

General Terms and Conditions

1. Parties

- 1.1. *Deepfinity LTD*, a limited company incorporated in England and Wales (registration number 10341207) having its registered office at Bush House Entrepreneurship Institute, 30 Aldwych, London, WC2B 4BG (the “**Company**”); and
- 1.2. A company entering a service level agreement with Deepfinity LTD, incorporated in England and Wales (the “**Customer**”).

BACKGROUND:

The Company will supply, host and manage a web and mobile based parcel management service known as Parcel Tracker™ for the Customer.

The Customer has appointed the Company to provide the Services (as defined herein) and the Schedules including related professional services under the terms and conditions of this Agreement.

Reference to the “Schedule” throughout the agreement is with reference to the Clauses in the Service Level Agreement signed by the customer.

2. Term

- 2.1. This Agreement will come into force on the Effective Date and will continue in force for the Minimum Term (as highlighted in Schedule 1) and indefinitely thereafter, unless terminated in accordance with Clause 14 or otherwise specified in the Service Level Agreement.

3. The Platform

- 3.1. The Company will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account on or before the Effective Date.
- 3.2. Subject to the terms of this Agreement, the limitations set out in **Clause 3.3** and the prohibitions set out in **Clause 3.4**, the Company hereby grants to the Customer a non-exclusive, non-transferable and revocable license to use the Platform for the Permitted Purpose via any standard web browser during the Term.
- 3.3. The license granted by the Company to the Customer under Clause 3.2 is subject to the following conditions and limitations.
 - 3.3.1. The Platform may only be used by the employees, residents and approved contractors of the Customer and:
 - Where the Customer is a company, the Customer's officers;
 - Where the Customer is a partnership, the Customer's partners; and
 - Where the Customer is a limited liability partnership, the Customer's members;

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3.3.2. The Customer is fully responsible and liable for all acts and/or omissions of the parties listed in 3.3.1 and the Customer hereby agrees to fully indemnify the Company against all losses incurred by the Company arising under this clause 3.3.

3.4. Except to the extent mandated by applicable law or expressly permitted in this Agreement, the licence granted by the Company to the Customer under this Clause 3 is subject to the following prohibitions:

3.4.1. The Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform without the prior written permission of the Company;

The Customer must not frame or otherwise re-publish or re-distribute the Platform; The Customer must not sell, supply, modify, translate, amend, incorporate, merge, or otherwise alter the Platform;

The Customer must not remove, alter, or destroy from the Platform provided by the Company to the Customer any logo, copyright or proprietary notices, legends, symbols, labels, watermarks, signatures or any other like marks affixed to or embedded in the Platform;

3.4.2. The Customer must not attempt or allow anyone under its control to decompile, reverse engineer or otherwise disassemble any part of the Platform;

The Customer must not create any derivative works of any part of the Platform provided by the Company; and

The Customer must not alter or adapt or edit the Platform save as expressly permitted in writing by the Company.

3.4.3. For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term

3.4.4. All Intellectual Property Rights in the Platform (now and in the future) shall, as between the parties, be the sole and exclusive property of the Company.

4. Support Services and Upgrades

4.1. During the Term the Company will use its reasonable efforts to provide the Support Services to the Customer, and may apply Upgrades to the Platform.

4.2. Unless otherwise set out in Schedule 3 (Fees) Upgrades will be provided by the Company for free.

5. Customisations

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- 5.1. Company and the Customer may agree that the Company will customise the Platform in accordance with a specification using the Change control procedure set out in Clause 8
- 5.2. The Company shall review each request for Customisation before commencing work to decide at its discretion:
 - 5.2.1. If the customisation project will be equally relevant to all other clients of the Company. If this is the case, The Company would undertake the project free of charge
 - 5.2.2. If the customisation project be specific only to the needs or modus operandi of the Customer, the Company reserves the right to refuse the customisation.
 - 5.2.3. From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Platform under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 3.
 - 5.2.4. The Customer acknowledges that the Company may make any Customisation available to its other Customers following the making available of that Customisation to the Customer
- 5.3. The Customer will provide the Company with:
 - 5.3.1. Such access to the Customer's computer systems and such other co-operation, documents and information as is required by the Company (acting reasonably) to enable the performance by the Company of its obligations under this Clause 5;

6. Customer Materials and Responsibilities

- 6.1. The Customer grants to the Company during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under this Agreement, and exercising its rights under this Agreement.
- 6.2. Subject to Clause 6.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
- 6.3. The Customer warrants and represents to the Company that the Customer Materials (**clause**), and their use by the Company in accordance with the terms of this Agreement, will not:
 - 6.3.1. Breach any laws, statutes, regulations or legally-binding codes;
 - 6.3.2. Infringe any person's Intellectual Property Rights or other legal rights
 - 6.3.3. Give rise to any cause of action against the Company; or
 - 6.3.4. Breach the Confidentiality Agreement
- 6.4. The Company Agrees that all data and information will be stored according to industry standard and contemporary regulations.

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6.5. Customer agrees to provide true, accurate, current and complete information.

7. Fees

7.1. The Company will issue invoices to the Customer for the Fees in accordance with Schedule 3

7.2. The Customer will pay the Fees to the Company within 30 days of the date of issue of an invoice.

7.3. The Company may upon written notice suspend access to the Platform and the provision of the Services if any undisputed amounts due to be paid by the Customer to the Company under this Agreement is overdue by more than 10 days.

8. Change control

8.1. The provisions of this Clause 8 apply to all major Changes requested by a party.

8.2. Either party may request a Change at any time.

8.3. When requesting a Change, the requesting party will notify the other party and provide a CCN. The CCN will set out (as a minimum):

8.3.1. Details of the impact on the Services;

8.3.2. Details of any additional resources expected to be required as a result of the Change; and

8.3.3. Details of any variation to the Fees consequent upon the Change.

8.4. The other party will consider any proposed Change within 10 working days.

8.5. Either party may:

8.5.1. Accept or reject a CCN issued by the other party;

8.5.2. Request further information concerning any aspect of a CCN issued by the other party; and/or;

8.5.3. Request amendments to a CCN issued by the other party.

8.6. If the Company rejects the CCN it shall have the final decision on not implementing the CCN

8.7. Following agreement of a CCN, each party will confirm its agreement to the CCN by sending a confirmation email to the other party.

8.8. Until a CCN recording a proposed Change has been signed or agreed in writing by each party, the proposed Change will not take effect.

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9. Warranties

9.1. The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under this Agreement and that the Company will comply with all its obligations under this Agreement.

9.2. The Company warrants to the Customer:

9.2.1. That it has the legal right and authority to enter into and perform its obligations under this Agreement and will perform its obligations under this Agreement with reasonable care and skill;

9.2.2. That the Platform will operate without Defects

9.2.3. That the Platform will be hosted in accordance with the requirements set out in Schedule 1.

9.2.4. The Platform (excluding for the avoidance of doubt the Customer Materials) will not:

9.2.4.1. Breach any applicable laws, statutes, regulations or legally-binding codes;

9.2.4.2. Infringe any person's Intellectual Property Rights or other legal rights in each case under the jurisdiction and any applicable law in England and Wales and under English law

9.3. The Customer acknowledges that: Complex software is never wholly free from defects, errors and bugs, and the Company gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs; The warranties offered by the Company are subject to the Customer complying with its obligations under this Agreement;

9.3.1. The Company does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible in Schedule 1;

9.3.2. The Company will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Company does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person

10. Indemnities

10.1. The Customer will indemnify and will keep indemnified the Company against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Company and arising as a result of any breach by the Customer of Clause 3.3, clause 3.4 and clause 6.3 ("Customer Indemnity Event").

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10.2. The Company will:

10.2.1. Upon becoming aware of an actual or potential Customer Indemnity Event, promptly notify the Customer;

10.2.2. Provide to the Customer all reasonable assistance in relation to the Customer Indemnity Event

10.2.3. Allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and

10.2.4. Not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.

10.3. The Company will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) directly suffered or incurred by the Customer and arising as a result of any direct breach by the Company of Clause 9.2.4.2 ("**Company Indemnity Event**").

10.3.1. Upon becoming aware of an actual or potential Company Indemnity Event, promptly notify the Company;

10.3.2. Provide to the Company all reasonable assistance in relation to the Company Indemnity Event;

10.3.3. Allow the Company the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Company Indemnity Event; and

10.3.4. Not admit liability in connection with the Company Indemnity Event or settle the Company Indemnity Event without the prior written consent of the Company

11. Limitations and exclusions of liability

11.1. Save for a breach of clause 3.4 neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

11.2. The Company will not be liable for the loss of any parcels, packages or any other mail logged with its platform.

11.3. Neither party will be liable for any loss of business, contracts, commercial opportunities, goodwill or reputation.

11.4. The Company will not be liable in respect of any loss or corruption of any data, database or software. The Company will however on a regular basis (Monthly or before major database operations) backup the data on the system.

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11.5. Neither party will be liable for any losses arising out of a Force Majeure Event

11.6. Neither party's liability in relation to any event or series of related events, or aggregate liability under the Agreement and any collateral contracts will exceed the lesser of:

11.6.1. £5,000, and

11.6.2. The total amount paid by the Customer to the Company under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim

12. Data protection & Privacy Policy

12.1. The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under or in connection with this Agreement and further the Customer shall fully comply with the Data Protection Act 1998 and GDPR 2018.

12.2. The Company warrants that:

12.2.1. It will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and

12.2.2. It has in place reasonably appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data

12.3. The Company warrants that it has in place reasonably appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data

13. Confidentiality

13.1. The Company will:

13.1.1. Keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 15;

13.1.2. Protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and

13.1.3. Without prejudice to the generality of Clause **12.**, deploy and maintain the security systems and technologies in relation to the Customer Confidential Information held on the Platform.

13.2. The Customer will:

13.2.1. Keep confidential and not disclose the Company Confidential Information to any person save as expressly permitted by this Clause 15;

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13.2.2. Protect the Company Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

13.2.3. Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

13.2.4. The obligations set out in this Clause 13 shall not apply to:

13.2.4.1. Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

13.2.4.2. Customer Confidential Information that is in the possession of the Company prior to disclosure by the Customer, and Company Confidential Information that is in the possession of the Customer prior to disclosure by the Company;

13.2.4.3. Customer Confidential Information that is received by the Company, and Company Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or

13.2.4.4. Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement

13.2.4.5. The Customer acknowledges and agrees that the Company shall retain rights to use in its ordinary course of business any know-how developed during the Term of the Agreement provided that such know-how does not include any confidential information of the Customer.

14. Termination

14.1. Either party may terminate this Agreement immediately by giving written notice to the other party if the other party commits any material breach of any term of this Agreement, and:

14.1.1. The breach is not remediable; or

14.1.2. The breach is remediable, but the other party fails to commence any remedial action within 30 Business Days of receipt of a written notice requiring it to do so;

14.2. Either party may terminate this Agreement immediately by giving written notice to the other party if:

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14.2.1. The other party:

- 14.2.1.1. Is dissolved;
- 14.2.1.2. Ceases to conduct all (or substantially all) of its business;
- 14.2.1.3. Is or becomes unable to pay its debts as they fall due;
- 14.2.1.4. Is or becomes insolvent or is declared insolvent; or
- 14.2.1.5. Convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

14.3. Either party may terminate this Agreement by giving at least 30 days' written notice of termination to the other party, expiring at any time after the end of the Minimum Term.

14.4. If the Company stops or makes a good faith decision to stop operating the Platform generally, then the Company may terminate this Agreement by giving at least 90 days' written notice of termination to the Customer. The Company shall make the following provisions if it stops operating the Platform:

14.4.1. An alternative license basis under which the Customer can run a copy of the Platform on their own facilities and solely for the same purpose. The Company will provide a perpetual license at no additional cost. The Company will charge reasonable costs to install and test the installation at the Customer's designated facility;

14.4.2. A data extract from the system of all Customer data in a re-usable format such as, XML, Comma Separated Values (CSV), or Excel format, and all documents and attachments. The format will be agreed with the customer and the data delivered on suitable storage media, and;

14.5. The Company may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Company any amount due to be paid under the Agreement within 10 days of the due date.

15. Effects of termination

15.1. Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 3, 7, 10, 9, 12.1 to 12.2, 13, 15 and 17.

15.2. Termination of this Agreement will not affect either party's accrued liabilities or rights as at the date of termination.

15.3. For terminations before the Minimum Term by the Customer, the Customer is liable to pay the full amount remaining to be paid under the Minimum Term. If the entire amount has been paid

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upfront for the Minimum Term, then the Company is not liable to refund the Customer. The Company will be liable to refund the remaining amount of the Minimum Term if;

15.3.1. The Platform has system critical defects/bugs that make the software unusable, and

15.3.2. The Customer has given notice of such bugs and they have not been fixed by the Company within a 30-days of the notice

16. Force Majeure Event

16.1. Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

17. General

17.1. No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach

17.2. If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

17.3. Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

17.4. This Agreement may not be varied except in accordance with Clause 10 or by a written document signed by or on behalf of each of the parties.

17.5. Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under this Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement

17.6. This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement is not subject to the consent of any third party.

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17.7. This Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

The parties have indicated by signing the Service level agreement that they agree to the general terms and conditions highlighted by this document.