf during the negotiations prior to the signing of these Conditions; and
- 7.10.2. it has taken appropriate legal advice and satisfied itself that this clause 7 is reasonable; and
- 7.10.3. all drawings, descriptive matter and advertising issued or provided by or on behalf of Tivoli and any descriptions and illustrations contained in catalogues or brochures relating to the Services are issued or published for the sole purpose of giving an approximate idea of the items described in them and do not form part of these Conditions.

8. EMPLOYEES

- 8.1. If by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') there is (on commencement of the provision of the Services) transferred to Tivoli any contract of employment of any person, the Customer shall:
- 8.1.1. promptly provide to Tivoli in writing, such information pertaining to any transferring employee as Tivoli may require (including, without limitation, their identity, contract of employment, salary, length of service, bonus, commission, benefits, periods of notice and pension rights) ('TUPE Information');
- 8.1.2. indemnify Tivoli from and against all losses, damages, liabilities, expenses, costs, actions, awards, penalties, fines and proceedings which Tivoli may suffer or incur arising out of or in connection with any claim or threatened claim or other legal recourse by all or any employees of the Customer (or a previous provider of all or any of the Services) in respect of:
- 8.1.2.(a) any matter concerning or arising from the employment or termination of employment with the Customer (or a previous provider of all or any of the Services) before the date of transfer;
- 8.1.2.(b) any act or omission of the Customer or any previous provider of all or any of the Services;
- 8.1.2.(c) any claim for breach of contract, unlawful deduction of wages, or any claim under the Equal Pay Act 1970 arising as a result of Tivoli continuing, in good faith, to pay the employees and provide benefits under the same terms and conditions provided by the Customer (or a previous provider of all or any of the Services) before the date of transfer.
- 8.2. On the termination or expiry of these Conditions, or in the event that there is a decrease in the scope of the Services such that it is a requirement that employees are made redundant, for whatever reason (without prejudice to the operation of TUPE if it applies) the Customer shall indemnify Tivoli against all losses, damages, liabilities, expenses, costs, actions, awards, penalties, fines and



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proceedings which Tivoli may suffer or incur arising out of or in connection with the termination of employment of any employees engaged in the provision of the Services.

- 8.3. Customer warrants that all TUPE Information provided by Customer (or a previous provider of all or any services similar to the Services) to Tivoli shall be complete and accurate in all material respects.

9. TERM AND TERMINATION

- 9.1. These Conditions shall come into force on the Start Date and, unless a fixed period for the agreement is specified in the Service Agreement, and subject as provided in these Conditions, shall continue in force for a period of three years ('the Initial Term') and shall continue thereafter until terminated by either party on not less than three months' written notice.

- 9.2. Notwithstanding clause 9.1 above, Tivoli shall be entitled to terminate these Conditions at any time during the Initial Term by providing three months' written notice to the Customer.

- 9.3. Tivoli shall be entitled to terminate these Conditions immediately by written notice to the Customer if the Customer commits any breach of any of the provisions of these Conditions and in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of written notice giving full particulars of the breach and requiring it to be remedied;

- 9.4. Either party shall be entitled to terminate these Conditions immediately by written notice to the other if:

- 9.4.1. an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if an administrator is appointed or if documents are filed with the Court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt;

- 9.4.2. that other party, being a partnership shall be dissolved or, being an individual, shall have a bankruptcy petition presented or shall die;

- 9.4.3. that other party shall cease or threaten to cease to carry on its business or be unable to pay its debts or become insolvent (within the meaning of Insolvency Act 1986), or make or propose to make an arrangement or composition with its creditors;

- 9.4.4. anything which, under the law of any jurisdiction, is analogous to any of the acts or events specified in this clause 9.4.

- 9.5. For the purpose of condition 9.3 a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to time of performance (provided that time of performance is not of the essence).

- 9.6. Any waiver by either party of a breach of any provision of these Conditions shall not be considered as a waiver of any subsequent breach of the same or any other provision of

these Conditions.

- 9.7. The rights to terminate these Conditions given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

10. CONSEQUENCES OF TERMINATION

- 10.1. On termination of these Conditions for any reason:
10.1.1. the Customer shall immediately pay to Tivoli all of Tivoli's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Tivoli may submit an invoice, which shall be payable immediately on receipt;

- 10.1.2. if so required by Tivoli the Customer shall purchase all or some of the Tivoli Equipment from Tivoli at book value or market value, whichever is the higher;

- 10.1.3. subject to clause 10.1.2, the Customer shall within 28 days (or such other period specified by Tivoli) return all of Tivoli's Equipment, and Tivoli Documentation to Tivoli. If the Customer fails to do so, then Tivoli may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

- 10.1.4. the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

- 10.2. If the Customer purports to terminate this Agreement whether in respect of some of the Services or all of them before expiry of the Minimum Period, or where Tivoli terminates this Agreement during the Minimum Period pursuant to clause 9.3, the Customer shall upon demand pay to Tivoli compensation calculated as follows:

- 10.2.1 Termination during year 1 of the Minimum Period. 80% of the aggregate charges payable by the Customer for the terminated Services until the first anniversary of the Commencement Date and 50% of the charges for the remainder for the Minimum Period.

- 10.2.1 Termination during year 2 or any subsequent year of the Minimum Period 50% of the aggregate charges payable by the Customer for the terminated Services for the remainder of the Minimum Period.

- 10.3 Where the Customer terminates this Agreement on or after expiry of the Minimum Period in breach of clause 9, the Customer shall be liable to pay Tivoli compensation to either

- 10.3.1 3 months charges; or

- 10.3.2 50% of the charges for the remainder of the period to the date on which the Customer could have terminated had they complied with clause 10 whichever is the greater.

- 10.4 On the termination of this Agreement, Tivoli shall as soon as reasonably possible, collect the Displays at the expense of the Customer who shall afford all necessary access for such purposes.

11. CONFIDENTIALITY AND TIVOLI'S PROPERTY

- 11.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Tivoli, its employees, agents or sub-contractors and any other confidential information concerning Tivoli's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to



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know the same for the purpose of discharging the Customer's obligations to Tivoli, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

11.2. All materials, equipment and tools, drawings, specifications and data supplied by Tivoli to the Customer (including Tivoli Documentation and Tivoli Equipment) shall, at all times, be and remain, as between Tivoli and the Customer, the exclusive property of Tivoli, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Tivoli, and shall not be disposed of or used other than in accordance with Tivoli's written instructions or authorisation.

11.3. This clause 11 shall survive termination of these Conditions, however arising.

12. DATA PROTECTION

12.1. The Customer acknowledges and agrees that details of the Customer's name, address, payment record and other information may be submitted to a credit reference agency and finance providers, and personal data will be processed by and on behalf of Tivoli in connection with the Services.

13. FORCE MAJEURE

13.1. Tivoli shall have no liability to the Customer if it is prevented or delayed from performing its obligations under these Conditions or from carrying on its business by acts, events, omissions, or accidents due to any event of Force Majeure.

14. GENERAL

14.1. If there is an inconsistency between any of the provisions of these conditions and the provisions of the Service Agreement the provisions of the Service Agreement shall prevail.

14.2. Save as otherwise provided in these Conditions, no variation of these Conditions or of any of the documents referred to in it shall be valid unless it is in writing and signed on behalf of each of the parties by an authorised person.

14.3. Failure to exercise, or any delay in exercising, any right or remedy provided under these Conditions or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

14.4. A waiver of any right under these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

14.5. The Customer shall not assign, transfer, sub-contract or otherwise dispose of all or any part of its rights or obligations under these Conditions without the prior written consent of Tivoli.

14.6. Tivoli shall be free to assign, sub-contract, transfer or otherwise dispose of all or any of its rights or obligations under these Conditions without the consent of the Customer.

14.7. If any provision of these Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Conditions which shall remain in full force and effect.

14.8. If any invalid, unenforceable or illegal provision would be

valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

14.9. For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not intend any person other than a party to these Conditions to be able to enforce any term of these Conditions (save where may be expressly stated otherwise in these Conditions). Nothing in these Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.10. Nothing in these Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.11. These Conditions contain the entire agreement between the parties with respect to the subject matter of these Conditions, and supersedes all previous agreements and understandings between the parties with respect to this agreement.

14.12. Each party acknowledges that, in entering into these Conditions, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in this agreement.

14.13. All notices under these Conditions shall be:

14.13.1. in writing and addressed to the recipient at the address set out in these Conditions;

14.13.2. deemed to have been duly given when delivered, if delivered by messenger during normal business hours of the recipient; or on the second business day following mailing, if sent by first class pre-paid recorded delivery post; or at the time of transmission if sent by fax (provided that a copy of the fax is put in the post to the recipient by first class recorded delivery post within 24 hours of the transmission).

14.14. English law governs these Conditions and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

15. CHRISTMAS DISPLAYS

15.1. It is the Customer's responsibility to provide a power supply for decorative lights and to supply all necessary power leads and other electrical equipment necessary for the safe operation of the Christmas Display. All such equipment must be PAT tested.

16. OWNERSHIP AND RISK IN GOODS SOLD

16.1. Risk of damage or loss to any good sold to the Customer or any Displays ("Goods") shall pass to the Customer upon delivery.

16.2. Notwithstanding delivery and the passing of risk in any Goods, the title in the Goods shall not pass to the Customer until Tivoli has received in cash or cleared funds payments in full of the price of the Goods and in respect of any other payment due to Tivoli by the Customer.



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- 16.3 Until such time as the title in the Goods passes to the Customer, the Customer shall hold the Goods as Tivoli's fiduciary agent and bailee and keep the Goods separate from those of the Customer and third parties but the Customer shall be entitled to use the Goods in the ordinary course of its business.
- 16.4 Until such time as the title in the Goods passes to the Customer, and provided the Goods are still in existence, Tivoli shall be entitled at any time to require the Customer to deliver up the Goods to Tivoli and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and dismantle and repossess the Goods.
- 17. REMOVAL OF GOODS**
- 17.1 The Customer will allow any person authorised by Tivoli to enter any premises owned or occupied by the Customer at all reasonable times to inspect the Displays and remove the Displays whether for replacement or upon termination of this Agreement howsoever such termination shall arise.
- 17.2 If upon termination of the Agreement, Tivoli is unable for any reason to recover the Display(s) (other than where solely due to the default of Tivoli or its employees) the Customer will be liable for the Replacement Value of the Display(s) which have not been recovered, such charges being payable immediately upon invoice from Tivoli.
- 17.3 Tivoli will exercise all reasonable care in removing the Display(s) from the Customer's premises but will not be responsible for restoring that part of the premises (including any Services such as electrical supply) where the Display(s) were installed to its original state.