



## SERVICE TERMS AND CONDITIONS

### DEFINITIONS

In these Terms, the following definitions are applicable:

**Customer:** the authorised person, employee, firm or any other entity which contracts with the Supplier for the purchase of Goods.

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

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.5 and 8.6

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to use of personal data (including, without limitation, the privacy of electronic communications).

**Effective Date:** the date the Customer enters into this Agreement.

**Force Majeure Event:** has the meaning set out in clause 15.

**Initial Subscription Term:** the initial term of this agreement

**Intellectual Property:** means copyright, rights in inventions, patents, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, domain names, rights to use and protect the confidentiality of, confidential

information (including know-how), and all other intellectual property rights, and all similar rights and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing.

**Normal Business Hours:** 8:00am to 6:00pm local UK time, each Business Day.

**Renewal Period:** the period described in clause 10.1

**Services:** the subscription services provided by the Supplier to the Customer under this agreement and these Terms via [www.orcommconnect.co.uk](http://www.orcommconnect.co.uk) or any other website notified to the Customer by the Supplier from time to time

**Software:** the online software applications provided by the Supplier as part of the Services

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the use of the Services

**Subscription Term:** has the meaning given in clause 10.1 (being the Initial Subscription Term together with any subsequent Renewal Periods)

**Supplier:** Orlight Limited (England & Wales company number 03331729) of Unit 3, Victor Way, Radlett Road, Colney Street, St Albans, AL2 2FL.

**Terms:** these terms and conditions as amended from time to time.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy & Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

### 1. SERVICES

- 1.1. The Supplier shall, during the Subscription Term, provide the Services on and subject to these Terms
- 1.2. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) Planned maintenance carried out during the maintenance window of [     ] to [     ]

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(b) Unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least [ ] Normal Business Hours' notice in advance.

1.3. The Supplier will, as part of the Services and in consideration of the support fees set out in the Customer Support Agreement, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in effect at the time that the Services are provided.

1.4. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

1.5. The Supplier may amend the Customer Support Agreement in its sole and absolute discretion from time to time.

1.6. Subject to termination or expiry of the Services in accordance

## 2. CUSTOMER DATA

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

2.2. In performing the services, the Supplier will comply with the ORCOMM Connect Privacy Policy relating to the privacy and security of the Customer Data available at [www.orcommconnect.co.uk](http://www.orcommconnect.co.uk) and incorporated herein by reference. The ORCOMM Connect Privacy Policy is subject to change at the Supplier's sole discretion

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

2.4. The parties acknowledge that:

(a) If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation

(b) [Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject]

(c) The personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement

2.5. Without prejudice to the generality of clause 2.3, 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 this agreement so the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

2.6. Without prejudice to the generality of clause 2.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) Process personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of Domestic UK Law. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless they prohibit the Supplier from doing so.

(b) Not transfer any personal data outside of the EEA and the UK unless the following is completed:

- (i) the Customer or Supplier has provided the appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

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- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators
- (d) notify the Customer without undue delay on becoming aware of a personal data breach
- (e) at written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the personal data; and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 2 and immediately inform the Customer if an instruction infringes the Data Protection Legislation

### 3. THIRD PARTY PROVIDERS

- 3.1. The Customer acknowledges that the Services may enable it or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third party websites and services and that it does so solely at its own risk.
- 3.2. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party service or website, or any transactions completed and any contract entered into by the Customer, with any such third party.
- 3.3. Any contract entered into and any transaction completed via any third-party website or service is between the Customer and that relevant third party, not the Supplier.
- 3.4. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse nor approve any third-party website or service nor its content.

### 4. SUPPLIER'S OBLIGATIONS

- 4.1. The Supplier undertakes that the Services will be performed substantially in accordance with the documentation and with reasonable skill and care
- 4.2. The undertaking at clause 4.1 shall not apply to the extent of any non-conformance caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents
- 4.3. The Supplier does not warrant that:
  - (a) The Customer's use of the Services will be uninterrupted or error-free
  - (b) The software or Services will be free from vulnerabilities
- 4.4. The Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from transfer of data over communications networks and facilities including the internet. The Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities
- 4.5. These terms do not prevent the Supplier entering into similar agreements with other third parties or independently developing, using, selling or licensing documentation, products or services similar to those provided under these terms.
- 4.6. The Supplier warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the terms.

### 5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall provide the Supplier with:
  - (a) All necessary cooperation in relation to provision of the Services
  - (b) All necessary access to such information as may be required by the Supplier;
- 5.2. Without affecting its other obligations under the terms, the Customer will comply with all applicable laws and regulations with respect to its activities under these terms

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- 5.3. Carry out all other customer-related responsibilities in a timely and efficient manner
- 5.4. The Customer shall obtain and maintain all necessary licences, consents and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation, the Services
- 5.5. The Customer shall ensure its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 5.6. The Customer shall be solely responsible for procuring, maintaining and securing its network connections and telecommunications links and all problems, conditions, delays, delivery failures and all other loss or damage arising from it

## 6. CHARGES & PAYMENT

- 6.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscription in accordance with this clause 6 and Schedule I
- 6.2. The Customer shall, on the Effective Date, provide the Supplier with valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier as well as, any other relevant contact and billing details.
- 6.3. The Customer hereby authorises the Supplier to bill such credit card:
- (a) On the Effective Date for the Subscription Fees payable in respect of the Subscription Term; and
- (b) Subject to clause [ ], on each anniversary of the Effective Date

## 7. PROPRIETARY RIGHTS

- 7.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these terms do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation

- 7.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these terms

## 8. CONFIDENTIALITY

- 8.1. The Supplier may be given access to Confidential Information from the other party to perform its obligations under these terms. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party proven by way of written evidence.
- 8.2. Subject to clause 8.4, the Supplier shall hold the other's Confidential Information in confidence and not make the other's available to any third party, or use it for any purpose other than the implementation of the Services and in accordance with these terms
- 8.3. The Supplier shall take reasonable steps to ensure the Customer's confidential information is not disclosed or distributed by its employees or agents in contravention of these terms
- 8.4. The Supplier may disclose Confidential Information to the extent that it is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction and will give as much notice of disclosure as possible to the Customer
- 8.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information
- 8.6. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer
- 8.7. These provisions of this clause 8 shall survive termination of the Services, however arising.

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**9. LIMITATION OF LIABILITY**

- 9.1. The Customer assumes sole responsibility for results obtained from use of the Services. The Supplier shall have no liability for any damage caused by any acts, omissions or delays of the Customer, or the Customer's breach or negligent performance of the Contract, or any actions taken by the Supplier at the Customer's direction
- 9.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract
- 9.3. The Services are provided to the Customer on an "as is" basis.
- 9.4. Nothing in these terms excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence; fraud or fraudulent misrepresentation; or any other liability which cannot lawfully be excluded or limited.
- 9.5. The Service Agreement states the Customer's full and exclusive right and remedy. The Supplier's only obligation and liability in respect of, the performance and/or availability of the Managed Service, or its non-performance and non-availability.
- 9.6. Subject to clause 9.4 and 9.5, the Supplier shall not be liable for any loss to profits, loss of business, loss of data, depletion of goodwill or similar losses, whether direct or indirect, or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 9.7. The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall, in respect of damage to tangible property be limited to the sum of [£ ] and in all other respects, be limited to the price paid for the Services during the 3 months preceding the date on which the claim arose.

**10. TERM & TERMINATION**

- 10.1. This Service Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this

Agreement shall be automatically renewed for successive period of 12 months (each a Renewal Period), unless:

- (a) Either party notifies the other party of termination, in writing, at least [60 days] before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) Otherwise terminated in accordance with the provisions of this agreement
- 10.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) The other party fails to pay any amount due under this agreement on the due date for payment and remains in default for no less than [ ] days after being notified in writing to make such payment;
- (b) The other party commits a material breach of any other term of this agreement which is irremediable or is not remedied within 30 days of being notified in writing to do so;
- (c) the other party ceases or threatens to cease its business, or becomes insolvent, or if an individual become bankrupt, or has a liquidator, receiver, administrator, trustee or similar officer appointed over its assets, or threatens to suspend payment of its debts, or is unable to pay its debts as and when they fall due, or any other analogous event.
- 10.3. Where the Contract is terminated, the Customer shall pay the Supplier all sums outstanding, including any unpaid invoices and payments of interest. The Supplier retains a right to claim damages in respect of any breach of contract which existed at the date of termination in addition to the payment of all sums outstanding.
- 10.4. Upon termination, the Supplier shall be under no further obligation to provide any further Services to the Customer. The Supplier shall also:
- (a) Immediately cease provision of the Managed Service
- (b) Destroy or otherwise dispose of any of the Customer Data in its possession unless the

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Supplier receives, no later than 10 days after termination or expiry of the Contract, a written request for delivery of the most recent backup of Customer Data to the Customer. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data

- 10.5. The accrued rights of the parties at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 11. FORCE MAJEURE

- 11.1. The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control

## 12. CONFLICT

- 12.1. If there is an inconsistency between any of the provisions in the main body of this agreement and the Associate Documents, the provisions in this agreement shall prevail

## 13. VARIATION

- 13.1. No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives)

## 14. WAIVER

- 14.1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 15. SEVERANCE

- 15.1. Where a provision is found to be unlawful, unenforceable or invalid, the parties shall negotiate in good faith to amend such a provision to ensure it

can be amended or construed as legal, enforceable and/or valid

- 15.2. If a provision may be modified to make it legal, enforceable or valid, the parties agree that it shall be deemed modified to the minimum extent necessary. Where this is not possible, it shall be deemed deleted from the Terms

## 16. THIRD PARTY RIGHTS

- 16.1. A person who is not a party to the Contract shall not have any rights to enforce its Terms. The Contracts (Right of Third Parties) Act 1999 is expressly not intended to apply

## 17. IP RIGHTS & CONFIDENTIALITY

- 17.1. The Customer agrees and acknowledges that all Intellectual Property relating to the Services shall remain the exclusive property of the Supplier. This Intellectual Property shall not be used, distributed, disclosed or licenced by the Customer without permission of the Supplier
- 17.2. The Customer acknowledges that where they have access to confidential information in addition to Intellectual Property rights, they must not disclose any such confidential information without prior permission of the Supplier.

## 18. NOTICES

- 18.1. Any notice required by these terms must be in writing and effected by way of personal delivery, registered mail postage, email or fax. If effected by post, it is deemed to be received 72 hours after date of postage. Other means of notification are deemed to have been received on the day of sending.

## 19. GOVERNING LAW & JURISDICTION

- 19.1. These Terms shall be construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales in respect of both contractual and non-contractual matters.

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