

Livetodot Colocation

Terms and Conditions

Definitions and construction

These Specific Terms and Conditions are to be read in conjunction with the General Terms and Conditions (<http://www.livetodot.com/hosting/terms-and-conditions.html>) and Acceptable Use Policy (<http://www.livetodot.com/hosting/acceptable-use-policy.html>); both of which are on the Livetodot website. If there is any discrepancy between this agreement and the website, this agreement shall prevail. If Provider changes the terms of the online agreements then the Customer will be provided at least 30 days' notice of before such changes take effect

Where applicable, all definitions contained within these Specific Terms and Conditions have the same meaning as those set out in the General Terms and Conditions. In addition, the following definitions are used in these Specific Terms and Conditions:

"Application" means Software loaded onto the Platform by the Customer designed to perform commercial functions for the Customer or the Customer's Users

"Commencement Date" is the start of the contract. This is specified on the Services Order Form.

"Customer Data" means all data processed by Provider or provided to Provider for processing or otherwise processed as part of the Services including, but not limited to, data generated by the website from visitor input.

"Customer's Users" means any individual or entity that uses the Services by means of Customer provided Application, Website or Software hosted on the Services. Customer's Users and all of their activity remain the full responsibility of the Customer.

"Data" means any information loaded onto the Services by the Customer or Customer's Users for use in the Services, Application, Website or Software.

"Downtime" means a period during Service Hours during which the Services are unavailable.

"Group Company" means any subsidiary, holding company or ultimate holding company (as defined in section 1159 of the Companies Act 2006) from time to time of a party and any subsidiary from time to time of such party's ultimate holding company;

"Hardware" means any goods or equipment purchased by the Customer from the Provider in connection with the provision of the Services.

"Initial Period" means the minimum contract term, commencing on the Commencement Date. This is specified in the Service Order Form.

"Intellectual Property Rights" means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.

"Outage" means an instance of Downtime.

"Parties" means the Customer and the Provider, including their representatives, employees and agents. In addition, on written notice from time to time by either the Customer or the Provider, it includes their contractors.

"Platform" means the hardware platform used by Provider to provide the Services.

"Scheduled Interruptions" means interruptions to the Services pre-notified by Provider to Customer intended by Provider to facilitate improvements to or maintenance of the Services.

"Service Fee" means the fee which covers the provision of the Services.

“Service Hours” means the hours during which the Services are to be provided. References to "hour(s)" and "minute(s)" in this Agreement will, unless otherwise indicated, be taken only to refer to the elapse of time during Service Hours.

“Service Interruption” means a period during Service Hours during which there is partial loss of the Services.

“Service Levels” means the levels of performance to which the Services are to be provided to the Customer by Provider as set out in the SLA.

“Services” means the set-up, hosting, reporting and on-going management of the Platform as set out in more detail on the Services Order Form.

“Software” means software provided by the Customer to be hosted on the Platform to provide the Services

“System Management Regulations” means regulations introduced by Provider from time to time, such amendments to be agreed in writing between the Parties for the better management of the Services and which include the following:

Regulations to ensure that the Platform and network through which the Services are provided are not overloaded and that the security and integrity of the network is maintained and including regulations which arise from the need to comply with regulations of any data centre facility engaged by Provider in connection with the Services; and

Regulations to ensure that any database or other applications which form part of the Services are used to the best effect and within their capacities.

“Target Service Level” means the target for service levels as specified in the SLA

“Term” means the effective term of this Agreement.

1 Provision of Services and Licences

Provider agrees with effect from the Commencement Date in consideration of the payment of the Service Fees by the Customer to supply the Services listed on the Services Order Form to this Agreement (including any amendments to it subsequently agreed by the parties) on a non-exclusive basis upon the terms and conditions of this Agreement.

The Customer hereby warrants that:

- it will not exceed its licensed usage rights in respect of the Software; and
- It is entitled to grant Provider with access to and enable usage of the Software by Provider as envisaged by this Agreement.

2 Duration

This Agreement shall commence on the Commencement Date and shall (subject to the provisions for termination set out in this Agreement) continue for the Initial Period and thereafter in further periods equal in length to that of the Initial Period until terminated by either party giving to the other not less than 30 days' notice in writing (any such notice to expire not earlier than the end of the Initial Period or current further period).

3 Service Fee

The Customer undertakes to pay the Service Fees for the Services at the charging rate set out on the Services Order Form and any additional fees as agreed in writing between the parties from time to time for any other service. Provider shall send to the Customer an invoice in respect of all Service Fees due in respect of services provided.

The Provider will invoice Customer monthly in advance for its services including all hosting and support services at the prices listed on the Services Order Form as amended from time to time by agreement between the parties.

Customer will pay all such invoices within 30 days after the date thereof unless otherwise agreed in writing.

Provider shall be entitled to charge the customer interest in respect of the late payment of any sums due under this Agreement (as well after as before judgment) at the rate of 3 per cent per annum above the base rate from time to time of Barclays Bank plc from the due date therefor until payment.

Any increase to the Service Fees shall be by prior agreement by the parties in writing.

All sums due under this Agreement are expressed exclusive of VAT but will be subject to VAT which will be payable by the Customer.

4 Service Levels

Provider will provide all services at the Service Levels specified in the SLA. The Customer will comply with its notification obligations set out in the SLA.

In the event that Provider's Services fall below the target service level payment credits shall be due to the Customer as set out in the SLA.

Service Levels will be tracked and reported by the Provider's monitoring systems.

Each outage will be itemised and the root cause of such outage will be summarised by the Provider and agreed between the parties prior to being attributed to the monthly services Downtime amount.

5 Outages, Scheduled Interruptions and Changes to Services

Provider will arrange Scheduled Interruptions so as to minimise impact on the Services and will notify the Customer of the anticipated commencement time of the Scheduled Interruptions and their estimated duration. Wherever possible a period of notice of at least 24 hours will be provided.

Customer requested interruptions received in writing (including, but not limited to, request for a server to be re-booted) will be fulfilled but will not be considered a break in service, and will not be a factor when calculating service levels for any purpose or give rise to any liability on the part of Provider. The Customer is required to request such interruptions via the customer support number listed in the SLA but will also confirm any such requests in writing.

Provider shall send initial notice to the Customer's Representative by telephone, e-mail or comparable notification service within ½ hour of Provider becoming aware of an event that has caused or may cause an unscheduled Outage. Any telephone call should be confirmed forthwith by email. In the event the Customer first becomes aware of such event, the

Customer shall promptly provide initial notice to Provider using the methods detailed in the SLA.

6 Warranties and indemnities

Provider warrants to and undertakes with the Customer that:

- Provider will use its reasonable efforts to provide the Services and to exercise reasonable care and skill and in accordance with the terms of this Agreement;
- Provider shall use its reasonable efforts to provide the Services in accordance with the Service Levels;
- Provider has full right power and authority to provide the Services to the Customer in accordance with the terms of this Agreement; and
- Provider has all requisite registrations under UK data protection legislation and will maintain such registrations throughout the Term and will comply with the provisions of such legislation.

Except for the express warranties set forth in this clause, the Services are provided on an “as is” basis, and the Customer’s use of the services is at its own risk. Provider does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. Provider does not warrant that the Services will be uninterrupted, error-free, or completely secure.

Provider does not and cannot control the flow of data to or from the Platform and its network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by parties with whom neither the Customer or Provider have contracts. At times, actions or omissions of such parties can impair or disrupt connections to portions the Internet or national power distribution system. Although Provider will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Provider cannot guarantee that such events will not occur and does not accept liability for these events.

Provider warrants and undertakes responsibility for third party providers that the Provider contracts with in order to provide the Service to Customer such as network and data centre providers.

Customer hereby agrees to indemnify and hold harmless Provider in respect of any liabilities, costs, damages or expenses that Provider may incur as a consequence of correct and proper use of the Software by Customer or Provider pursuant to this Agreement.

7 Customer Obligations and Warranties

In the event that the Customer is in material breach of any of its obligations under this Agreement including the Schedules hereto, then:-

- Provider cannot be held responsible should the Services fail to comply with the Service Levels as a result (directly or indirectly) of such Customer material breach and no service credits will accrue on account thereof; and
- Provider shall be entitled to charge the Customer for staff time engaged on rectifying any resulting problems arising as a result of the Customer’s specific breach at Provider’s standard charge rates for the time being, provided notice is given to the Customer that such additional charges will apply;

The Customer represents, warrants and undertakes that:

- it will use the Services only for lawful purposes and in accordance with this Agreement; and
- any software, data, equipment or other materials provided by the Customer to Provider or employed by the Customer in its use of or receipt of the Services shall not infringe any Intellectual Property Rights of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state which may have jurisdiction over such activity.

The Customer shall provide all such assistance, facilities and information to Provider as Provider may reasonably require in order to enable it to carry out its obligations under this Agreement.

8 Security

Each party recognises that it is impossible to maintain flawless security but (where relevant) Provider shall take all reasonable steps to prevent security breaches in its servers’ interaction with the Customer and the Customer’s Users and security breaches in respect of interaction with resources or users outside of any firewall that may be built into Provider’s servers.

The Customer is responsible for maintaining the confidentiality of any passwords which are required to access the Software and the Services and is solely responsible for any damage caused by any such unauthorised access.

The Customer recognises that the Provider is not providing a managed security service without which there can be no guarantee that the Provider's services will not be subject to downtime beyond the Provider's control such as DDoS or hacking attacks.

9 Limitation of liability

(CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE).

Provider shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer.

Neither party will be liable to the other for any indirect loss, consequential loss, data or goodwill howsoever arising suffered by the other party but not limited for fraud, wrongful or wilful breach.

Provider shall not be liable for any interruptions to the Services or Outages arising directly or indirectly from:-

- Interruptions to the flow of data to or from the internet beyond the Provider's network;
- The effects of the failure or interruption of services provided by third parties who the Provider is not contracted with or does not receive services from in order to provide the Service to the Customer;
- Any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement or the Proposal) or any third parties;
- Problems with the Customer's equipment and/or third party equipment owned by parties who neither the Provider or Customer contract with or receives services from;
- Interruptions to the Services requested by the Customer.
- Interruptions caused to the services resulting from an Event of Force Majeure.

None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of Provider or its appointed agents.

No matter how many claims are made and whatever the basis of such claims, Provider's maximum aggregate liability to the Customer under or in connection with this Agreement or any software related to this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by clauses above or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to 150% of the annual Service Fee for all services provided to the Customer during the year to which the claim relates.

The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Service Fee has been calculated on the basis of the limitations and exclusions in this clause and that the Customer accepts that it has the opportunity to effect insurance as is suitable having regard to its particular circumstances and the terms of this clause.

10 Intellectual property rights

Without prejudice to the Customer's rights in its own materials, the parties hereby agree that the Customer shall not acquire any Intellectual Property Rights in respect of materials used by Provider in connection with or related to the provision of the Services hereunder save for materials which have been jointly developed by the parties for or related to the provision of the Services, which for the avoidance of doubt shall vest with the Customer.

Provider warrants that it has all necessary right, title and interest to enable the Customer to benefit from the Services in accordance with this Agreement.

The Customer hereby grants to Provider:

- A non-exclusive, royalty-free, world-wide licence during the Term to use the Software for the purposes of providing the Services,
- A non-exclusive, royalty-free, world-wide licence during the Term to use, copy, reproduce, and manipulate data provided by the Customer or resulting from the Services for the purposes of using the data for the provision of the Services; and
- A non-exclusive, royalty-free, world-wide licence during the Term to use, reproduce and display the Customer's trade marks for the purposes of using the data for the provision of the Services.

The Provider will indemnify the Customer and any Group Company of the Customer from and against any loss, damage, cost, expense, claim, demand, liability, judgement, detriment or fine they are or any of them incur as a result of the Provider's breach of clauses above.

Subject to any contrary provision in this Agreement, Provider undertakes only to use the Customer's trade marks for the

purpose of providing the Services.

11 Termination

For the purposes of this clause, the following events shall be deemed “acts of default”:

- if the Customer fails to pay any moneys due pursuant hereto by the due date, the Provider will be entitled to issue a 21 day notice at any time after the due date. If payment is not made following 21 days after the notice is issued the Customer will have committed an act of default;
- if a party commits any material breach of any provision of this Agreement (other than one falling under clause above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;
- if a party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or assignment for the benefit of its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or liquidator or similar officer is appointed in respect of the other party or all or any part of its business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if any analogous step is taken in any jurisdiction.

11.1 “Act of Default” exception – disputed invoices:

The customer may dispute within 2 business days of receiving an invoice only if there is no supporting purchase order or the purchase order does not match the invoice.

If an invoice does not match a purchase order due to interest being applied following late payment by the Customer, the invoice cannot be disputed.

If the invoice is not disputed within this period it is considered accepted. If an invoice is disputed the customer has 2 business days to provide evidence supporting the dispute.

If evidence cannot be provided the invoice will be considered accepted.

If an invoice is accepted as disputed, non-payment will not be considered an “act of default”.

If the Customer commits an act of default then Provider may at its discretion terminate this Agreement by notice in writing taking effect forthwith on receipt of the notice by the Customer.

If Provider commits an act of default then the Customer may terminate this Agreement by notice in writing taking effect forthwith on receipt of the notice by the Provider.

Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

11.2 In the event of termination of this Agreement:

Provider’s entitlement to use the Customer’s trademarks and the Software ceases immediately except as necessary for the provision of any post-termination services;

Provider shall provide any assistance reasonably requested by the Customer in connection with the hand-over to a third party of any services provided by Provider hereunder, including the release of any Hardware as requested by the Customer. By requesting assistance the Customer may be subject to some support charges, which will be charged at the Provider's rates as provided for in this Agreement will be confirmed in writing prior to carrying out the assistance.

Termination of this Agreement shall be without prejudice to any rights or obligations, which shall have accrued prior to such termination.

12 Confidentiality and Ownership of Customer Data

Each party receiving information pursuant to this Agreement (“**Receiving Party**”) shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other party (“**Disclosing Party**”) disclose to any third party, any and all information of a confidential nature (including trade secrets and information of commercial value) that may become known to the Receiving Party and which relate to the Disclosing Party (“Confidential Information”).

Provider hereby undertakes not to disclose Customer's data without Customer's written consent, in whole or in part, to any other person save those of its employees agents and sub-contractors involved in the provision of the Services and who have, and to the extent that they have, a need to know the same.

The provisions of the Clause above shall not apply to the whole or any part of the Confidential Information to the extent that it is:

- trivial or obvious;
- already in the Receiving Party's possession without duty of confidentiality on the date of its disclosure to it by the Disclosing Party;
- in the public domain other than as a result of a breach of this clause; or
- to the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, the Receiving Party required to make such disclosure shall, unless legally precluded from doing so, use reasonable endeavours to notify the Disclosing Party of such requirement prior to making the disclosure.

Each of Provider and the Customer hereby undertakes to the other to make all relevant employees agents and subcontractors aware of the confidentiality of the Information and the provisions of this Clause.

For the avoidance of doubt, all Customer Data shall remain at all times the exclusive property of the Customer and may only be used by Provider in order to fulfil its obligations pursuant hereto.

Provider reserves the right to use part of any program or service, that does not reveal data which is the exclusive property of the Customer, produced for or acquired on behalf of the Customer for demonstrating its expertise to potential clients, subject always to the provisions of this Clause.

The provisions of this Clause shall remain in full force and effect notwithstanding any termination of this Agreement.

13 Force majeure

Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond the reasonable control of the party in default (or its subcontractors) including but not limited to act of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, flood, fire or tempest (an 'Event of Force Majeure'). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.

Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party.

14 Waiver

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

15 Notices

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post, email or by facsimile transmission (such email or facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this Agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery and (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission or email) upon the expiration of 12 hours after dispatch.

16 Publicity

The parties will be able to announce a joint press statement upon execution of this agreement, detailing the benefits which the Customer expects to accrue from the Services. For the avoidance of doubt no press statement shall be released without the written consent of the Customer.

17 Invalidity and severability

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18 Compliance with relevant requirements

The Provider will:

- comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**").
- comply with Customer's Ethics, Anti-bribery and Anti-corruption Policies in each case as the Customer may update from time to time ("**Relevant Policies**");
- have and maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Policies and will enforce them where appropriate;
- promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Agreement;
- immediately notify the Customer in writing if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider (and the Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement); and
- The Provider shall ensure that any person associated with the Provider who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause (Relevant Terms). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach of such persons of any of the Relevant Terms.

Breach of this clause shall be deemed a material breach of this agreement. For the purposes of this clause, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause a person associated with the Provider includes but is not limited to any subcontractor of the Provider.

19 Entire agreement

This written Agreement (including the Schedules and online agreements referred to above) constitutes the entire Agreement between the parties hereto relating to the subject matter hereof. In entering into this Agreement neither party has relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this clause shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation.

No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

Any change, alteration or modification to the online agreements referred to above, shall only be valid and binding on the parties 30 days after written notification of such changes from the Provider to the Supplier.

20 Successors

This Agreement shall be binding upon and endure for the benefit of the successors-in-title of the parties hereto.

21 Assignment

The Customer or the Provider shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder unless specifically consented to in writing and signed on behalf of both parties hereto. Such consent shall not be unreasonably withheld.

22 Subcontracting

Provider shall be entitled to subcontract the whole or any part of its obligations hereunder to any third party following consultation and prior written agreement between Provider and Customer, but shall remain liable as if it were performing the

Services itself.

23 Partnership/Agency

No relationship of partnership or agency is created or will be deemed to exist by reason of this Agreement.

24 Third Party Rights

Save for a Group Company of the Customer, no term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded. The parties hereby exclude the provisions of Section 1(1) of the Contract (Rights of Third Parties) Act 1999 so that they will be entitled to rescind or vary this agreement without the consent of any Group Company of the Customer which is entitled (or may be entitled) to enforce any term of this agreement against the Provider, provided that the Provider shall not by virtue of this Clause incur any greater extent or quantum of liability than it would have incurred if all services and administration performed for any Group Company of the Customer had been performed exclusively for the Customer itself.

25 Law

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.