

Marketplace Agreement for Smartnumbers Protect Service

INTRODUCTION

These are the terms that apply to any Service the Customer purchases from Resilient Limited trading as Smartnumbers ("Supplier") through an Approved Marketplace. Provider.

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Applicable Law"	means any of the following which are applicable to the provision or receipt of the Service: <ul style="list-style-type: none">• any relevant statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgement, demand, order or decision of any court, regulator or tribunal);• binding rule, policy, guidance or recommendation issued by any governmental, statutory or Regulatory Authority; and/or• binding industry code of conduct or guideline.
"Approved Marketplace"	means AWS Marketplace, Genesys AppFoundry or any other Marketplace as agreed by Supplier and Customer on the Order.
"Authorised Customer Contact"	means the Customer contact identified as such in the Order or otherwise notified to Supplier by Customer.
"Committed Call Volume"	means the number of monthly or annual inbound calls for which the customer commits to pay the Subscription Charges as set out in the relevant Order.
"Billing Frequency "	Means the frequency to which Supplier will submit invoices to the customer for the Subscription Charges as set out in the relevant Order
"Charges"	means the charges payable by Customer to Supplier for the Services, comprising of the: <ul style="list-style-type: none">• Set up Charges;• Subscription Charges• Over-usage Charges if applicable; and• Professional Services Charges where appropriate.
"Confidential Information"	means information (in any form) disclosed by a Party to the other Party including trade secrets, operations, processes, plans, intentions, services, product information, know-how, designs, market opportunities, transactions, business affairs and any information (whether or not included in the above examples) which is either labelled as confidential or that might reasonably be considered as such because of its nature and the manner of its disclosure, and which shall include the terms of the Contract, including pricing.
"Consortium Member"	means any Customer of Supplier that has elected to participate in the Smartnumbers Consortium Service.

"Consortium Service"	means the Smartnumbers Consortium, a counter-fraud service for telephony channels which enables the sharing of personal data and other information with Supplier and between Consortium Members.
"Contract"	has the meaning given to it in clause 2.2.
"Customer"	means the customer to whom the Service is being provided as set out in the Order.
"Customer Data"	means any data (including Personal Data), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are provided to Supplier by or on behalf of Customer, or which Supplier is required to generate, process, store or transmit pursuant to any Contract and including, for the avoidance of doubt, any recordings of telephone calls as part of the Services, which may include data regarding Users.
"Data Protection Laws"	<p>means all Applicable Laws and regulations relating to the processing of Personal Data and privacy including: (i) the Data Protection Act 2018; (ii) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); (iii) the GDPR as incorporated into UK law by the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("UK GDPR"); (iv) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); (v) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and (vi) any statutory instrument, order, rule or regulation made under each of items (i) - (v), each as amended, replaced, extended, re-enacted or consolidated from time to time.</p> <p>"controller", "data subject", "personal data", "personal data breach", "process/processing", "processor", "supervisory authority" and "technical and organisational measures" and other terms defined in Data Protection Laws will have the meanings given to them in the Data Protection Laws.</p>
"Data Sharing Terms"	Means the Terms available at https://smartnumbers.com/data-sharing-terms/ specifying the types of data, the purpose of sharing, and the obligations of each party involved ensuring compliance with Applicable Laws and regulations.
"Force Majeure Event"	means an event beyond a Party's control, including: (a) extreme abnormal weather conditions; (b) nuclear, chemical or biological contamination; (c) war, civil commotion or terrorist attack; (d) interruption or failure of a utility service including electric power, gas, water or telecommunication services; (e) acts of God, floods, earthquakes, or other natural disaster, epidemic or pandemic; or (f) acts of local or central Government or other competent authorities.
"Marketplace Provider"	means the company who operates the Marketplace through which the Customer orders the Service.
"Minimum Term"	means the minimum term that the Service shall be provided for as set out in the Order commencing on the Service Start Date.

"On Boarding Information"	means the operational documents provided by Supplier confirming the Service Start Date in accordance with clause 4.4.
"Order"	means an Order entered into through the ordering process for a given Marketplace that describes the Services that Supplier will provide to Customer under this Agreement via such agreed Marketplace.
"Over-usage Charges"	means the Charges applied on a per-call basis when the Customer exceeds the Committed Call Volume as set out in the relevant Order. For the avoidance of doubt, such Charges may be avoided if the Customer increases the Committed Call Volume for the remainder of the contact term.
"Personal Data"	means any information relating to an identified or identifiable natural person, which Supplier processes on Customer's behalf in providing the Service under this Contract.
"Professional Services"	means any bespoke works required to set up and manage the Service.
"Regulatory Authority"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law or regulation to supervise, regulate, investigate or influence the matters dealt with in any Contract or any other of Customer's affairs.
"Resilient Limited"	means a company registered in England and Wales (registered company number 01403177) whose registered office is at 8 Bishopsgate 2nd Floor, London, England, EC2N 4BQ
"Renewal Order"	means an Order place by a Customer to renew the Contract for an existing Service on expiry of the Minimum Term.
"Schedule" or "Schedules"	means the schedules to these Terms and Conditions.
"Security Policy"	means Supplier's security policy as may be updated by Supplier from time to time and made available to Customer upon request.
"Service" or "Services"	means the services provided by Supplier to the customer as set out in the Order and described in the Service Description.
"Service Description"	means the description of the Service as set out in Schedule 1.
"Service Management Boundary"	has the meaning given to it in clause 4.6.
"Service Start Date"	means the date on which the Service will be available for use as notified to Customer by Supplier in accordance with clause 4.4.4
"Set up Charges"	means any one-off charge payable by Customer to Supplier for the set up of the Service as set out in the Order.

"Shared Personal Data"	means all data defined as 'personal data' under Data Protection Laws and which is (i) exchanged between the parties (directly or indirectly), or otherwise processed, in relation to this Agreement and (ii) processed by either party as a controller.
"SLAs"	mean the service level arrangements for the Service as set out in Schedule 1.
"Solution Design"	means the solution design document prepared by Supplier and agreed by Customer describing the method by which the Service will be implemented for the Customer and including the number of Professional Services days required to provide the same.
"Standard Contractual Clauses" or "SCCs"	means, as applicable: <ul style="list-style-type: none"> • for transfers of Personal Data from the European Economic Area, the standard contractual clauses, including the provisions of "Module Two: Transfer controller to processor", approved by the European Commission decision 2021/914 of 4 June 2021; • for transfers of Personal Data from the United Kingdom, either: <ul style="list-style-type: none"> ○ the standard contractual clauses for the transfer of Personal Data to processors established in third countries contained in the annex to European Commission decision 2010/87/EC of 5 February 2010 to the extent that those standard contractual clauses remain a valid transfer mechanism under the UK GDPR; or ○ any standard contractual clauses adopted by the United Kingdom for the purposes of the UK GDPR in respect of transfers of Personal Data from the United Kingdom.
"Subscription Charges"	means the recurring charge Customer pays to Supplier for use of the Service as set out in the relevant Order in relation to the Committed Call Volume.
"Supplier Support Desk"	means the support desk provided by Supplier.
"Terms and Conditions"	has the meaning given to it in clause 2.1.
"User"	means a person authorised by Customer to use the Service.

2. CONTRACT STRUCTURE

- 2.1. These terms and conditions contain general terms relating to the provision of Services by Supplier to Customer (the "Terms and Conditions"). Where Customer requires a Service to be provided by Supplier, the Parties will agree and execute an Order.
- 2.2. Each Order operates as a separate contract between Customer and the Supplier for the provision and use of the Services as identified in that Order and is made up of the following documents: (a) these Terms and Conditions; (b) the Schedules; and (c) the Order (which together are referred to as the "Contract").
- 2.3. In the event of conflict between the terms making up each Contract and subject to the statement in 2.1 and 2.2 above, the following order of precedence shall apply where those items earlier in the list shall take precedence over those items later on: (a) the Order; (b) the

Schedules and (c) the clauses of these Terms and Conditions.

- 2.4. Customer agrees that Supplier shall not be liable to provide the Service unless and until an Order has been agreed between the Parties in relation to the Service.
- 2.5. Customer agrees to Supplier having access to Customer Data for the purpose of providing the Services.

3. RELATIONSHIP AND GOVERNANCE

- 3.1. Each Party will cooperate with the other Party in good faith in the performance of its respective activities contemplated by the Contract through, among other things, making available, as reasonably requested by the other Party, such management decisions, information, resources, facilities, technology, approvals and acceptances in order that the provision of the Service under the Contract may be accomplished in a proper, timely and efficient manner. Except as expressly provided otherwise, where agreement, approval, acceptance or consent of either Party is required by any provision of the Agreement, such action will not be unreasonably withheld or delayed.
- 3.2. The Parties shall meet or communicate as required to discuss the delivery and receipt of the Service, any proposals for change and any other issues relating to the Service and may agree a more regular meeting commitment as required.

4. THE SERVICE

- 4.1. Supplier will provide Customer with the Service in accordance with the terms of the Contract.
- 4.2. Prior to the execution of an Order, Supplier will prepare a Solution Design outlining the method by which the Service will be implemented for Customer and the Professional Service required for the same.
- 4.3. In the event that Customer delays the implementation of the Service at no fault of the Supplier to the extent that the contacted Professional Services days have been exhausted, or requests changes to the Solution Design or the method by which the Service is implemented after the corresponding Professional Services Charges have been accepted, such changes will be subject to change control and may result in additional Professional Services charges. For the avoidance of doubt, no additional Professional Services will be provided until the revised charges have been provided by Supplier and accepted by Customer.
- 4.4. Before the Service Start Date, Supplier will:
 - 4.4.1. request certain information from Customer in order for Supplier to commence the set-up of the Service;
 - 4.4.2. provide Customer with contact details for the Supplier Support Desk;
 - 4.4.3. build and test the Service to ensure that it is configured correctly in accordance with the Solution Design; and
 - 4.4.4. following completion of the activities in this clause 4.4, send the Authorised Customer Contact On Boarding Information which confirms the Service Start Date.
- 4.5. On and from the Service Start Date, Supplier:
 - 4.5.1. will provide the Service in accordance with the SLAs;

- 4.5.2. may carry out maintenance from time to time and will use reasonable endeavours to inform Customer at least five (5) days before any planned maintenance affecting the Service, however Customer agrees that Supplier may provide less notice where emergency maintenance is required or where Supplier has not been provided with sufficient notice by a third party supplier;
- 4.5.3. reserves the right to suspend the Service without notice if:
 - 4.5.3.1. Supplier reasonably believes the Service is being used by Customer in breach of these Terms and Conditions; or
 - 4.5.3.2. Customer notifies Supplier that someone has gained unauthorised access to the Service.
- 4.6. Supplier will provide and manage the Service as set out in the Order and the Service Description (the "Service Management Boundary"), and Supplier is not responsible for the Service outside of the Service Management Boundary.
- 4.7. Where the Service is provided to indicate fraudulent activity based on the profile of the caller, any further action to prevent a potential fraud event is the responsibility of the Customer.

5. CUSTOMER'S OBLIGATIONS

- 5.1. Customer shall:
 - 5.1.1. appoint one or more Authorised Customer Contacts, who shall have the authority to make decisions regarding the operation of the Service and to contractually bind Customer on all matters relating to the Service, however Supplier may also accept instructions from a representative of the Customer who Supplier reasonably believes is acting with Customer's authority;
 - 5.1.2. co-operate fully in providing any information, including Shared Personal Data, reasonably required for the services, and make sure the information provided is accurate and complete;
 - 5.1.3. obtain and maintain any equipment, associated services and network connections necessary to access and use the Service, and shall: (i) ensure that these meet the minimum requirements of the Service as set out in the Service Description; and (ii) pay any applicable third-party fees and charges incurred for these purposes;
 - 5.1.4. provide all necessary notices and obtain and maintain all necessary licences, consents, and permissions necessary for Supplier, its contractors and agents to perform their obligations under this agreement lawfully.
 - 5.1.5. report any incidents or breaches from Users to the Supplier Support Desk using the reporting procedure as agreed in writing by the Supplier;
 - 5.1.6. co-operate fully in providing information to enable any fault to be diagnosed including carrying out any reasonable testing that Supplier requests of Customer;
 - 5.1.7. use the Service in accordance with any Applicable Law and Regulations.
 - 5.1.8. be responsible for all acts and omissions of Users, as if they were the acts and omissions of Customer, and for ensuring that anyone who uses the Service does so in accordance with the Contract.
 - 5.1.9. Refrain from using caller information for any other purpose than those explicitly described in Schedule 1 of this document.
 - 5.1.10. be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its own network connections and telecommunications links from its own systems to Supplier'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.

- 5.2. The Customer owns all right, title and interest in and to all of the Customer Data and has sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6. SECURITY

- 6.1. Supplier will comply with its Security Policy in providing the Service, however Supplier does not guarantee the Service against unauthorised or unlawful access or use.
- 6.2. Customer will be provided with passwords for accessing and using the Service and is responsible for all activities and use of the Services under these passwords.
- 6.3. Customer shall:
 - 6.3.1. treat such passwords as confidential and must not reveal them to any third party;
 - 6.3.2. distribute, manage, and maintain any profiles or passwords or other administration instructions relating the Service;
 - 6.3.3. promptly notify Supplier and/or otherwise arrange for access and passwords to be revoked of any User that no longer requires access to the Services, or is no longer an employee / authorised personnel of Customer;
 - 6.3.4. ensure the proper use and security of User passwords and inform Supplier if a User password has been become known to an unauthorised person;
 - 6.3.5. change User passwords regularly; and
 - 6.3.6. change User passwords or other administration information used in connection with the service if Supplier requests Customer to do so in order to ensure the security of the Service.

7. CHARGES AND PAYMENTS

- 7.1. The Order will set out all applicable Charges for the Service.
- 7.2. The Charges will be billed in the following way:
 - 7.2.1. Set up Charges and Professional Service Charges will be billed upon the Service Start Date unless otherwise agreed by the Parties.
 - 7.2.2. The Subscription Charges will be applicable from the Service Start or as set out in the Order and will be billed in accordance with the Billing Frequency set out in the Order.
 - 7.2.3. Supplier reserves the right to revise its Charges from time to time. Such revisions not to come into effect until the expiry of the Minimum Term but may apply to a Renewal Order in accordance with clause 12.1; and
 - 7.2.4. Each party will be responsible, as required under Applicable Law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. Charges within the EU and the UK will be subject to VAT but are inclusive, where relevant, of all and any licence fees, installation, testing and commissioning and all other charges associated with Services, All payments made under this may be subject to withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, Supplier will pay the remaining amount. Each Party will provide the other Party with such tax forms as are reasonably requested

in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

- 7.3. Where a Customer is located in a jurisdiction which requires Customer to deduct or withhold Taxes or other amounts from any amounts due to Supplier, Customer shall notify Supplier, in writing, promptly and parties shall join efforts to avoid any such Tax withholding, provided, however, that in any case, Customer shall bear the sole responsibility and liability to pay such Tax and such Tax should be deemed as being added on top of the Charges, payable by Customer.
- 7.4. Customer shall pay the Charges in accordance with the payment processes of the applicable Approved Marketplace.

8. PROPRIETARY PROTECTION

- 8.1. Subject to clause 8.2, the intellectual property rights and/or other proprietary rights in the information (including hard copy and electronic, human-readable and otherwise) used or created by Supplier in providing the Service will be owned by Supplier or its licensors.
- 8.2. Supplier acknowledges that the Customer Data is Customer's property and Customer retains all intellectual property rights and/or other proprietary rights which may, at any time, subsist in the Customer Data. To the extent that any intellectual property rights and/or other proprietary rights in any of the Customer Data vest in Supplier by operation of law, such intellectual property rights and/or other proprietary rights shall be assigned by Supplier to Customer by operation of this clause 8.2 immediately upon the creation of such Customer Data.
- 8.3. Supplier shall:
 - 8.3.1. preserve, so far as possible, the security and integrity of the Customer Data and prevent any loss, disclosure, theft, manipulation, or interception of the Customer Data; and
 - 8.3.2. make secure back-up copies of the Customer Data on a regular basis.
- 8.4. Supplier warrants that it is sufficiently authorised and/or licensed to provide the Services and to utilise the intellectual property comprised in the Services. Supplier shall and hereby indemnifies Customer for any losses, costs and damages in respect of any third party claim brought against it in this regard. This provision shall survive termination of the Contract. Customer will notify Supplier of any such claim and Supplier will take control over the defence.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Each Party warrants to the other that it has the full and sufficient right and authority to enter into the Contract and to grant the rights and licences granted herein.
- 9.2. Supplier warrants that the Service will be provided with reasonable care and skill and that it will be provided substantially in accordance with the Service Description.
- 9.3. Supplier does not warrant that any software will be entirely free from defects or that its operation will be entirely error free.

- 9.4. Apart from the terms set out in this clause 9, no conditions, warranties or other terms shall apply to the Service or to anything else supplied under the Contract.

10. LIMITATION OF LIABILITY

- 10.1. Nothing under the Contract excludes or limits the liability of a Party: (a) for death or personal injury caused by its negligence; (b) for fraudulent misrepresentation or for any other fraudulent act or omission; and/or (c) for any other liability which may not lawfully be excluded or limited.
- 10.2. Other than as set out in clause 10.1, in no event will either Party be liable, whether based on an action or claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, the Contract, for any: (a) loss of profits, sales and/or revenue; (b) loss of data; (c) loss of goodwill and/or reputation; (d) loss or waste of management or staff time; and/or (e) indirect, consequential or special loss (including where such loss is of the type specified in clause 10.1).
- 10.3. Subject to clause 10.1 and 10.2, the total aggregate liability of Supplier to Customer whether based on an action or claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, the Contract shall be limited to an amount equal to 150% of all Charges payable by Customer under the Contract in the Contract Year in which the event giving rise to the claim occurred.
- 10.4. Supplier shall not be liable for any failure in the Service which arises because of any circumstances which Supplier cannot reasonably be expected to control.

11. DATA PROTECTION

- 11.1. All capitalised terms used in this clause 11 shall have the meaning given to them in the Data Protection Laws.
- 11.2. Where Supplier obtains, processes and stores Personal Data provided by Customer, Supplier will do so in accordance with the Data Protection Laws and its Data Protection Policy. Customer undertakes to comply with Data Protection Laws at all times and shall have sole responsibility for the accuracy, quality and legality of such Personal Data and the means by which it is acquired.
- 11.3. For the purposes of the Data Protection Laws, Supplier shall be:
- 11.3.1. a Controller in respect of account information Customer provides to Supplier (which may include contact details of individuals within Customer's organisation that Supplier deals with to manage and administer the Services) as set out in Schedule 2;
 - 11.3.2. a Controller in respect of call data relevant to the delivery of the Protect Service where such call data may be used to enhance the service model used by the Customer, as further expanded within the [Data Sharing Terms](#); and
 - 11.3.3. a Processor in respect of any other Personal Data which Supplier Processes in performing the Service (including the Customer Data) as set out in Schedule 2.
- 11.4. Customer agrees that the type of Personal Data Supplier will process under the Contract and the duration, nature and purpose of the Processing, and the categories of Data Subjects, are as described in Schedule 2.
- 11.5. Customer and Supplier will refer to the [Data Sharing Terms](#) to ensure each party comply with

their data protection obligations.

- 11.6. Customer's Personal Data may be stored electronically or otherwise. Supplier shall ensure that all personnel who have access to and/or Process such Personal Data are obliged to keep it secure and confidential.
- 11.7. Supplier will not cause or permit any Personal Data to be transferred outside the United Kingdom and European Economic Area without Customer's prior consent, which may include the requirement to execute the Standard Contractual Clauses for transfers from Controllers to Processors approved by the Commission pursuant to Decision 2010/87/EU or to have in place any other legal safeguard(s) as recognised by the Data Protection Laws.
- 11.8. Customer grants Supplier a general authorisation to appoint (a) other members of its group, as sub-processors and (b) additional third-party data centre operators and/or outsourced support providers, as sub-processors, to support the provision of the Services. Supplier will maintain a list of sub-processors and notify Customer of the names of new and replacement sub-processors prior to them sub-processing any Personal Data. If Customer objects to any new or replacement sub-processor, Customer will notify Supplier of such objection in writing within five business days of the notification and Supplier will seek to resolve the matter in good faith. If the Parties are unable to resolve the matter within a reasonable period of time, which shall not exceed sixty (60) days, Customer may terminate the applicable Services (with respect only to those Services which cannot be provided by Supplier without the use of the objected-to new sub-processor) by providing written notice to Supplier.
- 11.9. Supplier shall ensure that any sub-processor Supplier engages in the provision of the Services is engaged on the basis of a written contract which imposes on such sub-processor terms equivalent to those imposed on Supplier in this clause 11 ("Relevant Terms"). Supplier shall procure the performance by such sub-processor of the Relevant Terms and shall be directly liable to Customer for any breach by such sub-processor of any of the Relevant Terms.
- 11.10. In line with its Security Policy, Supplier will inform Customer in the event of a Personal Data Breach affecting any Customer Data. Supplier will do so without undue delay; providing Customer with sufficient information to allow Customer to meet any obligations or inform Data Subjects or Supervisory Authorities of such Personal Data Breach. Supplier will cooperate with Customer and take reasonable steps in the investigation, mitigation and remediation of any such Personal Data Breach.
- 11.11. Supplier will provide such assistance as Customer reasonably requests (taking into account the nature of its Processing and the information available to Supplier) in relation to Customer's obligations under the Data Protection Laws with respect to:
 - 11.11.1. responding to requests from any Data Subjects seeking to exercise their rights under Chapter III of the GDPR;
 - 11.11.2. Data Protection Impact Assessments; and
 - 11.11.3. Customer's compliance with its obligations under the GDPR with respect to the security of the Processing of the Personal Data, provided that Customer shall pay its charges for providing the assistance in this clause 11.11, at its standard consultancy rates.
- 11.12. Customer shall provide all necessary notices and obtain all necessary consents, approvals and authorisations to process the Personal Data lawfully and in accordance with Data Protection Laws.

- 11.13. Supplier may update the Data sharing terms periodically to reflect changes in circumstances, legal requirements, or the evolving needs of the organisations involved in the sharing process.

12. TERM AND TERMINATION

- 12.1. Each Contract shall commence on the Effective Date and will continue in force until the end of the Minimum Term. Prior to the end of the Minimum Term, Supplier will provide Customer with the option to renew the existing Contract at prevailing market rates in accordance with the processes of the applicable Approved Marketplace. Unless otherwise specified on the Renewal Order, such renewal will extend the existing Services on these same terms and conditions for a new Minimum Term.
- 12.2. Each Contract will not affect any accrued rights or liabilities which either Party may have by the time termination takes effect.
- 12.3. If Customer terminates the Service or any applicable Contract in accordance with clause 12.1, Customer will pay Supplier all outstanding Charges or payments due and payable under the Contract; and, except where the termination is due to a breach or failure by the Supplier:
- 12.3.1. For any parts of the Service that were terminated during the initial 12 months of the Minimum Term, an early termination charge equal to: (i) 100 percent of the Charges for any remaining months of the first 12 months of the Minimum Term, (ii) 50 percent of the Charges for the remaining months, other than the first 12 months, of the Minimum Term, and (iii) Any outstanding Professional Services charges, or
- 12.3.2. For any parts of the Service that were terminated after the initial 12 months of the Minimum Term, an early termination charge equal to 50 per cent of the Charges for any remaining months of the Minimum Term.
- 12.4. Either Party (the "non-defaulting party"), shall have the right to terminate any Contract upon written notice to the other Party (the "defaulting party") in the event of a material breach of these terms and conditions that remains uncured 30 days after the non-defaulting party gives the defaulting party notice of such breach. For the avoidance of doubt, failure to pay the Charges due under clause 7 will constitute a material breach.
- 12.5. Upon termination of a Contract (and, in relation to (i), at any time on written request), Supplier shall (i) deliver the Customer Data to Customer; (ii) on written request, erase all Customer Data from computer and communications systems and devices used by Supplier, including such systems and data storage services provided by third parties (in each case to the extent technically practicable) and confirm in writing that this has been done; and (iii) for up to 12 months after the expiry or termination of the Contract, provide access during normal working hours to Customer and/or its agents to such information relating to the Contract and relevant Services as remains in Supplier's possession or control, including information necessary to demonstrate Supplier's compliance with the Data Protection Laws.

13. VARIATION

- 13.1. Supplier may make changes to the Service from time to time upon notice to Customer. Changes which are either: (a) operational by nature; (b) represent enhancements to the Service; (c) purely for clarification; or (d) necessary to comply with any Applicable Law or regulatory requirement, will be effective immediately upon notice. Material changes will become effective thirty (30) days after the notice is given unless Customer notifies Supplier within that thirty (30) day period that that Customer does not agree with the change. The Parties shall then act reasonably and work together in good faith to reach a mutually

agreeable solution. Except as set out above, the Contract may not be modified or amended except by the mutual written agreement of the authorised representatives of the Parties.

14. FORCE MAJEURE; EXCUSE

14.1. Neither Party will be liable for any delays or failures to perform due to a Force Majeure Event. If a default due to a Force Majeure Event shall continue for more than thirty (30) days, then either Party will be entitled to terminate any affected Contract by giving not less than thirty (30) days written notice to the other. Neither Party shall have any liability to the other in respect of the termination of an Agreement as a result of a Force Majeure Event save and except for Client's payment obligations up to and including the effective date of termination of the Contract.

14.2. In the event of:

- 14.2.1. a refusal or delay by a third party to supply a telecommunications service to Supplier;
or
- 14.2.2. the imposition of restrictions of a legal or regulatory nature which prevent Supplier from supplying the Service,

then provided that there is no alternative workaround available at reasonable cost to Supplier, Supplier will have no liability to Customer for failure to supply the Service.

14.3. Without limiting the foregoing, to the extent Customer fails to perform any of its responsibilities described in the Agreement, Supplier shall be excused from failure to perform any affected obligations under the Agreement and, in the event of delay, shall be entitled to a reasonable extension of time considering the particular circumstances, and a reasonable reimbursement of cost. Each Party will notify the other as promptly as practicable after becoming aware of the occurrence of any such condition.

15. DISPUTES

15.1. The Parties will work in good faith to resolve any dispute amicably. The Parties will first attempt to resolve a dispute at an operational level within thirty (30) days of the date one Party notifies the other of such dispute. If the dispute is unresolved at that level within that period, the Parties' representatives at director level or above shall then meet within a further period of two (2) weeks, or as otherwise agreed between the Parties, to seek to resolve the dispute. If the Parties are then unable to resolve the dispute at this Director level within thirty (30) days, either Party shall have the right in accordance with clause 19.4 to pursue all available legal or equitable remedies available to it. Nothing shall preclude either Party from seeking equitable relief at any time in a court of competent jurisdiction in the event that a risk of irreparable harm to that Party exists and no appropriate remedy for such harm exists at law.

16. NOTICES

16.1. Notices given under the Contract must be in writing and may be delivered by email, hand or by courier, or sent by first class post to the following addresses:

- 16.1.1. to Supplier at Supplier's registered address or any alternative address which Supplier notifies to Customer; and
- 16.1.2. to Customer at the Customer address as stated on the Order or any alternative address which Customer notifies to Supplier.

17. CONFIDENTIALITY

- 17.1. Except to the extent set out in this clause 17, or where disclosure is expressly permitted by any Contract, each Party shall:
- 17.1.1. treat the other Party's Confidential Information as confidential; and
 - 17.1.2. not disclose the other Party's confidential information to any other person without the owner's prior written consent.
- 17.2. Clause 17.1 shall not apply to the extent that:
- 17.2.1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure;
 - 17.2.2. such information was obtained from a third party without obligation of confidentiality;
 - 17.2.3. such information was already in the public domain at the time of disclosure otherwise than through a breach of any Contract; or
 - 17.2.4. such information was independently developed without access to the other Party's Confidential Information.
- 17.3. Supplier acknowledges that Customer's Data is likely to contain price-sensitive information, trade secrets, commercial secrets or other Confidential Information belonging to Customer. Supplier undertakes to treat such information as confidential and undertake not to use, or to procure another to use, under any circumstances, such information to trade or exchange securities of any kind or to engage in other activities that may result in financial gains for Supplier or its affiliates as a result of the use of such information. Supplier acknowledges that Customer may be irreparably harmed by the breach of the terms of this clause 17 by Supplier or its sub-contractors. Supplier agrees that monetary damages may not be a sufficient remedy for any breach of this clause 17 by Supplier or for which Supplier is liable, and that the entity seeking a remedy shall be entitled to apply for, in addition to monetary damages, the remedies of injunction, specific performance and such equitable relief as a remedy for such breach.

18. AUDITS

- 18.1. Supplier shall allow Customer and any auditors of Customer or other advisers or an applicable Regulatory Authority to access any of its premises (other than its data centres), its personnel and relevant records as may be reasonably required in order to satisfy or fulfil any legal or regulatory obligation or legally enforceable request by any Regulatory Authority.
- 18.2. Subject to its confidentiality obligations, Supplier shall provide Customer (and Customer's auditors and other advisers) with all reasonable cooperation, access and assistance in relation to each audit.

19. GENERAL

- 19.1. Assignment. Customer may not sub-licence or assign any of the rights or obligations which Customer has under the Contract.
- 19.2. Entire Agreement. The Contract sets forth the entire understanding between the Parties and supersedes, without limitation, all prior discussions, communications, representations and arrangements between them with respect to the subject matter of the Contract. Each Party acknowledges that it is entering into the Contract solely on the basis of the agreements and representations contained herein, and that it has not relied upon any representations,

warranties, promises, or inducements of any kind, whether oral or written, and from any source.

- 19.3. Severability. In the event of any provision in these Terms and Conditions being held to be void, voidable or unenforceable this shall not affect the validity or enforceability of any other clause of these Terms and Conditions or of the remainder of these Terms and Conditions as a whole.
- 19.4. Governing Law and Jurisdiction. The parties irrevocably agree that the construction, validity and performance of the Contract and all non-contractual obligations arising from or connected with the Contract shall be governed by the laws of England and Wales unless otherwise agreed by the parties. Subject to clause 15, each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with the Agreement, but Supplier is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its intellectual property rights.

SCHEDULE 1 – SERVICE DESCRIPTION

The Services and SLAs applicable to this Contract are set out in the "Smartnumbers Service Description" document, a copy of which will be provided to the Customer by the Supplier and which may be updated, from time to time in accordance with the terms of the Contract.

SCHEDULE 2 – PERSONAL DATA

For the purposes of clause 11 of the Terms and Conditions, the Parties set out below a description of the Personal Data being processed under the terms and conditions and further details required pursuant to the GDPR.

NATURE OF THE PROCESSING

Telecommunication logs, including portal and service access, service logs and reports, reporting, distribution lists, billing and invoicing material, service backups, user surveys and consent tracking, provision and service build data, CRM data, consortium blacklist and call data, any further collection, analysis, storage, duplication, deletion and disclosure as necessary to provide the services and as instructed by Reseller in writing.

PURPOSE OF PROCESSING

To ensure effective delivery of the Services.

DURATION OF PROCESSING

Supplier will process the Personal Data for the duration of the Agreement, or until the Personal Data is no longer necessary for the purposes of either party performing its obligations under the Agreement (to the extent applicable) unless otherwise agreed between the parties in writing.

CATEGORIES OF DATA SUBJECTS

End-user customers.

TYPES OF PERSONAL DATA

The types of Customer Data Processed by Supplier or its Sub-Processors may include:

- Contact details: first name, last name, username (or other similar identifier) and log-in details, title and role, email address, phone number, phone number alias, postal address;
- Third party contact information such as first name, surname, mobile phone number, employer, and email addresses;
- Correspondence, comments and opinions when the Customer contacts us directly by email, phone or when completing an online form;
- Traffic data Supplier see as part of providing connectivity, such as phone numbers called, the time and duration of calls;
- Credential information such as encrypted passwords, hints and similar security information;
- Preferences for marketing communications, how its website is displayed and how the Customer uses the Service;
- Information about how Customer accesses and use the Service;
- Log files and information about the Customer's devices;
- Profile details and other related communications of Clients, Support tickets, data capture forms and other information relating to service details, Client requests and enquiries, feedback and survey responses, including the contents of those communications or messages;
- Automatically collected information: IP addresses, device IDs, and other technical information.
- Special category data: N/A.

This list is not exhaustive as Customer may specify additional Personal Data that is processed.