

## UK Tech Ltd t/a Foodhub - Terms and Conditions

These Terms and Conditions shall apply to the provision of Systems by foodhub, the trading name of UK Tech Ltd, a company registered in England and Wales under number 07845413, whose registered office is at 58 Moorland Road, Stoke-On-Trent, Staffordshire, ST6 1DT ("the Company").

We provide Systems to businesses only. We do not provide Systems to Consumers (as defined in the Consumer Rights Act 2015).

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Contract.

**Agreement Form** the form by which you have agreed to order the System, which is subject to these Terms and Conditions;

**Bank Account** your business bank account from which the Rental Payments shall be requested by the Company via a collection method such as standing order or Direct Debit, details of which are set out on the Agreement Form;

**Business Day** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Business Premises** your business premises located at the address detailed on the Agreement Form;

**Client/You/Your** the individual, firm or corporate body specified on the Agreement Form. Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to do so and to contractually bind that business and the business shall be the Client in the context of this Contract;

**Contract** the contract between the Company and you for the hire and/or purchase of the System in accordance with the Agreement Form, which is subject to and incorporates these Terms and Conditions;

**Commencement Date** the date that the website became live and ready for trading;

**Delivery** the transfer of physical possession of the Equipment to you at the Business Premises;

**EPOS Software** the computer program which enables customers to order from your takeaway via the Website and over the telephone and for the customer orders to be printed out in the Business Premises;

**EPOS System** the electronic point of sale system (EPOS) comprising the Equipment, the EPOS Software and the Website;

**Equipment** EPOS system, thermal printer and caller ID or such other equipment as may be provided by the Company from time to time which is suitable to operate the EPOS System;

**GDPR** General Data Protection Regulation 2016;

**Intellectual Property Rights** all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off;

**Setup Fee** the "one off" sum payable to the Company as specified on the Agreement Form, to be dealt with in accordance with clause 6.6;

**Material** the content provided by you to the Company from time to time for inclusion on the Website including photographs, menus, price lists and other information;

**Online Ordering Software** the computer program which enables customers to order from your takeaway via the Website (but not over the telephone) and for the customer orders to be printed out in the Business Premises;

**Online Ordering System** the Equipment, the Online Ordering Software and the Website;

**Personal Data** has the meaning as defined in the GDPR;

**Rental Payments** the weekly sum (inclusive of VAT) payable for the EPOS System the Online Ordering System as stated on the Agreement Form;

**System** either the EPOS System or the Online Ordering System as relevant and as ordered by you on the Agreement Form;

**Term** the term of this Contract as provided for in clause 5;

**Website** a website for your takeaway business, the primary function of which is to allow your customers to order online;

**Weekly Payment Date** the agreed day of every week during the Term on which the Rental Payment is paid, which in the absence of express agreement shall be a Monday;

1.2 Each reference in these Terms and Conditions to:

1.2.1 "we", "us" and "our" is a reference to the Company;

1.2.2 "writing" and "written" includes emails;

1.2.3 a statute is a reference to that statute as amended or re-enacted at the relevant time;

1.2.4 "these Terms and Conditions" is a reference to these Terms and Conditions as may be amended or supplemented at the relevant time;

1.2.5 a clause refers to a clause of these Terms and Conditions;

1.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation.

1.4 Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.

### 2. Basis of contract

2.1 These Terms and Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Agreement Form constitutes an offer by you to purchase the System in accordance with these Terms and Conditions. You are responsible for ensuring that the information set out on the Agreement Form is complete and accurate.

2.3 The Agreement Form shall only be deemed to be accepted when the Company signs the Agreement Form (by a handwritten or electronic signature) at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the System described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the System given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue and may rescinded by the Company prior to the expiration of that period without prior notice.

### 3. Provision of the EPOS System or the Online Ordering System

3.1 The Company shall hire the Equipment to you for use at the Business Premises subject to these Terms and Conditions.

3.2 You shall be permitted to use the EPOS Software or the Online Ordering Software (as relevant) and the Website in accordance with these Terms and Conditions.

3.3 The Company shall design, develop, deliver, maintain and arrange for the hosting of your Website which, subject to your use of the System in accordance with these Terms

- and Conditions, shall work compatibly with and be accessible by you through the Equipment.
- 3.4 You acknowledge and accept that the System will only work if the Business Premises has access to a broadband connection with a minimum download speed of 4MB.
  - 3.5 You are responsible for the security of the System and must not allow it to be used by anyone other than in accordance with these Terms and Conditions. You must put measures in place to comply with the GDPR, which includes, but is not limited to, ensuring that you lock your terminal or log off to prevent unauthorised users accessing the System in your absence if you leave the System unattended. Staff without authorisation should only be allowed to use System under supervision. Passwords must be kept confidential and must not be made available to anyone else unless specifically authorised by you. You must put measures in place to change the passwords for the System on the termination of employment of any of your staff who were in possession of your password
  - 3.6 You will provide the Company with suitable Materials to be displayed on the Website as soon as possible after the Commencement Date. It is your responsibility to ensure that this information is accurate. The Company shall update the Website with Materials provided by you from time to time but except with the prior agreement of the Company, not more than twice in any 12-month period of the Contract.

#### 4. SMS (short messaging service) Marketing

- 4.1 The System supports the sending of SMS (short message service) messages for the purpose of marketing your business. You are under no obligation to use the SMS messaging facility.
- 4.2 The cost to you in sending an SMS message is stated on the Agreement Form. This cost is in addition to the Rental Payments and is subject to change from time to time. Any change to the cost per message will be communicated to you prior to the change becoming effective.
- 4.3 In using the SMS messaging facility, you shall not:
  - 4.3.1 promote alcohol, music, dancing, dating, gambling or deception;
  - 4.3.2 send unsolicited messages (i.e. mobile spam) and to therefore ensure that your messages are only sent to individuals that have given you their permission;
  - 4.3.3 harvest, or otherwise collect information about others, without their consent;
  - 4.3.4 mislead others as to the identity of the sender of your messages, by creating a false identity, impersonating the identity of someone/something else or by providing contact details that do not belong to you;
  - 4.3.5 transmit, associate or publish any unlawful, racist, harassing, libellous, abusive, threatening, demeaning, lewd, immoral, harmful, vulgar, obscene or otherwise objectionable material of any kind;
  - 4.3.6 transmit any material that may infringe upon the intellectual property rights of third parties including trademarks, copyrights or other rights of publicity;
  - 4.3.7 transmit any material that contains viruses, trojan horses, worm, time bombs, cancel-bots or any other harmful/deleterious programs;
  - 4.3.8 interfere with, or disrupt, networks connected to the service or violate the regulations, policies or procedures of such networks;
  - 4.3.9 attempt to gain unauthorised access to the service, other accounts, computer systems or networks connected to the service, through password mining or any other means;
  - 4.3.10 interfere with another's use and enjoyment of the service; or
  - 4.3.11 engage in any other activity that the Company believes could subject it to criminal liability or civil penalty/judgment.
- 4.4 By using SMS messaging facility, you acknowledge and accept that:
  - 4.4.1 the Company shall have no responsibility for the content or the accuracy of your SMS messages

- 4.4.2 SMS messages are transmitted unencrypted and that 'eavesdropping' of mobile telephone communications, including SMS delivery, by third parties is possible. The Company recommends that Personal Data, particularly any sensitive or valuable information, is not communicated via SMS;
- 4.4.3 the transmitting of an SMS message by the Company is done so in good faith and shall not be deemed to be an approval by the Company of the content of an SMS message or the suitability of the recipient to receive the SMS message;
- 4.4.4 the Company stores message content and activity logs in accordance with the GDPR and if required to disclose this information to law enforcement agencies, the Company will fully co-operate with such requirements to make disclosures which may include a requirement not to inform you of any such disclosure;
- 4.4.5 any breach of these Terms and Conditions relating to using the SMS facility is not remediable and the Company shall have the right to terminate the Contract immediately on discovery of a breach in accordance with clause 11;
- 4.4.6 any breach of these Terms and Conditions relating to using the SMS facility may result in proceedings being brought under the relevant legislation in effect at the time of the breach.

#### 4.5 Provided:

- 4.5.1 the system status shows as functional; and
- 4.5.2 no error messages are displayed that indicate the SMS message will not be sent;

e Company guarantees that it shall transmit your SMS messages to one of the Company's SMS gateways for delivery to the relevant network.

- 4.6 The Company can make no guarantee in respect of either the delivery or time of delivery of the SMS message which is the responsibility of mobile network operator and services. Delivery reports are operator dependent features and the Company cannot make any guarantees as to their availability.
- 4.7 An SMS message submitted to and accepted by a mobile network operator will be transferred to the recipient provided that the recipients mobile telephone is switched on, located within an area covered by the recipient's subscribed mobile network provider and that the mobile telephone's memory is not full and any message delivered to the recipient's mobile phone operator, without an error code, is deemed to have been delivered.
- 4.8 SMS messages that cannot be delivered within the life span allocated to them by a mobile network operator will be discarded by the mobile network operator without any notice.

#### 5. Term

- 5.1 The Contract shall start on the Commencement Date and shall run for an initial period of 4 months ("the Initial Period"). If the Contract is not terminated during the Initial Period in accordance with clause 11.1.1, the Contract shall continue to run on a rolling 12-month basis, starting on the next day following the expiration of the Initial Period.

#### 6. Rental Payments, SMS payments and Setup Fee

- 6.1 You shall pay the Rental Payments to the Company on the Weekly Payment Date for the Term. The Rental Payments shall be paid in GBP Sterling by a collection method such as standing order or Direct Debit from your Bank Account or by such other means as may be agreed by the Company to ensure that the Rental Payments are made on or before the Weekly Payment Date. You will authorise the Company to set up a standing order or any alternative means from your Bank Account on the Commencement Date.

- 6.2 Any applicable taxes and duties or similar charges payable in connection with the Rental Payments shall be payable by you at the rate and in the manner from time to time prescribed by law.
- 6.3 SMS messages may only be sent by you when your account is in credit following prepayment to the Company. Please note prepayments may take up to 5 Business Days to clear and only cleared funds will be credited to your account. The Company may in its absolute discretion permit the sending of SMS messages by you at times when your account does not have sufficient levels of prepayment but the cost of the SMS messages shall be immediately due and outstanding to the Company.
- 6.4 All payments to be made by you under this Contract shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.
- 6.5 If you fail to pay any Rental Payments, payments in respect of SMS message or any other sums payable under this Contract by the due date for payment under this Contract then, without limiting the Company's rights under clause 11.4.1 you shall be liable to pay any costs incurred by the Company in recovering both sums due to it and the Equipment from the Business Premises.
- 6.6 You shall pay the Setup Fee to the Company on the Commencement Date,
- 6.7 If this Contract is terminated by you in accordance with clause 11 within four months of the Commencement Date (the Initial Period), the Setup Fee shall, subject to clause 11.8, be repaid to you by the Company within 20 Business Days following the end of the Initial Period. The Setup Fee shall not be refundable in any other circumstances.

**7. Delivery and Initial Period Testing**

- 7.1 Delivery of the Equipment shall be made by the Company. The Company shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with clause 8 of this Contract.
- 7.2 You shall procure that a duly authorised representative on your behalf shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that you have examined the Equipment and have found it to be in good condition and complete.
- 7.3 During the first 14 days of the Contract:
  - 7.3.1 you shall be able to test System in the manner directed by the Company to ensure that the System works successfully and is fit for the purpose for which it is intended; and
  - 7.3.2 the Company shall provide assistance reasonably requested by you to remedy any defects in the System that have not been caused by you by supplying technical support and/or where you have ordered an EPOS System, additional or replacement Equipment.
- 7.4 You shall be deemed to have accepted the Equipment and the System as fit for purpose unless you reject the Equipment and the System during the 14-day test period.

**8. Title, risk and insurance**

- 8.1 You shall retain all Intellectual Property Rights in any Materials that you provide to the Company to use on the Website and you hereby grant the Company a licence to such Intellectual Property Rights to the extent required to perform its obligations under this Contract.
- 8.2 All Intellectual Property Rights arising in the System, including any domain names, shall be the property of the Company and the Company hereby grants you a non-exclusive licence to use such Intellectual Property Rights to the extent required to utilise the System in accordance with these Terms and Conditions.
- 8.3 You agree that:
  - 8.3.1 the Equipment shall at all times remain the property of the Company and you shall have no right, title or interest in or to the Equipment (save the right to possession and use of the

- Equipment subject to these Terms and Conditions and the Contract);
- 8.3.2 the risk of loss, theft, damage or destruction of the Equipment shall pass to you on Delivery. The Equipment shall remain at your sole risk during the Term and any further term during which the Equipment is in your possession, custody or control ("Risk Period") until such time as the Equipment is redelivered to the Company. During the Term and the Risk Period, you shall at your own expense, obtain and maintain the following insurances:
  - 8.3.2.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
  - 8.3.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
  - 8.3.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to you;
- 8.3.3 all insurance policies procured by you shall be endorsed to provide the Company with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Equipment. You shall be responsible for paying any deductibles due on any claims under such insurance policies;
- 8.3.4 you shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment or arising out of or in connection with your possession or use of the Equipment;
- 8.3.5 if you fail to effect or maintain any of the insurances required under this Contract, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from you; and
- 8.3.6 you shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

**9. Your responsibilities**

- 9.1 You shall at all times during the Term of this Contract:
  - 9.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - 9.1.2 take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment 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 maintain at your own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn,

- damaged and lost parts and arranging for annual Portable Appliance Testing (PAT Testing) to be carried out by an appropriately certified electrician, and shall make good any damage to the Equipment;
- 9.1.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Company unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Company immediately upon installation;
- 9.1.5 keep the Company fully informed of all material matters relating to the Equipment, including but limited to instances where the Equipment breaks down or fails;
- 9.1.6 keep the Equipment at all times at the Business Premises and shall not move or attempt to move any part of the Equipment to any other location without the Company's prior written consent;
- 9.1.7 permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 9.1.8 maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;
- 9.1.9 not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 9.1.10 not without the prior written consent of the Company, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to the Equipment or such land or building and you shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
- 9.1.11 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment and, where the Equipment has become affixed to any land or building, you must take all necessary steps to ensure that the Company may enter such land or building and recover the Equipment both during the term of this Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the Equipment and a right for the Company to enter onto such land or building to remove the Equipment;
- 9.1.12 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, you shall notify the Company and you shall at your sole expense use your best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 9.1.13 ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; and
- 9.1.14 deliver up the Equipment at the end of the Rental Period or on earlier termination of this Contract at such address as the Company requires, or if necessary allow the Company or its representatives access to the Business Premises or any premises where the Equipment is located for the purpose of removing the Equipment.
- 9.2 You shall during the Term of this Contract:
- 9.2.1 not use the System for any unlawful purpose, in particular you must not use the System:
- 9.2.1.1 in any way that breaches any applicable local, national or international law or regulation,
- 9.2.1.2 in any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- 9.2.1.3 for the purpose of harming or attempting to harm minors in any way.
- 9.2.1.4 to send, knowingly receive, upload, download, use or re-use any material which:
- a. contains any material which is defamatory of any person,
  - b. contains any material which is obscene, offensive, hateful or inflammatory.
  - c. promotes sexually explicit material.
  - d. promotes violence.
  - e. promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
  - f. infringes any copyright, database right or trade mark of any other person.
  - g. is likely to deceive any person.
  - h. is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
  - i. promotes any illegal activity.
  - j. is threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
  - k. is likely to harass, upset, embarrass, alarm or annoy any other person.
  - l. is used to impersonate any person, or to misrepresent your identity or affiliation with any person.
  - m. gives the impression that they emanate from the Company if this is not the case.
  - n. advocates, promotes or assists any unlawful act such as (by way of example only) copyright infringement or computer misuse.
- 9.2.1.5 to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (including spam).
- 9.2.1.6 to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar

computer code designed to adversely affect the operation of any computer software or hardware;

- 9.2.2 not do or permit to be done anything which could invalidate the insurances referred to in clause 8;
  - 9.2.3 indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Material supplied by you infringes the Intellectual property Rights of a third party; and
  - 9.2.4 promptly notify the Company if you receive any notice or allegations alleging a breach or infringement of Intellectual Property Rights.
- 9.3 You acknowledge that the Company shall not be responsible for any loss of or damage to the System arising out of or in connection with any negligence, misuse, mishandling of the System or otherwise caused by you or your officers, employees, agents and contractors, and you undertake to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by you to comply with these Terms and Conditions or the Contract.

## 10. Repairs and liability

- 10.1 In the event that the System fails to work, either completely or in part, you will notify the Company within 2 Business Days of you becoming aware of the issue(s).
- 10.2 The Company will attempt to identify and resolve any issues regarding the performance of the System over the telephone. This may require your assistance which you must provide as reasonably requested by the Company.
- 10.3 To the extent that any issue relates to the Equipment and cannot be resolved over the telephone the Company may either, in its absolute discretion, attend the Business Premises to repair the Equipment or replace the Equipment via a courier.
- 10.4 To the extent that any issues relate to the server used by the Company in providing the System, the Company will use all reasonable efforts to liaise with the server provider with a view to restoring service as quickly as possible.
- 10.5 To the extent that any issues relate to the delivery of SMS messages, the Company use all reasonable efforts to liaise with the mobile network operator with a view to restoring service as quickly as possible.
- 10.6 The Company will not resolve any issues that relate to your broadband connection which you must resolve with your broadband provider except in cases where the broadband connection is provided by the company. Any issues relating to the broadband connection must be resolved prior to any other or additional issues being rectified.
- 10.7 Nothing in this Contract shall exclude or in any way limit the Company's:
  - 10.7.1 liability for death or personal injury caused by its own negligence;
  - 10.7.2 liability for fraud or fraudulent misrepresentation; or
  - 10.7.3 liability for any other acts which cannot be excluded by law.
- 10.8 Subject to clauses 10.2 - 10.7 the Company shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or any indirect or consequential loss arising under or in connection with the Contract, in each case however caused, even if foreseeable.
- 10.9 These Terms and Conditions set forth the full extent of the Company's obligations and liabilities in respect of the System and its hiring to you. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in these Terms and Conditions. Any condition, warranty or other term concerning the System which might otherwise be implied

into or incorporated within this Contract, whether by statute, common law or otherwise, is expressly excluded.

## 11. Termination

- 11.1 You may terminate this Contract:
  - 11.1.1 during the Initial Period by:
    - 11.1.1.1 giving at least 30 days written notice to the Company, such notice to expire on the last day of the Initial Period; and
    - 11.1.1.2 on or prior to the last day of the Initial Period, returning the Equipment to the Company at such address as specified by the Company or paying for the Company to collect the Equipment from the Business Premises; and
    - 11.1.1.3 on or prior to the last day of the Initial Period, paying in full any balance due on the account.
  - 11.1.2 after the Initial Period by:
    - 11.1.2.1 giving at least 30 days written notice to the Company, such notice to expire on the last day of the rolling 12-month period; and
    - 11.1.2.2 on or prior to the last day of the rolling 12-month period, returning the Equipment to the Company at such address as specified by the Company or paying for the Company to collect the Equipment from the Business Premises; and
    - 11.1.2.3 on or prior to the last day of the rolling 12-month period, paying in full any balance due on the account.
- 11.2 Failure to comply with any of the requirements to terminate the Contract set out in clause 11.1.1 and 11.1.2 will render any purported notice of termination void and the Contract will continue.
- 11.3 If having served a notice pursuant to clause 11.1 you wish the Contract to terminate prior to the end of either the Initial Period or the rolling 12-month period (as relevant), you may pay all Rental Payments that would otherwise be due up to the end of the Term and return the Equipment to the Company, on receipt of which the Company will confirm that the Contract has been terminated.
- 11.4 Without prejudice to any other right or remedy which may be available to it, the Company will have the right to terminate this Contract immediately by written notice to you if:
  - 11.4.1 you default in any of your payment obligations;
  - 11.4.2 you commit a breach of clause 3.5, 4.3 or 9.2;
  - 11.4.3 you commit any other material breach of this Contract which breach is irremediable, or which breach (if remediable) is not remedied within five (5) Business Days after the service of written notice from the Company requiring it to do so;
  - 11.4.4 being an individual, you have a petition presented for your bankruptcy;
  - 11.4.5 you suspend, or threatens to suspend, payment of your debts you are unable to pay your debts as they fall due or you admit inability to pay your debts or is deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 11.4.6 you commence negotiations with all or any class of its creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors; or
  - 11.4.7 being a corporate entity, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up; or
  - 11.4.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over you; or

- 11.4.9 the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
  - 11.4.10 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over the assets of the Lessee; or
  - 11.4.11 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days; or
  - 11.4.12 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.4.3 to clause 11.4.9 (inclusive); or
  - 11.4.13 you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business.
- 11.5 This Contract shall automatically terminate if a total loss occurs in relation to the Equipment.
- 11.6 Upon termination of this Contract, however caused:
- 11.6.1 the Company's consent to your possession of the Equipment shall terminate and the Company may, by its authorised representatives, without notice and at your expense, retake possession of the Equipment and for this purpose may enter the Business Premises or any premises at which the Equipment is located; and
  - 11.6.2 without prejudice to any other rights or remedies that you may have, you shall pay to the Company on demand:
    - 11.6.2.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any other charges accrued in accordance with these Terms and Conditions;
    - 11.6.2.2 any costs and expenses incurred by the Company in recovering the Equipment and/or in collecting any sums due under this Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 11.7 Upon termination of this Contract pursuant to clause 11.4, any other repudiation of this Contract by you which is accepted by the Company or pursuant to clause 11.5, without prejudice to any other rights or remedies of the Company, you shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period.
- 11.8 The sums payable pursuant to clause 11.7 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to clause 11.6.2. If the Contract is terminated by you during the first twelve months following the Commencement Date, such sums may be partly or wholly recovered from any Joining Fee which would otherwise be returned in accordance with clause 6.7.
- 11.9 Termination of this Contract shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

## 12. Data Protection

- 12.1 The Company warrants that, to the extent it processes any Personal Data on your behalf:
  - 12.1.1 it shall act only on instructions from you; and
  - 12.1.2 it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 12.2 You represent, warrant and undertake that:
  - 12.2.1 the processing of any Personal Data by you pursuant to this Contract will at all times be carried out in accordance with the relevant provisions of the GDPR and all other applicable data protection legislation and does not violate

- the relevant provisions of such data protection legislation in any way and;
- 12.2.2 notwithstanding the generality of the foregoing, you have obtained and will continue to obtain the specific and informed consent (and in the case of sensitive Personal Data, the explicit consent) of all and any of the customers (or any other relevant persons) to the processing of their Personal Data in the manner envisaged by this Contract.

## 13. Force majeure

- 13.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 14. Assignment and subcontracting

- 14.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

## 15. Notices

- 15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or e-mail.
- 15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 15.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 16. Severance

- 16.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 17. Waiver

- 17.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure

or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**18. Third party rights**

18.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

**19. Variation**

19.1 The Company has the right to revise and amend these Terms and Conditions from time to time on giving you at least 30 days' notice in writing.

**20. Governing law and jurisdiction**

20.1 The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.