BUDDYCRM Subscription Terms

PARTIES

(1) Sense 6 SoftwareLimited incorporated and registered in England and Wales with company number 09944296 whose registered office is at Unit N3a, Westpoint, Aldridge, Walsall, WS98DE, VAT Number 995 2320 01 **Supplier**

(2) The company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. **Customer**

BACKGROUND

(A) BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT.

(B) If you have a separate agreement specific to your subscription and order then that agreement takes primacy over any other agreement including this one.

(C) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of allowing those Customers to better manage and organise their sales process.

(D) The Customer wishes to use the Supplier's service in its business operations.

(E) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

(F) In addition to the standard Service the Customer has agreed pricing for the Additional Services set out in the Order Form (Schedule 2)

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Account Management Portal: the portal to be made available to the Customer at Buddy CRM at which the Customer may increase or decrease its requirement for User Subscriptions, may terminate this Agreement or may change its account details.

1.2 **Additional Services:** the optional, additional services described as such in **Additional Services** (Detailed on Schedule 2 of the order form)

Additional Services Fees: means the fees payable for the Additional Services, as set out in Schedule 3 of this Agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

Back up policy: has the meaning set out in Clause 5.2.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Change of Control: the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

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

Documentation: the document made available to the Customer by the Supplier online via BuddyCRM.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: The Date that the Company first accesses the System

Normal Business Hours: [9.00 am to 5.00 pm] local UK time, each Business Day.

Privacy and Security Policy: means our policy as set out at BuddyCRM.com.

Services: the subscription services provided by the Supplier to the Customer under this agreement via BuddyCRM.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

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

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in The Order Form.

Subscription Term: has the meaning given in clause 14.1.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available at BuddyCRM.com or such other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.4 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.5 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.7 Words in the singular shall include the plural and vice versa.

1.8 A reference to one gender shall include a reference to the other genders.

1.9 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.10 A reference to writing or written includes faxes but not e-mail.

1.11 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER SUBSCRIPTIONS

2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

(a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

(b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

(c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;

(d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

(e) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

(f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

(g) if any of the audits referred to in clause 2.2(e)reveal that the Customer has underpaid Subscription Fees to the Supplier, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out the Order form within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

(f) causes damage or injury to any person or property;

and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(c) use the Services and/or Documentation to provide services to third parties; or

(d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time, purchase additional User Subscriptions in excess of the number set out the order form and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall apply online via support@buddycrm.com. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or disapproval of the request (such approval not to be unreasonably withheld).

3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the order form.

4. SERVICES

4.1 The Supplier shall, during the Subscription Term, provide the Services and the Additional Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 3.00 am to 6.00 am UK time; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the support level set out in Schedule 1 of the Order Form. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. CUSTOMER DATA

5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at BuddyCRM.com or such other website address as may be notified to the Customer as such document may be amended by the Supplier in its sole discretion from time to time the current version of which is set out at Schedule 3 of this Agreement. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

5.3 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy as such document may be amended from time to time by the Supplier in its sole discretion.

5.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

(a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;

(b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(c) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and

(d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. THIRD PARTY PROVIDERS

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

7. SUPPLIER'S OBLIGATIONS

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. Save as set out in this Clause 7.2, if the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 Notwithstanding the foregoing Clauses 7.1 and 7.2, the Supplier:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7.5 The supplier shall provide the customer with the level of support agreed in Schedule 1 of the Order Form that is viewed in conjunction with this agreement. Should the Customer wish to upgrade support to a defined Service Level Agreement related to actual response times, this can be purchased for an additional cost, dependent on requirements.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

(a) provide the Supplier with:

(i) all necessary co-operation in relation to this agreement; and

(ii) all necessary access to such information as may be required by the Supplier;

in order to render the Services, including but not limited to Customer Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under this agreement;

(c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

(f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

(g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Subscription Fees and Additional Services Fees (if incurred) to the Supplier for the User Subscriptions and any applicable Additional Services in accordance with this clause 9 and Schedule 2 of the Order Form.

9.2 Payment in respect of the Subscription Services must be received in advance of the year to which those Services relate. The Customer agrees to pay for the Additional Services as set out in Schedule 2. If the Supplier has not received payment by the relevant due date, and without prejudice to any other rights and remedies of the Supplier:

(a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.3 All amounts and fees stated or referred to in this agreement:

(a) shall be payable in pounds sterling;

(b) are, subject to clause 13.4(b), non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.4 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space, bandwidth or downloads specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in The Order Form

9.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and/or the excess storage, bandwidth or download fees payable pursuant to clause 9.4 at the start of each Renewal Period or these terms and conditions upon 28 days' prior notice to the Customer and The Order Form shall be deemed to have been amended accordingly.

10. PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, the Services, the Documentation and all modifications to the same. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11. CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive termination of this agreement, however arising.

12. INDEMNITY

12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

(a) the Customer is given prompt notice of any such claim;

(b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c) the Customer is given sole authority to defend or settle the claim.

12.2 The Supplier shall, subject to clause 12.5 and the Limits of Liability in clause 13, defend the Customer, its officers, directors and employees against successful claims that the Services, Additional Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, provided that:

(a) the Supplier is given prompt notice of any such claim;

(b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

(c) the Supplier is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall the Supplier, its employees, agents or sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than the Supplier; or

(b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

(c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this agreement;

(b) any use made by the Customer of the Services and Documentation or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement;

(c) the Supplier gives no warranties as to the suitability of the Service for the Customer's business or at all;

and

(d) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees and Additional Services Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date, shall continue in force for successive periods of 36 months (the "Subscription Term"), at the current list price as advertised on www.buddycrm.com unless:

(a) either party notifies the other party of termination, in writing 31 days prior to the expiry of the subscription term. The subscription will automatically renew for a further period of 36 months, subject to the terms and conditions within this agreement.

(b) otherwise terminated in accordance with the provisions of this agreement.

(c) Unless otherwise agreed in writing, all contract terms are 36 months;

14.2 Please note that continued access to the Service is dependant upon payment being received in advance. The Supplier therefore reserves the right to suspend or terminate the Service where payment is not received.

14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

(a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

(c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

(e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(f) the other party ceases, or threatens to cease, to trade; or

(g) there is a change of control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or

(h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.4 On termination or expiry of this agreement or the Subscription Term for any reason:

(a) all licences granted under this agreement shall immediately terminate;

(b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

(d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

(e) any outstanding Additional Services Fees shall immediately become due and payable by the Customer.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. WAIVER

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. SEVERANCE

17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. ASSIGNMENT

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. GOVERNING LAW AND JURISDICTION

23.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date that the Customer first logged onto the System.

Schedule 3 – Back Up Policy

The Supplier shall use reasonable endeavours to back up data on a daily basis and keep data for a 7 day period. Back up data is stored in multiple secure sites. Should the Customer wish to request a copy of their raw data from within this period, or wish to request the restoration of data from within this period, they should e-mail support@buddycrm.com

Data Protection

1.1. The Parties shall each comply with their respective obligations under the applicable Data Protection Laws.

2. **DATA PROCESSING OBLIGATIONS**

2.1. In respect of any Personal Data to be processed by a party acting as Data Processor pursuant to this Agreement for which the other party is Data Controller, the Data Processor shall:

2.1.1. provide appropriate technical and organisational measures in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk;

2.1.2. not engage any sub-processor without the prior specific or general written authorisation of the Data Controller (and in the case of general written authorisation; the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes);

2.1.3. ensure that any sub-processor that is engaged to process such Personal Data by the Data Processor is subject to data protection obligations that are similar to those applicable to the Data Processor under this Schedule;

2.1.4. process that personal data only to perform its obligations under this Agreement or other documented instructions and for no other purpose save to the limited extent required by law;

2.1.5. on termination of this Agreement, at the Data Controller's option either return or destroy the personal data (including all copies of it) immediately;

2.1.6. ensure that all persons authorised to access the personal data are subject to obligations of confidentiality;

2.1.7. make available to the Data Controller (at the cost of the Data Controller, at the Processor's then current rates) all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; provided that, in respect of this provision the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Laws;

2.1.8. taking into account the nature of the processing, (at the cost of the Data Controller, at the Processor's then current rates) provide assistance to the Data Controller, insofar as possible, in connection with the fulfilment of the Data Controller's obligation to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR to the extent applicable;

2.1.9. provide the Data Controller (at the cost of the Data Controller, at the Processor's then current rates) with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Data Controller, taking into account the nature of the processing and the information available to the Data Processor;

3. INTERNATIONAL DATA TRANSFERS

3.1. In respect of any Personal Data to be processed by a party acting as Data Processor pursuant to this Agreement for which the other party is Data Controller, the Data Processor shall not transfer the Personal Data outside the EEA or to an international organisation without either:

3.1.1. obtaining the written permission of the Data Controller; or

3.1.2. alternatively, ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;

4. DETAILS OF PROCESSING ACTIVITIES

4.1. The following table sets out the details of processing as required by Article 28 of GDPR:

Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	Data is processed to enable the data controller to operate the sales and account management elements of their business. This should be specified by the data controller
Description of the categories of the data subjects Please specify the categories of data subject whose Personal Data shall be processed under this Agreement.	Data subjects will be as defined by the data controllers use but most likely will be business prospects or customers of the data controller. This should be specified by the data controller.
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this Agreement.	BuddyCRM only processes data entered by the "data controller". The above is a register of the primary types of data we would expect to be stored in BuddyCRM. Typically this does not include any data that is considered Special Category data under Article 9 or 10 of the GDPR. However, it is the responsibility of the "data controller" to ensure a register of any data collected that is covered by Article 9 or 10 is properly adhered to and BuddyCRM does not warrant any such collection of data. To check what type of data is covered by Article 9 or 10, please check here https://gdpr-info.eu/art-9-gdpr/.
Description of transfers of Personal Data to a country outside of the EEA Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards.	All our data centres are UK based. None of your data will ever be physically stored outside the UK or wider EU. These data centres are using industry best practice security and access control. If as part of our ongoing work, any of our team members outside the EU have to access your data (note it will never leave UK/EU)

	then all appropriate safeguards will be in place including EU Model Clauses.
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	Once data is deleted by a customer ("data controller") from the BuddyCRM interface, it is soft deleted in the BuddyCRM database. There is no way for access to this data by the "data controller" without going through our support teams. Our data retention period is up to two years so within a two-year period of soft deletion, we run data update tools that will hard delete any records deleted for more than two years. In terms of data that you, as the "data controller", have sent to us as part of ongoing support, this is also subject to our two-year retention period. It is stored on secure storage and will be deleted during our annual data review if it is over two years since it was last edited or accessed. It is the data accessed date that applies. This review happens once per annum so it can be up to three years after last accessed date that the data is deleted.
General description of technical and organisational security measures	We follow industry best practice with regard to our infrastructure and software security: - All your user passwords are saved in a hashed format so cannot be accessed in plain text - All data is secured in UK based data centres with 99.9% availability - Data centre is manned by security 24x7 - Perimeter door monitoring and alerts - Multi-tenanted infrastructure including multiple webservers, active/passive SQL databases - Data replicated to Microsoft Azure for disaster recovery purposes

	- Extensive digital CCTV system covering internal and external areas. Monitored by on-site security teams - PAC Integrated card access and biometric access control with full auditing and reporting - Security systems linked to the building management system (BMS) and network operations teams - Industry best practice security firewall tested regularly by our CREST approved security team - Access to infrastructure is locked down to BuddyCRM offices - All development is managed using Github tools to manage code quality and security access to code - Password change policies enacted frequently - BuddyCRM has committed to starting the process of becoming ISO27001 accredited which will provide an external audit of all our security policies and systems These measures are listed for information purposes and don't replace the contractual terms set out in our terms and conditions.
Authorised Sub-Processors	In the course of our business, occasionally we may work with authorised sub-processors. However, this will always be with contractual protection and EU model clauses in place.