

# TERMS OF TRADE

## 1. Definitions

1.1 In these Terms of Trade the following words and phrases have the following meanings;

**BigChange** BigChange Limited (Registered in England and Wales with Company Number 08189817) of 3150 Century Way, Thorpe Park, Leeds, LS15 8ZB or its successors in title or assigns;

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

**Browser System** a web browser application to enable the Customer to access its information on the System via the World Wide Web;

**Contract** the contract between the Customer and BigChange for the supply and installation of the System as detailed in the Order and which shall incorporate these Terms of Trade;

**Contract Period** the period of time set out in the Order.

**Customer** the individual, partnership or company named in the Order;

**Delivery Note** a form to be signed by the Customer acknowledging delivery of the Equipment in full and in satisfactory and acceptable condition;

**Data Protection** Legislation up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation (EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

**Equipment** the Tablet Computer/PDA or vehicle satellite tracking devices to be installed in or on the Customer's vehicles and/or any other hardware ordered by the Customer in the Order;

**Finance Company** a bank or other financial institution which is the Owner as defined in the Rental Agreement;

**Finance Confirmation** confirmation by BigChange that the Finance Company has agreed to enter into a Rental Agreement with the Customer for the purpose of the Contract;

**Fitting Address** the Customer address provided in the Order where the Equipment will be installed, if applicable;

**GDPR** General Data Protection Regulation ((EU) 2016/679))

**Installer** an installer of Equipment who will be either a BigChange employee or a sub-contractor who has been authorised and approved by BigChange;

**Job Cards and Certificates** An electronic reproduction of an existing paper form which can be output from the System.

**Liability Amount** the amount specified in 6.1 below;

**Order** the specific detail of the Contract;

**Personal Data** has the meaning given to it by the Data Protection Legislation;

**Purchase Price** the price stated in the Order for the purchase by the Customer of the Equipment and/or System sold by BigChange to the Customer;

**Price List** the listing of standard prices which can be downloaded by visiting <http://www.bigchange.com>

**Rental** each of the monthly rental payments specified overleaf payable under any Rental Agreement;

**Rental Agreement** a separate agreement with a third-party finance company or BigChange as the case may be for the hiring of the System for the Contract Period, (sometimes referred to as a Hire Agreement or Lease Agreement);

**Service Agreement** the agreement between BigChange and the Customer for the provision of services in relation to the System;

**Service Payments** the payments to be made for the Services as set out in the Service Agreement;

**Services** the services relating to the System set out in the Contract between BigChange and the Customer, including basic training, System services, customer support and text messaging, together with those shown on the Order and any other services BigChange agrees to supply to the Customer during the Service Term

**Service Term** the period as set out in the Order;

**Software** the app and web browser Interface (including all related documentation and manuals) supplied by BigChange;

**System** the BigChange Mobile Resource Management system including, without limitation, the Equipment and the Software supplied by BigChange and any other equipment ordered by the Customer in the Order; and

**System Warranty** the express warranty given by BigChange relating to the Equipment and/or System in the Order.

**Warranty Period** the warranty period as defined in Clause 5.3

1.2 Reference in these Terms of Trade to the singular shall be deemed to include the plural and vice versa.

1.3 Headings to Clauses are included for ease of reference and shall not affect the interpretation of these Terms of Trade.

1.4 References to written and in writing shall include email but not fax

## 2. The process of entering into Contracts, Risk and Title

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms of Trade

2.2 The Order shall only be deemed to be accepted when BigChange issues written acceptance of the completed Order at which point and on which date the Contract shall come into existence (**Commencement Date**) and such Contract shall be subject to these Terms of Trade". The terms of the Contract shall take precedence over any terms and conditions specified in any purchase orders issued by the Customer unless agreed in writing by both parties.

2.3 No variation of a Contract shall be binding unless agreed in writing between the authorised representatives of the Customer and BigChange. At the request of either party the other party will verify whether any individual has the requisite authority.

2.4 Any samples, drawings, descriptive matter or advertising issued by BigChange, and any descriptions or illustrations contained in BigChange's catalogues or brochures, are issued or published for the sole purposes of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.

2.5 If any provision of the Contract is held illegal or unenforceable such provision shall be severed and the remainder of the Contract shall remain in full force and effect unless the business purpose of the Contract is frustrated thereby.

2.6 If the Order is placed based on the Customer entering into a Rental Agreement then the Contract shall be conditional on either:

- (i) Finance Confirmation; or
- (ii) agreement for outright purchase of the System under Clause 3.4(ii).

If Finance Confirmation is not received by BigChange within 14 days of an Order then Clause 3.4 shall apply.

2.7 Risk in the Equipment shall pass to the Customer when the Equipment is delivered to the Customer. Where the Customer is purchasing Equipment, title in the Equipment will not pass to the Customer until BigChange has received payment for the Equipment in full in accordance with the terms of the Contract.

2.8 At any time before title has passed to the Customer pursuant to a sale to the Customer BigChange shall have the right, without prejudice to any other rights, to recover or re-sell the System or any part of the same (including the Equipment) and may enter upon the Customer's premises, or work upon the Customer's vehicles, by its servants or agents, for that purpose.

## 3. Payments to BigChange and Finance Confirmation

3.1 (i) Payments to BigChange and Finance Confirmation 3.1 In consideration of BigChange's performance of its obligations under the Contract, the Customer shall pay to BigChange the amounts set out in the Order.

(ii) On each twelve-month anniversary from the commencement of this contract BigChange may vary the value of the Service payments in line with the prevailing RPI (Retail Price Index) rate over the rate of RPI at the date of the commencement of this Contract applied as a percentage change to the original value. The customer accepts that the measurement by use of RPI is an appropriate method and agrees to pay any subsequent payments at the revised amounts determined and invoiced by BigChange after applying this method of calculation and giving the customer at least one month's written notice.

3.2 Invoices will be sent to the Customer each month or otherwise as per the associated Service Agreement notifying it of the payment date and value for each payment that will be collected by direct debit, unless agreed otherwise.

3.3 If the Customer has placed the Order based on entering into a Rental Agreement then upon receipt of Finance Confirmation, BigChange will contact the Customer confirming the basis on which the Rental Agreement is to be provided and the Customer shall immediately enter into a Rental Agreement in a form presented by BigChange.

3.4 If Finance Confirmation does not occur within 14 days from the date of the Order:

- (i) BigChange may extend such period for as long as it considers necessary for Finance Confirmation to be made; or
- (ii) the Customer and BigChange may agree to continue with the Contract as an outright purchase by the Customer, in which case the Contract will become unconditional upon payment in full by the Customer of the total value of the Equipment (plus VAT at the appropriate rate); or
- (iii) failing such extension or agreement pursuant to (i) and (ii) above, the Contract will automatically terminate after 180 days from being signed and the Deposit will be refunded to the Customer less an administration fee of £100 per item of Equipment ordered.

3.5 If the Customer neglects or refuses to execute the Rental Agreement offered under Clause 3.3 above or to provide the Finance Company with the information reasonably necessary to permit the offer of a Rental Agreement, or without reasonable cause, refuses or neglects to take delivery of the Equipment or to sign any Delivery Note or other document of like nature required by the Finance Company as a precondition to the implementing of the Rental Agreement, the Customer shall be obliged forthwith to pay to BigChange all Rentals that would otherwise be payable for the Contract Period (less the Deposit if already paid).

3.6 The Customer agrees that BigChange may take payment for all additional services and items provided by BigChange to the Customer (that are not paid for by the Rentals) by direct debit. BigChange will send the Customer an invoice notifying it in advance of the additional sums being taken by direct debit.

3.7 If an alternative method of payment has been agreed between the parties payment shall be due immediately on the invoice date.

3.8 If the Customer fails to take delivery of the Equipment within 7 days of the Equipment being made available to the Customer, without prejudice to any other rights that BigChange may have in relation thereto whether under the Contract or otherwise, BigChange may arrange storage of the Equipment at the Customer's risk and the Customer agrees to pay BigChange its reasonable costs and expenses (including insurance) for such storage.

3.9 The Customer agrees to make all payments due under the Contract without any deduction whether by way of set off, counter-claim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by BigChange to the Customer.

3.10 All payments and fees due under the Contract are subject to the addition of VAT and any other applicable taxes, duties or levies at the then prevailing rate. Except as specified otherwise, the Customer shall pay to BigChange all charges due immediately upon invoice. Any firm prices quoted are with errors and omissions excepted.

3.11 Notwithstanding any other provision in the Contract all payments payable to BigChange under the Contract shall become due immediately upon termination of the Contract, howsoever arising.

3.12 Without prejudice to any other rights BigChange may have, if the Customer fails to pay any sum due to BigChange on the due date notwithstanding delivery by BigChange of a written reminder to the Customer then BigChange may:

3.12.1 charge interest (both before and after any judgment) on the amount unpaid at the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998 from the date until the date of payment;

3.12.2 charge an administration fee of £25 per month or part month, from the due date until the date of payment;

3.12.3 charge the cost of time spent pursuing payment and any travelling expenses incurred;

3.12.4 charge the amount of all legal costs incurred by BigChange in connection with the recovery or attempted recovery of the whole or part of any monies due to it (on a full indemnity basis) whether or not proceedings are commenced, or costs can be awarded by the court;

3.12.5 suspend the provision of any Services provided under this Agreement until such time as all such payments due including all interest accrued and any costs incurred have been paid in full; and

3.12.6 immediately and without notice, recover the System or any part of the same (including the Equipment) and the Customer authorises BigChange to enter upon its premises and/or work upon its vehicles, by BigChange servants and/or agents, for that purpose.

3.13 Charges for SMS Text messages, additional training and other chargeable Services which are not specified on the Order but may be requested or used by the Customer will be at the current rates specified in the Price List when the chargeable Services are used. This Price List may be updated from time to time.

## 4. Installation of the Equipment, Services, Software, Text Messaging, Brower System, Customer Support, System Replacement, Training, Job Card and Certificates, Consultancy Services and Customer Obligations

### Installation of the Equipment

4.1 If no installation is specified on the Order then the Customer is responsible for fitting the Equipment on its vehicles in accordance with the instructions supplied with the Equipment.

4.2 If installation is specified on the Order and provided that the Terms relating to payment as detailed in the Order and Finance Confirmation have been complied with then BigChange will install the Equipment on the number of vehicles shown at a mutually convenient time in accordance with the following terms:

4.2.1 the Customer must make the vehicles available for BigChange to install the Equipment at the Fitting Address or such other location as BigChange may agree; and

4.2.2 installation of the Equipment may be by BigChange employees or duly authorised sub-contractors; and

4.2.3 if the Equipment or the vehicles are not available at the Fitting Address at the agreed time and the Customer has provided BigChange with less than 24 hours notice of its intention to cancel the installation then BigChange reserves the right to make an additional charge for cancellation and installation on an alternative date.

4.3 BigChange will remove the Equipment from vehicles (defit) and install it in replacement vehicles during the Contract Period by arrangement and subject to payment of BigChange's standard charges at the time for defit and refit.

### Services

4.4 The Service Payments will start when the System is delivered and will last for at least the Contract Period and will then continue thereafter until it is cancelled. The Customer can cancel the Service Payments at the end of the Contract Period or at any time thereafter by giving BigChange at least three months' notice in writing.

4.5 The Customer may only terminate the Service Payments before the end of the Contract Period by giving BigChange three months' written notice of termination and paying to BigChange all of the Service Payments which would otherwise have fallen due but for early termination calculated to the end of the Contract Period.

4.6 BigChange will provide Services for the System that the Customer has ordered to enable the System to:

- (i) record the information transmitted by the Equipment;
- (ii) analyse the information and prepare reports in accordance with the System's capabilities.

4.7 The Services and the System are subject to the following limitations:

- (i) information is sent from the Equipment to the System through the appropriate mobile phone network and will not work at places the mobile phone network is not available; and
- (ii) the System will not be available during scheduled maintenance outages which will be notified to the Customer from time to time or during unscheduled outages which will occur from time to time.

4.8 BigChange reserves the right to make such changes and improvements to the System as it consider necessary or appropriate from time to time.

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## Software

- 4.9 BigChange will pre-install the Software on the BigChange Tablet if these have been ordered. Otherwise the Customer can install the latest version of the Software from the relevant App Store.
- 4.10 BigChange will provide the Customer with upgrades of the App it develops during the Service Term and assist with the installation of the upgrade and training the Customer operator on the changes if required.
- 4.11 If an upgrade requires a hardware change BigChange will advise the Customer of the new requirements and assist it in sourcing the necessary equipment. The Customer will be responsible for the costs of any new hardware.
- 4.12 All intellectual property rights in the Software belong to BigChange subject to a non-exclusive and non-transferable licence for the Customer to use it during the Service Term.
- 4.13 By entering this Agreement the Customer undertakes:
- (i) to use the Software exclusively in connection with the System;
  - (ii) make no copies of the Software;
  - (iii) not demonstrate or provide details of the Software to any third party without BigChange's prior consent;
  - (iv) make no alteration to or modification of the whole or any part of the Software nor permit the Software or any part thereof to be combined with or become incorporated in any other programs, nor decompile or disassemble the object code version of the Software nor attempt to do any of such things, save only according to the extent that such cannot be precluded by section 296A of the Copyright, Designs and Patents Act 1988.

## Text Messaging

- 4.14 The System enables the sending of text messages. The System will automatically send the text messages that the Customer sets up notifying it about those steps the Customer requests BigChange to send it or its Customers text messages about.
- 4.15 BigChange will charge the Customer for text messages at BigChange's standard rate as applicable from time to time.

## Browser System

- 4.16 The Browser System can be accessed to enable the Customer to access the information stored on the system from the Customer's own network via the World Wide Web.
- 4.17 The Browser System can only be used through a web browser with access to the world wide web using the latest versions of Google Chrome, Microsoft Edge, Apple Safari or Mozilla Firefox.
- 4.18 The Browser System will be automatically updated during the Service Term free of charge.
- 4.19 If an upgrade requires a hardware change BigChange will advise the Customer of the new requirements and assist in sourcing the necessary equipment. The Customer will be responsible for the costs of any new hardware although this will normally be available from BigChange at cost.
- 4.20 The Customer will only be able to use the Browser System during the Service Term.
- 4.21 It is a condition of using the Browser System that:
- (i) the Customer acknowledges that copyright in the screen, the reports and other information available through the Browser System belongs to BigChange; and
  - (ii) the Customer will not copy or incorporate into any other work any of the material available through the Browser System although it may print or download extracts from the material for its internal use.

## Customer Support

- 4.22 BigChange will provide a helpdesk for answering any queries on use of the System.
- 4.23 The helpdesk will be available between 6.00 and 18.00 hours on any Business Day. Emergency backup, providing a limited range of assistance only, will be available outside these hours.
- 4.24 If a problem with the Equipment cannot be solved over the telephone BigChange will arrange a visit to the Customer premises. Visits will be arranged as quickly as possible.
- 4.25 BigChange will not charge for support visits if the visit is required by a defect in the System or Equipment during the Warranty Period.
- 4.26 In all other cases, the Customer will be liable for the cost of the visit at BigChange's standard rate at the time. This includes:
- (i) tampering with the System;
  - (ii) improper use of the System;
  - (iii) unauthorised additions to the System;
  - (iv) non-availability of the System, the Software, information, facilities or services reasonably required by us during the visit;
  - (v) any errors in Customer installation of the System.
  - (vi) interference with the System by a third party
- 4.27 To enable BigChange to provide the Customer Support the Customer must:
- (i) make available to BigChange, free of charge, access to the System, the Software and all information, facilities and services reasonably required by it for the performance of its obligations under this Agreement;
  - (ii) notify BigChange immediately on becoming aware of a fault in the Software or the System;
  - (iv) make no alteration or modification of the whole or any part of the Software nor permit the Software or any part of the Software to be combined with or become incorporated in any other programs, nor decompile or disassemble the object code version of the Software nor attempt to do any

of such things;

- (v) ensure that all Customer staff who use the System are competent and properly trained in respect of its use; and
- (vii) comply with the user requirements notified to the Customer from time to time.

## System Replacement

- 4.28 While the System Warranty is in force BigChange will replace any defective part of the System as soon as possible after it is notified that the System is not working. This Agreement will apply to the replacement System or part thereof in place of the original.
- 4.29 BigChange will not charge for the replacement System nor for installing on the Customer's vehicle if the replacement is required because of a defect in the System.
- 4.30 In all other cases BigChange will replace the defective part of the System but the Customer will be liable for the cost of the System and of its installation. This includes:
- (i) interference with the System by a third party;
  - (ii) tampering with the System;
  - (iii) improper use of the System;
  - (iv) accidental damage to the System;
  - (v) incorrect installation by anyone apart from our authorised installers; and
  - (vi) any Equipment outside of the Equipment Warranty Period detailed in the Order.
- 4.31 Following termination of the Contract, BigChange will not be obliged to provide replacement parts for the System.

## Training

- 4.32 BigChange will provide training to the Customer as agreed in the Order. If no further training has been agreed then Training will be web based and provided by BigChange's Customer Support team.
- 4.33 BigChange will provide further training from time to time if so required for existing or new personnel subject to payment of its standard charges for training at the time.

## Job Cards and Certificates

- 4.34 The Customer confirms that it has the right to reproduce any Job Cards and Certificates that it provides to BigChange for use and/or replication within the System.
- 4.35 Should BigChange provide the Customer with any industry standard job cards and/or certificates the Customer is solely responsible to ensure that they have the right to use such Job Cards and Certificates and holds all regulatory permissions necessary to do so.

## Consultancy Services

- 4.36 BigChange will provide the services agreed between the two parties at such rates and at such times as agreed on the Order, with reasonable skill and care in accordance with the professional standard expected.
- 4.37 In relation to all work undertaken for the Customer it is the responsibility of the Customers staff to provide BigChange with complete, accurate and timely information where requested and to carry out any other obligations ascribed to the Customer. BigChange will not be responsible for any consequences that may arise from any delay or failure by the Customer to do so and these may also result in additional fees for which invoices may be raised.
- 4.38 BigChange shall use its reasonable endeavors to ensure that the Consultant(s) is (are) available at all times on reasonable notice to provide such additional assistance or support (in addition to the number of days' Consultancy Services as set out in the Order Form) as the Customer may require, subject to the Customer's payment of such additional charges as the Supplier may propose, such charges to be based upon the Price List then in force.
- 4.39 BigChange acknowledges the statutory responsibility to co-operate with the Customers health and safety requirements, provided notice of these is given. Whilst on Customer premises any representative of BigChange shall be afforded by the Customer the same protection for health and safety purposes as is due to the Customers employees.

## Customer Obligations

- 4.40 The Customer shall:
- 4.40.1 ensure that the terms of the Order are complete and accurate;
- 4.40.2 provide BigChange with:
- (a) all necessary co-operation in relation to any applicable Contract; and
  - (b) all necessary access to such information as may be required by BigChange in order to provide the Services;
- 4.40.3 comply with all applicable laws and regulations with respect to its activities under any applicable Contract;
- 4.40.4 carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, BigChange may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 4.40.5 ensure that its employees, agents and authorised independent contractors use the Services and the Documentation in accordance with the terms of these Conditions and shall be responsible for any such person's breach of these Conditions;
- 4.40.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for BigChange, its contractors and agents to perform their obligations under these Conditions, including without limitation the Services;
- 4.40.7 ensure that its network and systems comply with the relevant specifications provided by BigChange from time to time; and
- 4.40.8 be solely responsible for procuring and maintaining its network

connections and telecommunications links from its systems to BigChange's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

- 4.41 The Customer undertakes that:
- 4.41.1 it will not allow or suffer any individual to make use of the Services and/or Documentation who is not an employee, agent or independent contractor of the Customer authorised to make use of the Services and/or Documentation;
- 4.41.2 it shall permit BigChange to audit the Customer's use of the Services;
- 4.41.3 if any of the audits referred to in clause 4.41.2 reveal that the Customer has more active licenses than specified on the Order, then without prejudice to BigChange's other rights, BigChange will be entitled to impose such additional charges on the Customer as it sees fit, at all times acting reasonably.
- 4.42 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 4.42.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 4.42.2 facilitates illegal activity;
- 4.42.3 depicts sexually explicit images;
- 4.42.4 promotes unlawful violence;
- 4.42.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 4.42.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and BigChange reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 4.43 The Customer shall not:
- 4.43.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- (a) and except to the extent expressly permitted under these Conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 4.43.2 access all or any part of the Services and/or Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 4.43.3 use the Services and/or Documentation to provide or resell similar services to third parties; or
- 4.43.4 subject to clause 12, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
- 4.43.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 4.
- 4.44 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify BigChange.

## 5. Warranty

- 5.1 BigChange warrants that the Equipment will be of satisfactory quality and fit for its purpose for the duration of the Warranty Period specified in Clause 5.3 below but for no longer. Any defects arising after the Warranty Period has expired will be the responsibility of the Customer. BigChange further warrants that the remainder of the System (excluding the Equipment) and the Software shall be of satisfactory quality and fit for its purpose throughout the Contract Period.
- 5.2 Except as expressly provided in the Contract, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Consumer Rights Act 2015) are, to the fullest extent permitted by law, excluded from the Contract.
- 5.3 Except as specified otherwise in the Contract, if the Equipment is or becomes of unsatisfactory quality during the first 24 months of the contract BigChange will (at its option) repair or replace the Equipment free of charge subject to the terms of the Contract (Warranty Period). Such Warranty Period may only be extended with the written agreement of BigChange and upon payment of an appropriate extension charge. For the avoidance of doubt, this obligation shall not apply to any Equipment that is of satisfactory quality on delivery in the event that the defect(s) or non-performance is caused by an act or omission of the Customer. The aforementioned liability of BigChange will be the Customer's sole remedy in respect of the supply of defective Equipment and will be in full and final settlement of and represents the entire liability of BigChange for the Equipment arising under or in connection with this Agreement and, accordingly, BigChange shall not be liable to the Customer in connection with the Equipment for any other losses, costs, claims, damages, liabilities or expenses arising to the Customer either direct or indirect (and including without limitation direct loss or profits and replacement and renewal costs) whether in contract, tort or otherwise however arising all of which are fully excluded. BigChange reserves the right from time to time to modify the design, operation or performance of the System.

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|---|--|-----|---|--|-------|---|
| 5.4   | Where BigChange repairs or replaces the System or part thereof where there is no defect in the System, where the defect has arisen from abuse or damage of the Equipment by the Customer and/or where it is otherwise not obliged to under the Contract the Customer will be liable for the cost of the repair or replacement and its installation at BigChange's standard rate at the time plus return carriage and packaging. Where, upon investigation into an allegedly defective item of Equipment, no defect at all is found BigChange may charge the Customer the fee of £25 per item of Equipment for its costs in carrying out an investigation plus return carriage and packaging. |     |   |  | 8.6.1 | responding to requests from a Data Subject exercising their data subject rights;  |
|   |  |     |   |  | 8.6.2 | complying with its own data processing security obligations;  |
|   |  |     |   |  | 8.6.3 | Personal Data breach;   |
|   |  |     |   |  | 8.6.4 | Data protection impact assessments; and   |
|   |  |     |   |  | 8.6.5 | consultations with the applicable supervisory authority following a privacy impact assessment;  |
| 5.5   | The Customer warrants that it will not make any alteration to or modification of any software comprising part of the System nor allow any such software to be combined with or become incorporated in any other programs, nor decompile or disassemble such software nor attempt to do any such things save only to the extent that such cannot be precluded by section 296A of the Copyright, Designs and Patents Act 1988.   | 7.2 | The benefit of the acknowledgment and warranties given by the Customer in Clause 7.1 are intended for the Finance Company and may be enforced by it as a third party to the Contract. |  | 8.6.6 | notify the Customer without undue delay on becoming aware of a Personal Data breach of the Customer's Personal Data, with further information about the breach provided in phases as information becomes available and provide full and prompt information and assistance to the Customer and any applicable law enforcement authority (including any applicable supervisory authority) in relation to such breach;   |
|   |  |     |   |  | 8.6.7 | at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer within 12 months following termination of the Contract unless required by Applicable Law to store the Personal Data; and  |
|   |  |     |   |  | 8.6.8 | maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and shall, with 28 days' notice, make available to the Customer or grant to the Customer and its auditors (subject to a maximum of one audit request in any 12 month period), and any applicable law enforcement authority (including any applicable supervisory authority), a right of access to, and to take copies of, any information or records kept by BigChange pursuant to this clause 9; and   |
|   |  |     |   |  | 8.6.9 | notify the Customer immediately if, in BigChange's opinion, an instruction for the processing of the Customer Personal Data given by the Customer breaches any provision of the Data Protection Legislation;  |
|   |  |     |   |  | 8.7   | The Customer consents to BigChange appointing third parties as a third-party processor of Personal Data under the Contract. BigChange confirms that it has entered or (as the case may be) will enter with the third-party processors into a written agreement. As between the Customer and BigChange, BigChange shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8. Upon written request from the Customer BigChange will make available a list of sub-processor categories. |
|   |  |     |   |  | 8.8   | BigChange will notify the Customer without undue delay in writing if it receives from any data subject whose personal data forms part of the Customer Personal Data, or any applicable law enforcement authority (including any applicable supervisory authority):  |
|   |  |     |   |  | (a)   | any communication seeking to exercise rights conferred on the data subject by the Data Protection Legislation;  |
|   |  |     |   |  | (b)   | any complaint or any claim for compensation arising from or relating to the processing of the Customer Personal Data; or  |
|   |  |     |   |  | (c)   | any communication from any applicable law enforcement authority (including any applicable supervisory authority).   |
|   |  |     |   |  | 8.9   | The table below sets out the subject matter and the duration of the processing, the nature and purpose of the processing under this Contract, the types of Customer Personal Data that BigChange will process and the categories of Data Subject whose Personal Data is processed:  |
| Required details:   |  |     |   |  |       |   |
| <b>Subject matter</b>   |  |     |   |  |       |   |
| The provision of the Services in accordance with this Contract  |  |     |   |  |       |   |
| <b>Duration of processing</b>   |  |     |   |  |       |   |
| The term of this agreement plus the period following the expiry or termination of this Contract until the destruction or return of all Customer Personal Data in accordance with the requirements of this Contract.   |  |     |   |  |       |   |
| <b>Nature and purpose of the processing</b>   |  |     |   |  |       |   |
| BigChange will process the Customer Personal Data for the purpose of providing the Services in accordance with the terms of this Contract.  |  |     |   |  |       |   |
| <b>Data subjects</b>  |  |     |   |  |       |   |
| Prospects, customers, employees and other persons with whom the Customer has interests  |  |     |   |  |       |   |
| <b>Categories of data</b>   |  |     |   |  |       |   |
| <ul style="list-style-type: none"><li>- name, and other identity data;</li><li>- address and contact details;</li><li>- timesheets and expenses;</li><li>- skills and qualifications;</li><li>- personal or business vehicle details;</li><li>- locations and journeys collected via vehicle tracking and other mobile devices;</li><li>- driving events and behavior scores calculated using business customer configured algorithms;</li><li>- signatures;</li><li>- business photographs/videos which may include images of people or identity documents;</li><li>- voice recordings;</li><li>- other data as determined by the Customer</li></ul> |  |     |   |  |       |   |
| <b>Special categories of data (if applicable)</b>   |  |     |   |  |       |   |
| At the customers discretion:  |  |     |   |  |       |   |
| <ul style="list-style-type: none"><li>- other data as determined by the Customer</li></ul>  |  |     |   |  |       |   |
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# TERMS OF TRADE

## 9. Default and Termination

- 9.1 BigChange can terminate the servicing of the Equipment and/or this Contract by giving the Customer written notice if the Customer;
- (i) fails to pay any payment or any other sum due under the Contract or any other agreement with BigChange on time; or
  - (ii) has made any untrue statements or given any false information to BigChange in connection with the Contract; or
  - (iii) does not abide by the terms of the Contract or any other agreement with BigChange; or
  - (iv) the System is taken to settle a debt or Judgment or any other event happens which might prejudice BigChange's interest in the System; or
  - (v) breaches the terms of any software licence provided in connection with the System; or
  - (vi) is an individual and has a petition presented against it for bankruptcy or proposes any scheme of arrangement or composition with its creditors; or
  - (vii) is a company and is unable to pay its debts as they fall due or it has a receiver appointed or a petition is presented (or resolution passed) for the appointment of an administrator or administrative receiver or for its winding up or proposes any scheme of arrangement or composition with its creditors.
- 9.2 If BigChange gives the Customer notice under Clause 9.1 and the Contract is terminated before the end of the Service Term the Customer must recompense BigChange for all loss and damage which it has suffered by reason of such early termination. The Customer will in any event pay to BigChange on demand any costs and expenses (including legal costs) which BigChange incur in enforcing the terms of the Contract following breach by the Customer and on an indemnity basis.
- 9.3 Notwithstanding any other provision in the Contract all payments payable to BigChange under the Contract shall become due immediately upon termination.
- 9.4 The Termination of this agreement due to Default shall not affect any rental agreements that are in place between the Customer and a Third Party leasing provider.

## 10. Force Majeure

- 10.1 BigChange shall not be liable for any delay in performing any of its obligations or any failure of the System to perform any of its functions under the Contract caused by force majeure including, but not limited to:
- 10.1.1 emergency, acts or omissions of Government, highway, telecommunications operators, regulatory or other competent authority, unofficial or otherwise unlawful industrial action of any kind, riot, civil unrest, environmental conditions, severe inclement weather, inability to obtain supplies of power, fuel or transport;
  - 10.1.2 breakdown or malfunctioning of the world wide web or other communication links between the Equipment and BigChange and/or between BigChange and the Customer's computer network;
  - 10.1.3 viruses introduced to the System by the Customer's computer network or otherwise;
  - 10.1.4 external hacking of information within the System; and/or
  - 10.1.5 any other cause beyond BigChange's reasonable control.

## 11. Notices and Waiver

- 11.1 Any notices given under the Contract shall be in writing and shall be sent to the address given in the Order or subsequently notified to the other party for such purpose and shall be deemed

to have been duly given or made: (i) if sent by first class post or recorded delivery two clear Business Days after posting; and (ii) if sent by e-mail, one Business Day after sending.

- 11.2 Failure or delay by either party to exercise any right in the Contract shall not be a waiver of any such right nor operate so as to bar the subsequent exercise of it or of any other right and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or of any other right or remedy.

## 12. Assignment

- 12.1 The Customer may not assign the benefits or its obligations under the Contract without BigChange's prior written consent.
- 12.2 BigChange or its successors and assigns reserve the right to assign the benefits or obligations under the Contract to another group company or suitable supplier.

## 13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party.
- 13.2 Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 14. Entire Agreement

- 14.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.3 Nothing in this clause shall limit or exclude any liability for fraud.

## 15. Third Party Rights

- 15.1 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.
- 15.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

## 16. General

- 16.1 If any provision of the Contract shall be held illegal or unenforceable such provision shall be severed and the remainder of the Contract shall remain in full force and effect unless the business purpose of the Contract is frustrated thereby.
- 16.2 The whole of the Contract is set out on the Order and herein. No other terms or representations apply to or are incorporated into the Contract and no subsequent variation shall be effective unless set out in writing and signed by a duly authorised representative of the Customer and by a director of BigChange.
- 16.3 The terms of the Contract shall take precedence over any terms and conditions specified in any purchase orders issued by the Customer unless agreed in writing by both parties.

## 17. Governing Law

- 17.1 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 17.2 If any proceedings are commenced in the County Court in connection with the Contract then those proceedings will be heard in the Leeds County Court and the parties will co-operate to ensure that any transfer or re-transfer of such proceedings is made to give effect to this condition.