

Terms and Conditions

These conditions together with the attached Agreement will govern continuing business in relation to the Agreement between the Parties and which together form part of the Agreement. Where there is any inconsistency between the provisions hereof and the Agreement, the provisions of the Agreement will take precedence.

1. Interpretation

- 1.1 In these conditions: **Buyer** means the Party of **Parties** so described in the **Agreement**; **Buyer's Materials** mean all information, data, software, text, visual images, pictures and other materials supplied by the **Buyer** for use in or to form part of the **Goods** and/or **Services**; **Conditions** mean the standard terms and conditions of sale set out here and (unless the context otherwise requires) includes any special terms and conditions agreed in **Writing** between the **Parties**; **Confidential Information** means this **Agreement** and all information obtained by one **Party** from the other pursuant to this **Agreement** which is marked, or ought reasonably to be regarded as confidential; **Agreement** means the **Agreement** for the sale and purchase of the **Goods** and/or the supply and acquisition of the **Services**; **Delivery Address** means the address stated on the **Agreement**; **Goods** means the **Goods** (if any), including any instalment of the **Goods** or any constituent parts or materials of which the **Goods** are comprised, described in the **Agreement**; **Intellectual Property** means trade marks (whether registered or unregistered), logos, trade names, unregistered and registered designs, copyright, database rights, rights in computer software, domain names, rights in confidential information and any and all other intellectual property rights (whether now subsisting or in the future created) both in the UK and all other countries of the world for the full period of those rights (including any extensions and renewals); **Agreement** means the **TouchTec Technology Limited** sales **Agreement** to which this **Agreement** and these conditions are annexed; **Party or Parties** means the **Buyer** and the **Seller**; **Price** means the **Price** of the **Goods** and/or the charge for the **Services** and further defined at condition 4; **TouchTec Technology Limited** means (Company Number: 11642510) whose registered office is at 1-2 Rhodium Point Hawkinge Business Park, Spindle Close, Hawkinge, Folkestone, Kent, United Kingdom, CT18 7TQ; **Seller** means **TouchTec Technology Limited**; **Services** mean the **Services** (if any) described in the **Agreement**; **Specification** includes any designs, descriptions, plans, drawings, data or other information relating to the **Goods** and/or **Services**; **Term** means the period of time that the **Agreement** shall be in force; **Third Party Intellectual Property** means any and all intellectual property licensed to the **Seller** by a third party in connection with the **Goods** and/or **Services**; **Use** means copying, adaptation, publishing and otherwise exploiting in the manner set out in the **Agreement**; **Writing** includes e-mail, facsimile transmission and comparable means of communication. These conditions together form part of the **Agreement**.

1.2 Any reference in these conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

2. Basis of sale

2.1 The **Agreement** constitutes an offer by the **Buyer** to purchase the **Goods** and/or the **Services** from the **Seller** subject to these conditions. No **Agreement** placed by the **Buyer** shall be deemed to be accepted by the **Seller** until the **Seller** issues an acknowledgement in **Writing** of the **Agreement** or, if earlier, the **Seller** delivers the **Goods** and/or performs the **Services**.

2.2 These conditions shall apply to the **Agreement** to the exclusion of any other terms and conditions.

2.3 The **Agreement** supersedes all prior **Agreements**, arrangements and understandings between the **Parties** and constitutes the entire **Agreement** between the **Parties** relating to the **Agreement** (except that neither of the **Parties** seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other **Party** can be shown to have relied). No addition to or modification to the **Agreement** or these conditions shall be binding on the **Seller** without the prior consent of one of the **Seller's** authorized representatives in **Writing**.

3. Specifications

3.1 The quantity, quality and description of the **Goods** and/or the **Services** shall, subject to these conditions, be as specified in the **Agreement** and/or in any applicable **Specification** supplied by the **Buyer** and accepted by the **Seller** in **Writing** by one of the **Seller's** authorized representatives in **Writing**.

3.2 The **Seller** shall not be liable for any failure to provide or delay in providing the **Goods** and/or the **Services** to the extent that such delay arises out of or in connection with any act or omission of the **Buyer** or its sub-contractors, agents, officers or employees which either directly or indirectly affects the **Seller's** ability to provide the **Goods** and/or the **Services** including any breach of the **Buyer** of its obligations under the **Agreement**. The **Seller** reserves the right to invoice the **Buyer** for any additional expenses incurred by the **Seller** as a result of such failure or delay.

3.3 During the course of providing the **Goods** and/or the **Services**, the **Seller** reserves the right to make any improvement, substitution or modification to the **Specification** as it reasonably deems fit provided that such improvement, substitution or modification will not materially change the nature of the **Goods** and/or the performance of the **Services**.

3.4 The **Seller** reserves the right to refuse to provide the **Goods** and/or the **Services** where, in its reasonable opinion the **Agreement** and/or the **Specification** are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity or are otherwise actionable or in violation of any rules, regulations or laws to which the **Goods** and/or the **Services** are subject.

3.5 The **Seller** reserves the right to refuse to maintain hardware, or take responsibility for failure or malfunction of said hardware, where that hardware has been modified, altered or change in any way by the **Buyer** or the **Buyer's** agent or has been moved by the **Buyer** or the **Buyer's** agent from the original premises in which it was installed.

4. Price of the Goods and/or Services

4.1 The **Price** of the **Goods** and/or the **Services** shall be as stated in the **Agreement** and, unless otherwise so stated, shall be:

(a) Exclusive of VAT (which shall be payable by the **Buyer** subject to receipt of a VAT invoice); and

(b) All tariffs may be subject to change without notice

5. Terms of payment

5.1 The **Seller** will normally invoice the **Buyer** at the end of every month for the performance of **Services** and for **Goods** and/or products already delivered. The exceptions to this including the performance of **Service** or line rental that is charged in advance or **Service** or product that is charged periodically in advance. The **Seller** reserves the right to invoice the **Buyer** on or immediately following delivery of the **Goods** and/or the performance of the **Services** and/or in advance of the performance of the **Services** as long as this has been agreed by the **Buyer** in advance. Each invoice shall quote the number of the **Agreement**.

5.2 Unless otherwise stated in the **Agreement**, the **Buyer** shall pay the **Price** of the **Goods** and/or the **Services** within 30 (thirty) days after the date of the invoice issued by The **Seller**. Any other payment terms must be agreed in **Writing** and signed by one of the **Sellers** authorized representatives prior to the commencement of any account being initiated.

5.3 [Null - intentionally blank]

5.4 If the **Buyer** fails to pay the sums due under The **Seller** invoice pursuant to the **Agreement** within 10 (ten) days after the due date (without prejudice to The **Seller** other rights and remedies) The **Seller** may immediately suspend provision of the **Goods** and/or the **Services** until such payment is made. In addition, the **Buyer** shall be liable to pay interest to The **Seller** on such sum from the due date of payment at the rate set out under the Late Payment of Commercial Debts (Interest) Act 1998 (regardless of whether the Act applies to the **Agreement**) accruing on a daily basis until payment is made, whether before or after any Judgment.

5.5 The **Buyer** shall make all payments due under the **Agreement** without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the **Buyer** has a valid court **Agreement** requiring an amount equal to such deduction to be paid by the **Seller** to the **Buyer**.

6. Delivery

6.1 The **Goods** shall be delivered to the Delivery Address on or before the date stated in the **Agreement** during the **Buyer's** usual business hours.

6.2 Where the date of delivery of the **Goods** or of performance of the **Services** is to be specified after the placing of the **Agreement**, the **Seller** shall give the **Buyer** reasonable notice of the specified date.

6.3 If the **Goods** are to be delivered or the **Services** are to be performed by instalments, the **Agreement** will be treated as a single **Agreement** and not severable.

6.4 The quantity of any consignment of **Goods** as recorded by the **Seller** upon dispatch from the **Seller's** place of business shall be conclusive evidence of the quantity received by the **Buyer** on delivery unless the **Buyer** can provide conclusive evidence proving the contrary.

6.5 The **Seller** shall not be liable for any non-delivery of **Goods** or non-performance of the **Services** (even if caused by the **Seller's** negligence) unless notice is given to the **Seller** in **Writing** within 7 (seven) days of the date when the **Goods** would in the ordinary course of events have been received or the **Services** performed.

6.6 Any liability of the **Seller** for non-delivery of the **Goods** shall be limited to replacing the **Goods** within a reasonable time or issuing a credit note at the pro rata **Agreement** rate against any invoice raised for such **Goods**.

7. Risk and Property

7.1 Risk of damage to or loss of the **Goods** shall pass to the **Buyer** upon delivery of the **Goods** to the **Buyer** in accordance with the **Agreement**.

7.2 Notwithstanding delivery and the passing of risk in the **Goods**, or any other conditions of the **Agreement**, the property in the **Goods** shall not pass to the **Buyer** until the **Seller** has received in cash or cleared funds payment in full of the **Price** of the **Goods** and/or the **Services** and all other **Goods** and/or **Services** agreed to be sold or supplied by the **Seller** to the **Buyer** for which payment is then due.

7.3 Until such time as the property in the **Goods** passes to the **Buyer** the **Buyer** shall hold the **Goods** as the **Seller's** fiduciary agent and bailee and shall keep the **Goods** separate from those of the **Buyer** and third **Parties** and properly stored, protected and insured and identified as the **Seller's** property. Until that time the **Buyer** shall be entitled to use the **Goods** in the ordinary course of its business, but it shall account to the **Seller** for the proceeds of any sale of the **Goods**, including insurance proceeds, and shall keep all such proceeds separate from any other monies of the **Buyer** and third **Parties**.

7.4 Until such time as the property in the **Goods** passes to the **Buyer** (and provided the **Goods** are still in existence and have not been resold) the **Seller** shall be entitled at any time to require the **Buyer** to deliver up the **Goods** to the **Seller** and, if the **Buyer** fails to do so forthwith upon demand, the **Buyer** grants the **Seller** (or its appointed agent) a license to enter upon any premises of the **Buyer** or any third **Party** where the **Goods** are stored to repossess the **Goods**.

7.5 The **Buyer** shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the **Goods** which remain the property of the **Seller**, but if the **Buyer** does so, all monies owing by the **Buyer** to the **Seller** shall (without prejudice to any other right or remedy of the **Seller**) forthwith become due and payable.

7.6 The **Buyer's** right to possession of the **Goods** shall terminate immediately if:

(a) The **Buyer** has a bankruptcy **Agreement** made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or it (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the **Buyer** or for the granting of an administration **Agreement** in respect of the **Buyer**, or any proceedings are commenced relating to the insolvency or possible insolvency of the **Buyer**; or

(b) The **Buyer** suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the **Agreement** or any other **Agreement** between the **Seller** and the **Buyer**, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the **Buyer** ceases to trade.

8. Intellectual Property Rights

8.1 Unless otherwise expressly stated in the **Agreement**, the **Parties** acknowledge and agree that all right, title and interest to any and all Intellectual Property in and to the **Goods** and/or the **Services** and any Intellectual Property relating to them and all modifications and amendments thereto shall remain the property of the **Seller** and the **Buyer** shall have no residual rights in and shall make no use whatsoever of such Intellectual Property except that the **Buyer** shall have a license to use such Intellectual Property for the period stipulated in the **Agreement** subject to any restrictions or limitation on such use set out in the **Agreement** or otherwise made known to the **Buyer** in **Writing**.

8.2 The **Buyer** hereby undertakes and agrees not to use or enable any other person to use the Intellectual Property for any purpose or by any media in any country other than as expressly permitted in **Writing** in the **Agreement**.

8.3 Subject to payment of the **Price**, the **Buyer** and/or its nominees shall be entitled to a non-exclusive, non-transferable license to use the Intellectual Property prepared by the **Seller** relating to the **Agreement**, notwithstanding the termination of the **Agreement** or any of the **Services** in accordance with the **Agreement**.

8.4 The **Seller** shall procure for the **Buyer** any rights required to use **Third Party Intellectual Property** in respect of the **Goods** and/or the **Services** in accordance with the **Agreement** subject to any conditions or restrictions on such **Third Party Intellectual Property**, which conditions or restrictions the **Buyer** agrees to comply with in full. Unless otherwise stated, the license fee for such **Third Party Intellectual Property** is included in the charges payable pursuant to condition 4.

8.5 Except as expressly provided in the **Agreement**, the **Seller's** sole responsibility in respect of **Third Party Intellectual Property** shall be limited to procuring the supply by the appropriate licensor of the **Third Party Intellectual Property**. The **Seller** offers no warranty of any kind whatsoever in respect of any **Third Party Intellectual Property**. The **Seller** hereby assigns and shall assign to the **Buyer** any rights which the **Seller** may have under any warranties given by any licensor to the extent it is reasonably able to do so.

8.6 Subject only to the express terms of the **Agreement**, the **Seller** reserves the right to use any and all skills, expertise, knowledge and know-how gained and/or arising from providing the **Goods** and/or the **Services** in the provision of similar **Goods** and/or **Services** to other the **Seller's** clients and/or potential clients and the **Buyer** shall place no restriction whatsoever on such right. The **Buyer** permits the **Seller** to promote and advertise itself through the use of examples of the **Goods** and/or the **Services** in promotional and other materials.

9. Warranties and liability

9.1 The **Seller** warrants to the **Buyer** that the **Goods**:

(a) Will be free from material defects in design, material and workmanship;

(b) Will materially correspond with any relevant description in the **Agreement**, **Specification** or sample; and

(c) Will comply with all statutory requirements and regulations relevant to the **Goods**.

9.2 The **Seller** warrants to the **Buyer** that the **Services** will be performed by appropriately qualified and trained personnel, with due care and diligence and to such a standard of quality as it is reasonable for the **Buyer** to expect in the circumstances.

9.3 If any **Goods** and/or **Services** are not supplied or performed in accordance with the **Agreement**, then the **Seller** shall at its election either repair the **Goods** and/or supply replacement **Goods** or **Services** in accordance with the **Agreement** within 14 (fourteen) days of the **Seller** inspecting, testing or otherwise verifying the condition of the **Goods** and/or **Services**.

9.4 The **Seller** shall not be liable for a breach of any of the warranties in condition's 9.1 and 9.2 unless:

(a) The **Buyer** gives written notice of the defect to the **Seller**, and (if the defect is as a result of damage in transit) to the carrier, within 7 (seven) days of the time when the **Buyer** discovers or ought to have discovered the defect; and

(b) The **Seller** is given a reasonable opportunity after receiving such notice to examine the **Goods** and the **Buyer** (if asked to do so by the **Seller**) returns such **goods** to the **Seller's** place of business at the **Buyer's** cost for the examination to take place there.

- 9.5 The **Seller** shall not be liable for a breach of any of the warranties in condition's 9.1 and 9.2 if the defect arises as a result of any act or omission on the part of the **Buyer** or its sub-contractors, agents, officers or employees.
- 9.6 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by Section 12 of the Sale of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from this **Agreement**.
- 9.7 Nothing in this **Agreement** excludes or limits the liability of either Party for:
- Death or personal injury caused by the **Seller's** negligence;
 - Fraud;
 - Liability which cannot be excluded or limited under applicable law.
- 9.8 Subject to condition's 9.6 and 9.7:
- The total liability of the **Seller** and / or **Buyer** in **Agreement**, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the **Agreement** shall be limited to the **Price**; and
 - The **Seller** and / or **Buyer** shall not be liable for any indirect or any consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the **Agreement**.
- 10. Buyer's Warranties, Undertakings and Indemnities**
- 10.1 The **Buyer** warrants that:
- It has obtained and will obtain all necessary consents, approvals and licenses for the use of the **Specification** and the **Buyer's** Materials; and
 - The use of the **Specification** and the **Buyer's** Materials will not violate any **Third Party Intellectual Property** and the **Buyer** will take all necessary action to ensure that for all IP (Internet Protocol) products (fixed or mobile) the fair usage policies dictated by the ISP (Internet Service Provider) are adhered to consistently: with fair usage being no more than 3GB of data transfer per user and per connection per month and the **Buyer** will ensure that for all VOIP (Voice over Internet Protocol) connections the user clearly understands that should they used the VOIP connection to make a telephone call to the emergency **Services** then no geographic information is passed to the emergency **Services** due to the nomadic nature of VOIP connections.
- 10.2 In the event of an allegation(s) of a breach of condition 10.1, or if the **Seller** reasonably suspects such a breach or infringement has occurred, the **Seller** may, without giving notice to the **Buyer** and without liability, suspend availability of the **Goods** and/or the **Services** pending clarification of such allegations or suspicion.
- 10.3 The **Parties** shall notify each other as soon as is reasonably possible after becoming aware of any third party allegation(s) of a breach of the provisions of condition 10.1.
- 10.4 Save as provided in condition 10.2, the **Buyer** shall indemnify the **Seller** and Its officers, agents, employees or otherwise against any claims, proceedings, losses, liabilities, damages (including reasonable costs), charges and expenses of whatever nature arising out of or in connection with any claim or action made against the **Seller** and its officers, agents, employees or otherwise relating to a breach of condition 10.1, provided that the **Seller** shall not:
- Make any admissions without the **Buyer's** written consent;
 - Take any step (or omit to take any step) which would prejudice the **Buyer's** defense of the claim; and
 - Allow the **Buyer** to conduct and/or settle all negotiations and litigation resulting from such claim. The **Seller** shall, at the request of the **Buyer**, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the **Buyer** for any reasonable costs and out-of-pocket expenses incurred in so doing.
- 10.5 The **Buyer** undertakes to not alter or in any way change the configuration of the **Goods** and/or **Services** and indemnifies the **Seller** for any adverse effect that such changes may have on the functioning of the **Goods** and/or **Services** and agrees to pay the **Seller** for any reasonable costs and out-at-pocket expenses incurred in remedying any consequent problems that may arise.
- 11. Breach of Agreement**
- 11.1 This **Agreement** may be terminated:
- By either **Party** with immediate effect if the other commits a material or persistent breach of any term of the **Agreement** which in the case of a breach capable of remedy shall not have been remedied within 30 (thirty) days of the receipt by the other of a written notice identifying the breach and requiring its remedy, Upon remedy, the **Party** in breach shall provide proof of remedy within this same 30 (thirty) days;
 - By either **Party** with immediate effect if:
 - the other has stopped payment of, or is unable to pay its debts;
 - The other compounds with or convenes a meeting of its creditors or some action is taken to terminate its business;
 - The other has a receiver, administrative receiver, liquidator or provisional liquidator appointed over all or any part of its assets;
 - An event takes place which would entitle the appointment of a receiver over the assets of the other **Party** or which could cause any floating charge on its assets to crystallize;
 - A petition is presented or an **Agreement** is made or a resolution is passed for the winding up of the other **Party** or a meeting is convened for the purpose of winding it up;
 - Any event analogous to the events described in this condition shall occur in any jurisdiction in which the other **Party** is incorporated or resident or carries on business;
 - or
 - The other **Party** for any reason ceases, or threatens to cease, to carry on business.
 - By the **Seller** with immediate effect if:
 - The **Buyer** infringes the Intellectual Property rights of the **Seller** or **Third Party Intellectual Property**; or
 - Notwithstanding condition 11.1(a) the **Buyer** fails to pay any sums due by it to the **Seller** within 7 (seven) days after the due date.
 - By the **Buyer** giving notice in writing to the **Seller** 30 days before the **Agreement** is to end.
- 11.2 Any termination of the **Agreement** shall be without prejudice to any other rights or remedies a **Party** may be entitled to under the **Agreement** or at law and shall not affect any accrued rights or liabilities of either **Party** nor the coming into or continuance in force of any provision of the **Agreement** which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.3 Any agreement with on-going support for any services outlined within the agreement will be charged to the buyer for the remaining term of the agreement upon termination or 40% of the agreement total upon termination whichever is less
- 12. Force Majeure**
- 12.1 Neither the **Seller** nor the **Buyer** shall be liable to the other or be deemed to be in breach of the **Agreement** by reason of any delay in performing or any failure to perform any of its obligations (except any obligation to pay money due) in relation to the **Goods** and/or the **Services**, if the delay or failure is beyond that **Party's** reasonable control (an 'event of force majeure').
- 12.2 If either **Party** becomes aware of an event of force majeure which gives rise to, or is likely to give rise to, any failure or delay on its part it shall forthwith notify the other in **Writing** and shall inform the other of the period which it estimates the event of force majeure will continue.
- 12.3 If the event of force majeure in question prevails for a continuous period in excess of 3 (three) months, the **Parties** shall enter bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 12.4 For the purposes of clause 12.1 **Force Majeure** Event means any circumstance not within a party's reasonable control including, without limitation:
- acts of God, flood, drought, earthquake or other natural disaster;
 - epidemic or pandemic;
 - terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - nuclear, chemical or biological contamination or sonic boom;
 - any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - collapse of buildings, power cuts, fire, explosion or accident;
 - any labour or trade dispute, strikes, industrial action or lockouts;
 - non-performance by suppliers or subcontractors ; and
 - interruption or failure of utility service (including internet).
- 13. Confidentiality**
- 13.1 Each **Party** shall keep confidential the terms of the **Agreement** and any and all confidential information that it may acquire in relation to the business or affairs of the other **Party**. Each **Party** shall not use the confidential information for any purpose other than to perform its obligations under the **Agreement**. Each **Party** shall ensure that its sub-contractors, agents, officers and employees comply with the provisions of this condition 13.
- 13.2 The obligations on the **Parties** set out in condition 13.1 shall not apply to any information which:
- Is publicly available or becomes publicly available through no act or omission of the disclosing **Party** or;
 - Is required to be disclosed by **Agreement** of a court of competent jurisdiction.
- 13.3 The provisions of this condition 13 shall survive any termination of this **Agreement** for a period of 5 (five) years from termination.
- 13.4 The total estimated Service Charges that would have been paid had the **Agreement** continued until the end of the Initial Term or any subsequent Renewal Term based on the mean average of all Service Charges during the 12 month period immediately preceding termination; but, in either case,
- 13.4 If for any reason this **Agreement** ends prior to the expiration of the Initial Term or any subsequent Renewal Term the Customer shall pay to TouchTec an early termination fee (the "Early Termination Fee") being a sum equivalent to the greater of either:
- The Service charge that should have been paid had the **Agreement** continued until the end of the Initial Term or any subsequent Renewal Term; or
 - Less a discount of 10%
- 14. Duration of Agreement**
- 14.1 The minimum term for the **Agreement** shall be 36 months from the date on the **Agreement** unless a different term is otherwise specified in the **Agreement**.
- 14.2 The **Agreement** will automatically renew for a further minimum period of 12 months at the end of the current term unless the **Buyer** serves the **Seller** with a notice terminating the **Agreement** no less than 30 days prior to the end of the current term. The **Agreement** will continue in this fashion until cancelled by the **Buyer**.
- 15. Nondisclosure**
- 15.1 Confidential information shall include all information or material that has or could have commercial value or other utility in the business in which the **Buyer** is engaged. If confidential information is in **Writing**, the **Buyer** shall label or stamp the materials with the word 'Confidential' or some similar warning. If confidential information is transmitted orally, the **Buyer** shall promptly provide in **Writing**, indicating that such oral communication constituted confidential information.
- 15.2 The **Seller's** obligations under this **Agreement** do not extend to information that is:
- Publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the receiving party;
 - Discovered or created by the **Seller** before disclosure by the **Buyer**;
 - Learned by the **Seller** through legitimate means other than from the **Buyer** or the **Buyer's** representatives; or
 - Is disclosed by the **Seller** with the **Buyers** prior written approval.
- 15.3 The **Seller** shall hold and maintain the confidential information in strictest confidence for the sole and exclusive benefit of the **Buyer**. The **Seller** shall carefully restrict access to confidential information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this **Agreement**. The **Seller** shall not, without prior written approval of the **Buyer**, use for the **Seller's** own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of **Buyer**, any confidential information. The **Seller** shall return to the **Buyer** any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to confidential information immediately if the **Buyer** requests it in writing.
- 15.4 The nondisclosure provisions of this **Agreement** shall survive the termination of this **Agreement** and **Seller's** duty to hold confidential information in confidence shall remain in effect until the confidential information no longer qualifies as a trade secret or until the **Buyer** sends the **Seller** written notice releasing the **Seller** from this **Agreement**, whichever occurs first.
- 16. Sub-Contracting and Assignment**
- 16.1 The **Seller** shall be entitled to sub-contract, transfer or assign any or all of its rights and/or obligations under the **Agreement** without restriction.
- 16.2 The benefits and obligations conferred by the **Agreement** upon the **Buyer** are personal to the **Buyer** and shall not be capable of being, assigned, delegated, transferred, sub- contracted or otherwise disposed of and the **Buyer** shall not purport to assign, transfer, sub-contract or dispose of the same without the prior written consent of the **Seller**, such consent not to be unreasonably withheld.
- 17. Data Protection**
- 17.1 The **Buyer** and The **Seller** will each comply with the General Data Protection Regulation (2016/679) ("GDPR") and any other similar national privacy legislation (collectively the "Data Protection Legislation") applicable to any personal data processed as part of the products and services the **Buyer** receives from the **Seller** or otherwise in connection with those products and services (the "Personal Data").
- 17.2 The **Seller** agrees that the **Buyer** will process any personal information on the **Seller** or its agents in compliance with the GDPR and in line with their privacy notice.
- 17.3 Where the **Seller** processes personal data made available by the **Buyer** in relation to the products and services we provide ("Supplied Personal Data") as your Processor (as defined in Article 28 of the Data Protection Legislation):
- We will only process the Supplied Personal Data on our documented instructions unless we are required to process it for other purposes by EU law (in which case we will give prior notice of that requirement unless the relevant law prohibits the giving of notice);
 - The **Seller** generally authorise you to engage further Processors to process Supplied Personal Data only where necessary and if they too are GDPR compliant.
 - The **Seller** will confirm if data is transferred outside of the EEA.
 - The **Seller** will comply with the express obligations of a Processor under Articles 28(3)(b) to 28(3)(h) of the GDPR. However, we may not instruct you to delete copies of data that you hold as Controller (as defined in the Data Protection Legislation);
 - The **Seller** will tell us if you require any assistance pursuant to Articles 28(3)(a) to 28(3)(h) of the GDPR inclusive.
 - In fulfillment of the **Sellers** obligation to demonstrate compliance with this paragraph, we will make available to us information on your processing of our Supplied Personal Data on request.
- 17.4 You shall in relation to the Supplied Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

- 17.5 You will assist us in ensuring compliance with the obligations pursuant to articles 32 – 36 taking into account the nature of processing and the information available to the processor.
- 17.6 You and we will each maintain appropriate physical, technical and organisational measures to protect Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access ("Data Breach").
- 17.7 You will, without undue delay, tell us of any actual or suspected non-trivial Data Breach relating to Personal Data that may also impact us or the security of our systems, products or services.
- 17.8 At the end of this contract you confirm that you will either delete or return all Supplied Personal Data as requested.
- 18. General**
- 18.1 Any notice required or permitted to be given by either **Party** to the other under these conditions shall be in **Writing** addressed to that other **Party** at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the **Party** giving the notice. Any such notice may be delivered personally or by first class pre-paid letter, e-mail or facsimile transmission and shall be deemed to have been served, if by hand, when delivered; if by first class post, 48 (forty-eight) hours after posting; and if by facsimile transmission or e-mail, when dispatched.
- 18.2 No waiver by the **Buyer** of any breach of the **Agreement** by the **Seller** shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
- 18.4 The **Agreement** (including any dispute or claim of whatever nature arising under or in connection with the **Agreement**) shall be governed by and construed in accordance with the laws of England, and the **Buyer** hereby irrevocably submits to the non-exclusive jurisdiction of the English courts in respect of any dispute or claim of whatever nature arising under or in connection with the **Agreement**.
- 18.5 Except in relation to condition 8, which may be enforced by the relevant proprietor of the Third Party Intellectual Property for the purposes of the **Agreements (Rights of Third Parties) Act 1999**, and notwithstanding any other provision of these conditions, the conditions are not intended to, and do not give any person who is not a **Party** to it any right to enforce any of their provisions.
- 19. Limitation of Liability**
- 19.1 Nothing in this **Agreement** shall exclude or limit **TouchTec's** liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence; or
 - (c) a breach of any obligations implied by the **Sale of Goods Act 1979** or section 2 of the **Supply of Goods and Services Act 1982**.
- 19.2 Subject always to clause 4.1, **TouchTec** shall not be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss or damage caused by any risk which the **Customer** is required by this **Agreement** to insure against;
 - (b) any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
 - (c) any delay;
 - (d) loss or corruption (whether direct or indirect) of data or information; or
 - (e) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this **Agreement**.
- 19.3 Subject always to clause 5, **TouchTec's** total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this **Agreement** shall be limited to the greater of:
- (a) the total **Service Charges** paid during the 12 month period immediately preceding the date on which the cause of action first arose;
 - (b) the limit of **TouchTec's** insurance cover but only in the event that the liability is in fact insured and **TouchTec's** insurers have agreed to pay out for such a liability; or
 - (c) in cases where **Equipment** is purchased directly from **TouchTec** by the **Customer** (i.e. without the assistance of a **Finance Provider**) the recommended retail price for the **Equipment** under this **Agreement**.
- 20. Waiver**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 21. Variation**
- 21.1 No variation of this agreement shall be effective unless it is in writing and signed by **TouchTec**.
- 21.2 **TouchTec** may vary the conditions of this **Agreement** to take account of new legislation, statutory instrument, government regulations or licenses or similar matters provided that the **Customer** is notified of any such variances in writing and making such variations available at **TouchTec's** principal place of business.
- 21.3 It is **TouchTec's** policy to continually review its charges, service charter and the terms upon which it contracts with **Customers**. **TouchTec** may therefore vary the terms of this **Agreement** from time to time provided that the **Customer** is notified of any such variances in writing and making such variations available at **TouchTec's** principal place of business.
- 22. Indemnity**
- 22.1 The **Customer** shall indemnify **TouchTec** irrespective of whether or not **TouchTec** has been negligent or at fault against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and the entire legal costs of any action (including any proceedings allocated to the small claims track) and acknowledge that any entitlement to legal costs is a contractual entitlement under this **Agreement** as well as all other professional costs and expenses suffered or incurred by **TouchTec** arising out of or in connection with:
- (a) the **Customer's** breach or negligent performance or non-performance of this agreement;
 - (b) the enforcement of this agreement;
 - (c) any claim made against **TouchTec** for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with this **Agreement** or the **Customer's** use of the **Software**;
 - (d) any claim made against **TouchTec** by the **Customer** or a third party arising out of or in connection with the provision of the services or supply of **Equipment**, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the **Customer**, its employees, agents or subcontractors; and
 - (e) any claim made against **TouchTec** by a third party for death, personal injury or damage to property arising out of or in connection with defective **Equipment** to the extent that the defect in the **Equipment** is attributable to the acts or omissions of the **Customer**, its employees, agents or subcontractors.
- 23. Rights & Remedies**
- Except as expressly provided in this **Agreement**, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 24. Severance**
- 24.1 If any provision or part-provision of this agreement 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 this agreement
- 24.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 24.3 If this document is supported by an SLA (Service Level Agreement) you may have additional rights to terminate this agreement if expected service levels set out in that document are not met.
- 25. Entire Agreement**
- 25.1 This agreement and the **Order Form** 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.
- 25.2 Each party acknowledges that in entering into this agreement 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 this **Agreement** or in the "Additional Provisions" Section of the **Order Form**.
- 25.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this **Agreement** or the **Order Form**.
- 25.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 26. Assignment**
- 26.1 The **Customer** shall not, without the prior written consent of **TouchTec**, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the **Agreement**.
- 26.2 **TouchTec** may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this **Agreement**.
- 27. Third Party Rights**
- No one other than a party to this **Agreement**, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 28. Notices**
- 28.1 A notice given to a party under or in connection with this agreement:
- (a) shall be in writing and in English;
 - (b) shall be signed by or on behalf of the party giving it;
 - (c) may be sent to the party for the attention of the contact and at the address, fax, DX number or email as set out in the **Order Form**;
 - (d) shall be sent by a method listed in clause 25.2; and
 - (e) unless proved otherwise is deemed received as set out in clause 25.2 if prepared and sent in accordance with this clause.
- 28.2 This table sets out:
- (a) delivery methods for sending a notice to a party under this agreement; and
 - (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 25.3:
- 28.3 For the purpose of clause 25.2 and calculating deemed receipt:
- (a) all references to time are to local time in the place of deemed receipt; and
 - (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.
- 28.4 This clause 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.
- 28.5 A notice given under or in connection with this agreement is not valid if sent by email.
- 29. No Partnership or Agency**
- 29.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- 29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 30. Successors**
- 30.1 The **Agreement** shall be binding upon and endure for the benefit of the successors in title (as permitted hereunder) of the **Parties** hereto.
- 31. Governing Law and Jurisdiction**
- 31.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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