



## Seasonal B2B Terms & Conditions of Business

### 1. INTERPRETATION

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

#### 1.1 Definitions:

<b>"Business Day"</b>	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>"Contract"</b>	means these Terms and any related Order Forms.
<b>"Commercial Model Assumptions"</b>	means the assumptions made by the Supplier and notified to the Customer prior to the Hire Period in relation to, among other things, the assumed usage of the Hardware and end user tariff.
<b>"Customer"</b>	means the person or business named on the Order Form with whom the Supplier has agreed to sell or hire Goods and/or supply Services.
<b>"Deposit"</b>	the deposit amount set out in the Order Form.
<b>"Force Majeure Event"</b>	has the meaning given to it in clause 20.
<b>"Goods"</b>	means the Software and/or Hardware specified in the Order Form.
<b>"Hardware"</b>	means the hardware specified in the Order Form.
<b>"Hire Period"</b>	means the period for which the Goods are hired by the Customer as set out in the Order Form.
<b>"Intellectual Property Rights"</b>	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.
<b>"Licence Fee"</b>	means the licence fee for the licence to use the Software specified in the Order Form, which in relation to Sale Contracts shall be included in the Management Fee and in relation to Hire Contracts shall be included in the Operating Costs.
<b>"Licence Term"</b>	means the term of the licence of the Software specified in the Order Form.
<b>"Management Fee"</b>	means the management fee for the Services as set out in the Order Form.

<b>“Operating Costs”</b>	means the operating costs set out in the Order Form, as varied in accordance with clause 13.2.3.
<b>"Order Form"</b>	means the completed order form for the sale or hire of Goods and/or supply of Services and/or licence of the Software, as annexed to these Terms.
<b>“Revenue Share”</b>	means the applicable percentage of the revenue from the use of the Hardware during the Hire Period as set out in the Order Form.
<b>"Services"</b>	means the repair, management and maintenance services to be provided by the Supplier to the Customer as set out in the Order Form and further described in clause 10.
<b>“Services Term”</b>	means the period for which the Services shall be supplied as set out in the Order Form, pursuant to the provisions of these Terms.
<b>“Software”</b>	means the software specified in the Order Form.
<b>"Supplier"</b>	means DGB Mobility Limited registered in England and Wales with company number 13466062, trading as Ottr.
<b>“Terms”</b>	means the terms and conditions set out in this document as amended from time to time in accordance with clause 21.8 and (unless the context otherwise requires) includes any special terms agreed in writing between the Customer and the Supplier.

## 1.2 Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes fax and email.

## 2. APPLICATION OF TERMS AND BASIS OF CONTRACT

2.1 These Terms form part of the contract between the Supplier and the Customer, unless otherwise agreed in writing, for the Customer’s purchase of the Hardware from the Supplier (**“Sale Contracts”**), the Customer’s licence of the Software from the Supplier (**“Licence”**), the Customer’s hire of Hardware from the Supplier (**“Hire Contracts”**) or the Supplier’s provision of Services to the Customer (**“Service Contracts”**) from time to time.

2.2 The Order Form constitutes an offer by the Customer to purchase or hire the Goods and/or Services and/or licence the Software in accordance with these Terms.

2.3 The Order Form shall only be deemed to be accepted when the Supplier issues written acceptance of it at which point and on which date the Contract shall come into existence (**“Commencement Date”**).

- 2.4 Any drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.
- 2.7 All of these Terms shall apply to both the sale or hire of Hardware, supply of Services and the licence of the Software except where application to one or the other is specified.

### 3. **ORDERS AND SPECIFICATIONS**

- 3.1 The quantity, quality and description of the Goods or Services and any specification for them shall be as set out in the Order Form unless otherwise agreed in writing between the Customer and the Supplier.
- 3.2 The Supplier reserves the right to amend any specification in the Order Form if required by any applicable statutory or regulatory requirements, and the Supplier shall notify the Customer in any such event.
- 3.3 By providing the Order Form, the Customer warrants that the use of the Goods is appropriate to the intended application and complies with all local and national legislation, regulations, standards, codes of practice and any other requirements.

### 4. **DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that each delivery of the Hardware is accompanied by a delivery note which shows the date of the order, all relevant Customer and Supplier reference numbers, the type and quantity of the Hardware (including the code number of the Hardware, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Hardware remaining to be delivered.
- 4.2 The Supplier shall deliver the Hardware to the location set out in the Order Form or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Hardware is ready ("**Location**").
- 4.3 Delivery of the Hardware shall be completed on the completion of unloading of the Hardware at the Location.
- 4.4 Any dates quoted for delivery of the Hardware 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 Hardware 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 Hardware.
- 4.5 If the Supplier fails to deliver the Hardware, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Hardware. The Supplier shall have no liability for any failure to deliver the Hardware 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 or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Customer fails to accept delivery of the Hardware within three Business Days of the Supplier notifying the Customer that the Hardware 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 Hardware:
  - 4.6.1 delivery of the Hardware 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 Hardware was ready; and
  - 4.6.2 the Supplier shall store the Hardware until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Hardware was ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Hardware and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Hardware.
- 4.8 The Supplier may deliver the Hardware 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 GOODS**

- 5.1 The Supplier warrants that, on delivery, the Hardware shall:
  - 5.1.1 conform in all material respects with their description and specification as set out in the Order Form;
  - 5.1.2 be free from material defects in design, material and workmanship;
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
  - 5.2.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Hardware do not comply with the warranty set out in clause 5.1;
  - 5.2.2 the Supplier is given a reasonable opportunity of examining such Hardware; and
  - 5.2.3 the Customer (if asked to do so by the Supplier) returns such Hardware to the Supplier's place of business at the Customer's cost,  
  
the Supplier shall, at its option, repair or replace the defective Hardware, or in the case of Sale Contracts refund the price of the defective Hardware in full.
- 5.3 The Supplier shall not be liable for the Hardware's failure to comply with the warranty set out in clause 5.1 if:
  - 5.3.1 the Customer makes any further use of such Hardware after giving a notice in accordance with clause 5.2;
  - 5.3.2 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 Hardware;

- 5.3.3 the Customer alters or repairs such Hardware without the written consent of the Supplier;
- 5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.5 the Hardware differs from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 5.1.
- 5.5 These Terms shall apply to any repaired or replacement Hardware supplied by the Supplier.

## 6. **TITLE AND RISK**

### 6.1 **Sale Contracts**

- 6.1.1 The risk in the Hardware shall pass to the Customer on completion of delivery.
- 6.1.2 Title to the Hardware shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Hardware.
- 6.1.3 Until title to the Hardware has passed to the Customer, the Customer shall:
  - (a) store the Hardware separately from all other goods 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 Hardware;
  - (c) maintain the Hardware 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 18.2.2 to clause 18.2.4; and
  - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to the Hardware and the ongoing financial position of the Customer.
- 6.1.4 Until the Supplier receives payment for the Hardware, the Customer shall not have the right to resell the Hardware without the prior written consent of the Supplier and the Hardware is at the Customer's risk.
- 6.1.5 At any time before title to the Hardware passes to the Customer, the Supplier may require the Customer to deliver up all Hardware in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover it.
- 6.2 **Hire Contracts.**
- 6.2.1 The Supplier shall retain full title to the Hardware at all times during the Hire Period. The Customer's rights to use the Hardware are as lessee only, with the rights to possession and use of the Hardware subject to these Terms.
- 6.2.2 The risk of loss, theft, damage or destruction of the Hardware shall pass to the Customer on delivery of the Hardware in accordance with clause 4. The Hardware shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Hardware is in the possession, custody or control of the Customer until such time as the Hardware is redelivered to the Supplier.

## 7. HIRE OF GOODS

- 7.1 The Supplier hereby hires to the Customer the Hardware for the Hire Period and the Customer shall be paid the Revenue Share as stated in the Order Form subject to these Terms.
- 7.2 The hiring of the Hardware will commence on the date on which the Hardware is delivered to the Location pursuant to clauses 4.2 and 4.3 (“**Commencement of Hire**”).
- 7.3 The Customer may use the Hardware for the purpose(s) specified in the Order Form only. The Hardware shall not be used, and the Customer will not permit them to be used, for any other purpose whatsoever.
- 7.4 The Customer agrees that it will not, without the prior written consent of the Supplier, effect any modification or alteration to the Hardware nor will it make any addition to the Hardware.

## 8. INSURANCE AND DAMAGE TO THE GOODS UNDER A HIRE CONTRACT

- 8.1 The Supplier will, throughout the Hire Period, without prejudice to the liability of the Customer to the Supplier, keep the Hardware (including any replacement Hardware) insured against damage. The Customer shall not use or allow the Hardware to be used for any purpose not permitted by the terms and conditions of the insurance policy or do or allow to be done any act or thing whereby the insurance may be invalidated.
- 8.2 The Customer shall indemnify the Supplier against all loss or damage to the Hardware not recoverable under the insurance policy and the Supplier shall not be responsible for any loss or damage, including consequential loss, incurred by the Customer whatsoever as a result of any loss of or damage to the Hardware, except that where a claim is made by the Supplier under its policy of insurance which is successful, the Supplier shall pay 50% of the excess costs in relation to such claim.
- 8.3 Where any event, accident, loss or damage shall occur to the Hardware, the Customer shall:
- (a) immediately notify the Supplier thereof;
  - (b) not compromise any claim without the consent of the Supplier;
  - (c) allow the Supplier to take over the conduct of negotiations, except in relation to claims of the Customer for personal injuries, loss of use of the Hardware or loss or damage to the property of the Customer unconnected with the Hardware; and
  - (d) at the expense of the Customer, take such proceedings as the Supplier shall direct, holding all sums recovered, together with any monies received by the Customer under the insurance policy, on trust for the Supplier and paying or applying the same as the Supplier directs.
- 8.4 The Supplier shall have the right to repair or have repaired any Hardware which is the subject of damage. If the Supplier does not choose to do so, the Customer shall be liable to reinstate or repair at its own expense (but subject to any insurance proceeds) Hardware which has not become a total loss.
- 8.5 The Customer shall be liable to pay to the Supplier any amount deducted by the insurers by way of excess or in respect of damage caused to the Hardware prior to the date of total loss, and shall indemnify the Supplier against all and any loss suffered by it in consequence of the loss or destruction of the relevant Hardware except that where a claim is made by the Supplier under its policy of insurance which is successful, the Supplier shall pay 50% of the excess costs in relation to such claim.

## 9. CUSTOMER'S RESPONSIBILITIES DURING THE HIRE PERIOD

### 9.1 The Customer shall during the term of the Hire Period:

- 9.1.1 ensure that the Hardware is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner in accordance with any operating instructions;
  - 9.1.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Hardware is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - 9.1.3 make no alteration to the Hardware and shall not remove any existing component (or components) from the Hardware without the prior written consent of the Supplier;
  - 9.1.4 keep the Supplier fully informed of all material matters relating to the Hardware;
  - 9.1.5 permit the Supplier or its duly authorised representative to inspect the Hardware at all reasonable times and for such purpose to enter on the Location or any premises at which the Hardware may be located, and shall grant reasonable access and facilities for such inspection;
  - 9.1.6 maintain public liability insurance in respect of the Hardware on such terms as are satisfactory to the Supplier and shall provide a copy of such insurance policy to the Supplier promptly at the Supplier's request;
  - 9.1.7 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - 9.1.8 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Hardware;
  - 9.1.9 not suffer or permit the Hardware to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hardware is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Hardware and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - 9.1.10 not use the Hardware for any unlawful purpose; and
  - 9.1.11 deliver up the Hardware at the end of the Hire Period at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Location or any premises where the Hardware is located for the purpose of removing the Hardware.
- 9.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Hardware arising out of or in connection with any negligence, misuse, mishandling of the Hardware or otherwise caused by the Customer or its officers, employees, agents, customers and contractors, and the Customer shall indemnify the

Supplier in full against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer to comply with these Terms.

## 10. **SUPPLY OF SERVICES**

- 10.1 The Supplier shall provide the Customer with Services as specified in the Contract in all material respects for the Services Term.
- 10.2 In respect of Hardware provided under a Hire Contract, the Services shall consist of:
- (a) routine maintenance of the Hardware at such intervals as the Supplier may reasonably determine to be necessary in order to keep the Hardware in good working order; and
  - (b) the repair of any defect in or malfunction of the Hardware which is discovered by the Supplier during the course of routine maintenance checks or is reported to the Supplier by the Customer in writing from time to time.
- 10.3 In respect of Hardware provided under a Sale Contract, the Services shall consist of:
- (a) a planned maintenance visit of the Hardware at such time as agreed between the Supplier and the Customer; and
  - (b) the repair of any defect in or malfunction of the Hardware caused by general wear and tear which is discovered by the Supplier during the course of the routine maintenance checks or is reported to the Supplier by the Customer in writing from time to time provided that the costs of any replacement parts shall be charged to the Customer in addition to the Supplier's Management Fee.
- 10.4 Routine maintenance and repair of the Hardware shall be carried out by one of the Supplier's suitably qualified and duly authorised representatives ("**Representative**") attending at the Location at such times during the hours of 9.00 am to 5.00 pm ("**Business Hours**") on a Business Day as may be agreed in advance between the Supplier and the Customer from time to time.
- 10.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 10.6 If the Representative discovers a defect in or malfunction of the Hardware in the course of routine maintenance checks or the Customer reports a defect or malfunction during Business Hours, the Representative will use all reasonable endeavours to repair it at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Business Hours), the Representative will seek to make suitable arrangements with the Customer for:
- (a) a further visit to be made to the Location during Business Hours for the repair of the defect or malfunction;
  - (b) if the Hardware is inoperative as a result of the defect or malfunction, its repair at the Location outside Business Hours; or
  - (c) if it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Hardware (or, where practical, the part of the Hardware in question) for the purposes of repair.
- 10.7 The Services shall not apply to any defect in or malfunction of the Hardware which in the Supplier's reasonable opinion has arisen as a result of:

- (a) transportation or relocation of the Hardware not performed by or on behalf of the Supplier;
  - (b) any error or omission relating to the operation of the Hardware;
  - (c) any modification, adjustment or repair to the Hardware made by a third party without the written consent of the Supplier;
  - (d) the neglect or misuse of the Hardware by the Customer; or
  - (e) any other cause (except fair wear and tear) which is not due to the neglect or default of the Supplier.
- 10.8 In respect of a Hire Contract, if any part of the Hardware can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Hardware is damaged beyond economic repair otherwise than through the Supplier's fault, as to whether either of which events has occurred the Supplier's decision shall be final and binding on the Customer, the Supplier reserves the right to terminate the Contract with immediate effect by giving written notice to the Customer in respect of the whole or any part of the Hardware, in which case the Supplier shall repay to the Customer a fair proportion of any charges for the Supplier's services which have been paid in advance by the Customer.
- 10.9 Except as expressly provided in the Contract or as agreed between the parties in writing, the Supplier shall have no obligation to provide any services to the Customer outside Business Hours.
11. **CUSTOMER'S OBLIGATIONS**
- 11.1 The Customer shall:
- 11.1.1 ensure that the terms set out in the Order Form are complete and accurate;
  - 11.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 11.1.3 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;
  - 11.1.4 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;
  - 11.1.5 comply with all applicable laws, including health and safety laws;
  - 11.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
  - 11.1.7 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk (except in respect of Hire Contracts where the Supplier has insured the Supplier Materials), maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 11.2 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**"):

- 11.2.1 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;
- 11.2.2 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 11.2; and
- 11.2.3 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.

## 12. SOFTWARE LICENCE

- 12.1 The Supplier shall deliver and install on the Customer's equipment one copy of the Software electronically to the Customer at the address for the Customer at a date agreed with the Customer. Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 12.2 In consideration of the Licence Fee to be paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence for the Licence Term to use the Software.
- 12.3 In relation to scope of use:
  - 12.3.1 for the purposes of clause 12.2, use of the Software shall be restricted to use of the Software in object code form for the purpose of using the Hardware (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee or customer of the Customer).
  - 12.3.2 the Customer may not use the Software other than as specified in clause 12.2 and clause 12.3.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
  - 12.3.3 the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
  - 12.3.4 except as expressly stated in this clause 12, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information before undertaking any such reduction.
- 12.4 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 12.3.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 12.5 The Customer shall not:

- 12.6 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- 12.7 allow the Software to become the subject of any charge, lien or encumbrance; and
- 12.8 deal in any other manner with any or all of its rights and obligations under this licence,
- 12.9 without the prior written consent of the Supplier.
- 12.10 The Customer shall:
- 12.11 ensure that the number of persons using the Software does not exceed the number specified in the Order Form;
- 12.12 notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
- 12.13 pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 12.14 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.
- 12.15 The Supplier warrants that as at the Commencement Date, the Software conforms in all material respects to the specification as set out in the Order Form.
- 12.16 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 12.17 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the licence, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 13. **CHARGES AND PAYMENT**
- 13.1 **Sale Contracts**
- 13.1.1 The price for the Hardware shall be the price set out on the Order Form.
- 13.1.2 The Supplier reserves the right to increase the price of the Hardware, by giving notice in writing to the Customer at any time before delivery, to reflect any increase in the cost of the Hardware to the Supplier that is due to:
  - (a) 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;
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Hardware ordered; or
  - (c) any delay caused by any instructions of the Customer in respect of the Hardware or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Hardware.

13.1.3 The Supplier shall invoice the Customer on or at any time after completion of delivery, provided that the Supplier may require payment in part or in full for the Hardware prior to delivery.

## 13.2 Hire Contracts

13.2.1 The Customer shall pay to the Supplier in advance the Deposit prior to the commencement of the Hire Term and by the date notified to the Customer by the Supplier. After the Hardware has been delivered to the Customer at the commencement of the Hire Period, the Deposit shall be returned by the Supplier to the Customer however if the deployment of the Hardware does not occur due to an act or omission of the Customer, the Supplier shall retain the Deposit and the Deposit shall be non-refundable.

13.2.2 At the end of the Hire Term, the Supplier shall pay to the Customer within 20 Business Days of the end of the Hire Term, the Revenue Share. If there is a shortfall in the revenue generated during the Hire Period because the Commercial Model Assumptions have not been achieved, the amount of such shortfall in revenue as against the revenue expected in accordance with the Commercial Model Assumptions shall be apportioned to the Supplier such that any calculation of the Revenue Share shall assume that the revenue generated is as expected by the Commercial Model Assumptions prior to calculating the Revenue Share.

13.2.3 The Supplier may increase the Operating Costs by up to 10% to cover any unplanned costs that may be incurred by the Supplier throughout the Hire Period, provided that the Supplier is entitled to increase the Operating Costs beyond that threshold if they are incurred as a result of matters outside the Supplier's control, theft or vandalism of the Hardware or as a result of any Force Majeure Event.

13.2.4 The Supplier shall be entitled to revise the Revenue Share, Operating Costs or Commercial Model Assumptions as the Supplier shall in its absolute discretion determine before the Commencement of Hire in the event that, between the date of signature of the Contract and the Commencement of Hire, an increase in the prices of the Hardware is imposed by the manufacturer or an increase in the prices generally to be incurred by the Supplier.

13.2.5 Any revision pursuant to clause 13.2.4 shall be notified by the Supplier to the Customer as soon as practicable and in any event on or before the Commencement of Hire. If the Customer does not accept such revision, it shall have the right for a period of seven days after receipt of such notification to serve notice on the Supplier terminating the Contract. Subject to return of any Hardware then in possession of the Customer in good repair and condition, the Customer will incur no liability or obligation to the Supplier on account of such termination.

## 13.3 Service Contracts

13.3.1 In relation to Services provided under a Hire Contract, there shall be no additional charge for the provision of the Services. In relation to Services provided under a Sale Contract, the charges for the Services shall be the Management Fee.

13.3.2 In respect of Services provided under a Sale Contract, the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by its Representatives including travelling expenses, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

13.3.3 The Supplier reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date 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.

13.3.4 The Supplier shall invoice the Customer monthly in arrears.

## 13.4 General

13.4.1 Except where the Supplier requires payment in part or full for the Hardware prior to delivery in which case payment may be required immediately, the Customer shall pay each invoice submitted by the Supplier within 30 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 in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.

13.4.2 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 Goods at the same time as payment is due for the supply of the Services or Goods.

13.4.3 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 18, 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 13.4.2 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%.

13.4.4 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).

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Software (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier. The Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the licence pursuant to the Contract.

14.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.

14.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 14.2.

14.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 15. DATA PROTECTION

15.1 The following definitions apply in this clause 15:

- 15.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 15.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
- 15.1.3 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 15.2 To the extent that either party processes Personal Data on the other party's behalf, such party shall take all such measures that may be required to ensure compliance with the obligations set out in the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.3 The parties acknowledge that in connection with the provision of the Services or the supply of the Goods, the Supplier is required to process Personal Data on behalf of the Customer.
- 15.4 Without prejudice to the generality of clause 15.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.
- 15.5 Without prejudice to the generality of clause 15.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 15.6 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- 15.7 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 15.8 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 15.9 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 15.10 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

- 15.11 the Data Subject has enforceable rights and effective legal remedies;
- 15.12 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 15.13 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 15.14 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.15 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 15.16 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data;
- 15.17 not engage any sub-contractor to carry out any processing of Personal Data without the prior written consent of the Customer; and
- 15.18 maintain complete and accurate records and information to demonstrate its compliance with this clause 15.
- 15.19 Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## 16. **CONFIDENTIALITY**

- 16.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
  - 16.2.1 to its employees, officers, representatives, customers, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
  - 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 17. **LIMITATION OF LIABILITY**

- 17.1 The limits and exclusions in this clause 17 reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 17.2 The restrictions on liability in this clause 17 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 17.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession), and defective products under the Consumer Protection Act 1987.
- 17.4 Subject to clause 17.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the total charges.
- 17.5 In clause 17.4:
- 17.5.1 **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- 17.5.2 **total charges.** The total charges means all sums paid by the Customer (which shall include the amount of any Revenue Share received by the Customer) and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 17.6 The following types of loss are wholly excluded: loss of revenues; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 17.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 10. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 17.8 This clause 17 shall survive termination of the Contract.
18. **TERMINATION**
- 18.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 6 months' written notice.
- 18.2 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:
- 18.2.1 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 10 Business Days after receipt of notice in writing to do so;
- 18.2.2 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), obtaining a moratorium, 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;
- 18.2.3 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

- 18.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 18.3 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 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 18.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract in respect of a Hire Contract at any time after half of the Hire Period has elapsed by giving the Customer not less than three weeks' written notice if the Commercial Model Assumptions have not been achieved for the period of the Hire Period that has elapsed or are likely not to be achieved for the Hire Period.
- 18.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services, the licence of the Software or all further deliveries of Hardware 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 18.2.1 to clause 18.2.4 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 19. CONSEQUENCES OF TERMINATION

- 19.1 On expiry or termination of the Contract:
  - 19.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods 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; and
  - 19.1.2 the Customer shall return all of the Goods which have not been fully paid for, including all Goods subject to a Hire Contract. 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.
- 19.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 19.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 20. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a "**Force Majeure Event**"). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three weeks, the party not affected may terminate the Contract by giving five Business Days' written notice to the affected party. Without limiting the foregoing, the following shall be regarded as caused beyond the Supplier's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-

laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; pandemic or epidemic; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## 21. **GENERAL**

### 21.1 **Assignment and other dealings**

21.1.1 The Supplier may at any time sub-license, 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.

21.1.2 The Customer shall not sub-license, assign, transfer, mortgage, charge, subcontract, delegate, 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.

### 21.2 **Notices**

21.2.1 Any notice 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 address or its principal place of business, or sent by email to the address notified in writing by the party to be served.

21.2.2 Any notice shall be deemed to have been received if delivered by hand, 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 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

21.2.3 This clause 21.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

### 21.4 **Waiver**

21.4.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21.5 **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.

### 21.6 **Entire agreement**

21.6.1 The Contract constitutes the entire agreement between the parties.

- 21.6.2 Each party acknowledges that in entering into the Contract it does not rely on 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 based on any statement in the Contract.
- 21.7 **Third party rights**
- 21.7.1 Unless it expressly states otherwise, 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.
- 21.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 21.8 **Variation.** Except as set out in these Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 21.9 **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.
- 21.10 **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.

With full review of the terms of business and the above terms of deployment, we [the customer] would like to proceed with this service provision. We acknowledge that booking cannot be confirmed until the deposit payment is paid, and receipt confirmed.