



# General Terms & Conditions

V1.0



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## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with the following:

- (a) the Conditions; and
- (b) any Managed Services Agreement; and
- (c) any applicable Specific Terms and Conditions.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** the person or firm who purchases the Equipment and/or Services from the Supplier.

**DPA:** means the Data Protection Act 2018 (2018 c.12).

**Controller, Processor, Data Subject and Personal Data, Sensitive Data, processing and appropriate technical and organisational measures** shall have the meanings given to them in the DPA.

**Data Protection Laws:** means: (a) the GDPR; (b) the DPA; and (c) any laws that implement, replace, extend, re-enact, consolidate or amend the GDPR or DPA.

**Data Security Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.2.

**EEA:** the European Economic Area.

**Equipment:** the Equipment (or any part of it) set out in the Order.

**Equipment Specification:** any specification for the Equipment, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Force Majeure Event:** has the meaning given to it in clause 0.

**GDPR:** means the General Data Protection Regulation (EU) 2016/679.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



**Managed Services Agreement:** a agreement for the provision of managed services provided in writing by the Supplier to the Customer.

**Minimum Cancellation Notice Period:** the minimum period of notice that the Customer must give to the Supplier to terminate the Services or any part of them or this Contract.

**Order:** the Customer's order for the supply of Equipment and/or Services.

**Protected Data:** means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract.

**Representatives:** means in relation to the Supplier its officers, employees, professional advisers, consultants and contractors that need to know the Confidential Information to enable the Supplier to comply with the terms of the Contract.

**Restricted Person:** means any person employed or engaged by the Supplier during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

**Service Fee:** the fee payable by the Customer to the Supplier for the Services, which is made up of the Subscription Fee and any applicable Usage Fee.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Specific Terms and Conditions:** the Supplier's specific terms and conditions (if any) applicable to the Services (or any part of them) referred to in the Order.

**Subscription Fee:** that regular part of the Service Fee.

**Supervisory Authority:** means any regulator, authority or body responsible for administering Data Protection Laws.

**Supplier:** Little Big Tech Ltd

**Usage Fee:** that variable part of the Service Fee based on actual Usage for a period.

## 1.2 Interpretation:

- a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its personal representatives, successors and permitted assigns.
- c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- e) A reference to writing or written includes fax and email.



## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with the Contract.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force unless stated otherwise in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

## 3. Equipment

- 3.1 The Equipment is described in the Equipment Specification.
- 3.2 To the extent that the Equipment (or part of it) is to be manufactured in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

## 4. Delivery of Equipment

- 4.1 The Supplier shall ensure that:
  - a) each delivery of the Equipment is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and
  - b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for



collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The parties may agree either that:

- a) the Supplier shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Equipment are ready; or
- b) the Customer shall collect the Equipment from the Delivery Location within three Business Days of the Supplier notifying the Customer that the Equipment are ready.

4.3 Delivery of the Equipment shall be completed on the completion of unloading or loading (as may be appropriate) of the Equipment at the Delivery Location.

4.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

4.6 If the Customer fails to take or accept delivery of the Equipment within three Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:

- a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
- b) the Supplier shall store the Equipment until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of it, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.

4.8 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.



## 5. Quality of Equipment

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Equipment shall:
- a) conform in all material respects with the Equipment Specification; and
  - b) be free from material defects in design, material, and workmanship.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full if:
- a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
  - b) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost.
- 5.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
- a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 5.2;
  - b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) best practice;
  - c) the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Customer;
  - d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
  - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - f) the Equipment differs from the Equipment Specification as a result of changes made to ensure that it complies with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 0, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier.

## 6. Title and risk

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Equipment.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:



- a) store the Equipment separately from all other equipment held by the Customer so that they remain readily identifiable as the Supplier's property;
  - b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - d) notify the Supplier immediately if it becomes subject to any of the events listed in clause b); and
  - e) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause b) to clause 14.2(d) then, without limiting any other right or remedy the Supplier may have:
- a) the Customer's right to use the Equipment in the ordinary course of its business shall cease immediately; and
  - b) the Supplier may at any time:
    - (i) require the Customer to deliver up the Equipment; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

## 7. Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the relevant Managed Services Agreement, and/or Specific Terms and Conditions as applicable. The Services may include applications or other services provided by third parties.
- 7.2 The Supplier shall assist the Customer in the set-up of the Services.
- 7.3 The Supplier shall provide technical assistance and training (which may incur a reasonable additional charge depending on requirements unless set out in any Managed Services Agreement or Specific Terms and Conditions) for the set-up and provision of the Services when reasonably requested to do so. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified (including any project work that is time and materials charged) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks that are allocated to them.
- 7.6 Unless stated in any Managed Services Agreement or Specific Terms and Conditions the Supplier does not warrant that the Services will be error-free or uninterrupted.





- 7.7 The supplier shall co-operate with the customer in all matters relating to the supply of services subject to the order it relates to.
- 7.8 The Supplier will maintain all necessary statutory and regulatory license and permits to provide the services within the Order.
- 7.9 Maintain necessary insurance in the sum of no less than £5 million in respect of any breach of its obligations under the Order.

## 8. IT Support scope

### 8.1 In scope services

- 8.1.1 Operating system (OS) versions currently supported by [Microsoft](#) and Apple MacOS 11 Big Sur, 12 Monterey and 13 Ventura
- 8.1.2 Microsoft Office Suites current generally available version
- 8.1.3 Configuration of M365 tenant or Google workspace account
- 8.1.4 Email Clients: Microsoft Office 365 Outlook, Microsoft Windows Mail App, Google Workspace and Mac Mail
- 8.1.5 Browsers: Chromium based, Microsoft Edge, Firefox and Safari
- 8.1.6 Help Desk Services will assist end clients with the restoration of files and folders owned/created by the same end client using Backup solution or Microsoft Previous Versions when enabled

### 8.2 Out of scope

- 8.2.1 Fix database corruption issues.
- 8.2.2 End Client Training – example teaching clients how to use PowerPoint.
- 8.2.3 Hardware-related issues (hard disk, memory, power supply, etc.) on devices older than 5 years, or older than 3 years with repeating issues.
- 8.2.4 On-site support at MSP and/or end client locations for hardware and physical connectivity issues.
- 8.2.5 Anything not specifically identified as in scope.

## 9. Security Services

- 9 Little Big Tech SOC Service provides monitoring, detection, investigation, escalation, and incident support for incidents within the current support toolset and visibility of the managed services. This SOW defines what is in scope, what is not in scope and client responsibilities. Client acknowledges and agrees that anything not specifically set forth herein as in scope is deemed out of scope, "End Client" or "End Client site" shall mean any entity for whom Little Big Tech provides one or more elements of the SOC offering.
- 9.1 SOC Services vary based on the security products purchased. Product specific variations will be defined in the In Scope Services section of this SOW. The following service definitions are common to all services.
  - 9.1.1 Coverage hours are 24 x 7
  - 9.1.2 SOC Service teams including Pittsburgh, PA, USA, Salt Lake City, UT, USA, Pune, India, Mumbai, India. There are also provisions for work from home staff.



## 9.2 In Scope services

9.2.1 The SOC will provide monitoring, detection, investigation, escalation and incident support for all incidents within the current supported toolset and visibility of the managed services. The SOC is responsible for incident monitoring, detection, analysis, investigation, escalation, and incident support. The SOC will be responsible for remote incident analysis and investigation to determine if alerts or security events warrant incident classification. If an event is classified as an incident by the SOC, the SOC will track the incident with You. The SOC will perform incident triage to include determining threat scope, urgency, potential impact and make recommendations designed to allow for remediation.

The SOC will remotely investigate initial security events identified by the SOC and escalate as appropriate in accordance with the established and agreed upon Service Level Objectives (SLOs), Events and incidents will be analyzed and investigated using the SOC's standard process and procedures. Escalations will follow established escalation paths and utilize contact information collected during onboarding and documented by soc.

For incidents that are assigned to the Client after analysis, the Client is responsible for escalating incidents back to the SOC that require action or analysis by the SOC.

The SOC will be the collection point for additional group inputs for classification of security incidents. The potential exists for other entities to notify the SOC of possible events. In these relatively rare cases, the SOC will ensure outside sources of information are incorporated into established SOC workflow procedures. As events are pulled into the SOC Workflow, it is the SOC's responsibility to create and classify incidents. As the SOC is responsible for incident escalation and response, only the SOC has the authority to classify events or alerts as incidents to ensure due diligence of event investigation and accountability in reporting.

9.2.2 During incident investigation the SOC may perform the following activities:

9.2.2.1 Perform analysis on client assets/traffic, document results noting attacker profiles. Assist in identifying potential impact of incidents on client systems and using available Little Big Tech security tools to assist client in determining if data was exfiltrated,

9.2.2.2 Document and track events (false positives and false negatives, blacklists, whitelists) within the Little Big Tech security toolset.

9.2.2.3 Escalate incidents to identified client contacts for further remediation.

9.2.3 Testing of Monitoring and Response Capabilities

9.2.3.1 Client may test SOC monitoring and response capabilities by staging simulated or actual reconnaissance activity, system, or network attacks, and/or system compromises. Such activities may be initiated directly by Client or by a contracted third party. Client shall notify the SOC testing email at least fourteen (14) days in advance of testing with the expectation that analyst activities will not be notified of testing. Testing performed on newly added (within 60 days) assets or data feeds should be communicated to the SOC via advance electronic or written notice to ensure SOC personnel have properly onboarded new information and that all monitoring and response capabilities are working properly. SLOs will not apply during the period of staged or testing activities.

9.2.4 Scheduled and Emergency Maintenance

9.2.4.1 Scheduled maintenance means any maintenance that is performed during a scheduled maintenance window or in which Client is notified at least one day in advance. Notice of scheduled maintenance will be provided to the Client's Authorized Point of Contact. Emergency maintenance means any



non-scheduled, non-standard maintenance required by SOC. No statement in the section of any Services entitled "Service Level Objectives" shall prevent SOC from conducting emergency maintenance if it is critically necessary for the integrity and security of the Services. During such emergency maintenance, Client's Authorized Point of Contact will receive notification of initialization of the emergency maintenance, and of the completion of the emergency maintenance. The SOC will be relieved of its obligations under the applicable SLOs during scheduled and emergency maintenance.

#### 9.2.5 File Sample Submissions

9.2.5.1 The EDR and SIEM SOC services may detect suspicious or malicious executable files on endpoints. Sometimes it is necessary to perform additional investigations to understand an attack. In these cases, Little Big Tech may retrieve file samples of suspicious or malicious files from an endpoint to perform additional analysis.

By allowing sample submissions, our analysts are enabled to provide more in-depth analysis and context to their investigations of potential incidents, as well as enhancing the detection and prevention of future incidents that may involve the same file(s).

Part of this process may require our analysts to automatically request samples of files, scripts or other source detected in Client or End Client environments to perform further analysis. In addition to our own in-house analysis, Little Big Tech may use outside services including but not limited to:

9.2.5.1.1 VirusTotal

9.2.5.1.2 Opswat MetaDefender

9.2.5.1.3 Joe Sandbox

Unless Client opts-out of File Analysis Submissions, the SOC will request samples from an endpoint and upload potentially malicious files for analysis as needed.

By allowing permission for the SOC to upload unknown binaries, SOC Analysts will either manually or automatically upload unknown binaries to outside analysis services:

Sample binary or its hash representation will be submitted to the appropriate analysis service.

Terms of Service and Privacy Policy for each service will apply.

The SOC shall not be responsible for this submission or for any act or omission by any online service.

9.2.6 You are hereby advised some/most analysis services make the file metadata publicly available, along with scan results from numerous anti-virus products, Service providers may also make the files samples available for download to partners.

#### 9.2.7 Host Isolation Terms

9.2.7.1 With our EDR offerings, Little Big Tech SOC has the ability to isolate machines on a Client or End Client's network that have an agent installed. The SOC uses host isolation to prevent the spread of malicious code by preventing a compromised machine from communicating to other network devices on the Internet or the Client or End Client's network. The Isolated machine will maintain connectivity to SOC and allow our analysts to continue investigation without risking other network devices to malicious code or active attacks.

9.2.7.2 Unless the Client opts-out, Little Big Tech will isolate potentially compromised machines. Little Big Tech will manually isolate the machine using the installed Endpoint Agent and notify the client of the isolation via an incident for escalation, The machines will remain in isolation until the threat has



been remediated or the client has specifically said they accept the risk and request the SOC to remove the isolation.

- 9.2.7.3 The client commits to identifying production impacting servers and assets that are NOT to be isolated unless the client has given written authorization. Client recognizes they assume all risk for non-isolated machines and the spread of any attack profile due to this.
- 9.2.7.4 The SOC commits to isolating machines that are NOT on the unauthorized list only to prevent the spread of malicious code and lateral movement by suspected attackers.
- 9.2.7.5 The SOC will escalate all incidents that require isolation to the client for their visibility and active feedback on the incident,
- 9.2.8 Clients are hereby advised that the SOC has the functionality to isolate machines on the End Client's network with installed EDR offerings, that the SOC has the ability to use this function to protect the network, and that the isolated machines will lose all connectivity to all other devices on the network,
- 9.2.9 Automated Remediation
  - 9.2.9.1 Some incidents can be remediated by the Little Big Tech EDR agents. These remediation actions are visible in the endpoint console.
  - 9.2.9.2 Clients can opt-out of allowing SOC Analysts to execute the automated remediation actions on affected endpoints. The current remediation actions that can be performed are, but are not limited to:
    - 9.2.9.2.1 Kill Process
    - 9.2.9.2.2 Quarantine Files
    - 9.2.9.2.3 Remediate Threat
    - 9.2.9.2.4 Rollback Threat
- 9.2.10 Clients are hereby advised that the SOC has the functionality to remediate machines on your or your End Client's network, that the SOC has the ability to use this function to protect the network, and that the SOC is not liable for downtime as the result of remediation actions that were taken.

## 10. Customer's obligations

10.1 The Customer shall:

- a) ensure that the terms of the Order and any information it provides in the Service Specification and the Equipment Specification are complete and accurate;
- b) co-operate with the Supplier as far as reasonable in all matters relating to the Services;
- c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;



- d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- e) prepare the Customer's premises for the supply of the Services;
- f) comply with all applicable laws, including health and safety laws;
- g) comply with any policies issued by the Supplier including (but not limited to) acceptable use, security and disaster recovery;
- h) respond to Supplier enquiries in a professional and timely manner;
- i) provide the Supplier with remote and (if requested) physical access to any systems that the Supplier supports;
- j) comply with the terms of any licence(s) applicable to the Services;
- k) keep all contact information provided to the Supplier up to date and correct in order to enable account management and technical notifications about the Services;
- l) if the Services include VoIP services, to keep the Supplier of any phone location changes in order to ensure details are correct for the use of 999 emergency services;
- m) keep the Supplier up to date with any changes to the infrastructure or environment relating to the Services that might impact on the performance of the Services;
- n) maintain any Equipment and insure any rented or loaned Equipment against all risks for its full value on the Customer's behalf from the date of delivery;
- o) notify the Supplier as soon as reasonably practicable of any loss of or damage to rented or loaned Hardware (fair wear and tear excepted) and, on request, reimburse the Supplier for the price for any loss or damage to it;
- p) establish, maintain and monitor adequate internal security measures for the Customer's access and use of the Services including the confidentiality and safe storage of all login details, usernames and passwords and updating them regularly;
- q) use the Services for the Customer's business purposes only; and
- r) comply with any additional obligations as set out in the Service Specification and the Equipment Specification;
- s) return any loaned or rented Equipment to the Supplier well-packaged and in good condition (fair wear and tear excepted) within thirty (30) days of termination of Contract; and
- t) where the Services include applications or other services provided by third parties, to comply with any terms, conditions and instructions issued by those third parties.

10.2 The Customer shall not access or use the Services for any unlawful purpose including:

- a) in any way which is likely to infringe the Intellectual Property Rights of a third party;
- b) for the transmission, display, downloading or uploading of any material which is or is likely to be construed as defamatory, threatening, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party or which is otherwise unlawful;
- c) attempting to gain unauthorised access to the Services;



- d) attempting to modify, distribute, reverse engineer or otherwise attempting to decipher any code in connection with the Services and/or any other aspect of the Supplier's or the Supplier's licensor's technology;
- e) in any way that is likely to cause damage or adversely affect the operation of the Services or interfere with or disrupt the Customer's website, other websites, servers or networks; and
- f) in any way that will or is likely to interfere with the use and enjoyment of the Services for other users.

10.3 Unless the Supplier has appointed the Customer as a partner or reseller the Customer agrees that it will not market, offer to sell or resell the Services to any third party.

10.4 If the Services include any third-party services, the Customer agrees to be bound by the third-party terms and conditions applicable to such services.

10.5 If the Services include any project work that is time and material charged the Customer accepts that:

- a) any failure by the Customer to adhere to the terms of this Contract that leads to delays will result in target dates being extended so as to accommodate fully the effects of such delay; and
- b) any delay that is directly or indirectly caused by any act or omission by the Customer may result in the Supplier charging the Customer for the effects of such a delay on a time and materials basis at its standard published day billing rates.

10.6 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation **(Customer Default)**:

- a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.6; and
- c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10.7 In order to protect the legitimate business interests of the Supplier, the Customer covenants with the Supplier that it shall not (except with the prior written consent of the Supplier):

- a) attempt to solicit or entice away; or
- b) solicit or entice away

from the employment or service of the Supplier the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.



- 10.8 The Customer further covenants with the Supplier that it shall not (except with the prior written consent of the Supplier) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.
- 10.9 The Customer shall be bound by the covenants set out in clauses 8.7 and 8.8 during the term of the Contract, and for a period of 12 months after its termination or expiry.
- 10.10 If the Customer commits any breach of clause 8.7 or clause 8.8 the Customer shall, on demand, pay to the Supplier a sum equal to one year's basic salary or the annual fee that was payable by the Supplier to the Restricted Person plus the recruitment costs incurred by the Supplier or relevant in replacing such person. The Customer acknowledges that it has had the opportunity to obtain independent legal advice on the implications of this clause and agrees to be bound by it.
- 10.11 The customer commits to replace any computer hardware experiencing issues which is older than 3 years, and all computers over 5 years

## 11. Charges and payment

11.1 The price for Equipment:

- a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the order; and
- b) unless otherwise stated, shall be exclusive of all costs and charges of packaging, insurance, transport of the Equipment.

11.2 The Supplier reserves the right to:

- a) increase the charges for the Services on written notice to the Customer:
  - (i) in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index; and / or
  - (ii) in line with any price increase levied upon the Supplier by a third-party supplier.
- b) increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification;
  - (iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment; or
  - (iv) any price increase levied upon the Supplier by a third-party supplier.

11.3 Unless the parties otherwise agree, the following shall apply:



- a) the Supplier shall invoice the Customer in advance of service delivery/completion; and
- b) where the Services include applications or other services provided by third parties, the Customer shall be liable for full payment in respect the entire term of each service even where the term of that service exceeds the term of the Contract;
- c) for the avoidance of doubt, the Customer acknowledges that termination of the Contract for any reason will not avoid its liability under clause 9.3(b) above.

11.4 The Customer shall pay each invoice submitted by the Supplier:

- a) within 7 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- b) in full via GoCardless unless written agreement of an alternative arrangement is provided

11.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.

11.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 0 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 12. Intellectual property rights

12.1 Unless stated otherwise, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier or a third-party licensor.

12.2 The Customer acknowledges that it has no right, title or interest in or to such Intellectual Property Rights other than as expressly set out in the Contract or as permitted by law.

12.3 The Customer shall indemnify and hold the Supplier harmless against any costs, liabilities, losses, and expenses including reasonable legal costs arising from any claim relating to the infringement of any third-party Intellectual Property Rights provided that:

- a) the Supplier gives notice of the claim;
- b) the Customer has sole control and defence of the claim; and
- c) the Supplier provides reasonable cooperation in the defence and settlement of the claim.

12.4 The supplier shall grant the customer royalty free license to use any documents provided as part of the service order





## 13. Data protection

- 13.1 The Customer and the Supplier acknowledge that the Customer is the Controller and the Supplier is a Processor for the purposes of processing Protected Data pursuant to these Conditions. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure that all instructions that it gives to the Supplier in respect of Protected Data are in accordance with Data Protection Laws.
- 13.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and these Conditions.
- 13.3 The Supplier confirms that it has a valid registration with the Supervisory Authority. A copy of the Supplier's registration certificate is available for inspection on request.
- 13.4 The Supplier shall process Protected Data fairly and lawfully in accordance with clauses 11.5 and 11.6.
- 13.5 The Supplier shall ensure that it processes Protected Data on the basis of one or more of the following legal grounds:
- a) the Data Subject has unambiguously given his or her consent;
  - b) processing is necessary for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the Data Subject prior to entering into a contract;
  - c) processing is necessary for compliance with a legal obligation to which the parties are subject, other than an obligation imposed by contract;
  - d) processing is necessary in order to protect the vital interests of the Data Subject;
  - e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties; and / or
  - f) processing is necessary for the purposes of the legitimate interests pursued by the parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject.
- 13.6 In addition to its obligations under clause 11.5 the Supplier shall ensure that it processes Sensitive Data on the basis of one or more of the following legal grounds:
- a) the Data Subject has given his or her explicit consent to the processing of the Sensitive Data;
  - b) processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the Controller in connection with employment;
  - c) processing is necessary to protect the vital interest of the Data Subject or of another person where the Data Subject is physically or legally incapable of giving his or her consent or the Controller cannot reasonably be expected to obtain the data subject's consent;
  - d) processing relates to data which have been made public as a result of steps taken by the Data Subject;
  - e) processing is for the purpose of or in connection with legal proceedings (including prospective legal proceedings), for the obtaining legal advice or is otherwise necessary for the purpose of establishing, exercising or defending legal rights;



- f) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties;
- g) processing is necessary for the purposes of preventing fraud; and / or
- h) processing relates to racial or ethnic origin and is necessary to review the existence or absence of equality of opportunity or treatment with a view to enabling such equality to be promoted or maintained.

13.7 The Customer shall, in respect of Protected Data, ensure that their privacy notices are clear and provide sufficient information to the Data Subjects for them to understand what of their Protected Data the Customer is sharing with the Supplier, the circumstances in which it will be shared, how such data will be processed and either the identity of the Supplier or a description of the type of organisation that will receive the Protected Data.

13.8 The Customer and the Supplier both acknowledge that Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. In circumstances where the processing of a Data Subject's Personal Data is not in compliance with Data Protection Laws, Data Subjects may also request rectification, erasure or blocking of their Personal Data. Where the Supplier receives a Subject Access Request as a result of its processing Protected Data, the Customer shall provide all reasonable assistance at its own cost to enable the Supplier to respond to the Subject Access Request.

13.9 The Supplier shall not retain or process Protected Data for longer than is necessary. Any Protected Data in the Supplier's possession on the termination or expiry of the Contract will be returned to the Customer unless the Supplier is required by law to retain such Protected Data for a specified period.

13.10 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Protected Data.

13.11 Each party warrants to the other that it will process the Protected Data in compliance with the Data Protection Laws and all codes, recommendations and advices issued by the Supervisory Authority.

13.12 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

- a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Protected Data and against the accidental loss or destruction of, or damage to, Protected Data to ensure a level of security appropriate to:
  - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
  - (ii) the nature of the data to be protected; and
- b) take reasonable steps to ensure compliance with those measures.

13.13 Subject to clause 13 below, each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 11.



- 13.14 The Customer acknowledges that, subject to clauses 11.5 and 11.6 above, the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Protected Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly or indirectly from the Customer's instructions.
- 13.15 The Supplier may authorise with the Customer's prior written consent (but not otherwise) a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- a) is on terms which are substantially the same as those set out in these Conditions; and
  - b) terminates automatically on termination of the Contract for any reason.
- 13.16 The Supplier will notify the Customer promptly of any Data Security Breach and use all reasonable endeavours to rectify it or mitigate against its effects. The Supplier will also report such Data Security Breach to the Supervisory Authority where required by Data Protection Laws. The Customer agrees to provide all necessary assistance at its own expense to the Supplier to facilitate the handling and resolution of the Data Security Breach in an expeditious and compliant manner.
- 13.17 In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Protected Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 13.18 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 13.19 The Supplier may without the consent of but by written notice to the Customer unilaterally amend this clause 11 to comply with changes in Data Protection Laws.
- c) The Customer agrees that the Supplier may provide the Customer's contact details to any company that it uses to provide the Services solely for the purpose of delivering the Services.
  - d) Third Party Processors

Our carefully selected partners and service providers may process personal information about you on our behalf as described below:

"Digital Marketing Service Providers. We periodically appoint digital marketing agents to conduct marketing activity on our behalf, such activity may result in the compliant processing of personal information. Our appointed data processors include:

(i) Prospect Global Ltd (trading as Sopro) Reg. UK Co. 09648733. You can contact Sopro and view their privacy policy here: <http://sopro.io>. Sopro are registered with the ICO Reg: ZA346877 their Data Protection Officer can be emailed at: [dpo@sopro.io](mailto:dpo@sopro.io)"



## 14. Confidentiality

14.1 Confidential Information means all confidential information that the Customer discloses or makes available to the Supplier before, on or after the date of this agreement. This includes:

- a) the fact that discussions and negotiations are taking place and the status of those discussions and negotiations;
- b) the existence and terms of this agreement;
- c) all confidential or proprietary information relating to:
  - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Customer; and
  - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Customer;
- d) any information, findings, data or analysis derived from Confidential Information; and
- e) any other information that is identified as being of a confidential nature; but excludes any information referred to in clause 12.2.

14.2 Information is not Confidential Information if:

- a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Supplier in breach of this agreement;
- b) it was available to the Supplier on a non-confidential basis prior to disclosure by the Customer;
- c) it was, is, or becomes available to the Supplier on a non-confidential basis from a person who, to the Supplier's knowledge, is not under any confidentiality obligation in respect of that information;
- d) it was lawfully in the possession of the Supplier before the information was disclosed by the Customer;
- e) it is developed by or for the Supplier independently of the information disclosed by the Customer; or
- f) the parties agree in writing that the information is not confidential.

14.3 In return for the Customer making Confidential Information available to the Supplier, the Supplier undertakes to the Customer that it shall:

- a) keep the Confidential Information secret and confidential;
- b) not use or exploit the Confidential Information in any way except for complying with its obligations under the Contract;
- c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;
- d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for complying with its obligations under the Contract; and
- e) apply the same security measures and degree of care to the Confidential Information as the Supplier applies to its own confidential information, which the Supplier warrants as providing adequate protection from unauthorised disclosure, copying or use.



- 14.4 The Supplier shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.
- 14.5 The Supplier may disclose the Confidential Information to its Representatives on the basis that it:
- a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
  - b) procures that those Representatives comply with the confidentiality obligations in clause 12.3 as if they were the Supplier.
- 14.6 The Supplier shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Supplier.
- 14.7 If so requested by the Customer at any time by notice in writing to the Supplier, the Supplier shall promptly:
- a) destroy or return to the Customer all documents and materials (and any copies) containing, reflecting, incorporating or based on the Customer's Confidential Information;
  - b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form;
  - c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
  - d) certify in writing to the Customer that it has complied with the requirements of this clause 12.7.
- 14.8 Nothing in clause 12.7 shall require the Supplier to return or destroy any documents and materials containing or based on the Confidential Information that the Supplier is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Supplier pursuant to this clause 12.8.
- 14.9 The Customer reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Customer to the Supplier does not give the Supplier or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.
- 14.10 Except as expressly stated in this agreement, the Customer makes no express or implied warranty or representation concerning its Confidential Information including, but not limited to, the accuracy or completeness of the Confidential Information.
- 14.11 Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Customer shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Supplier.



## 15. Limitation of liability

15.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);  
or
- e) defective products under the Consumer Protection Act 1987.

15.2 Subject to clause 13, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- a) pure economic loss;
- b) loss of profits;
- c) loss of sales or business;
- d) loss of agreements or contracts;
- e) loss of anticipated savings;
- f) loss of use or corruption of data;
- g) loss of or damage to goodwill;
- h) any indirect loss; or
- i) any consequential loss.

15.3 The Customer acknowledges that its use of the internet to access the Services (or part of the Services) is at its own risk and that the Supplier shall not be liable in respect of any goods, services, information, software or other material that the Customer may obtain from a third party when using the internet.

15.4 Subject to clause 13, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract (including any indemnity under it), shall be limited to:

- a) in any Minimum Cancellation Notice Period 150% of the charges paid in respect of such period; or
- b) in all other cases 150% of the total charges paid under the Contract.

15.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.6 The Customer acknowledges that it has read and understood this clause 13 and that it has adequate insurance or other financial means to cover for any losses beyond those set out in this clause.



15.7 This clause 0 shall survive termination of the Contract.

## 16. Termination

16.1 The Customer shall give not less than three months' notice to terminate the Contract or any Service(s) supplied pursuant to it. The termination of the Contract will take place at the end of the calendar month three months after the date that the notice to terminate has been received by the Supplier. If no notice or less than three months' notice is given, the Contract and any Service(s) supplied pursuant to it shall continue until such notice is given.

16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five days after receipt of notice in writing to do so;
- b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

16.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- b) there is a change of control of the Customer.

16.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause b) to clause 14.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 17. Consequences of termination

17.1 On termination of the Contract:

- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been



submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- b) the Customer shall return any Deliverables or Equipment which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 18. Force majeure

18.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its or, in the case of the Supplier, its own suppliers' reasonable control. These include: (a) natural disasters or "acts of God," such as lightning, tornadoes, hurricanes, tsunamis, floods and earthquakes; (b) manmade disasters, such as plant fires or floods; (c) war and civil issues, such as riots, civil unrest, acts of terrorism; (d) labour disputes or strikes; (e) government embargoes or other government actions affecting the supply chain; and (f) power outages or transportation issues.

18.2 Clause 16.1 above shall not apply in respect of any failure or delay by the Customer to make any payment to the Supplier that falls due under the Contract.

## 19. General

### 19.1 Assignment and other dealings

- a) The Supplier shall not at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier which shall not be unreasonably withheld, conditioned or delayed.

### 19.2 Notices

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order.
- b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.





c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

#### 19.6 Entire agreement.

a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

c) Nothing in this clause shall limit or exclude any liability for fraud.

19.7 **Third parties' rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.8 **Variation.** Except as set out in these Conditions no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

19.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

19.11 **Execution.** Both parties agree that the signing of the Order electronically shall be as valid as if signed in manuscript.



## VOIP and Connectivity

### 20 DEFINITIONS AND INTERPRETATION – VOIP and Connectivity

- 20.1 'Acceptable Use Policy' the latest version of the document issued by the Company in accordance with regulation to uphold its obligations under the Communications Act 2003 and clearly define for the Customer the policies and rules regarding use of the Services.
- 20.2 'Business or 'Enterprise' a Customer who is a company, a limited liability partnership, a partnership or sole trader or which otherwise trades through the premises to which the Products and Services are supplied and chooses to contract with the Company for specific or enhanced Services designed for commercial or business use 'Company' / 'Us' Little Big Tech Limited a company registered in England and Wales (Company number 14638974) whose registered office is at The Workary, Quadrant House, Croydon Road, Caterham, Surrey CR3 6TR and any Group company of Little Big Tech Ltd (as defined in section 474 of the Companies Act 2006).
- 20.3 'Confidential Information' all information identified as such by the disclosing party in writing together with all such other information which relates to the business affairs, finance, products, data, software programs, specifications, documentation, software listings, source or object code, developments, pricing terms, trade secrets, know how, personnel, customers and suppliers of the other party, together with all information which may reasonably be regarded as the confidential information of the disclosing party.
- 20.4 'Customer' the end user receiving and responsible for payment regarding the goods and/or services provided by the Company.
- 20.5 'E-Billing' an on-line or email process for sending out or accessing invoices and charges by the Customer for the Services.
- 20.6 'Event of Force Majeure' means any circumstances beyond a party's reasonable control including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors;
- 20.7 'Headline Transmission Speeds' the optimum non-guaranteed data transmission rates intended for the Service as stated on the Service Order, that the Customer can expect from the Service under ideal conditions.
- 20.8 'Initial Term' a period of 12 months unless otherwise stated on the Order Form.
- 20.9 'Intellectual Property Rights' any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing copyright, database rights, know-how, trade or business names and other similar rights or obligations, in any country (including, but not limited to, the UK).



- 20.10 'Order Form' a form provided by the Company containing the specific details of the goods and/or services to be provided, together with the associated costs of this provision, which is then accepted by the Customer through signing or completing online and submitting it to the Company.
- 20.11 'Products and Service(s)' all equipment, software or services which are detailed on the Service Order and/or which are supplied to the Customer by the Company including any new, extra or substitute Products or Services which the Company agrees to supply to the Customer at a later date.
- 20.12 'Product Terms' any additional terms and conditions that apply to specific product and services and are referred to on the Service Order.
- 20.13 'Service Demarcation Point' The defined socket, equipment port or device to which the Company delivers and supports the Service. This is defined on the Service Order and pointed out to the Customer upon acceptance of the Service.
- 20.14 'Service Order' the completed Little Big Tech Ltd Order Form signed or completed online by a Customer submitted to the Company and subsequently accepted by the Company.
- 20.15 'Service Level Agreement or SLA' those enhanced service levels which can be ordered by a Business or Enterprise customer subscribing to its enhanced Business or Enterprise services including an SLA.
- 20.16 'Terms and Conditions' the terms and conditions set out in this document, together with any Product Terms and all the details set out in any contract document or Order Form the Company may ask the Customer to sign including any regulated agreement under the Consumer Credit Act 1977.
- 20.17 'Unlimited Use' the use of the Company's internet packages and other related services without any form of usage cap imposed by the Company. However, such use remains subject to Little Big Tech Voice and Data's 'Acceptable Use Policy' which may change this.
- 20.18 Words in the singular shall include the plural and vice versa and words importing gender include any other gender.
- 20.19 Unless otherwise expressly provided, any reference to any legislation shall be deemed to include any amendment replacement or re-enactment thereof for the time being in force and to include any delegated legislation, orders, notices, directions, consents, provisions made thereunder and any condition attaching thereto.
- 20.20 References to writing shall include any modes of reproducing words in a legible and non- transitory form.
- 20.21 The headings of paragraphs are for ease of reference and shall not affect the construction of this Contract.
- 20.22 Unless stated to the contrary in the event of a conflict between the Terms and Conditions and any Product Terms relating to products and services to be provided by the Company then the specific Product Terms shall prevail.

## 21 SERVICE ORDERS



- 21.1 All orders are accepted subject to the availability of Products, the installation survey necessary to ascertain installation requirements to the property, the ability of the Company to provide Services to the location defined by the Customer on the Service Order and to these Terms and Conditions.
- 21.2 The Company shall supply, and the Customer shall purchase the Products and Services described on the Service Order in accordance with these Terms and Conditions, which shall govern the contract to the exclusion of any other terms on which the Customer seeks to rely. No variation to these terms and Conditions by the Customer shall be binding unless expressly agreed in writing by the authorised representatives of the Company.
- 21.3 The Company's employees or agents are not authorised to make any representations concerning the Products/Services unless confirmed by the Company in writing. In entering into the contract, the Customer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms and Conditions affects the liability of either party for fraudulent misrepresentation.
- 21.4 Any typographical, clerical or other error or omission in any sales literature, quotation, Order, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 21.5 The Company reserves the right to vary the charges contained in the Service Order prior to acceptance of the Service Order if additional costs are identified through survey, design or scoping of the Customer's requirements. The Customer has the right to cancel the Service Order within 5 working days of being advised of any such change. The Company will deem acceptance of these charges and accept the Service Order as Confidential document amended if the Customer does not cancel in writing with this period. The provisions of this condition shall not affect the rights of a Customer dealing as a consumer (within the meaning of the Consumer Credit Act 1977).
- 21.6 Customer shall be bound by all Service Orders signed or acknowledged on the Customer's behalf and the Company will only be bound to supply the Products and Services on the Company's acceptance of the Service Order and following receipt of payment of any charges detailed therein.
- 21.7 The Company reserves the right to charge for any omission or additional cost arising from the provision of inaccurate or insufficient information by the Customer or in cases where the Customer requests changes to the planned solution as delivered by the Company and to revise prices to take into account increases in any costs of providing the Products which occurs between the date of quotation and delivery.
- 21.8 The Company reserves the right to amend the charges on the Service Order in the event of unforeseen circumstances at the point of installation. During these unforeseen circumstances the Company reserve the right to suspend the Service Order until further survey, design, and or solution is identified and agreed by both parties. The Customer has the right to instruct the Company to suspend installation to allow for consideration of these amendments. If the Customer does not accept the amendments formally within 10 days the Company reserve the right to cancel the Service Order.

## 22 COMPANY OBLIGATIONS

- 22.1 The Company shall supply the Products and Services as detailed in the Service Order in accordance with these Terms and Conditions and any Product Terms.



- 22.2 The Company will configure and install items to the specification provided to the Customer in accordance with the rates detailed on the Service Order.
- 22.3 Installation shall be to the point identified by the Company as most accessible. In the event the Customer changes the specification for such installation/configuration the Company reserves the right to require payment for implementing such changes at rates notified to the Customer from time to time.
- 22.4 The Company will use reasonable care and skill in performing such installation/configuration and will perform such Services within a reasonable time. Times quoted by the Company are estimates only and any delay in meeting delivery dates shall not give rise to a right to cancel the order or to claim damages.
- 22.5 Delivery will be to the location and access point specified on the Service Order. Any request by the Customer for the Company to delay or split delivery may result in additional costs incurred by the Company and such costs shall be notified to, invoiced and be payable by the Customer. The Customer may only suspend its delivery if this is agreed in writing by the Company and if any costs incurred by the Company as a result are paid by the Customer at this time. The Company may be reliant on third party suppliers and in some cases require planning consents, wayleaves or rights of way for such installations. Delays caused through these sources will not allow the Customer to cancel or amend the Service Order unless agreed in writing by the Company. The Company will not be liable for any losses of any kind incurred by the Customer through such delays.
- 22.6 The Company shall be responsible for provision of the Service up to and including the Service Demarcation Point. The Company shall inform the Customer of this obligation and the relevant location of the Service Demarcation Point at the time of commissioning and acceptance of the Service by the Customer.
- 22.7 In supplying the Services the Company will use its reasonable skill and care to maintain provision but the Company is not able to guarantee fault-free performance. Due to factors outside the Company's control such as access to 3rd party content and services and shared use of networks, internet access availability and speed may vary from time to time. In addition the speed and limitations of your equipment may affect the transmission speed that we can provide you. We cannot provide a fully guaranteed end to end Service to be available at all times.
- 22.8 The Company will endeavour to carry out necessary maintenance and support of its own systems work outside of UK business hours ("Planned Outages"). The Company shall also endeavour to notify the Customer of any Planned Outages at least five days prior to such work being carried out, although the Customer accepts that due to the nature of the Services, this may not always be possible. The Company shall not be liable to the Customer for any temporary unavailability of Services due to planned maintenance, emergency maintenance or loss of use outside the reasonable control of the Company.

## 23 CUSTOMER OBLIGATIONS

- 23.1 The Customer is responsible for the installation, configuration, performance, maintenance and use of the Service beyond the Service Demarcation Point.
- 23.2 The Customer is responsible for the provision, maintenance and upkeep of an environment suitable for the provision of the Services, as defined in the Service Order Form or any Product Terms. For the avoidance of doubt, this includes adequate and consistent electrical power as required by the Products or Services.



- 23.3 The Customer agrees to abide by the Company's Acceptable Use Policy.
- 23.4 The Customer agrees to only use the Company network for lawful purposes. Any material transmitted through the Company network, or use of any part of it, in violation of any UK law or regulation, which is otherwise defamatory, discriminatory, or derogatory is prohibited.
- 23.5 The Customer hereby consents to our intermittent monitoring of the Services (whether authorised by statute or other legislation or otherwise) to ensure lawful use of the Services.
- 23.6 When the Customer is issued with a password to access the Products and Services, they shall take all reasonable steps to keep such password private and confidential and ensure that it does not become known to other persons. If the password becomes known to any other person, the Customer will immediately inform the Company and the password will immediately be changed. The Company may change the Customer's password from time to time at their discretion without prior notice.
- 23.7 The Customer agrees that they are liable for any charges on the Customer's account regardless of whether the Customer or anybody else (with or without the Customer's permission) incurs those charges (unless the charges result from fraud by an unrelated third party which is not residing at the Property and over which the Customer could have had no control over). For the avoidance of doubt, the Company considers anyone who has access to the Customer's premises or has been given access to the Services (whether deliberately or by default of weaknesses in the Customer's security) to be within the Customer's control and the Customer would be liable for those charges. If the Customer becomes aware of any fraud by someone else, they must tell the Company as quickly as they can. The Customer shall be deemed to have given permission to use the Customer's account and add charges on to the Customer's account to any other individual or party to whom they have divulged any PINs or passwords relevant to the Service.
- 23.8 The Customer may use the Company's network to access other Internet connected networks world-wide and agrees to conform to any published and future protocols and standards. In the event that communications by the Customer do not conform to these standards, or if the Customer makes profligate use of the Company network to the detriment of the Company or any other of the Company's Customers, the Company reserves the right to restrict passage of the Customer's communications until they give a suitable undertaking as to use and adhere to such undertaking.
- 23.9 The Company is not responsible or liable for any third party charges from other organisations (such as telephone service or content providers) which may be incurred by the Customer while using the Services. The Customer shall indemnify the Company for any claims or charges made against Little Big Tech Ltd in respect of any such costs incurred.
- 23.10 Any Internet address allocated by the Company to the Customer will at all times belong to the Company and the Customer may not sell or agree to transfer the address to any person. The Customer will have a nontransferable licence to use such Internet address whilst the Customer receives internet access from the Company. In the event the Service Order is terminated, for whatever reason, the Customer's licence to use the Internet address shall automatically terminate and thereafter the Customer shall not use the Internet address.
- 23.11 The Customer undertakes not to assign or in any other way transfer the Services, without the Company's prior consent.



23.12 The Customer accepts that the Company may vary the technical specifications of Products and Services from time to time for operational or regulatory reasons and such reasonable variance shall not invalidate these Terms and Conditions.

## 24 USING THE SERVICES

24.1 Due to the nature of the Internet, the Company cannot guarantee specific levels of performance, speed or access for the use of the Services and for internet access.

24.2 The Company reserves the right to remove by immediate notice material placed on its servers by the Customer or other users which violates these Terms and Conditions or is otherwise harmful to the Company's interests or the interests of other users of the Services.

24.3 The Company reserves the right to monitor and control data volume and/or types of traffic transmitted via the Services. In the event that the Customer misuses the Service or their use does not comply with the Company's 'Acceptable Use Policy', available on the Company's website and amended from time to time, the Company reserves the right to reduce, suspend or terminate the Customer's access and use of the Services.

24.4 During any such time of reduction or suspension, the Customer will remain liable for the payment of the original level of charges. It is the Customer's responsibility to review the Acceptable Use Policy from time to time, to ascertain if changes have been made to it.

24.5 The Company cannot guarantee that Headline Transmission Speeds can be obtained at any time, however the Company will endeavour to inform the Customer of any issues, and attempt to resolve them, as soon as is reasonably possible.

24.6 The Customer is responsible for maintaining in good order any Products under its control. ITS recommend that all Products of the Company be insured for their full replacement value by the Customer. The Customer must make good any damage to Products (including damage or cuts to Little Big Tech Voice and Data's network or fibre within the Customer's property) within 21 days of the damage being incurred, except where such damage is caused by the negligence of Little Big Tech Ltd or its agents.

24.7 The Customer agrees to take responsibility for any and all liabilities, claims and losses which are in any way connected with misusing the Services supplied under these Terms and Conditions, and to fully indemnify the Company if the Company suffer any costs or losses of this kind. For the avoidance of doubt, such losses include all direct, indirect (whether reasonably foreseeable or not) or consequential losses that can be evidenced by the Company.

24.8 The Company may email service announcements to the Customer as part of the Services.

## 25 CUSTOMER EQUIPMENT

25.1 The Company will not be liable in any way for any loss or damage which is caused to the Customer's own equipment arising as a result of its use with the Services.

25.2 The following equipment supplied as part of the installation will be deemed to be owned by the Customer, and title will pass on acceptance of the installation and commissioning of the Service:

25.3 All cabling within the Customer's premises up to and beyond the Service Demarcation Point



- 25.4 The socket, equipment or device providing the Service Demarcation Point (as defined on the Service Order and shown to the Customer upon acceptance of the Service)
- 25.5 Any router or other IP switching and management device connected to the Service Demarcation Point
- 25.6 The Company will provide, subject to clause 9.4 a warranty on this equipment supply for 12 months from the date of installation in respect of the equipment is free of manufacturing defect in workmanship and associated labour. The Company reserves the right to repair or replace faulty equipment at its entire discretion. Where the Company finds that any warranty claim arises from the misuse of the equipment, the Company shall be entitled to charge the Customer for any costs of repair or replacement.
- 25.7 In the event that any of the equipment supplied as part of the installation requires replacement after the 12 month warranty period, then the Customer will be invoiced for replacement equipment and should engineering presence be required to replace the equipment at the Customer premises the Company reserves the right to levy a service call out charge which shall be advised to the Customer prior to attendance.
- 25.8 An additional extended warranty may be offered by Little Big Tech Ltd (directly or through a selected third party) for an additional monthly charge. This will be subject to any specific terms and conditions that may be offered at the end.

## 26 TERM AND TERMINATION

- 26.1 These Terms and Conditions shall be deemed to have taken effect from signature of Order Form and acceptance by the Company and shall continue for the Initial Term. Thereafter, the Terms and Conditions shall continue in their entirety until terminated by either party giving not less than 3 months' notice in writing or until terminated in accordance with this clause or unless stated in the Product Terms.
- 26.2 Either party may terminate a Service Order forthwith on giving notice in writing to the other party if the other party commits a material breach of these Terms and Conditions and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of other party's intention to terminate).
- 26.3 Any termination of the Service Order (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination, which includes without limitation, the Customer's obligation to make any payment due to the Company for Products and Services supplied (including for the avoidance of doubt any charges incurred in respect of work in progress) prior to the date of termination. For the avoidance of doubt, charges shall become due and payable during any period of notice of termination and in the event that termination occurs during any Confidential document Initial Period, the Customer shall pay any and all charges due until the expiry of any such Initial Period.
- 26.4 Either party may terminate this agreement forthwith if an order is made or an effective resolution passed for the liquidation, winding up, dissolution or bankruptcy (other than by way of members voluntary liquidation or pursuant to any amalgamation or reconstruction on mutually agreed terms) of





either party or a receiver, administrative receiver, administrator or trustee in bankruptcy is appointed over all or any of the revenues or assets of either party.

26.5 The Customer has a right to cancel their Service Order under the E-Commerce Regulations and the Consumer Protection Regulations (as amended from time to time). The Customer has the right to cancel the service for a period of 7 days from the date of confirmation of the Customer's Service Order by the Company (a "cooling-off period"), unless the Customer is a consumer (within the meaning of the Consumer Credit Act), in which case clause 7.3 prevails. In the event of cancellation during the cooling-off period, the Service Order is treated as if it had not been made. Please be aware that the Customer will lose the Customer's right to cancel the Service Order during the cooling-off period once the Company has commenced activation of the Services, i.e. by starting the installation or provisioning of Services to the Customer subject only to clause 2.8.

26.6 Where the customer acts as a consumer (within the meaning of the Consumer Credit Act) the Customer has a right to cancel this agreement before the end of the fourteenth day following the day on which the Customer signed the unexecuted agreement. (a "cooling-off period"). In the event of cancellation during the cooling-off period, the Customer will be liable to the Company for any work undertaken on the Customer's behalf, and for any use made of the Service during the period to cancellation.

26.7 The Company has the right to terminate the Service Order on the grounds of non-payment of invoices or late payment of invoices where not paid within 7 days of invoice being due or non-payment of direct debits. The Company may alternatively suspend service or reduce speed of service in the case of non-payment, in which case the relevant provisions of clause 8 will apply.

## 27 SUSPENDING SERVICE

27.1 The Company may suspend any or all of the Services immediately without notice if:

28 The Customer is in breach of any of these Terms and Conditions;

28.1 The Company or our agents need to carry out any maintenance, repairs or improvements to any part of the Services;

28.2 The Company is obliged to do so by law or in line with these Terms and Conditions of Service;

28.3 The Customer fails to make any payment when due;

28.4 The Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order, goes into liquidation, has an encumbrancer or receiver take possession of its property or assets, or the Company reasonably apprehends that any of the events mentioned herein is about to occur in relation to the Customer and notifies the Customer accordingly.

28.5 The Company has reason to believe that the Customer has provided the Company with false, inaccurate or misleading information either for the purpose of obtaining the Services or at any time during the provision of the Services;

28.6 The Company believe that the Customer or another person at the Customer's premises has committed, or may be committing, any fraud against the Company or against any other person or organisation by using the Services;



28.7 The Customer or anyone the Customer authorises to deal with us on the Customer's behalf acts in a way towards our staff or agents which the Company reasonably consider to be inappropriate; or

28.8 The Customer is in breach of the Company's Acceptable Use Policy.

28.9 If the Company suspends the Services because the Customer is in breach of these Terms and Conditions or if paragraphs 8.1.4 to 8.1.9 apply, a reconnection fee of £25 plus VAT will be payable in addition to any outstanding amounts on the Customer's account before any suspension of service is lifted. Should the reconnection require a service call out the Company reserve the right to levy an additional charge to the Customer.

28.10 The Customer may not suspend its initial order for any reason.

## 29 WARRANTIES

29.1 The Company warrants that the Company has the authority to license the Products and to provide the Services as set out within the Service Order and under the terms of these Terms and Conditions.

29.2 The Company will always aim to provide the Customer with the best service possible, but the Company cannot guarantee that the Products and Services will be fault free. The Customer will inform the Company about any fault in the Services by phoning, emailing or writing to the Company's Support Services team, who will aim to respond as promptly as possible.

29.3 The Company is not responsible if the Customer is not able to use the Services because the Customer equipment (for example, any PC, modem, network interface card, printer, switch, local area network or other equipment) does not work properly, is not compatible with the system, does not conform to the relevant standard or does not meet the minimum specifications or because of faults in any 3rd party networks over which the Company has no responsibility.

29.4 Where the Company is acting as a reseller in respect of any Products, the Company shall pass on to the Customer such unexpired warranties the Company receives from the manufacturer of the goods as are capable of transfer and the Company's liability shall be limited to such guarantee as the Company receives from the manufacturer.

29.5 Except as expressly set forth in these Terms and Conditions and any Product Terms, all warranties, terms and conditions, whether oral or written, express or implied by statute, common law, or otherwise (including but not limited to any warranties, terms and conditions of fitness for purpose, description or quality) are hereby excluded to the fullest extent permitted. Please note in particular, that without limiting the generality of this clause 9.5, the Company does not warrant, represent or guarantee in any way whatsoever that our Products or Services will be virus-free, worm-free, spam-free or inaccessible to malicious code or malignant third parties.

29.6 The Customer acknowledges that software products are by their very nature susceptible to imperfections in operation and no warranty is given in respect thereof.

29.7 The Customer agrees to indemnify and hold the Company harmless from any claim brought by third parties, alleging that the proper use of the Services by the Customer has infringed any right of any kind applicable in the UK or by International legislation and regulation. The Customer shall defend and pay any direct costs or damages finally awarded against Company arising from such claims. The Customer



must promptly provide the Company with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance to defend such claims at the Customer's sole expense

### 30 LIMITATION OF LIABILITY AND NON-AVAILABILITY

30.1 Neither party excludes or limits its liability to the other for death or personal injury caused by its negligent act or omission or for fraudulent misrepresentation.

30.2 The Company shall not be liable in respect of any adverse effect on Services resulting from application or operation of any process by the Customer unless agreed to by the Company in writing.

30.3 Subject to the limits on liability set out in clauses 10.4 and 10.13, the Company shall be liable for any direct damage to a Customer property which is caused due to the negligence of the Company.

30.4 Subject to clause 10.1 our maximum aggregate liability for all claims made by the Customer in relation to any Products or Services provided under the Service Order shall not exceed the charges paid in the previous 12 months for that Product and Service against which the claim is made, plus ten (10%) however that claim may arise including, without limitation, negligent error or omission, breach of contract, tort, misrepresentation (excluding fraudulent misrepresentation) or breach of statutory duty.

30.5 The Company accepts no liability for failure to deliver the Products or perform the Services that arise from the acts or omissions of any third party including but not limited to the Company's suppliers or third party telecommunications providers or for any failures or faults of their equipment.

30.6 The Company will use all reasonable endeavours to provide a prompt and continuing Service. The Company will not be liable for any loss or damage to data or for any loss or damages resulting from delays, non-deliveries, missed deliveries, or service interruptions or events beyond the control of the Company.

30.7 The Customer acknowledges that the Company is not the manufacturer of any Products supplied hereunder. Save as expressly provided for in these Terms and Conditions, the Company gives no warranties in relation to the Products and shall not be liable to the Customer whether in damages or otherwise for any damage to or defect, or failure in the Products. The Customer must rely solely on any warranties given to the Customer by the manufacturer of the Products or as passed to the Customer in accordance with Clause 9.4.

30.8 Unless the Company expressly agree otherwise under a separate contract the Company is not responsible for the security of the Customer's networks and/or systems and shall not be liable for unauthorised access thereto.

30.9 Notwithstanding any provisions of this Clause 10, but subject to clause 17.1, in the event of Critical (as defined in the relevant Product Terms) non-availability of connection or use of all of the Services or Products supplied by the Company which results in non-availability below the guaranteed level in any specific Product Terms, the Customer may be entitled to a refund in respect of any Charges. Such refund is dealt with in the applicable Product Terms. Where no specific terms are specified in the Product Terms, the Company may apply credits of 1/30th of the monthly service invoice charge to the customer for each complete 24 hour day that service is unavailable, and where Little Big Tech Voice and Data's Service Desk have been notified of a fault and a ticket has been raised.



- 30.10 For the avoidance of doubt, simultaneous non-availability of more than one Service or Product shall not give rise to more than one claim for compensation under clause 10.9 and shall be treated as one claim only.
- 30.11 The Customer acknowledges that the Company is unable to exercise control over the content of any information passing over the Company connection and or the Company network. The Customer further acknowledges that the Company hereby excludes all liability in respect of any transmission or reception of information of whatever nature.
- 30.12 The Company shall not be liable for any failure of the Products and Services which results from any interference by the Customer or any third party which is not in accordance with the standard use of the Products or Services or following our written instructions. The Customer agrees to tell the Company immediately about any loss or damage to any part of the Products and Services on the Customer's property or any cable or routers provided to allow the Customer to use the Products and Services and that the Customer is responsible for any loss or damage to a router or cable regardless of how it happens.
- 30.13 Subject to Clause 28.1, the Company does not accept liability under or in relation to any Service nor its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation, or for any other reason excluding fraudulent misrepresentation) for any loss of profits, loss of business, loss of anticipated savings, loss of sales or turnover, loss of, or damage to reputation, loss of contract, loss of customers, nor loss of use of any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, nor any indirect, consequential loss or damage of any kind. 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.
- 30.14 The Company shall not be liable for any loss claim or liability arising from an event of Force Majeure.

## 31 PAYMENT AND PAYMENT TERMS

- 31.1 The charges for Products and Services and their invoice due dates/ frequencies will be stated on the relevant Service Order.
- 31.2 All payments for Products and Services will be made under a continuous direct debit authority which the customer agrees to enter into upon signing the Service Order Form. All payments will be due on invoice date except where any other payment terms are agreed and specified on the Service Order.
- 31.3 The Company reserves the right to pass on any additional costs arising from any increase in the cost to the Company of any Government licence or permit required to provide the Services. Where the Company increases its charges as a result of such additional costs, the Customer shall be entitled to terminate this agreement on not less than thirty days' written notice, such notice to be received by the Company within three months of the price increase taking effect.
- 31.4 The Company reserves the right to charge the Customer for the Products and/or Service notwithstanding the Products and/or Service not being available due to either the Customer failing to comply with their obligations under this Agree these Terms and Conditions or the Company's reasonable instructions from time to time or a failure of the Customer's systems.



- 31.5 Payment of all charges under any Service Order Form shall be made in full and free from any deductions, rights of set-off, counterclaims or liens.
- 31.6 All amounts due shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Company reserves the right to apply monies held against any other account of the Customer.
- 31.7 Should the Company order any third party equipment or Services on the Customer's behalf the Customer will be responsible for and shall indemnify the Company against all such costs incurred including, without limitation, any costs incurred due to a cancellation by the Customer.
- 31.8 Without prejudice to the Company's other rights if the Customer fails to pay any amount on the due date:
- 31.8.1 The Company shall have the right to cancel any contract made with the Customer and/or to suspend deliveries;
- 31.8.2 The Company reserves the right to charge the Customer penalties and interest in accordance with the Late Payment of Commercial Debts Interest Act 1998 as amended;
- 31.8.3 The Customer shall indemnify the Company and keep it indemnified in respect of all costs (including legal fees) reasonably incurred in attempting to recover such overdue amounts;
- 31.8.4 The whole of the balance then outstanding to the Company by the Customer on any account whatsoever shall become immediately due and payable.
- 31.9 The Company may ask the Customer to make initial payments and/or a deposit.
- 31.10 The Customer must provide the Company with a valid and current email account to enable the Company to provide electronic invoicing to the Customer. The accuracy of that email address is entirely the Customer's responsibility. The Company reserves the right to modify the E-billing service at our discretion.
- 31.11 The Company cannot guarantee uninterrupted and/or reliable access any electronic invoicing service and make no guarantees whatsoever as to its operation, availability, functionality, that it will be free of error or disruption or otherwise.
- 31.12 Annual Price Increases: both the Company and the Customer acknowledge that there will be annual incremental price increases effective 1st July in each year after the Initial Term expires and every 12 months thereafter. The annual price increase will be calculated by taking the contract price and increasing it by Retail Price Index as calculated for the 12 months ended on 31st March of that the year in which the Initial term expires. The customers will be notified in writing of this increase if it is applicable by 1 st May of each year three months before the increase comes into effect. if it is applicable and price Any price increase will be applied on the anniversaries of the Initial Term expiring. increases will be applicable from 1st July.

## 32 TITLE AND LICENSING

- 32.1 The Customer acknowledges that the Company (or where applicable the third party owner) shall own and shall retain title to all Intellectual Property Rights to all Products and Services (if any) supplied pursuant to or created as a result of any Service Order Form and any copies thereof.



32.2 At the request and expense of the Company, the Customer shall do all such things and sign all documents or instruments reasonably necessary to enable us to obtain, defend and enforce the Company's rights in any software and Products.

### 33 WAYLEAVES

33.1 Where supply of Service to the Customer relies on the provision of wayleaves, the Company will use its reasonable endeavours to ensure continuity and provision of service. If for any reason whatsoever, the wayleaves are terminated or suspended preventing the supply of service, then the Company may terminate the service to the Customer by 7 days notice in writing or by email, without any liability to the Customer in relation to future supply.

33.2 Where a wayleave is granted by the Customer the Customer will use best endeavours to ensure continuity and provision of service. If for any reason whatsoever, the wayleaves are terminated or suspended preventing the supply of service, then the Company may terminate the service to the Customer by 7 days notice in writing or by email, without any liability to the Customer in relation to future supply.

### 34 PRIVACY AND DATA PROTECTION

34.1 The Customer must give the Company promptly and accurately all the information which may be needed so that the Company can perform its obligations under these Terms and Conditions. The Customer must also tell the Company immediately if any of the Customer's details change.

34.2 By having the Services activated in the Customer's property and/or by using them the Customer gives the Company the Customer's consent to use the Customer's personal information together with other information for the purposes of providing the Customer with the Services, service information and updates, administration, credit scoring, customer services, training, tracking use of our Services (including processing usage, billing, viewing and interactive data), profiling the Customer's usage and purchasing preferences for so long as the Customer is a customer and for as long as is necessary for these specified purposes after the Customer terminate the Services. The Company may occasionally use third parties to process the Customer's personal information in the ways outlined above. These third parties are permitted to use the data only in accordance with our instructions and in compliance with all applicable laws and regulations.

34.3 Obtaining credit reference searches against a Customer can affect their credit rating. By agreeing to receive the Services, the customer is agreeing to the Company carrying out such searches.

34.4 The Company may also, subject to the Customer's consent, use the Customer's personal information to contact the Customer with information about our Products and Services, special offers and rewards, as well as those of selected third parties. From time to time, the Company may contact the Customer by mail, telephone, email, other electronic messaging services (such as text, voice, sound or image messages including using automated calling systems) for these purposes. If the Customer no longer wishes to receive such communications, it should contact the Company's Customer Support Team, or where applicable unsubscribe by electronic means.

34.5 Customer details will not be shared with companies outside of the Company Group for marketing purposes without the Customer's consent.



- 34.6 The Company uses and process the Customer's personal information in accordance with the Data Protection Act 1998, The General Data Protection Regulations in force at the time and the Company's Privacy Policy which can be reviewed at the Company's website.
- 34.7 If the Company uses third parties to process Customer data, the Company will put a contract in place to ensure the Customer's information is properly protected.
- 34.8 The Customer has a right to ask for a copy of the Customer's personal information which is held on file, (for which the Company may charge a small fee) and to correct any inaccuracies.
- 34.9 If the Customer does not pay the Customer's bills for the Services then the Company reserves the right to transfer the Customer's debt to a third party in which case the Company will also transfer the Customer's personal information to that third party for them to use in connection with the recovery of the Customer's debt. Such third party will take such action to recover the Customer's debt as they consider appropriate and will not be acting on our behalf or to our instructions.
- 34.10 The Company may monitor and record phone conversations the Customer has with Company staff. The Company will use these to shape training and for compliance purposes.
- 34.11 The Company may for legal and regulatory purposes, but only where lawful to do so, monitor internet communications, including without limitation, any content or material transmitted over the Services.

## 35 CONFIDENTIALITY

- 35.1 Either party may have access to or become aware the other party's Confidential Information. The parties agree that any Confidential Information obtained by the other, its employees, agents or sub-contractors remains the property of the other and neither party shall disclose or use the Confidential Information of the other except to the extent necessary for the performance of these General Terms and Conditions
- 35.2 The Company may disclose the Customer's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 35.3 The provisions of clause 15.1 shall not apply to Confidential Information that:
- 35.3.1 is or later becomes generally available to the public, otherwise than through any act or omission on the part of the Customer or the Company
  - 35.3.2 the Customer or the Company can show was in their possession at the time of disclosure and which was not acquired directly or indirectly from the Customer or the Company under obligations of confidentiality
  - 35.3.3 is information rightly acquired from others who did not so far as the acquirer was aware obtain it under pledge of secrecy from the Customer or the Company
  - 35.3.4 is information required to be disclosed or retained by law or relevant regulatory authority.

## 36 DISPUTE

- 36.1 Subject to clause 34.2, in the event of any dispute being unresolved by the Company and the Customer within a reasonable period of time being not less than 30 days, then the parties shall in good faith take



the matter jointly to Alternative Dispute Resolution (ADR). The outcome of the ADR process shall then be binding on both parties, except where clause 34.3 applies.

36.2 In the event that the Service and the Customer falls under categories covered by Ofcom's complaints and dispute procedure, then this procedure shall be followed in place of the procedure outlined in clause 16.1.

36.3 Notwithstanding the provisions of this clause 16. the provisions of clause 17.8 shall apply and either party shall be entitled to apply to the courts of England.

## 37 GENERAL

37.1 Neither party shall be liable for any delay in performing its obligations as a result of any circumstances beyond its reasonable control: "Force Majeure"; such as but without limitation to lightning, flood, exceptionally severe weather, fire, act of God, explosion, war, terrorism, civil disorder, strike industrial dispute (whether or not involving employees of either party), malicious damage (including virus/hacking attacks or other intentional malicious acts of third parties), compliance with a law or governmental order, rule, regulation direction, accident, third party interference, actions or omissions of third party telecommunication providers.

37.2 The Customer hereby warrants to the Company that the Customer has not been induced to enter into the Service Order by any prior representations whether oral or in writing, except as specifically contained in the Service Order and the Customer hereby waives any claim for breach of any such representations which are not so specifically mentioned.

37.3 No forbearance, delay or indulgence by either party in enforcing the provisions of these Terms and Conditions shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.

37.4 The Company may assign or sub-license the service provided under the Service Order to any associated company or body but subject always that this shall not affect the provision of Services to the Customer.

37.5 These Terms and Conditions together with the Service Order and any relevant Product Terms supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. The Company may make additions to or modifications of any provision of these Terms and Conditions following 90 days' notice of the same to the Customer. Where any such modification is made, the Customer shall be entitled to terminate the Service Order on not less than one month's written notice, such notice to be received within three months of the change taking effect. The Company will display these Terms & Conditions on its website [www.littlebigcomms.co.uk](http://www.littlebigcomms.co.uk)

37.6 If any provision of these Terms and Conditions is invalid or unenforceable at law, then such provision shall be severed and the remainder of these Terms and Conditions shall continue in full force and effect.

37.7 All notices that are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Service Order. Any such notice may be delivered by email or personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 2 business days after posting and if by email or facsimile transmission when dispatched.





37.8 These Terms and Conditions shall be governed by and construed in accordance with the laws of England. Any dispute that may arise between the parties shall, subject to clause 16, be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts