

On Direct General Terms and Conditions – Version 3.0

1. Definitions

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"**we**", "**our**" or "**us**" means On Direct Business Services Ltd ("On Direct", company number 04631034) whose registered office is at 1 London Street, Reading, Berkshire RG1 4QW, trading as "Backup Direct", "Voice Direct", "Coms Direct", "Cloud Direct" or "Activator" with trading address The Tramshed, Walcot Street, Bath BA1 5BB (VAT registration number GB 801 3192 74);

"**Products**" means the third party software, monitoring systems and/or other products provided to you under the Agreement;

"**you**" or "your" means the customer named in the Service Agreement;

"**Supplier**" means the company or person that sold you the Services;

"**Agreement**" means the Service Agreement, these Terms and Conditions and the Service Level Agreements;

"**Service Agreement**" means the document setting out the Services, the Service Fees, the Initial Term, the Commencement Date and other information relating to the Services;

"**Service Level Agreement**" means the agreement setting out the applicable service levels for the Services;

"**Commencement Date**" means the date the Services commence as set out in the Service Agreement;

"**Services**" means the Services set out in the Service Agreement;

"**Service Fees**" means the fees for the provision of the Services set out in the Service Agreement;

"**Initial Term**" means the minimum term of the Agreement as set out in the Service Agreement;

"**Hardware**" means any hardware provided by us to you as part of the Services;

"**Site**" means your premises, where our Hardware related to the provision of the Services is located, our Services are provisioned or from which data and systems information for backup is sent.

2. Our Obligations

2.1 We shall:

2.1.1 assist you in the set-up of the Services, including providing relevant training;

2.1.2 provide the Services to the levels set out in the Service Level Agreements;

2.1.3 provide technical assistance when reasonably requested to do so.

2.2 We may vary the detailed implementation of the Services at any time provided that the level of Services is not materially adversely affected.

3. Your Obligations

You shall:

3.1 enter into, maintain and abide by the terms of all applicable licence agreements for the Products;

3.2 observe all our instructions for the use of the Services which we may send to you from time to time;

3.3 notify us immediately if you become aware of any problem with the Services;

3.4 make available to us as reasonably required:

3.4.1 employees with appropriate skills, knowledge and authority;

3.4.2 access to your Site and such facilities at your Site to assist us in performing our obligations hereunder;

3.4.3 such information and materials required in order for us to supply the Services.

3.5 comply with all applicable laws, legislation and regulations relating to the provision of the Services and the Agreement;

3.6 co-operate with us in all matters relating to the Services;

3.7 keep us up to date with any changes to the infrastructure or environment relating to the Services that might impact on the performance of the Services;

3.8 maintain Hardware in satisfactory condition and insure such Hardware against all risks for its full price (as set out in the Service Agreement) on our behalf from the date of delivery;

3.9 notify us as soon as reasonably practicable of any loss of or damage to Hardware (fair wear and tear excepted) and on request, reimburse us for the price of any lost or damaged Hardware as specified in the Service Agreement.

4. Prices and Payment

4.1 The provisions of clauses 4.2, 4.4, 4.5 and 4.6 shall apply only where we invoice you directly for the Services. In all other cases, your Supplier will invoice you for the Services in accordance with any terms your Supplier has agreed with you. However, if your Supplier notifies us that you have not paid its invoices on or before their due date for payment, we shall be entitled to suspend the provision of the Services until such time as all outstanding invoices have been paid in full. You shall

continue to be liable for the Service Fees during any period of suspension.

4.2 If we intend to increase the Service Fees, we shall give you at least 90 days' notice in writing. Notwithstanding the provisions of clause 9.1, if any percentage increase in the Service Fees exceeds that of the Retail Price Index published by the Office for National Statistics or its successor from time to time for the 12 month period preceding the date of our written notice to you (or the nearest publication dates to the commencement and expiry dates of the relevant 12 month period) and such increase is not acceptable to you, you shall notify us in writing within 30 days of the date of our written notice and we shall have the right without limiting our other rights or remedies to terminate the Agreement by giving you 30 days notice in writing. We shall not increase the Service Fees more than once in any period of 12 months. If we intend to decrease the Service Fees, we shall notify you accordingly.

4.3 If either party requests a change to the scope or execution of the Services, we shall agree with you any variations to the Service Fees arising from the change, the likely timescale required to implement the change and any other impacts of the change prior to commencing the new Services.

4.4 For all plans, Service Fees are calculated on the peak amount of Service usage as defined in the Service Agreement at any time during the monthly billing cycle, rounded up to the nearest full gigabyte. The committed Service Fee element is charged and invoiced monthly in arrears. Additional Service Fees are charged and invoiced monthly in arrears at the same pro-rata rate as the committed Service Fee element, unless stated otherwise in the Service Agreement.

4.5 Invoices are due for payment in full without deduction or withholding except as required by law within 30 days of the date of the invoice. If you fail to pay any invoice on time, we reserve the right to charge you interest at the rate of 4% per annum above the then published base rate of HSBC Bank Plc accruing on a daily basis from the date of the invoice until the actual date of payment of the overdue amount, whether before or after judgement, and to suspend the provision of Services until you have paid all overdue invoices in full. You shall continue to be liable for the Service Fees during the period of suspension.

4.6 All charges are quoted exclusive of value added tax, which shall be charged at the rate prevailing at the time of invoice.

5. Data Protection and Contact Details

5.1 You and we shall comply with the provisions of the Data Protection Act 1998 and any related legislation insofar as the same relates to the provisions and obligations of the Agreement or the data held by us.

5.2 You agree that we may provide the vendors of the Products with your contact details for the purpose of monitoring the provision of the Services.

6. Warranties

6.1 Subject to your compliance with the terms of the Agreement, we warrant the Services will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks which are allocated to them.

6.2 We do not warrant that the Services will be error free or uninterrupted.

6.3 Except as set out in this clause 6, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

7. Limitation of Liability

7.1 This clause sets out the limit of our liability to you for breach of our obligations under the Agreement, any representation, tort (including negligence), breach of statutory duty or other wrongful act on our part ("Act of Default").

7.2 Nothing in this Agreement shall limit or exclude our liability for death or personal injury resulting from our own negligence or that of our employees or agents, for fraud or fraudulent misrepresentation, or for any other liability that cannot be excluded or limited by law.

7.3 Subject to clause 7.2:

7.3.1 we shall not be liable for:

(i) any indirect, consequential or special loss arising from an Act of Default; or

(ii) any loss of profits, loss of goodwill, loss of contracts or loss of data; or

(iii) any loss arising from corruption of data due to the introduction of a virus or arising as a result of a problem with the internet unless you can demonstrate that it is due to our negligence or default; and

7.3.2 our total liability to you in respect of direct damage to your physical property shall not exceed £2,000,000; and

- 7.3.3 our total liability to you in respect of all other losses arising under or in connection with an Act of Default shall not exceed the total Service Fees paid by you during the period of 12 months immediately preceding the date on which the event giving rise to the claim occurred.
- 7.4 You confirm that you have read and understood this clause and understand that you should take out insurance cover for any losses beyond those set out in this clause. If you require us to take on any additional liability beyond that set out in this clause, then we will consider doing so upon agreement of an increase in the Service Fees to reflect such additional liability, which must be agreed in writing between you and us.
- 8. Confidentiality and Intellectual Property**
- 8.1 Each party undertakes to the other not to disclose to any person, except to the extent required to perform the Services to persons who have a need to know such information, all confidential information (written or oral) concerning the business and affairs of the other that it shall have obtained or received from the other party save that the obligation of confidentiality shall not apply to information which is:
- 8.1.1 trivial or obvious;
- 8.1.2 already in the possession of the receiving party other than as a result of a breach of this clause;
- 8.1.3 in the public domain other than as a result of a breach of this clause;
- 8.1.4 disclosed or used in accordance with the other party's prior written approval;
- 8.1.5 required to be disclosed by law, court order or any governmental or regulatory authority.
- 8.2 Each party undertakes to the other to take all such steps as shall from time to time be reasonably necessary to ensure compliance with the provisions of this clause by its employees, authorised agents and sub-contractors.
- 8.3 Nothing in the Agreement shall take effect to transfer any intellectual property rights to you in the software, materials, documents or items we prepare, produce or supply to you in connection with the Services.
- 8.4 The provisions of this clause shall survive the termination of the Agreement howsoever caused.
- 9. Term and Termination**
- 9.1 This Agreement will commence on the Commencement Date and, shall continue, unless terminated earlier in accordance with this clause 9, for the Initial Term. The term of this Agreement shall automatically extend for a period of 12 months ("Extended Term") at the end of the Initial Term and at the end of each Extended Term, unless and until either party gives written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 9.2 This Agreement may be terminated:
- 9.2.1 by us on written notice if you fail to pay any amount either to us or to your Supplier on or before the due date for payment therefore;
- 9.2.2 by us on written notice if you commit any material breach of any term of the Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 9.2.3 by us on 14 days' written notice in the event that your use of the Services is materially adversely affecting the operation of the Services for other users;
- 9.2.4 by us in the event of a technical emergency in which case we shall provide notice to you via telephone and e-mail;
- 9.2.5 by either party on written notice if an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of the property or assets of the other party;
- 9.2.6 by either party on written notice if the other party makes any voluntary (or similar) arrangement with its creditors or an administrator is appointed or the other party is subject to insolvency proceedings in any jurisdiction;
- 9.2.7 by either party on written notice if the other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under the Agreement);
- 9.2.8 by either party on written notice if the other party ceases, or threatens to cease, to carry on business.
- 9.3 You may terminate a Service on written notice if we commit a material breach in relation to that Service which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; such termination will not affect the continuation of any other Service that we are providing to you.
- 9.4 If you provide us with notice of termination of this Agreement under clause 9.1 or 9.2, such notice shall not be valid or effective until we have acknowledged receipt of the same in writing.
- 9.5 Without limiting our other rights or remedies, we shall have the right to suspend provision of the Services in any of the circumstances listed in clause 9.2.
- 9.6 Upon termination of this Agreement:
- 9.6.1 you shall immediately cease to use the Services and deliver to us all software, Hardware, materials, documentation and items provided under the Agreement at your own cost and expense; and
- 9.6.2 we shall delete all of your data relating to the Services no later than 30 days after the termination date.
- 9.7 Clauses which expressly or by implication have effect after termination of this Agreement shall continue in full force and effect.
- 10. General**
- 10.1 The Agreement (together with any documents referred to in the Agreement) constitutes the whole agreement between the parties relating to its subject matter and no variations to the Agreement shall be effective unless made in writing and signed by both parties.
- 10.2 Neither party shall be liable for any delays in performing or failure to perform any of its obligations under the Agreement if such failure or delay was due to any cause beyond its reasonable control, for so long as such situation exists.
- 10.3 The Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, you may not assign the Agreement to a direct competitor of ours.
- 10.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 10.5 No waiver by either party in respect of a breach shall operate as a waiver in respect of any subsequent breach.
- 10.6 If any provision of this Agreement is wholly or partly invalid or unenforceable, then:
- 10.6.1 If by applying to it a restrictive interpretation it would not be invalid or unenforceable, that restrictive interpretation shall be applied to it; and,
- 10.6.2 Subject to clause 10.6.1 the provision or part of the provision which is invalid or unenforceable shall be deleted to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable.
- 10.7 Subject to clause 9.4, any notice or other information required or permitted to be given under the Agreement shall be deemed to have been validly given if served personally on that party or if sent by first class pre-paid post to the last known address of that party. If sent by first class pre-paid post the notice shall be deemed to have been received 2 days after the date of posting. If any such notice or other information is given by means of facsimile then notice shall be deemed to have been received on the same day if sent during normal working hours or on the next working day where sent outside such hours.
- 10.8 A reference to any statute or statutory provision is a reference to such statute or provision as amended or re-enacted.
- 10.9 References in these Terms and Conditions to "writing" include facsimiles but not e-mail.
- 10.10 We reserve the right to amend and update the Agreement from time to time.
- 10.11 In the event of any conflict between these Terms and Conditions, the Service Agreement and the Service Level Agreements, the documents shall prevail in the following order: the Service Agreement, these Terms and Conditions and the Service level Agreements.
- 11. Law**
- This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.