



Call2Field Service Management Software - Conditions

Agreed terms

1. Interpretation

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

Authorised Users: those employees, agents and independent contractors of the Customer and the Customer End Users who are authorised by the Customer to use the Software, the Services and the Documentation.

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

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

Conditions: means these terms and conditions set out in clause 1 (Interpretation) to clause 24 (Jurisdiction) (inclusive) and including the Schedule to these terms and conditions.

Customer: the organisation that uses the Software and the Services having paid RedZebra the Subscription Fees.

Contract: the contract between the Customer and RedZebra for the supply of the Services as set out in these Conditions and the Proposal.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by the Customer, the Authorised Users or RedZebra on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer End Users: means those employees, agents and independent contractors of the

Customer's customer who are authorised by the Customer to use the Software, the Services and the Documentation in accordance with the Proposal.

Customer Personal Data: means any Personal Data which RedZebra processes in connection with the Contract, in the capacity of a Processor on behalf of the Customer as set out in paragraph 1.2, Part 1 of the Schedule.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Documentation: any documents made available to the Customer and/or any of the Authorised Users by RedZebra which sets out a description of the Services and/or the Platform and the user instructions for use of the Services and/or the Software from time to time.

Effective Date: the date the executed copy of the Proposal is sent by the Customer to RedZebra, or if the Proposal is sent outside Normal Business Hours on a Business Day, the date of the subsequent Business Day.

Initial Subscription Term: the initial term of the Contract as set out by RedZebra in the Proposal, being either:

(a) 12 calendar months (Annual Subscription); or

(b) 36 calendar months (Three Year Subscription).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade



secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Modules: features of the Software that may be utilised by Authorised Users depending on the type of User Subscriptions purchased by the Customer, as described in the Documentation, set out in the Proposal, and as may be increased in accordance with clause 3.1(c).

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Platform: RedZebra's infrastructure and cloud computing platform and runtime environment made available by RedZebra to the Customer in connection with the supply of the Services.

Proposal: means RedZebra's proposal form sent to the Customer along with these Conditions, which specifies, amongst other things, the Subscription Fees, the Upload Storage Limit, and the applicable Initial Subscription Term.

RedZebra: means RedZebra Software Limited, a company incorporated in England and Wales with the company number 5562425 and having its registered office at The Force, 8 High Street, Waddesdon, Buckinghamshire, HP180JD.

RedZebra's Apps: any applications provided by RedZebra to the Customer for the Authorised Users' use in connection with the provision of the Services, including both source code and object code.

RedZebra Personal Data: any Personal Data which RedZebra processes in connection with the Contract, in the capacity of a Controller as set out in paragraph 1.1, Part 1 of the Schedule.

Renewal Period: the period described in clause 13.1.

Services: the subscription services for the provision of access to and use of the Software

(and the applicable Modules) as more particular described in the Documentation.

Software: the Platform and/or RedZebra's Apps, including any modifications made by RedZebra to the same including any updates, new release, or new versions.

Subscription Fees: the subscription fees payable by the Customer to RedZebra for the User Subscriptions and Upload Storage, as set out by RedZebra in the Proposal.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Upload Storage: data storage made available to the Customer by RedZebra that will be utilised by the Customer in the Customer's use of the Services up to the Upload Storage Limit.

Upload Storage Limit: the maximum amount of data storage made available to the Customer by RedZebra in the Customer's use of the Services, as specified in the Proposal (or if not so specified, 10 gigabytes), unless otherwise increased in accordance with clause 3.1(b).

User Subscriptions: the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract, the number of which may be increased in accordance with clause 3.1(a).

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely



affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedule forms part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Schedule.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

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

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the Effective Date under that statute or statutory provision.

1.11 A reference to **writing** or **written** includes email.

1.12 References to clauses and the Schedule are to the clauses and the Schedule of these Conditions; references to paragraphs are to paragraphs of the Schedule to these Conditions.

2. User subscriptions

2.1 Subject to the Customer:

(a) purchasing the User Subscriptions (at the applicable price for the relevant Modules selected by the Customer);

(b) not exceeding the Upload Storage Limit;

(c) the restrictions set out in this clause 2; and

(d) the other terms and conditions of the Contract,

RedZebra hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences except to the extent permitted in clause 2.2, to permit the Authorised Users to use (in accordance with the Documentation and the Proposal) the Software, the Services and the Documentation during the Subscription Term solely for the Customer's business and usual service operations.

2.2 Subject to clause 2.3, in relation to the Authorised Users, the Customer undertakes that:

(a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

(b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

(c) each Authorised User shall keep a secure password for their use of the Services and



Documentation and that each Authorised User shall keep their password confidential; and

(d) it shall maintain a written, up to date list of current Authorised Users and provide such list to RedZebra within 5 Business Days of RedZebra's written request at any time or times.

2.3 The Customer may authorise an unlimited number of Customer End Users to access and use the Software, the Services and the Documentation in accordance with the Proposal.

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and RedZebra 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 2.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, the Services, and/or the Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise

reduce to human-perceivable form all or any part of the Software and/or the Services; or

(b) access all or any part of the Software, the Services and Documentation in order to build a product or service which competes with the Software, the Services and/or the Documentation; or

(c) save as expressly permitted under the Contract, use the Software, the Services and/or the Documentation to provide services to third parties; or

(d) subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Services and/or the Documentation available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Software, the Services and/or the Documentation, other than as provided under this clause 2; or

(f) introduce or permit the introduction of, any Virus or Vulnerability into the Services or RedZebra's network and information systems.

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify RedZebra.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions, additional modules, and additional storage

3.1 The Customer may, from time to time during the Subscription Term:

(a) purchase additional User Subscriptions and RedZebra shall grant access to the Software, the Services and the Documentation to such



additional Authorised Users in accordance with the provisions of the Contract;

(b) purchase additional Upload Storage to increase the Upload Storage Limit in proportion to the amount of Upload Storage purchased and the increased Upload Storage Limit shall apply thereafter; and/or

(c) purchase additional Modules from RedZebra, and RedZebra shall modify the Services to enable Authorised Users to access the relevant Modules on the date of purchase.

3.2 If additional User Subscriptions, Upload Storage, and/or Modules are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), then:

(a) in respect of additional User Subscriptions and Upload Storage, such fees shall be pro-rated from the date the additional User Subscriptions or additional Upload Storage is made available by Red Zebra for the remainder of the Initial Subscription Term or any Renewal Period, as the case may be; and

(b) in respect of additional Modules, such fees shall be pro-rated with reference to:

(i) the number of active User Subscriptions; and

(ii) the date the additional Modules are made available by RedZebra to the end of the Initial Subscription Term or any Renewal Period, as the case may be.

4. Services

4.1 RedZebra shall, during the Subscription Term, provide the Services and the applicable Modules, and make available the Documentation to the Customer on and subject to the terms of the Contract and up to the applicable Upload Storage Limit.

4.2 RedZebra shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

(b) unscheduled maintenance performed during or outside Normal Business Hours, provided that RedZebra has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 RedZebra shall provide the Customer with reasonable notice in writing of any update and/or modification to the Software and/or the Services that may affect the ability of Authorised Users to sync Customer Data inputted into the Software offline with the live version of the Software.

4.4 If RedZebra provides the Customer with such notice in accordance with clause 4.3, the Customer shall procure that any Authorised User who has inputted Customer Data into the Software whilst offline immediately sync such offline Customer Data with the online version of the Software prior to any update and/or modification.

4.5 The Customer acknowledges and agrees that if any Authorised User fails to sync inputted Customer Data offline with the live version of the Software prior to any update and/or modification of the Software and/or the Services, in circumstances where RedZebra has complied with its obligations under clause 4.3, RedZebra shall not be liable for any loss of that Customer Data.

5. Data protection

5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.2 The parties acknowledge that for the purposes of the Data Protection Legislation:

(a) RedZebra is the Controller of the RedZebra Personal Data;

(b) the Customer is the Controller and RedZebra is the Processor of the Customer Personal Data;

(c) the Customer retains control of the Customer Personal Data and remains responsible



for its compliance obligations under the Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the written processing instructions it gives to RedZebra;

(d) in relation to the Customer Personal Data, Part 2 of the Schedule sets out the scope, nature and purpose of processing by RedZebra, the duration of the processing and the types of Personal Data and categories of Data Subject.

5.3 Should the determination in clause 5.2(a) or clause 5.2(b) change, then the parties shall work together in good faith to make any changes which are necessary to clause 1, clause 5, or the Schedule.

5.4 Without prejudice to the generality of clause 5.1, RedZebra shall, in relation to any Customer Personal Data processed in connection with the performance by RedZebra of its obligations under the Contract:

(a) process that Customer Personal Data only on the documented written instructions of the Customer unless RedZebra is required by domestic law to otherwise process that Customer Personal Data. Where RedZebra is relying on domestic law as the basis for such processing of Customer Personal Data, RedZebra shall promptly notify the Customer of this before performing the processing required by the domestic law unless the domestic law prohibits RedZebra from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity,

availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all its personnel who have access to and/or process Customer Personal Data are obliged to keep the Customer Personal Data confidential; and

(d) not transfer any Customer Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or RedZebra has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) RedZebra complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Customer Personal Data that is transferred; and

(iv) RedZebra complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Personal Data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless required by domestic law to store the Customer Personal Data; and



(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of RedZebra, an instruction infringes the Data Protection Legislation.

5.5 The Customer hereby provides it prior, general authorisation for RedZebra to appoint a third party Processor to process the Customer Personal Data if:

(a) the third party Processor is listed in Part 3 of the Schedule or the Customer is provided with an opportunity to object to the appointment of each new third party Processor;

(b) RedZebra enters into a written contract with the third party Processor that contains terms substantially the same as those set out in this clause 5, and, upon the Customer's written request, provides the Customer with copies of such contracts;

(c) RedZebra maintains control over all Customer Personal Data it entrusts to the relevant third party Processor; and

(d) RedZebra remains responsible for the acts and omissions of any such third party Processor(s) as if they were the acts and omissions of RedZebra.

5.6 Where the Customer objects to the appointment of any new third party Processor pursuant to clause 5.5(a), RedZebra may terminate the Contract with immediate effect by giving written notice to the Customer.

6. RedZebra's obligations

6.1 RedZebra shall perform the Services substantially in accordance with the Documentation and with reasonable skill and care.

6.2 RedZebra's obligations at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Software and/or the Services contrary to RedZebra's instructions, or modification or alteration of the Software and/or the Services by any party other than

RedZebra or RedZebra's duly authorised contractors or agents. If the Software and/or the Services do not conform with the terms of clause 6.1, RedZebra will use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3 RedZebra:

(a) does not warrant that:

(i) the Customer's use of the Software and/or the Services will be uninterrupted or error-free;

(ii) that the Software, the Services, the Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;

(iii) the Software or the Services will be free from Vulnerabilities or Viruses; or

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 The Contract shall not prevent RedZebra from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

6.5 RedZebra warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

6.6 Without prejudice to clause 4.5, in the event of any loss or damage to Customer Data (excluding Customer Personal Data), the Customer's sole and exclusive remedy against RedZebra shall be for RedZebra to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the



latest back-up of such Customer Data maintained by RedZebra. RedZebra shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by RedZebra to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

7. Customer's obligations

7.1 The Customer shall:

(a) provide RedZebra with:

(i) all necessary co-operation in relation to the Contract; and

(ii) all necessary access to such information as may be required by RedZebra;

in order to provide the Services, including Customer Data, security access information and configuration services;

(b) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

(c) carry out all other Customer responsibilities set out in the Contract 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, RedZebra may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for RedZebra, its contractors and agents to perform their obligations under the Contract, including the Services;

(f) ensure that its network and systems comply with the relevant specifications provided by RedZebra from time to time; and

(g) be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to RedZebra'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.

7.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not Customer Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

7.3 The Customer accepts responsibility for the selection of the Software and the Services to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

8. Charges and payment

8.1 The Customer shall pay the Subscription Fees to RedZebra in accordance with this clause 8 and the Proposal.

8.2 Without prejudice to clause 8.3, RedZebra shall invoice the Customer for the Subscription Fees yearly in advance in the case of an Annual Subscription. If the Customer selects a Three Year Subscription, the Customer will enter into a finance agreement which will involve the Customer making monthly payments.

8.3 RedZebra shall also be entitled to invoice the Customer for any additional User Subscriptions or additional Upload Storage in accordance with clause 3 on or around the date of purchase at RedZebra's then current prices for such items.

8.4 If RedZebra has not received payment within 30 days after the due date of a relevant invoice, and without prejudice to any other rights and remedies of RedZebra:



(a) RedZebra may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password(s), account(s) and access to all or part of the Services and RedZebra shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.5 All amounts and fees stated or referred to in the Contract:

(a) shall be payable in the currency stated by RedZebra;

(b) are non-cancellable and non-refundable; and

(c) are exclusive of VAT, which shall be added to RedZebra's invoice(s) at the appropriate rate, if applicable.

8.6 RedZebra shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.1(a), the additional Upload Storage fees purchased in accordance with clause 3.1(b), and/or the additional Modules purchased in accordance with clause 3.1(c) at the start of each Renewal Period upon 60 days' prior notice to the Customer and the Proposal shall be deemed to have been amended accordingly.

9. Proprietary rights

9.1 The Customer acknowledges and agrees that RedZebra and/or its licensors own all Intellectual Property rights in the Software, the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.

9.2 The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Software, the Services and/or the Documentation and shall promptly report to RedZebra any such infringement that comes to its attention. In particular, the Customer shall:

(a) ensure that each Authorised User, before starting to use the Services, is made aware that the Software, the Services and the Documentation is proprietary to RedZebra or third parties and that they may only be used in accordance with the Contract;

(b) not permit any person other than an Authorised User to have access to the Software, the Services and/or the Documentation without the prior written consent of RedZebra, who may require that such third party executes a written confidentiality agreement before giving access to any of the same.

10. Confidentiality

10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



10.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11. Indemnity

11.1 The Customer shall defend, indemnify and hold harmless RedZebra against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and legal fees calculated on an indemnity basis) arising out of or in connection with the Customer's and its Authorised Users' use of the Software, the Services and/or the Documentation.

11.2 RedZebra shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Software, the Services and/or the Documentation in accordance with the Contract infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) RedZebra is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to RedZebra in the defence and settlement of such claim; and
- (c) RedZebra is given sole authority to defend or settle the claim.

11.3 In the defence or settlement of any claim, RedZebra may procure the right for the Customer to continue using the Software and/or the Services, replace or modify the Software and/or the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4 In no event shall RedZebra, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than RedZebra; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by RedZebra; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from RedZebra or any appropriate authority; or
- (d) the Customer's breach of the Contract.

11.5 The foregoing shall be the Customer's sole and exclusive rights and remedies, and RedZebra's (including RedZebra's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. Limitation of liability

12.1 Except as expressly and specifically provided in the Contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software, the Services and the Documentation by the Customer and its Authorised Users, and for conclusions drawn from such use. RedZebra shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to RedZebra by the Customer or its Authorised Users in connection with the Services, or any actions taken by RedZebra at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and



(c) the Software, the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in the Contract excludes the liability of RedZebra:

- (a) for death or personal injury caused by RedZebra's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.2:

- (a) RedZebra shall have no liability for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses; and
- (b) RedZebra's total aggregate liability to the Customer (including in respect of the indemnity at clause 11.2), in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

(c) In clause 12.3(b):

- (i) **cap.** The cap is 100% of the total Subscription Fees paid during the contract year in which the breaches occurred;
- (ii) **contract year.** A contract year means a 12 month period commencing on the Effective Date or any anniversary of it.

12.4 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13. Term and termination

13.1 The Contract shall, unless otherwise terminated as provided in clause 5.6, this clause 13 or clause 14, commence on the Effective Date and shall continue for the applicable Initial Subscription Term and, thereafter, (irrespective of whether the Customer has purchased an Annual Subscription or a Three Year Subscription) the Contract shall be automatically

renewed for successive periods of 3 calendar months (each a **Renewal Period**), unless:

(a) either party notifies the other party of termination, in writing, at least 3 calendar months before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of the Contract;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or



more other companies or the solvent reconstruction of that other party;

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) 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 the other party (being a company, partnership or limited liability partnership);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to clause 13.2(j) (inclusive);

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

(n) there is a Change of Control of the Customer.

13.3 On termination of the Contract for any reason:

(a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

(b) RedZebra may destroy or otherwise dispose of any of the Customer Data in its possession unless RedZebra receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. RedZebra shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by RedZebra in returning or disposing of Customer Data; and

(c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract



immediately by giving written notice to the affected party.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of the Contract and the Schedule, the provisions in the main body of the Contract shall prevail.

16. Variation

Without prejudice to clause 3, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

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

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

18. Severance

18.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

18.2 If any provision or part-provision of the Contract is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. Entire agreement

19.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

19.2 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.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20. Assignment

20.1 The Customer shall not, without the prior written consent of RedZebra, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

20.2 RedZebra may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, provided that it gives prior written notice of such dealing to the Customer.

21. Third party rights

21.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

22. Notices

22.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) If given by RedZebra:
 - (i) delivered by commercial courier to the Customer's registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the following address (or an address substituted in writing by the Customer): the Customer's email address which received the Proposal from RedZebra.



(b) If given by the Customer, sent by email to the following address (or an address substituted in writing by RedZebra): accounts@redzebrasoftware.com.

22.2 Any notice shall be deemed to have been received:

(a) if delivered by courier, on signature of a delivery receipt or at the time the notice is left at the proper address; or

(b) if sent by email, at the time of transmission provided that no bounceback or out of office message is received.

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

23. Governing law

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 interpreted in accordance with the law of England and Wales.

24. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).



Schedule Personal data processing purposes and details

Part 1 – Role of the parties

1.1 Where RedZebra acts as a Controller:

- (a) when processing the RedZebra Personal Data contained within correspondence between the Customer's staff, RedZebra's staff, and/or documents relating to the establishment, management, audit, operation, and communication (on which RedZebra may wish to rely on to establish its rights and liabilities under the Contract) in respect of the Contract for the provision of the contracted services; and
- (b) when processing the RedZebra Personal Data of the Customer's staff for marketing purposes.

1.2 Where the RedZebra acts as a Processor:

Save as set out in paragraph 1.1 of this Schedule, when processing the Customer Personal Data of Data Subjects whose Personal Data is collected through the services provisioned under the Contract.

Part 2 – Particulars of processing

2.1 Subject matter of processing

The performance of RedZebra's duties under the Contract.

2.2 Duration of processing

For the term of the Contract and for such time afterwards as required for the parties to exercise their rights and obligations under clause 5.

2.3 Nature of processing

The processing of personal data to enable RedZebra to comply with its duties under the Contract.

2.4 Processing purposes

To enable RedZebra to perform its duties under the Contract.

2.5 Personal data categories

Identity data, contact details and such other personal data categories as relevant.

2.6 Data subject types

Clients or customers of the Customer and/or such clients' or customers' staff and such other data subjects whose personal data is processed by RedZebra in connection with the performance of its duties under the Contract.

Part 3 - Approved third party Processors:

- Poundhost Internet Limited.