

DATED 31st May 2019

CONTACTLESS CHECK SOLUTIONS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Acceptance Date: the date on which the Customer accepts delivery of the Pins and Apps.

App: the software application to commission the Pins installed on a desktop, telephone or other electronic equipment and to read the information stored in the Tags.

Applicable Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

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

Business Requirements Specification: the Business Requirements Specification agreed between the Customer and the Supplier which sets out the Customer's business requirements regarding the Pins, Coins Apps and Hosting Service set out in the Order.

Change in Law: any change in any Applicable Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

Commencement Date: has the meaning at clause 2.2.

Conditions means these terms and conditions as amended from time to time in accordance with clause 11.5.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including, in the case of the Customer, (i) any information that reveals how the Supplier Software has been configured in order to integrate with non-Supplier Software for the purposes of this agreement and (ii) any information relating to the Customer Data.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Contract Year: the first 12 month period ending on the anniversary of the Commencement Date and thereafter any subsequent 12 month annual period.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer Data: all information, data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or

otherwise provided or made available by or on behalf of the Customer or any Licensed User for processing by or through the Services, or (b) collected, downloaded, or otherwise received by the Supplier or the Services for the Customer or any Licensed User at the written request or instruction of the Customer or such Licensed User. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Customer Data are themselves also Customer Data.

Customer: means the person or firm who purchases Services from the Supplier.

Customer Default: means has the meaning set out in clause 4.2.

Data Protection Legislation: all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK

Documentation: the operating manuals, user instruction manuals, technical literature, data recorded by the pins/coins and stored in the Hosted Service and all other related materials in human-readable and/or machine-readable forms prepared by the Supplier in relation to the pins/coins/Apps and regarding the use of the Service, and in particular any material prepared by the Supplier in connection with the Services, including any updated versions of the Documentation prepared by the Supplier from time to time.

Force Majeure Event: an event or circumstances beyond a party's reasonable control.

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

Hosting Fee: the agreed fee is annum.

Hosted Services: the Supplier Software, and infrastructure in a hosted environment operated and maintained by the Supplier to which the Customer will be granted access for the duration of this agreement, namely:

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.

Licence: the licence granted under clause 6.

Losses: all losses, liabilities, damages, costs, expenses (including reasonable legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** shall be interpreted accordingly.

Order: the Customer's order for pins/coins/, Apps and the Services as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation as the case may be.

Pin/Coin: the hardware to be installed into an existing fire door which shall record all of the checks and maintenance to and servicing of the fire door.

Price: the aggregate price for the Pins/coins, the Apps, the Services and the Licence, as specified in the Order and the Hosting Fee.

Services: the provision of the Supplier Software via the pins/coins and Apps and Hosted Services and to which the Customer is being granted access under this agreement and any other products, deliverables and services to be provided by the Supplier to the Customer and identified in this agreement, or as otherwise necessary to comply with this agreement or to ensure the proper and efficient provision of the services required by the Business Requirements Specification including the Hosted Services.

Software Program: software in object code form and source code form; and **Software** shall be interpreted accordingly.

Supplier: means Contactless Check Solutions registered in England and Wales under company number 11753432 and whose registered address is at Unit 15, Solway Industrial Estate, Maryport, Cumbria CB15 8NF.

Supplier Materials: has the meaning set out in clause 4.1.7.

Supplier Software: the software used in the Tags and App and any other Software Program developed or used by the Supplier for the purposes of this agreement.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax [and email **OR** but not email].

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. **SUPPLY OF GOODS AND SERVICES**

- 3.1 The pins/coins and Apps ("**Goods**") placed through the Order shall be supplied by the Supplier to the Customer as required to site.
- 3.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.3 Delivery of the Goods shall be completed on the completion of the delivery
- 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.6 The risk in the Goods shall pass to the Customer on completion of delivery.
- 3.7 Title in the Goods shall not pass to the Customer until payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due.
- 3.8 The Supplier shall supply the Services to the Customer in accordance with the Business Requirements Specification in all material respects.
- 3.9 The Supplier reserves the right to amend the Business Requirements Specification if necessary to comply with any Applicable Law or regulatory requirement, General Change in

Law or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 3.10 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.11 The Supplier shall provide the Hosted Services from the Commencement Date.
- 3.12 The Supplier accepts no liability whatsoever for any failures in the Hosted Services whether due to third party provides or the Supplier or the Customer.

4. **CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- 4.1.1 ensure that the terms of the Order and any information it provides in the Business Requirements Specification are complete and accurate;
- 4.1.2 co-operate with the Supplier in all matters relating to the Services and in any matter reasonably required by the Supplier in order to provide the Hosted Services, including provision of information and data, making available suitably qualified employees and contractors of the Customer;
- 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 4.1.6 comply with all Applicable Laws, including health and safety laws;
- 4.1.7 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- 4.2.2 the Supplier shall not be liable for any costs or Losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or Losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Customer shall pay the Price in accordance with the Order.
- 5.2 The Hosting Fee shall be due in respect of the twelve month period following the Acceptance Date ("**Hosting Period**") and thereafter at the start of each new Contract Year until the termination of this agreement. The Hosting Fee shall be payable within thirty Business Days after the Acceptance Date and thereafter shall be payable annually within thirty Business Days after each new Contract Year.
- 5.3 The Supplier shall invoice the Customer for the Price. The Customer shall make payment of each such invoice within thirty Business Days of receipt of the invoice.
- 5.4 The Supplier reserves the right to increase the Hosting Fee on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.5 In the event that this agreement is terminated in any Contract Year, whether at the end of the Contract Year or during the Contract Year the full Hosting Fee shall be payable and the Customer shall not be entitled to any rebate.
- 5.6 The Price is net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).
- 5.7 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 17;
 - 5.7.1 the Supplier shall be entitled to withdraw the Hosted Service and prevent access to it by the Customer; and
 - 5.7.2 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer a non-exclusive, worldwide, non-transferable and sub-licensable right to use the Services for the purpose of any activity in the course of its business for so long as the Contract subsists (the “**Licensed Purposes**”).
- 6.3 The Licence is exercisable by and through the Licenced Users subject to the following conditions:
- 6.3.1 the Licence may be extended to contractors employed by the Customer for any of the Licensed Purposes;
 - 6.3.2 the Customer must not sub-license, rent, lend, assign or transfer in any other way the Licence to any person other than a Licenced User without the prior written consent of the Supplier; and
 - 6.3.3 the Customer must not give access to the Services through any network of computers to users who are not Licenced Users.
- 6.4 The Customer shall be able to use the Documentation during the term of the Contract.
- 6.5 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.6 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. DATA PROTECTION

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 7.4 Either party may, at any time on not less than 30 days’ notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1 The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The Customer is responsible for making its own arrangements for insurance.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.3.1 death or personal injury caused by negligence;
 - 8.3.2 fraud or fraudulent misrepresentation; and
 - 8.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.4 Subject to clause 8.3 the Supplier's total liability to the Customer shall not exceed the Price in the relevant Contract Year.
- 8.5 The Supplier has given commitments as to compliance of the Services with relevant Business Requirements Specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.
- 9.2 The Customer shall not be entitled to any rebate of the Hosting Fee if termination is effected part way through a Contract Year.
- 9.3 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:
- 9.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty Business Days of that party being notified in writing to do so;
 - 9.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 9.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - 9.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 9.4.2 there is a change of control of the Customer.
- 9.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2.2 to clause 9.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 10. **CONSEQUENCES OF TERMINATION**
- 10.1 On termination of the Contract:
 - 10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 10.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination of the Contract shall not affect 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.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. **GENERAL**

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

11.2.1 The Supplier 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.

11.2.2 The Customer shall not 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.

11.3 **Confidentiality.**

11.3.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.

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

11.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

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

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 **Entire agreement.**

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

11.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 11.7 shall not affect the validity and enforceability of the rest of the Contract.
- 11.8 **Notices.**
- 11.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in.
- 11.8.2 Any notice or communication shall be deemed to have been received:
- 11.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 11.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 11.8.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.8.3 This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**
- 11.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.