

## 1 Background

- 1.1 These are the conditions referred to in the Sales Order (as defined below) which you are submitting or have submitted to Cybertill Limited whose registered office is at Suite 12, Stanley Grange, Home Farm Court, Knowsley, Merseyside, L34 4AR company registration number 4007218 (referred to in these conditions as “we” or where appropriate “our” or “us”).
- 1.2 No contract will subsist between you and us until we have communicated our acceptance of your order to you (“the Acceptance”).
- 1.3 We have developed electronic point of sale (EPoS) software (“the Software”) which enables you to access your core database of products, purchases, sales and prices and other data (“Your Data”) remotely. Functions include a stock control tool, the ability to manage your purchase and sales order processing, a customer relationship management system as well as an e-commerce tool. For a full description of the many features of our Software please check our website.
- 1.4 We may also provide services (the “Services”) Including the creation of a web site for you (your “Cybertill Web Site”) which we will host for you as well as general support services, Internet access and the supply of an Asynchronous Digital Subscriber Line (“ADSL”).
- 1.5 The Software Includes a content management tool which enables you to modify and update your Cybertill Web Site whenever you want.
- 1.6 You have agreed to licence the Software and purchase those Services set out in the Sales Order in respect of the number of licences also set out in the Sales Order or notified to us from time to time

## 2 Definitions and Interpretation

- 2.1 In this Agreement the following words and expressions will have the following meanings:

“Additional Products” means any additional products or services made available by Cybertill, including products provided by Cybertill affiliates or third parties.

“Agreement” means these conditions and the Sales Order Including all specification plans, drawings and other documents referred to in this Agreement or attached hereto which may be or are agreed by the parties to form part of this Agreement. In the event of any inconsistency or conflict between the terms of the Agreement and the terms of any Sales Order or Statement of Work, the terms of the Sales Order or Statement of Work shall control.

“Authorised User” means anyone permitted by you to use the Hosting Service under this Agreement or can be reasonably assumed by Cybertill to have such permission.

“Back End” means the network connection between the Customer’s premises and the Site.

“Business Day” means a day (excluding Saturdays and Sundays) on which banks generally are open for the transaction of normal banking business.

“Confidential Information” means all information, data, drawings, specifications, documentation, contracts, design material, software, listings, source or object code relating to the Discloser’s know-how, its business clients and suppliers, prices, services, the Software, your Cybertill Web Site, contracts (Including this Agreement), your Cybertill Web Site design architecture and content (Including any technical specifications therefor), the Software support documentation procedures and Your Data

“Cybertill System Statement of Functionality” means the document which can be found <https://cybertill.com/system->

“Data Protection Legislation” means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

“Equipment” means equipment (Including any software) placed on the Site which is owned by the Host and/or Cybertill or for which the Host and/or Cybertill is responsible.

“ServiceDesk” means the ServiceDesk facility provided by Cybertill to handle enquiries and administration for the Hosting Service.

“Hosting Software” means any software provided by the Host and/or us to enable the Customer to access or use the Hosting Service.

“Out of Office Hours” means the time outside of ServiceDesk Hours.

“ServiceDesk Hours” means 08:00 am to 18.00 pm Monday to Saturday, or as stated in your Sales Order Bundle

"Subscriber" means the party as set forth on the Service Order and may also be referred to as "You" or "Your."

"Subscription Term" means the period during which Subscriber has agreed to subscribe to a Service.

“Supplemental Terms” means any separate or supplemental terms and conditions applicable to an Additional Product, including terms governing data processing and privacy.

“Month” means a calendar month beginning on its first day.

“UK Saas Inflation Index” means the annual percentage change in the average cost of Software-as-a-Service (SaaS) products and subscriptions purchased in the United Kingdom, as reported in the SaaS Inflation Index published by Vertice (or any direct successor thereto).

“Sales Order” means any order, form or forms signed by you and submitted from time to time by you to us

“Site” means the Internet Data Centre (IDC) from which the Hosting Service is provided.

“UK Data Protection Legislation” means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

- 2.2 reference to a statute or statutory instrument or any of its provisions is to be construed as a reference to that statute or statutory instrument or such provision as from time to time amended or re-enacted;
- 2.3 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 2.4 “Includes” and “Including” shall mean Including without limitation;
- 2.5 the Sales Order forms part of the operative provisions of this Agreement; and
- 2.6 the headings in this Agreement are for information only and shall be ignored in construing it.

**3 Our Obligations**

Subject to receiving a Sales Order in respect of the particular Service, we agree to:

- 3.1 licence the Software to you
- 3.2 create your Cybertill Web Site for you;
- 3.3 host your Cybertill Web Site or another web site stipulated by you;
- 3.4 support the Software;
- 3.5 provide internet access;
- 3.6 provide a standard dial in service ("The Dial In Service"); and/or
- 3.7 provide ADSL in accordance with the terms set out below

**4 Your Obligations**

You agree:

- 4.1 to use the Services and the Software in accordance with these terms and any instructions issued by us from time to time;
- 4.2 to comply with data protection legislation and any other legislation applicable to the operation of a website in England and Wales;
- 4.3 to pay the licence fee and any Charges (as defined below) when due and in accordance with the Payment provisions set out below;
- 4.4 to give full and accurate details wherever possible when submitting your Sales Order or when supplying information reasonably requested by us from time to time, for the avoidance of doubt we shall not be responsible for any errors or omissions in such details or information provided by you or for any default on our part which arises directly or indirectly from such errors or omissions or your failure to provide such details and/ or information;
- 4.5 to grant us a non-exclusive, worldwide, irrevocable royalty free licence to use any information (Including trademarks) you provide to us or other users of our Services for the purposes of performing the Services;
- 4.6 to ensure that such information and any information you make available on your Cybertill Site shall be legal, decent, honest and truthful, shall not infringe any third party's rights, shall not contain any viruses or other malicious computer programming routine and shall not link to any other websites;
- 4.7 to ensure that the Software is not used to send messages, or to collect a list of subscribers, relating to, but not limited to: pornography, spam, unsolicited bulk email, gambling, illegal activities, warez, MP3 (or other music formats) or any other activity that may adversely affect our reputation;
- 4.8 to warrant that all the information so requested of and provided by you to us is correct and complete;
- 4.9 to keep secure any User ID, password and/or any other confidential information provided to you by us for the secure use of the Software or the Services; and

- 4.10 notify us of any unauthorised use of such User ID, password and /or any other confidential information or any other breach of security regarding the Software or the Services.

## **5 Software Licence**

- 5.1 We are authorised to license and support the Software
- 5.2 From the date of the Acceptance, we grant to you and you accept a revocable non-exclusive non-transferable licence to “Use” (as hereinafter defined) the Software for viewing and otherwise using the functions of the Software upon the terms and subject to the conditions contained in this Agreement
- 5.3 For the purposes of this Agreement “Use” shall mean and include:
- 5.3.1 accessing the Software via ADSL or via a business portal dial-in direct to our servers; and/or
- 5.3.2 viewing displays created by the Software on your hardware  
in respect of each concurrent user specified in your Sales Order or notified to us from time to time
- 5.4 You shall also be entitled to:
- 5.4.1 receive and utilise (but not copy) the instructional and / or operational manuals relating to the Software; and
- 5.4.2 receive information on upgraded versions of the Software
- 5.5 For the purposes of this Agreement upgraded versions of the Software shall mean enhancements improvements or modifications to the Software
- 5.6 It is envisaged that there will be no charge for such upgraded version.
- 5.7 You undertake:
- 5.7.1 not to copy the Software nor otherwise reproduce the same;
- 5.7.2 not to translate adapt vary modify the Software; and
- 5.7.3 not to disassemble decompile or reverse engineer the Software

## **6 Your Cybertill ECommerceSite**

- 6.1 We will set up your initial home page with our standard frames, menus, navigation tools software and functions depending on the option you have specified in your Sales Order.
- 6.2 Your Cybertill EcommerceSite will incorporate the software and other e-commerce software to enable you to sell goods or services on line with reference to Your Data.
- 6.3 You will need to provide Your Data, your company logo and any images or designs you wish to use (Including any material from an existing web site) in an acceptable electronic format.
- 6.4 You will be given an opportunity to comment on the draft design of your Cybertill ECommerceSite which we will email to you.
- 6.5 Once the draft design of your Cybertill EcommerceSite has been converted into hypertext mark-up language format, we will

email a link to you, so that you can view your Cybertill EcommerceSite.

- 6.6 You accept that, whilst we will endeavor to take into account your wishes and preferences in setting up your initial Cybertill Ecommerce Site, it is your responsibility to design, modify or update your Cybertill Ecommerce Site using the content management system provided with the Software.
- 6.7 If we at our sole discretion consider something which you have requested us to incorporate in your Cybertill EcommerceSite to be unreasonable too complicated or beyond the scope of this initial design we will:-
- 6.7.1 provide a web site to you which we consider suits your requirements as well as possible in view of the time and budget constraints;
- 6.7.2 discuss with you our charges or any additional terms should you instruct us to carry out further development; or
- 6.7.3 offer you guidance on how to complete the work yourself using the content management tools or commission someone else to do the work for you.
- 6.8 Once your initial Cybertill EcommerceSite is ready, we will transmit it to our host server.
- 6.9 You acknowledge that it is your responsibility to register, renew, protect or point your domain name(s).
- 6.10 Your initial Cybertill Ecommerce Site will include terms and conditions, a privacy policy disclaimer and a copyright notice (“the Web Terms”) which will reflect the law as at a date not more than 12 months prior to your Cybertill Ecommerce Site going live. We may from time to time recommend changes to the Web Terms but you are responsible for ensuring that they are kept up to date regardless of whether such recommendations are made or not.
- 6.11 You acknowledge that it is our Intellectual property that drives your e-commerce website and you therefore consent to the displaying of a banner linking to Cybertill at the foot of each website stating “Powered by Cybertill” for standard websites built on our CMS platform using our templates and “Bespoked by Cybertill” for websites using our CMS and designed by us.

## **7 The Hosting Service**

- 7.1 Cybertill is hosted (“the Hosting Service”) by a third party (“the Host”) with the reasonable skill and care of a competent telecommunications and Internet service provider.
- 7.2 You acknowledge that it is impractical to provide a fault free Hosting Service and that neither we nor the Host undertake to do so.
- 7.3 We may:
- 7.3.1 give you instructions which we believe are necessary for the reasons of health, safety or the quality of any telecommunications service provided by us to you or any other customer: or
- 7.3.2 temporarily suspend the Hosting Service because of an emergency or for operational maintenance or improvements. Service will be restored as soon as possible.
- 7.4 Before doing any of these things we will give you as much as notice as possible.
- 7.5 You are responsible for providing suitable computer hardware, software and telecommunications equipment and services accessory to access and use the Hosting Service.

- 7.6 Use Of The Hosting Service:
- 7.6.1 You are responsible for the acts and omissions of all Authorised Users in connection with the Hosting Service and is liable for any failure by any Authorised User to perform or observe the terms and conditions of this Agreement.
- 7.6.2 You must not attempt, at any time, to circumvent system security or access the source code or compiled code of the Hosting Software without our prior written consent.
- 7.6.3 The Hosting Service is provided solely for your own use, including use by Authorised Users, and you will not assign or resell or attempt to assign or resell the Hosting Service (or any part or facility of it) to any third party.
- 7.6.4 If you, or an Authorised User, with or without your knowledge or approval, use:
- 7.6.4.1 the Hosting Service in contravention of this Agreement; or
- 7.6.4.2 the server capacity or the Hosting Software made available to it in any way which, in our opinion, is, or is likely to be, detrimental to the provision of the Hosting Service to you or any other customer.
- we will notify you of such serious breach and provide you with 2 (two) hours from verbal notification to rectify the breach. If the breach is not rectified within 2 (two) hours then we may terminate the Hosting Service without further notice.
- 7.7 Service Level Guarantee:
- 7.7.1 We guarantee that the Host will provide the Hosting Service with a 99.8% availability in any one month, provided that-
- 7.7.1.1 if the Hosting Service is unavailable it must be reported by you and acknowledged by us.
- 7.7.1.2 the period of unavailability will commence from the moment we acknowledge your report or will be deemed to commence no later than 2 hours after being reported to us [during Service Desk Hours], provided always that where your report is made by email or fax transmission it is confirmed by an email "delivery receipt" or a fax transmission slip; and
- 7.7.1.3 following investigation and repair we will contact you to inform you that the Hosting Service can be accessed from the Internet, ADSL or the Dial In Service. This will be deemed to be the end of the period of unavailability unless you advise us that the Hosting Service remains unavailable.
- 7.7.2 Unavailability of the Hosting Service shall mean any problem proven to be on the Host's and/or our equipment or network that causes the Hosting Service to be inaccessible for a period of 4 hours or more.
- 7.7.3 We guarantee that the Host will ensure the availability of power to the server(s) will be maintained at 100% over a month. Unavailability of power shall mean any interruption that causes your equipment to fail owing to a loss of power for any period of time.
- 7.7.4 If we fail to meet the guarantee set out in Clauses 7.7.1, 7.7.2, and 7.7.3 above in any one month, subject to clause 2 of this Service Level Guarantee, your sole remedy will be to claim a refund of one month's hosting charges.
- 7.7.5 We will make a backup copy of the data each evening, which will be stored at a separate facility. Copies of the backup data will be provided to you and/or reinstated on the system within 14 days of a downtime event.
- 7.7.6 For the avoidance of doubt clause 7.7.4 shall not apply to or limit any claim by you for our failure to maintain, store and provide backup copies of the data in accordance with clause 7.7.5.

**7.8 Exclusions To The Service Level Guarantee:**

This Service Level Guarantee will not apply where the unavailability of the Hosting Service is due to:

- 7.8.1 a cause covered by clauses 4.6 to 4.10 and 9.12.2 to 9.12.7 of this Agreement;
- 7.8.2 a suspension of the Hosting Service in accordance with this Agreement;
- 7.8.3 any faults with or impact on the Hosting Service caused by any application or software installed by you;
- 7.8.4 a Maintenance Window;
- 7.8.5 faults or omissions of Internet service providers or other telecommunications service providers; or
- 7.8.6 us awaiting information from you or awaiting your confirmation that the Hosting Service has been restored;
- 7.8.7 disabling of either the SMTP Mail or SNMP traps by you or Authorised Users; or
- 7.8.8 any faults caused by your management of the Hosting Service.

**7.9 How to Make a Claim:**

- 7.9.1 You must make claims under the Service Level Guarantee in writing within 1 month of the end of the Month in respect of which the claim is being made, and sent either:

- 7.9.1.1 by post to: Cybertill, Suite 12, Stanley Grange, Ormskirk Road, Knowsley, Merseyside, L34 4AR

- 7.9.1.2 or by email to: [cybertillmanagers@cybertill.co.uk](mailto:cybertillmanagers@cybertill.co.uk)

- 7.9.2 You must notify us in writing of any dispute concerning any amount refunded, or not refunded (as the case may be), within 1 month of the date of our invoice.

**7.10 How We Will Pay the Refund:**

We reserve the right to verify claims for refunds in the support charge to ensure they are in accordance with the Service Level Guarantee. Once verified, claims will be paid to you by means of a reduction in your support charge on the next invoice.

**8 The Dial In Service (if part of your order)**

- 8.1 You acknowledge that:

- 8.1.1 We purchase the Dial In Service from Giacom Group ("Giacom") on the terms and conditions set out in the "Conditions for WLR" issued from time to time by Giacom ("the Giacom Terms"); and

- 8.1.2 you are fully aware of the Giacom Terms which can be accessed by visiting:

- [Terms and Conditions - Giacom](#)

- 8.2 You agree to perform and comply with all the provisions of the Conditions for Giacom WLR Service (other than provisions relating to charges payable to BT) in so far as they relate to you and are capable of being performed by you.

- 8.3 You agree to indemnify us against and from:
- 8.3.1 any breach, non-observance or non-performance by you of the provisions of the Conditions for Giacom WLR terms and conditions; and
  - 8.3.2 any act or omission of yours which involves us in any liability to Giacom under the Conditions for GiacomWLRService.

## **9 Support**

### Part A - Software

- 9.1 We will from time to time issue patches upgrades or enhancements to the Software.
- 9.2 Where possible we will notify you in advance if the upgraded version of the Software requires you to use higher specification equipment and/or software than the current version requires. However, you accept that you are solely responsible for ensuring that the specifications of your equipment and software are adequate to operate the Services and/or the Software.
- 9.3 We will release upgraded versions of the Software on Monday evenings after 8.00 pm and 10.00 pm or such other time as we will notify to you from time to time.
- 9.4 You may request assistance or report errors concerning the Software or the Services during ServiceDesk Hours by:
  - 9.4.1 sending a message to the ServiceDesk by email to [support@cybertill.co.uk](mailto:support@cybertill.co.uk);
  - 9.4.2 calling the ServiceDesk.
  - 9.4.3 Outside of ServiceDesk Hours the Cybertill Out of Office Hours procedure will be implemented.
- 9.5 We shall use reasonable endeavors to correct errors reported to us by you and may in our sole discretion correct errors by “patch” or by new version.

### Part B – Hosting

- 9.6 If you report a fault to us in relation to the Hosting Service, we will aim to correct the fault or procure that the Host will correct it within 6 hours from when the fault is reported to us.
- 9.7 If the fault is in relation to the Hosting Service and is found by the Host and/or us to be due to the Host and/or our Equipment, power or connection to the Internet or to the point of Back End connection, then all charges for investigation and repair will be waived otherwise you will be charged.
- 9.8 From time to time it will be necessary for the Host and/or us to schedule maintenance (Including but not limited to network maintenance, replacement of faulty components, or testing of the uninterruptible power supply) which may cause a disruption to the Hosting Service.

### Part C - General

- 9.9 In order to perform scheduled routine maintenance, software and hardware upgrades, etc, a monthly system downtime period of six hours (“Maintenance Window”) is reserved for each of the Host’s servers. This Maintenance Window is allocated by the Host with full consideration for the need to minimise any impact on the Hosting Service, and is typically from midnight Sunday

through to Monday morning. Where downtime during this period is expected to be less than 60 minutes, prior notification to the customer is not required. When it is reasonably practical to do so, the Host and/or we will schedule any service affecting maintenance activity to fall within a Maintenance Window, and further will endeavor to provide as much prior notice of any other maintenance affecting the Hosting Service as is reasonably practicable under the circumstance. You will be notified as to when the Maintenance Window will fall.

- 9.10 Emergency maintenance, updates, and other procedures will be scheduled by the Host and/or us on a case-by-case basis.
- 9.11 We shall charge for services requested by you which are not specifically covered by this Agreement
- 9.12 The following support is not included and shall be charged for:
  - 9.12.1 any support requested by you outside of ServiceDesk Hours except for support in relation to errors which prevent you from carrying out transactions;
  - 9.12.2 any support which is due to your incorrect use abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible;
  - 9.12.3 rectification of lost or corrupted data arising for any reason other than our own negligence;
  - 9.12.4 support rendered more difficult because of any changes alterations additions modifications or variations to the Software or operating environment;
  - 9.12.5 attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Software or caused by operator error or omission; and
  - 9.12.6 diagnosis and/or rectification of problems not associated with the Software.
  - 9.12.7 issues relating to data import and data that is not supplied in the specification as issued by us from time to time.

## **10 Additional Products**

- 10.1 Cybertill may make available certain additional products or services, including products provided by Cybertill affiliates or third parties ("Additional Products"). Additional Products may be enabled by default, including on a trial or evaluation basis, unless the You elect to opt out. Continued use of an Additional Product after notice of its applicable terms constitutes acceptance by You of those terms in respect of that Additional Product. For the avoidance of doubt, no fees will be charged for an Additional Product during any stated trial period unless the Subscriber has been given prior notice of the end of the trial and applicable charges.
- 10.2 Additional Products may be hosted on infrastructure that is separate from the Cybertill hosting environment and may be operated or supported by a Cybertill affiliate or third-party provider.
- 10.3 Additional Products may be subject to separate or supplemental terms and conditions, including terms governing data processing and privacy ("Supplemental Terms"). Details of, and any applicable Supplemental Terms will be made available to the You directly for acceptance.
- 10.4 Where an Additional Product processes Personal Data, Cybertill and/or its affiliate may act as a data processor in accordance with applicable data protection law and any applicable data processing addendum or Supplemental Terms.

10.5 Cybertill shall exercise reasonable care in the selection, evaluation, and ongoing oversight of any affiliate or third-party provider whose products or services are made available as Additional Products. However, except to the extent that any loss or damage is caused by Cybertill's failure to exercise such reasonable care, Cybertill is not responsible for the performance, availability, or functionality of any Additional Product. Any service levels, warranties, or commitments applicable to an Additional Product shall apply only as expressly set out in the applicable Supplemental Terms. For the avoidance of doubt, this clause does not limit Cybertill's liability under clause 20 (Data Protection) or for any loss or damage to You/Your use of the Software or Hosting Service caused directly by the introduction of an Additional Product.

10.6 For the avoidance of doubt, any Supplemental Terms applicable to an Additional Product apply solely in respect of that Additional Product and do not modify, vary, or supersede any rights or obligations of the parties under these Conditions in respect of the Software, the Hosting Service, or any other service provided by Cybertill under this Agreement.

## 11 Security

11.1 You are responsible for the security and proper use of all User ID's and passwords allocated by us and/ or the Host and all security checkwords which are used in connection with the Services (including changing such passwords and security checkwords on a regular basis), and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

11.2 You must inform us immediately if there is any reason for to believe that a User ID or password allocated by the Host and/or us, or a checkword, has or is likely to, become known to someone not authorised to use it or is being, or is likely to be, used in an unauthorised way

11.3 You must not change, or attempt to change, a User ID. If you forget, lose or wish to change a password or User ID allocated by the Host and/or us, you must contact us and satisfy such security checks as we may operate.

11.4 We reserve the right to suspend User ID and password access to the Services if at any time we has reason to believe that there is or is likely to be, a breach of security or misuse of the Services and we will notify you as soon as possible after we have done so.

11.5 We reserve the right (at our sole discretion, to require you to change any or all of the passwords allocated by us or the Host and used by you in connection with the Services.

11.6 You must, as soon as reasonably practicable, inform us of any changes to the information that you supplied when ordering the Services.

## 12 Charges

12.1 You agree to pay the licence fee and charges set out in the Sales Order together with any additional charges in respect of each additional Service or concurrent user ("the Charges"). All licence charges as set out in the Sales Order will commence from the 1<sup>st</sup> of the following month after the issue of URL and activation key.

12.2 If the Subscriber chooses to upgrade the Service Plan stated in the Sales Order or increase the number of licences during the Subscription Term, any incremental Subscription Charges associated with such upgrade will be charged in accordance with the remaining Subscription Term. In any subsequent Subscription Term, the Subscription Charges will reflect any such upgrades.

- 12.3 The Subscriber may not downgrade its Service Plan or reduce the number of licences during any Subscription Term. The Subscriber may only downgrade its Service Plan or reduce the number of licences for a subsequent Subscription Term at the end of the then-current Subscription Term by providing Cybertill with thirty (30) days prior written notice indicating which instances will be affected and the details of the downgrade requested. In the event of a downgrade, the Subscriber must demote any downgraded licences prior to the beginning of the subsequent Subscription Term. Downgrading the Service Plan may generate additional costs (e.g., ServiceDesk charges) and cause loss of content, features, or capacity of the Service as available to Subscriber under an Account, and Cybertill is not responsible for such loss. If a new Sales Order is not signed by the Subscriber before the end of the then-current Subscription Term, the Services will renew as defined in Section 22.1.
- 12.4 We reserve the right on giving you 30 (thirty) day's notice to adjust the Charges in line with the Saas Inflation Index.
- 12.5 Charges payable in respect of the development of your Cybertill Ecommerce Site may be varied if your requirements change during development, if the development takes longer than expected to complete (through no fault of our own), or if we at our sole discretion consider something which you have requested us to incorporate in your Cybertill Ecommerce Site to be unreasonable, too complicated or beyond the scope of the initial design.
- 12.6 Additional support or support requested by you outside of ServiceDesk Hours may be subject to a higher charge.
- 12.7 All Charges are exclusive of and net of any taxes duties or such other additional sums Including, but without prejudice to the foregoing generality, value added or purchase tax, excise tax, tax on sales, property or use, import or other duties whether levied in respect of this Agreement, the Software, its use or otherwise.

### **13 Terms of Payment**

- 13.1 Unless otherwise agreed in writing you will pay:
- 13.1.1 100% (one hundred per cent) of any Perpetual or Annual Software Charges on the date you place the Sales Order;
- 13.1.2 100% (one hundred per cent) of the Services & Hardware Charges within 10 days of the invoice date and delivery.
- 13.2 All regular monthly payments specified in the Sales Order (other than by virtue of a credit Agreement with a third party) payment shall be due and made by direct debit in advance on or around the 15th (fifteenth) business day of every calendar month.
- 13.3 If you do not return, or cancel your direct debit mandate and fail to rectify this within 7 days of us giving notice to do so we will
- 13.3.1 suspend the Services; and
- 13.3.2 be entitled to charge reasonable administration charges and interest at 2% above the base rate of Barclays Bank plc per annum accrued daily from the date of expiry of such notice until the direct debit mandate is reinstated or the Agreement is validly terminated

### **14 Warranty**

- 14.1 the Software when properly used will perform in accordance with the Cybertill System Statement of Functionality.
- 14.2 You acknowledge that software in general is not error-free and agree that the existence of such errors shall not constitute a breach of this Agreement.
- 14.3 In the event that you discover a material error which substantially affects your use of the same and you notify us of the error

within 90 days from the date you place the Sales Order (the “warranty period”) we shall at our sole option either refund the licence fee or use all reasonable endeavors to correct by patch or new release (at our option) that part of the Software which does not so comply PROVIDED THAT such non- compliance has not been caused by any modification variation or addition to the Software not performed by us or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible

14.4 To the extent permitted by the applicable law we disclaim all other warranties with respect to the Software and the Services either express or implied Including but not limited to any implied warranties of merchantability or fitness for any particular purpose

14.5 Although we do not warrant that the Software supplied hereunder shall be free from all known viruses or that the Web Site complies with all legislation we have used our commercially reasonable efforts to check for the most commonly known viruses and that the Web Site complies with all relevant statutes and regulations in force in England at that time and operates in accordance with best practice prior to making it available to you.

## **15 Our Liability**

15.1 We shall not be liable to you for any loss or damage whatsoever or howsoever caused or for consequential loss or damage arising directly or indirectly in connection with:

15.1.1 this Agreement;

15.1.2 the Software its use or support;

15.1.3 damage or corruption to other software or data;

15.1.4 the development of your Cybertill Web Site or the provision of the content management system its use application or support;  
or

15.1.5 otherwise except to the extent to which it is unlawful to exclude such liability under the applicable law or in respect of:

15.1.6 other equipment or property or for loss of profit, business revenue, goodwill or anticipated savings  
or as a result of:

15.1.7 any modification variation or addition to the Software not performed by us;

15.1.8 incorrect use abuse or corruption of the Software;

15.1.9 by use of the Software with other software or on equipment with which it is incompatible; or

15.1.10 any modification variation or addition to the Web Terms not supplied by us

15.1.11 failure of your telecommunications equipment, ADSL or the internet service provision.

## **16 Copyright Patents Trade Marks and Other Intellectual Property Rights**

16.1 You acknowledge that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Software or the development of your Cybertill Web Site shall be and remain the sole property of Cybertill Limited or such other party as may be identified in such software (the “Owner”). You shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership by us or the Owner thereof.

- 16.2 In the event that new inventions designs or processes evolve in performance of or as a result of this Agreement you acknowledges the same shall be the property of Cybertill Limited unless otherwise agreed in writing by us.
- 16.3 You shall indemnify us fully against all liabilities costs and expenses which we may incur as a result of work done in accordance with your instructions in development of your Cybertill Web Site or specifications involving infringement of any patent or other proprietary right (Including but not limited to framing or linking to third party web sites and/or third party proprietary material)
- 17 Our Indemnity**
- 17.1 We agree to indemnify and save harmless and defend at our own expense you from and against any and all claims of infringement of copyright, patents, trademarks, industrial designs or other intellectual property rights affecting the Software PROVIDED THAT
- 17.1.1 You shall not have done, permitted or suffered to be done anything which may have been or become an infringement of any rights in any copyright patent, trade mark or other rights as hereinbefore provided; and
- 17.1.2 you shall have exercised a reasonable standard of care in protecting the same failing which you shall indemnify us against all actions, proceedings, costs, claims and expenses incurred in respect thereof
- 17.2 You undertake that we shall be given prompt notice of any claim specified in clause 16.1 above that is made against you and we shall have the right to defend any such claims and make settlements thereof at our own discretion and you shall give such assistance as we may reasonably require to settle or oppose any such claims
- 17.3 In the event that any such infringement occurs or may occur we may at our sole option and expense:
- 17.3.1 procure for you the right to continue using the Software or infringing part thereof; or
- 17.3.2 modify or amend the Software or infringing part thereof so that the same becomes non-infringing;
- 17.3.3 replace the Software or infringing part thereof by other software of similar capability; or
- 17.3.4 repay to you the Charges relating to the whole or the infringing part of the Software
- 18 Your Indemnity**
- 18.1 You agree to indemnify and save harmless and defend at your own expense us from and against any and all claims of infringement of copyright, patents, trademarks, industrial designs or other intellectual property rights affecting your Cybertill Web Site and based upon your contribution to it.
- 18.2 We undertake that you shall be given notice of any claim specified in clause 18.1 above that is made against us and you shall have the rights to defend any such claims and make settlements thereof at your own discretion and we shall give such assistance as you may reasonably require and at your expense to settle or oppose any such claims
- 18.3 In the event that any such infringement occurs or may occur you may instruct us at your expense to:
- 18.3.1 procure for you the right to continue using the infringing material; or

18.3.2 modify or amend the infringing material so that the same becomes non-infringing; or

18.3.3 replace the infringing material with other material of similar capability

## **19 Confidential Information**

19.1 The following obligations shall apply to the party disclosing Confidential Information (“the Disclosing Party”) to any other party (“the Receiving Party”)

19.2 Subject to clause 19.3, the Receiving Party:

19.2.1 May not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement;

19.2.2 may not disclose any Confidential Information to any person except with the proper written consent of the Disclosing Party;  
and

19.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information

19.3 The obligations of confidence referred to in the provisions of this clause shall not apply to any Confidential Information that:

19.3.1 is in the possession of and is as the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;

19.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

19.3.3 is required to be disclosed by any applicable law or regulation; or

19.3.4 is received in good faith by the Receiving Party from a third party who on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to this Agreement in respect of it and who imposes no obligations of confidence upon the Receiving Party

19.4 Without prejudice to any other rights or remedies the Disclosing Party may have the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall without proof of special damage be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled

19.5 The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of this Agreement for whatever reason

## **20 Data Protection**

20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 20, Applicable Laws means (for so long as and to the extent that they apply to Cybertill) 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.

20.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Cybertill is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by Cybertill, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

20.3 Without prejudice to the generality of clause 20.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Cybertill for the duration and purposes of this agreement.

- 20.4 Without prejudice to the generality of clause 20.1, Cybertill shall, in relation to any Personal Data processed in connection with the performance by Cybertill of its obligations under this agreement:
- 20.4.1 process that Personal Data only on the written instructions of the Customer unless Cybertill is required by Applicable Laws to otherwise process that Personal Data. Where Cybertill is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Cybertill shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Cybertill from so notifying the Customer;
- 20.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 20.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 20.4.4 not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
- 20.4.4.1 the Customer or Cybertill has provided appropriate safeguards in relation to the transfer;
- 20.4.4.2 the data subject has enforceable rights and effective legal remedies;
- 20.4.4.3 Cybertill complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 20.4.4.4 Cybertill complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 20.4.5 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;
- 20.4.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 20.4.7 at the 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 (or to the extent that it is not reasonably technologically possible to do so (for example due to historical snap shot back-ups of servers on which the Personal Data is stored for 12 months)); and
- 20.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Customer or the Customer's designated auditor on at least 14 days' notice to do so. Cybertill shall contribute (to the extent reasonably necessary) to such audit at the Customers' cost which shall include a cost of £100 per hour spent contributing to such audit (to a maximum of £750 plus VAT per audit).
- 20.5 Those subcontractors approved as at the commencement of this Agreement are as set out in Schedule 1 to this Agreement ("Approved Processors"). The Customer consents to Cybertill appointing the Approved Processors as a third-party processors of Personal Data under this Agreement. Cybertill confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 20. As between the Customer and Cybertill, Cybertill shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 19.

20.6 The Customer will:

Cybertill, Suite 12 Stanley Grange Business Village, Ormskirk Road, Knowsley, Merseyside L34 4AR.  
Call: +44 (0)151 545 2050\* Website: cybertill.com

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- 20.6.1 ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to Cybertill, and the lawful use of Person Data Processed by Cybertill on behalf of the Customer for the duration of the Agreement and for the Business Purpose; and
- 20.6.2 not do or permit to be done any act or omission which would cause Cybertill to breach the Data Protection Legislation
- 20.7 Notwithstanding the confidentiality obligations in Clause 19 and the data processing restrictions in this Clause 20, you acknowledge and agree that Cybertill may collect, derive, and use Aggregated Anonymised Data for the purposes of benchmarking, product development, service improvement, and the generation of industry insights.

For the purposes of this Agreement, "Aggregated Anonymised Data" means data derived from Your Data and/or your use of the Software and Services that has been: (a) combined with data derived from other customers of Cybertill; and (b) anonymised such that it does not identify, and cannot reasonably be used to identify, you, any Authorised User, or any individual data subject.

Cybertill shall ensure that any process of anonymisation and aggregation applied pursuant to this clause meets the standard required under applicable Data Protection Legislation such that the resulting data falls outside the definition of personal data.

Aggregated Anonymised Data shall be and remain the property of Cybertill. Nothing in this clause shall entitle Cybertill to publish or share data that identifies you as a specific customer, or that could reasonably enable a third party to identify you as the source of the underlying data, without your prior written consent.

Cybertill shall not be required to account to you for any commercial benefit derived from the use of Aggregated Anonymised Data pursuant to this clause.

## 21 Force Majeure

- 21.1 We shall be under no liability to you in respect of anything which apart from this provision may constitute breach of Agreement arising by reason of:
- 21.1.1 force majeure namely circumstances beyond our control which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, Including acts of local government and parliamentary authority; inability to supply the Software or Services; the breakdown of equipment and labour disputes of whatever nature and for whatever cause arising Including (but without prejudice to the generality of the foregoing) work to rule overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer); or
- 21.1.2 in relation to the Hosting Service:
- 21.1.2.1 a refusal or delay by a third party to supply a telecommunications service to us or the Host and where there is no alternative service available at a reasonable cost; or
- 21.1.2.2 us or the Host being prevented by restrictions of a legal or regulatory nature from supplying the Hosting Service.

## 22 Term & Termination

- 22.1 The term of this Agreement begins on the Effective Date and will remain in effect as long as the Subscriber has a valid Sales Order or Statement of Work or until this Agreement is otherwise terminated in accordance with the terms hereof, whichever occurs first. The Subscription Term will be defined in each individual Sales Order. Unless an Account and subscription to a Service are terminated in accordance with this Agreement or the applicable Sales Order, or unless otherwise stated in the applicable Sales Order, (a) Subscriber's subscription to a Service (including any and all Deployed Associated Services) will renew for a Subscription Term equivalent in length to the then-expiring Subscription Term; and (b) the Subscription Charges applicable to any

subsequent Subscription Term shall be Cybertill's Standard Subscription Charges for the applicable Sales Order at the time of such renewal.

- 22.2 Either Party may elect to terminate an Account and subscription to a Service at the end of the then current Subscription Term by providing notice in accordance with Section 27 of this Agreement to [accounts@cybertill.co.uk](mailto:accounts@cybertill.co.uk) no less than ninety (90) days prior to the end of such Subscription Term.
- 22.3 A Party may terminate this Agreement for cause (a) upon written notice to the other Party of a material breach by the other Party if such breach remains uncured after thirty (30) days from the date of receipt of such notice; or (b) if the other Party being a body corporate, shall present a petition or have a petition presented by a creditor for your winding up or shall convene a meeting to pass a resolution for voluntary winding up or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) shall call a meeting of your creditors or shall have a receiver of all or any of your undertakings or assets appointed or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay your debts. However, Cybertill may immediately terminate this Agreement for cause without notice if the Subscriber violates the Cybertill User Content and Conduct Policy or if provision of the Service violates applicable law, regulation or court order.

Cybertill will refund any prepaid fees covering the remainder of the Subscription Term as of the effective date of termination if this Agreement is terminated by Subscriber in accordance with this Section for Cybertill's uncured material breach.

The Subscriber must pay any unpaid fees covering the remainder of the Subscription Term pursuant to all applicable Sales Orders if Cybertill terminates this Agreement for the Subscriber's material breach in accordance with this Section. In no event will Cybertill's termination for cause relieve the Subscriber of its obligation to pay any fees payable to Cybertill for the period prior to termination.

- 22.4 Except for the Subscriber's termination under Section 22.3, if the Subscriber terminates its subscription to a Service or cancels its Account prior to the end of the then-effective Subscription Term, or if Cybertill terminates or cancels the Subscriber's Account pursuant to Section 22.3, in addition to any other amounts the Subscriber may owe Cybertill, the Subscriber must immediately pay any and all unpaid Subscription Charges associated with the remainder of such Subscription Term along with any expenses including legal and other fees incurred.
- 22.5 Except for Subscriber's termination rights under Section 22.3, no refunds or credits for Subscription Charges or other fees or payments will be provided if the Subscriber terminates a subscription to a Service or cancels its Account prior to the end of a Subscription Term.
- 22.6 Within seven (7) days after the termination date you will destroy (as we will instruct) hard copy forms of our software, designs and all audio visual and hard copy material and data relating to your Cybertill Ecommerce Site and business and purge expunge all magnetic media forms of your Cybertill software and related material and furnish us with a certificate certifying that the principal and all copies of such material made (in whole or in part) in any form of media have been so returned destroyed and/or purged/expunged as the case may be or hereby permit our personnel or agents to collect destroy or purge/expunge the same
- 22.7 Termination of this Agreement will be without prejudice to any accrued rights of either party and will not affect obligations which are expressed not to be affected by expiry or termination hereof
- 22.8 On termination we will, if requested, provide a secure link to Your Data in a MYSQL format provided that all Charges have been paid. We can arrange for Your Data to be copied on to other formats or media, but this may be subject to additional charge.

## **23 Assignment**

You shall not assign or otherwise transfer all or any part of this Agreement without our prior written consent.

**24 Waiver**

Failure or neglect by either party to enforce at any time any of the provisions hereof will not be construed nor will be deemed to be a waiver of its rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice its rights to take subsequent action.

**25 Headings**

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of these terms and conditions of this Agreement

**26 Severability**

In the event that any of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

**27 Notices**

27.1 Any notice demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered personally or sent by fax, email or prepaid first-class post (air mail if posted to or from a place outside the United Kingdom)

**in our case to:**

Suite 12, Stanley Grange Business Village, Ormskirk Road, Knowsley, Merseyside, L34 4AR Fax:

0151 548 4947

email: cybertillmanagers@cybertill.co.uk

**in your case to:**

the fax number, address, or email address given on your Sales Order:

and shall be deemed to have been duly given or made as follows:

27.1.1 if personally delivered upon delivery at the address of the relevant party;

27.1.2 if sent by first class post two business days after the date of posting;

27.1.3 if sent by air mail 5 working days after the date of posting; and

27.1.4 if sent by fax when dispatched

27.1.5 if sent by email upon delivery to the recipient's email server

27.2 A party may notify the other party to this Agreement of a change to its name relevant addressee address or fax number email address or address for the purposes of the above clause provided that such notification shall only be effective on:

27.2.1 the date specified in the notification as the date on which the change is to take place; or

27.2.2 if no date is specified or the date specified is less than 5 business days after the date on which notice is given the date falling 5 business days after notice of any such change has been given.

**28 Exclusion of Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it nor shall it be enforceable under that Act by any person other than the parties to it

**29 Dispute Resolution**

In the event of a dispute or difference between the parties arising out of the terms and or performance of this Agreement which cannot be resolved the same shall be referred in the first instance to our Client Services Director and your nominated representative to resolve (both parties acting reasonably and in good faith). If such dispute cannot be resolved within 5 (five) business days of being referred, the dispute shall be escalated to our Chief Operating Officer and your nominated representative (both parties acting reasonably and in good faith) and failing Agreement within 5 (five) business days then to our Chief Executive Officer and your nominated representative (both parties acting reasonably and in good faith), and failing Agreement in this instance within 5 (five) business days, the matter may be referred to a mediator in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Neither party may initiate any legal action until the process has been completed, unless either party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.

**30 Law**

The parties hereby agree that the Agreement concluded between them and constituted on these terms and conditions shall be construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

## Schedule 1 Processing, Personal Data and Data Subjects

|                                               |                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                 |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scope and Purpose of processing               | The collection and Processing of Personal Data on behalf of the Customer in performance of the Services further particularised in the Master Agreement.                                                                                                                                                                     |                                                                                                                                                                                                                                                 |
| Duration of the processing                    | The duration of the Processing will, subject to any variation to the scope of the Services to be provided under the Agreement, be the duration of the Agreement.                                                                                                                                                            |                                                                                                                                                                                                                                                 |
| Types of personal data                        | <ul style="list-style-type: none"> <li>Names</li> <li>Addresses</li> <li>Phone numbers</li> <li>Emails</li> <li>DOB</li> <li>UK Tax Status</li> <li>Client Transactional Data</li> <li>Non-sensitive personal data</li> <li>No special categories data (as described in Article 9 of the GDPR) will be processed</li> </ul> |                                                                                                                                                                                                                                                 |
| Categories of data subject                    | The Data Subjects to which the Personal Data shall relate shall be customers of the Customer who visit the Customer's stores and/or website (if applicable)                                                                                                                                                                 |                                                                                                                                                                                                                                                 |
| Approved Processors                           | <b>Processor</b><br>Amazon Web Services<br>Anthropic<br>Atlassian Inc<br>Eleven Labs Inc<br>Hubspot Inc<br>Kudos Software Ltd<br>Microsoft Ireland Operations Ltd<br>Panintelligence<br>Ring Central UK Ltd<br>Zendesk Inc                                                                                                  | <b>Service</b><br>Hosting<br>Claude AI<br>JIRA / Confluence<br>ElevenLabs AI Voice Generation<br>Hubspot CRM<br>ServiceDesk<br>Microsoft 365, Microsoft Copilot<br>Embedded BI & Analytics<br>RingCentral Contact Centre<br>Zendesk ServiceDesk |
| Obligations and rights of the Data Controller | The obligations and rights of the Data Controller are set out in this Agreement and the Data Protection Legislation.                                                                                                                                                                                                        |                                                                                                                                                                                                                                                 |