

PODSYSTEM TERMS & CONDITIONS OF SALE version 3.0

This agreement (the “**Agreement**”) is a legal contract between you (“**Customer**” or “**you**”) and Podsystem Limited (trading as Pod Group, PodM2M and Pod Solutions) a company registered in England with company number 03848359 and with its registered offices at WhiteLeaf Business Centre, Little Balmer Buckingham Industrial Park, Buckingham, United Kingdom (“**Podsystem**”, “**us**” or “**we**”).

1. Definitions

1.1 In this Agreement:

- a) **Confidential Information** means any information which is either designated as confidential by the disclosing party or which by its nature is confidential.
- b) **Intellectual Property Rights** means all intellectual and industrial property rights, including patents, copyright, database rights, trade marks, service marks, designs and logos, design rights and registered designs, know-how and all other rights of a similar nature anywhere in the world in each case whether registered, unregistered or incapable of registration.
- c) **MNO** means mobile network operator and can include mobile virtual network operators.
- d) **Products** means SIM cards, data, SMS, CSD and/or voice services (or other mobile network services), network infrastructure, API services or billing services or other services as agreed between the parties.
- e) **Restricted Persons** has the meaning set out in clause 5.6(c).
- f) **Sanction Laws** has the meaning set out in clause 5.6(a).
- g) **Term** means the duration of the Agreement between you and Podsystem as provided to you either in an email or a quote from us.

2. Acceptance and order

2.1 You acknowledge and agree that by you either:

- a) clicking on an “I accept” style button; or
- b) sending us a fax, post, email order for Product(s); or
- c) agreeing to the terms of this Agreement by email or similar; or
- d) using any Products,

and by Podsystem either:

- e) accepting your order; or
- f) delivering Products to you (whichever is earlier),

then a legally binding agreement is formed between you and Podsystem.

2.2 You represent that:

- a) you have read, understand, and agree to be bound by the Agreement; and

- b) you have the authority to enter into the Agreement personally or on behalf of the company you represent, and to bind that company to the terms of this Agreement.
- 2.3 Podsystem reserves the right, at its sole discretion, to reject and not to supply any Customer order and, in such circumstances, a contract is not deemed to have been formed between the parties.
- 3. Delivery**
- 3.1. Unless agreed otherwise by Podsystem in writing, the Customer will bear all costs of shipping Products to the Customer, including any re-deliveries.
- 3.2. Podsystem shall bear no liability, consequential or otherwise for delay in delivering any Product supplied to the Customer.
- 4. Prices and payments**
- 4.1. The prices and Term for the Products will be as provided in a quote or by email to the Customer, or if no email or quote has been provided as advertised at www.podgroup.com or any other website operated by Podsystem., including www.podm2m.com and www.pod.solutions. Unless indicated otherwise, prices are exclusive of banking charges, VAT and other applicable taxes.
- 4.2. Unless otherwise agreed in writing, payments by the Customer will be made:
- a) **for physical SIM cards (including commissioning costs):** in advance of delivery;
 - b) **for 'bundled charges' including monthly line rental on SIM cards, per MB usage and billing services:** either: (i) billed in advance of the applicable period with payment prior to the beginning of the applicable period or the applicable usage; or, if agreed by Podsystem (ii) billed at the beginning of the month, on a 30-day payment period;
 - c) **for overuse traffic usage (if applicable):** billed in arrears with a 30-day payment period or taken from any outstanding credit on the Customer's account. If additional charges from the MNOs are received for a period that has already been billed, the SIM usage report will be re-issued and the Customer invoiced the difference; and
 - d) **for additional services as agreed between the parties:** in advance of the provision of the services unless otherwise agreed in writing by the parties.
- 4.3. Unless otherwise agreed in writing, nine months after the start of this agreement, the Customer agrees to pay, in the currency of the contract a minimum amount, whichever is the greater of: 100 euros, pounds or dollars for the use of connectivity only Products; 200 euros, pounds or dollars for the use of security Products (where security is supplied as an additional chargeable Product to connectivity); or 500 euros, pounds or dollars for the use of billing Products (where billing is supplied as an additional chargeable Product to connectivity and/or security).
- 4.4. Customer agrees to be bound by this Agreement and pay all charges for Products provided to the Customer including, but not limited to, the payment of all charges for a SIM card until either:

- a) the SIM card has been terminated with 30 days' written notice (if such written notice is given on or before the 15th day of the month); or
- b) 45 days' written notice (if notice is given after the 15th day of the month); or
- c) the Term has expired as specified in writing (in order of preference) in a quote, by email or as specified at www.podm2m.com or another website operated by Podsystem,

regardless of whether charges were incurred by the Customer or a third party, or as a result of misuse or fraudulent activity.

- 4.5. The Customer shall pay all invoices in full (including disputed amounts) in accordance with the terms of this Agreement, and shall, if a dispute in relation to an invoice occurs, co-operate in good faith with Podsystem to resolve any dispute in accordance with clause 4.5.
- 4.6. The Customer may only dispute an invoice within 30 days of the Customer's receipt of such invoice. If the invoice or part thereof is subsequently found by Podsystem to be incorrect, then Podsystem will credit the Customer within 10 business days of such a finding. Podsystem will not accept disputes about any invoice where the Customer informs Podsystem about any such dispute more than 30 days after the date of the invoice.
- 4.7. All payments must be made directly to a designated Podsystem bank account. If any payments due are not received and cleared in Podsystem's bank account within the agreed payment terms as set out in this clause 4, Podsystem reserves the right to charge interest on the overdue amount at the rate of 2% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.
- 4.8. If any payments are overdue, Podsystem reserves the right to employ a credit recovery agency to recover monies due. Podsystem is not liable for any detrimental effect (financial or otherwise) if action by the credit recovery agency affects the Customer's credit rating and/or financial position. Furthermore, the costs, including any legal costs and court fees, incurred in the collection of any overdue payments will be paid by the Customer.
- 4.9. If any SIMs have incurred costs that exceed three times the expected level of use, Podsystem reserves the right to invoice for these charges separately and the Customer must pay these charges in full within 7 days of the date of such invoice.
- 4.10. If any payments are overdue by more than 14 calendar days, Podsystem reserves the right to terminate all Products on the Customer's account without notice and charge a re-connection charge equal to the previous month's invoice for reconnection and other administration charges that may be incurred.
- 4.11. In the event of a significant increase in charges or minimum charges by a supplier or mobile network on Products provided by Podsystem, Podsystem reserves the right, with 30 days' notice, to change its prices for services for that Product. In this eventuality the Customer has a right of termination as set out in clause 10.2(b).

5. Customer obligations

- 5.1. The Customer is responsible for ensuring that any hardware equipment, or software application running on that equipment, that uses a Product provided by Podsystem complies with any and all requirements of all networks and will not cause any damage or interruption to any mobile phone network. The Customer accepts all liabilities for damage or interruption to any mobile phone network caused as a direct result of the hardware equipment or software application running on that equipment. If the Customer is unsure whether the equipment or software being used may cause any damage to a mobile phone network, the Customer may request Podsystem to gain approval from the MNO prior to use. Whether approval is sought is at the sole discretion of Podsystem.
- 5.2. The Customer shall ensure that neither the content passed over the mobile network nor the details of users or customers or other personal data held by the Customer pursuant to this Agreement shall infringe the rights of any third parties or any laws or regulations (including, without limitation, the Data Protection Directive (95/46/EC), the General Data Protection Regulation (2016/679/EC), the Directive on Privacy and Electronic Communications (2002/58/EC), the Electronic Commerce Directive (00/31/EC) and the Distance Selling Directive (97/7/EC)), and any national implementations thereof, in any country where any message is originated, delivered or in respect of which any of service provided by the Product are performed.
- 5.3. The Customer agrees to comply with any reasonable instructions as Podsystem may from time to time notify to the Customer in regards to using the Product. However, even without such instructions, the Customer warrants and represents that it will not breach any applicable laws, standards or codes, including but not limited to "SIM boxing", or infringe a third party's rights, or breach any content requirements or codes stipulated by any relevant authority. Furthermore, the Customer shall refrain, and prevent others, from using the Product for any purpose other than that intended by the relevant telecommunications operator, in any way whatsoever, including "annoyance", "spamming" or any other form of harassment, creating, or having third parties create, connections with buy lines (090x numbers) on a large scale or committing criminal offences or use the Product in a way which interferes with other users or harasses or restricts any other user from using or enjoying the hosting MNO network or the internet. Customer shall be liable for any damage, costs or usage (at standard overuse rates or the rates charged by the network to Podsystem - whichever is the higher), arising as a result of unlawful or fraudulent use of the Product, regardless as to whether the Customer was aware of such use or not. Fraudulent use includes, but is not limited to, using the SIM in a way that was not agreed with Podsystem, including via satellite modem, WAP, voice, SMS, USSD and use of an APN which was not provided by and agreed with Podsystem. Fraudulent use can only be prevented by cancelling the SIM off the network. Once a SIM is registered on the network (SIMs are registered on the network prior to delivery to Customer) there may be some services that are impossible to block. Therefore, whilst Podsystem will endeavour to ensure that all services are blocked when requested, use of any services apart from those agreed with Podsystem will be deemed to be fraudulent use.
- 5.4. The hosting MNO, as a supplier of Podsystem, has an independent right to claim for damages suffered as a result of the Customer's failure to comply with clause 5.3. Therefore, the hosting MNO may claim damages directly from the Customer.

5.5. If the Customer requests any functionality that is not provided within Podsystem's standard Products, Podsystem will provide a quote for the work required. Only upon written confirmation by the Customer to proceed will Podsystem undertake and invoice for this work.

5.6. Customer represents, warrants and covenants that Customer:

- a) is compliant in all respects relevant to this Agreement with all applicable sanction or embargo laws and regulations in effect from time to time, including trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and any other enabling legislation or government order relating thereto (collectively "**Sanction Laws**");
- b) is not listed on, or owned or controlled by an entity or person on, the U.S. Department of Treasury list of Specially Designated Nationals or any similar list in place in any jurisdiction where Customer is conducting business;
- c) is not located in or organised under the laws of a country subject to U.S. or E.U. trade embargo (collectively, "**Restricted Persons**");
- d) will take all such steps as prudent to ensure that it will not provide Product to Restricted Persons; and
- e) will not use the Product, or allow them to be used, for any purposes prohibited by applicable Sanction Laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

Notwithstanding any other provision in this Agreement, Podsystem reserves the right to terminate this Agreement immediately upon written notice to the Customer if Podsystem reasonably determines that Customer is not in compliance with this clause 5.6 or that its actions are causing Podsystem to be exposed to prosecution or liability for violation of Sanction Laws or any other applicable law.

5.7. In order to preserve the integrity of the network, Podsystem reserves the right to request that the Customer changes the firmware of its device so that it does not stop and start authentication requests and/or data session requests (including retries) more than on average 30 times per hour over any consecutive 12-hour period. If requested, the firmware change needs to be completed within 5 working days otherwise Podsystem has the right to immediately and without notice cease the use of that SIM card and Podsystem will not be responsible for any consequential or other costs as a result of the SIM's cessation.

6. **Confidentiality**

Neither party shall without the prior written consent of the other party (during and after termination of this Agreement) use (other than in the performance of this Agreement) or divulge or otherwise disclose to any other person other than to their professional advisers, directors, officers or employees of whose province it is to know the same any Confidential Information received at any time by it in consequence of this Agreement, save that any obligations contained in this clause shall not apply in respect of any Confidential Information which is in or comes into the public domain other than as a result of any breach by the

receiving party of any duty of confidentiality or in respect of any disclosure required by law or any legal or regulatory authority.

7. Intellectual Property

The Customer acknowledges that all Intellectual Property Rights arising in or in relation to the Products, including any services delivered under this Agreement shall at all times belong to Podsystem or its licensors, and the Customer shall have no rights in or to the same other than the limited rights set out in this Agreement.

8. Warranty

- 8.1. Podsystem does not warrant or guarantee the fault free working of the Products, including but not limited to the fault free working of mobile networks. Podsystem is not liable for any service or proof of service of Customer, which is carried over Podsystem's or any other mobile network. Podsystem is also not liable for any losses caused by an operator ceasing or terminating mobile or other services. Under no circumstances shall Podsystem be liable for any direct, indirect or consequential damages, including but not limited to damages that result from the Customer or any user's use of or inability to access any part of the Product or the Product's functionality, or the Customer or any user's reliance on or use of information and services provided on or through the Product or damages that result from mistakes, omissions, interruptions, loss, theft, or deletion of files, packet data or other information, errors, viruses, defects, delays in operation or transmission, or any failure of performance.
- 8.2. Except as expressly stated elsewhere in the Agreement, Podsystem makes no express or implied warranty or representation concerning the Products, or their accuracy or completeness and therefore excludes all conditions, warranties and representations (express or implied), statutory or otherwise in respect of the Products.

9. Liability

- 9.1. Nothing in this Agreement shall limit or exclude the liability of either party for:
- a) death or personal injury caused by negligence;
 - b) fraud (including fraudulent misrepresentation); or
 - c) any other liability which cannot be limited or excluded by applicable law.
- 9.2. Subject to clause 9.1, Podsystem shall have no liability to Customer or any third party however arising (whether in contract, tort (including negligence), statutory duty or otherwise) in connection with this Agreement, and/or the Products for any:
- a) direct or indirect loss of or damage to profit, revenue, business, opportunity, anticipated savings, data, goodwill, reputation or similar; or
 - b) indirect or consequential loss or damage.
- 9.3. Subject to clauses 9.1 and 9.2, Podsystem's liability under this Agreement however arising (whether in contract, tort (including negligence), statutory duty or otherwise) or in connection with its performance is expressly limited to the express provisions in this Agreement and the maximum sum of any and all claims will be limited to the lesser of either:

- a) the cost of Products supplied to the Customer in the preceding calendar year; or
- b) £10,000.

9.4. The Customer shall indemnify Podsystem and hold Podsystem harmless from and against all losses, damages, expenses (including, without limitation, legal expenses), costs and liabilities for personal injury, loss of life or personal property damage arising out of or in connection with:

- a) any breach of this Agreement by the Customer;
- b) the Customer's negligent act or omission; or
- c) any claims, demands, actions or proceedings made by any person or entity (including, without limitation, any regulator) arising out of or in connection with the provision or use of the Product by the Customer (unless the same arises as a result of any breach of this Agreement by Podsystem or Podsystem's negligent act or omission).

10. Service suspension and termination

10.1. Podsystem may at any time immediately suspend all or part of the Product it provides until further notice without incurring any liability:

- a) if it is obliged to comply with an order, instruction or request of government, or emergency services organisation, or other competent administrative authority; or
- b) it needs to carry out work related to exceptional upgrading or maintenance of its facilities where those facilities must cease operation; or
- c) in order to prevent damage or degradation of Podsystem's contracting party's network integrity which may be caused by whichever reason; or
- d) for behaviour that in Podsystem's reasonable discretion may be deemed to be illegal; or
- e) in order to protect Podsystem, at its sole discretion, from legal liability which relates to a breach of obligation and/or warranties by Customer; or
- f) if any SIMs have undertaken a level of usage either in the amount and number of transmissions or costs, that exceeds three times the expected level of use; or
- g) in case of notifications or signs of fraud or abuse of service; or
- h) the services of one or more of the MNOs upon which the provision of the Product hereunder is dependent suspends its provision of those services to Podsystem under the terms of its or their relevant agreement(s) with Podsystem; or
- i) if payments have not been made in accordance with this Agreement.

10.2. This Agreement may be terminated prior to expiration of the Term by notice in writing as follows:

- a) by either party in the event the other has failed to perform any material obligation required to be performed under this Agreement and such failure is not corrected within 30 days from receipt of written notice advising of such failure from the other party; or

- b) by the Customer after a period of 30 days in the event of a significant change in price as set out in clause 4.10; or
- c) by Podsystem by immediate notice in the event that one or more of the MNOs upon which the provision of services hereunder is dependent terminates its provision of those services to Podsystem under the terms of its or their relevant agreement(s) with Podsystem; or
- d) by Podsystem by immediate notice in the event that the Customer is in material breach of its obligations under clauses 5.1, 5.2, 5.3, 5.5, 5.6 or 5.7 above; or
- e) by either party in the event that the other party (being a company) enters into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), enters into a voluntary arrangement with its creditors, has a receiver, administrative receiver or administrator of all or any of its undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or (if an individual) presents or has presented against him a bankruptcy petition or (if a non UK national or corporation) shall suffer anything analogous to these matters to occur to him or it.

11. Anti-bribery and anti-corruption

Each party shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977 and promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.

12. Disclosure

12.1. The Customer agrees to:

- a) the disclosure to any telecommunications company, debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider of any information relating to the Customer's performance in meeting its obligations under this Agreement;
- b) any disclosure as may be required by Podsystem's obligations under any applicable regulatory requirement, including data protection laws; and
- c) any disclosure required as a result of an order of any court of competent jurisdiction or by statutory authority.

13. Force Majeure

13.1. Either party's performance of any part of this Agreement, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by:

- a) the acts or omissions of the other party or any MNO;
- b) flood, fire, earthquake, strike or riot; or

- c) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that party.
- 13.2. If a default due to an event listed in clause 13.1 shall continue for more than 3 months, then either party may terminate its contract with the other without any liability to the other.

14. General

- 14.1. Podsystem may at any time sub-licence, assign, transfer, charge or deal in any other manner with any of its rights or obligations hereunder. The Customer may not sub-licence, assign, charge, or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of Podsystem which will not be unreasonably withheld.
- 14.2. Any notice given under this Agreement shall be in writing, in English, and may be served by leaving it at, or by sending it by pre-paid first-class post, by email or recorded delivery to, the intended recipient's address. A notice is deemed to be received when left at the recipient's address or, if sent by email on delivery or, if sent by pre-paid first-class post or recorded delivery, 48 hours from the date of posting. If such deemed receipt is not within business hours (being between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business hours next commence.
- 14.3. This Agreement constitutes the entire agreement, and upon acceptance, supersedes all previous agreements, versions of this agreement, regulations, representations and discussions) between the parties in respect of the subject matter of this Agreement and, except in the case of fraud or fraudulent misrepresentation, neither party shall be entitled to rely on any agreement, understanding, representation or arrangement which is not expressly set out within the Agreement.
- 14.4. If any provision or part of a provision in this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force and effect. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give the provision legal effect.
- 14.5. No variation of this Agreement shall be effective unless it is made in writing and signed by each of the parties to the Agreement or on their behalf by duly authorised representatives. For the purposes of this clause, the expression "variation" includes any supplement, deletion or replacement however effected.
- 14.6. No waiver by a party in exercising a right or remedy arising in connection with this Agreement or by law is valid unless it is in writing and signed by the relevant party or on his behalf by a duly authorised representative. A waiver of a right or remedy on one occasion shall not constitute a waiver of the same right or remedy in the future.
- 14.7. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, representative or agency relationship between the parties hereto or construed or have effect as constituting any relationship of employer and employee between the parties.

- 14.8. No provision of this Agreement shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 14.9. References to legislation shall be construed to include references to future re-enactments and modifications from time to time. Headings to clauses shall not affect their meaning. Unless expressly stated to the contrary in this Agreement: (a) words and phrases like “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words; and (b) words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations.
- 14.10. This Agreement and any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Agreement shall be governed by the laws of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales for the determination of all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with this Agreement.