

## TERMS OF TRADE

THIS AGREEMENT GOVERNS CUSTOMER'S USE OF THE SERVICES. CAPITALISED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) SIGNING A PROPOSAL THAT REFERENCES THIS AGREEMENT, OR (3) USING THE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

This Agreement is effective between Customer and BigChange as of the date of Customer's acceptance (the "Effective Date").

### 1. DEFINITIONS

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **"Control,"** for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means these terms of trade.

**"BigChange"** means BigChange Limited, UK company number 08189817.

**"Customer"** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Services Agreements.

**"Customer Data"** means electronic data and information submitted by or for Customer to the Services, excluding Non-BigChange Applications.

**"Documentation"** means the applicable documentation and its usage guides and policies, as updated from time to time, accessible via <https://support.bigchange.com/home/en-gb/>.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**"Non-BigChange Application"** means web-based, mobile, offline or other software functionality that interoperates with a Service, that is provided by Customer or a third party.

**"Purchased Products"** means subscription Services that Customer or Customer's Affiliate purchases under a Services Agreement.

**"Services"** means the products and services that are ordered by Customer under a Services Agreement. "Services" exclude third party products or services, including Non-BigChange Applications.

**"Services Agreement"** means an ordering document specifying the Services to be provided hereunder that is entered into between Customer and BigChange or any of their Affiliates, including any addenda and supplements thereto. By entering into a Services Agreement hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"User"** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorised by Customer to use a Service, for whom Customer has purchased a subscription, and to whom Customer (or, when applicable, BigChange at Customer's request) has supplied a user identification and password (for Services utilising authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

### 2. BIGCHANGE RESPONSIBILITIES

**2.1 Provision of Purchased Products.** BigChange will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Services Agreements and Documentation, (b) provide applicable BigChange standard support for the Purchased Products to Customer, (c) use commercially reasonable efforts to make the Purchased Products available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which BigChange shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond BigChange's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving BigChange employees), Internet service provider failure or delay, Non-BigChange Application, or denial of service attack ("Uptime") and (d) provide the Services in accordance with laws and government regulations applicable to BigChange's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services) and subject to Customer's and Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Services Agreement. The Customer understands that its sole and exclusive remedy for breach by BigChange of sub-section (c) above in any given calendar month shall be:

Uptime Level	Available Credit
99.0% to < 99.5%	Credit equal to 6% of monthly fees for the affected service
98.5% to < 99.0%	Credit equal to 7% of monthly fees for the affected service
98.0% to < 98.5%	Credit equal to 8% of monthly fees for the affected service

97.5% to < 98.0% Credit equal to 9% of monthly fees for the affected service  
Below 97.5% Credit equal to 10% of monthly fees for the affected service

- 2.2 Protection of Customer Data.** BigChange will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data in accordance with the data processing addendum at <https://www.bigchange.com/>. The Customer understands that BigChange taking all commercially reasonable steps to recover data from available backups is its sole and exclusive remedy for loss or corruption of Customer Data. The Customer agrees that BigChange will retain the Customer Data for as long as is necessary for the purpose for which it was collected.

### **3. USE OF SERVICES**

- 3.1 Subscriptions.** Purchased Products are purchased as subscriptions for the term stated in the applicable Services Agreement. Subscriptions commence when access is first given to the applicable Purchased Product. Subscriptions for Purchased Products can be added by Customer during a subscription term and will be added to Customer's minimum commitment. Billing on those additions will commence, at BigChange's sole discretion, either on: (i) the date BigChange provides access to the additional subscription; or (ii) the next monthly billing date following the date BigChange provides access. Any added subscription will terminate on the same date as the underlying subscriptions.
- 3.2 Usage Limits.** Services are subject to usage limits specified in Services Agreements and Documentation. If Customer exceeds a usage limit, Customer will execute a Services Agreement for additional quantities of the applicable Services promptly upon BigChange's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below. Unless expressly stated otherwise in a Services Agreement setup, training and/or implementation Services expire 12 months after purchase.
- 3.3 Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation, Services Agreements, the End User License Agreement and Acceptable Use Policy both available at <https://www.bigchange.com/> and incorporated hereby by reference (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-BigChange Applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorised access to or use of Services, and notify BigChange promptly of any such unauthorised access or use, (d) use Services only in accordance with this Agreement, Documentation, the End User License Agreement and Acceptable Use Policy, Services Agreements and applicable laws and government regulations, (e) comply with terms of service of any Non-BigChange Applications with which Customer uses Services, and (f) maintain all the consents needed for it to use the Services. Any use of the Services in breach of the foregoing by Customer or Users that in BigChange's judgment threatens the security, integrity or availability of BigChange's services, may result in BigChange's immediate suspension of the Services, however BigChange will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 3.4 Usage Restrictions.** Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in a Services Agreement or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or Non-BigChange Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-BigChange Application to store or transmit Malicious Code, (e) use a Service to store or transmit protected health information or information that require special precautions to protect from unauthorised use, including payment card information and PIN, (f) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (g) attempt to gain unauthorised access to any Service or its related systems or networks, (h) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of BigChange intellectual property except as permitted under this Agreement, a Services Agreement, or the Documentation, (i) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (j) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.
- 3.5 Upgrades and Modifications.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by BigChange regarding future functionality or features. Customer agrees that BigChange may update, upgrade or modify the Purchased Products, at any time, including the removal or modification of previously available functionality; provided, however, that any such updates, upgrades, enhancements and/or modifications shall not materially reduce the functionality of the Purchased Products. Any updates, upgrades, enhancements and/or modifications provided to the Purchased Products will automatically be considered part of the Purchased Products and will be subject to the terms of this Agreement.
- 3.6 Removal of Non-BigChange Applications.** If Customer receives notice, including from BigChange, that a Non-BigChange Application may no longer be used or must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the

Acceptable Use Policy, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in BigChange's judgment continued violation is likely to reoccur, BigChange may disable the applicable Service and/or Non-BigChange Application. If requested by BigChange, Customer shall confirm deletion and discontinuance of use of such Non-BigChange Application in writing and BigChange shall be authorised to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable.

#### **4. NON-BIGCHANGE PRODUCTS AND SERVICES**

**4.1 Non-BigChange Products and Services.** BigChange or third parties may make available third-party products or services, including, for example, Non-BigChange Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-BigChange provider, product or service is solely between Customer and the applicable Non-BigChange provider. BigChange does not warrant or support Non-BigChange Applications or other Non-BigChange products or services, whether or not they are designated by BigChange as "certified" or otherwise, unless expressly provided otherwise in a Services Agreement. BigChange is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-BigChange providers.

**4.2 Integration with Non-BigChange Applications.** The Services may contain features designed to interoperate with Non-BigChange Applications. BigChange cannot guarantee the continued availability of such Service features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-BigChange Application ceases to make the Non-BigChange Application available for interoperability with the corresponding Service features in a manner acceptable to BigChange.

**4.3 Hardware.** All hardware provided by, or purchased from, BigChange is third party supplied hardware, which will be governed by and subject to the manufacturer's terms and conditions (including guarantees or warranties for such hardware, if any). Risk to hardware passes to Customer upon delivery. Title to hardware passes to Customer upon payment in full. At any time before title has passed, title to, and property in, the hardware shall remain with BigChange and BigChange shall have the right, without prejudice to any other rights, to recover or re-sell supplied hardware or any part of the same and may enter upon the Customer's premises, or work upon the Customer's vehicles, by its servants or agents, for that purpose.

**4.4 Hardware Installation.** All hardware installation services are carried out by third parties and are governed by and subject to such parties' terms and conditions. The parties agree that the Hardware Advisory Disclaimer posted on <https://www.bigchange.com/legal> is incorporated herein by reference.

#### **5. FEES AND PAYMENT**

**5.1 Fees.** Customer will pay all fees specified in Services Agreements. Fees are either one-off or based on Services subscriptions purchased and not actual usage. Payment obligations are non-cancelable and fees paid are non-refundable. Quantities purchased cannot be decreased to below the quantity specified in the relevant Services Agreement during the relevant subscription term.

**5.2 Invoicing and Payment.** Customer will provide BigChange with valid and updated payment information. Customer authorises BigChange to charge for all charges listed in the Services Agreement for the initial subscription term and any renewal subscription term(s). Such charges shall be made in the frequency stated in the applicable Services Agreement. Unless otherwise stated in the Services Agreement, invoiced fees are due net 7 for one-off fees and net 30 days for other fees. Customer is responsible for providing complete and accurate billing and contact information to BigChange and notifying BigChange of any changes to such information.

**5.3 Overdue Charges.** If any invoiced amount is not received by BigChange by the due date, then without limiting BigChange's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) BigChange may condition future subscription renewals and Services Agreements on payment terms shorter than those specified in the "Invoicing and Payment" section above.

**5.4 Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorised BigChange to charge to Customer's credit card), BigChange may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, BigChange will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.

**5.5 Taxes.** BigChange's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If BigChange has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, BigChange will invoice Customer and Customer will pay that amount unless Customer provides BigChange with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, BigChange is solely responsible for taxes assessable against it based on its income, property and employees.

**5.6 RPI Increases.** On each twelve-month anniversary from the commencement of Services, BigChange may increase prices in line with the prevailing RPI (Retail Price Index) rate over the rate of RPI at the date of the commencement applied as a percentage change to the original value. Customer accepts that the measurement by use of RPI is an appropriate method and agrees to pay any subsequent payments at the revised amounts determined and invoiced by BigChange after applying this method of calculation.

## **6. PROPRIETARY RIGHTS AND LICENSES**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, BigChange, its Affiliates and its licensors reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2 License by Customer to BigChange.** Customer grants BigChange, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-BigChange Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for BigChange to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. Customer agrees that BigChange may create anonymised statistical data from Customer Data and usage of the Services, including through aggregation. Once anonymised, BigChange may use the same for its own purposes. If Customer chooses to use a Non-BigChange Application with a Service, Customer grants BigChange permission to allow the Non-BigChange Application and its provider to access Customer Data and information about Customer's usage of the Non-BigChange Application as appropriate for the interoperation of that Non-BigChange Application with the Service. Subject to the limited licenses granted herein, BigChange acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-BigChange Application or such program code.

**6.3 License by Customer to Use Feedback.** Customer grants to BigChange and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of BigChange's or its Affiliates' services.

**6.4 Personal Data Protection Notice.** Any collection of personal data shall be collected in accordance with the Personal Data Protection Notice at <https://www.bigchange.com/>, which is hereby incorporated by reference.

**6.5 Credit Checks.** BigChange may perform credit and identity checks with one or more credit reference agencies ("CRAs"). To do this, BigChange will supply personal information to CRAs. CRAs supply both public (including the electoral register) and shared credit, financial situation and financial history information and fraud prevention information, which will be used by BigChange to: (a) assess creditworthiness, (b) verify the accuracy of the data provided, (c) prevent criminal activity, fraud and money laundering, (d) manage account(s), (e) trace and recover debts, and (f) ensure offers provided are appropriate in the circumstances. BigChange will continue to exchange information about Customer with CRAs while Customer has a relationship with BigChange.

## **7. CONFIDENTIALITY**

**7.1 Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of BigChange includes the Services, and the terms and conditions of this Agreement and all Services Agreements (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional BigChange services.

**7.2 Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Services Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, BigChange may disclose the terms of this Agreement and any applicable Services Agreement to a contractor or Non-BigChange Application Provider to the extent necessary to perform BigChange's obligations under this Agreement, under terms of



confidentiality materially as protective as set forth herein.

- 7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. REPRESENTATIONS, DUE DILIGENCE AND DISCLAIMERS**

- 8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2 Due diligence.** THE CUSTOMER SHOULD APPLY DUE DILIGENCE TO ENSURE THE SERVICES MEET ITS SPECIFIC REQUIREMENTS. THE CUSTOMER SHOULD COMPARE ITS BUSINESS REQUIREMENTS AGAINST THE FUNCTIONAL CAPABILITIES DETAILED IN THE DOCUMENTATION.
- 8.3 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS". NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. BIGCHANGE DOES NOT WARRANT OR GUARANTEE THAT USE OF THE SERVICES WILL BE FREE FROM DEFECTS, ERROR-FREE OR UNINTERRUPTED OR THAT DATA LOSS WILL NOT OCCUR. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BIGCHANGE DISCLAIMS ALL LIABILITY IN CONNECTION WITH THE ACTS AND OMISSIONS OF THIRD-PARTY HARDWARE, SOFTWARE AND PROFESSIONAL SERVICE PROVIDERS.

## **9. MUTUAL INDEMNIFICATION**

- 9.1 Indemnification by BigChange.** BigChange will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by BigChange in writing of, a Claim Against Customer, provided Customer (a) promptly gives BigChange written notice of the Claim Against Customer, (b) gives BigChange sole control of the defense and settlement of the Claim Against Customer (except that BigChange may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives BigChange all reasonable assistance, at BigChange's expense. If BigChange receives information about an infringement or misappropriation claim related to a Service, BigChange may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by BigChange, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under a Services Agreement for which there is no charge; or (IV) a Claim against Customer arises from a Non-BigChange Application or Customer's breach of this Agreement, the Documentation or applicable Services Agreements.
- 9.2 Indemnification by Customer.** Customer will defend BigChange and its Affiliates against any claim, demand, suit or proceeding made or brought against BigChange by a third party (a) alleging that the combination of a Non-BigChange Application or configuration provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or (b) arising from (i) Customer's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation, or Services Agreement, (ii) any Customer Data or Customer's use of Customer Data with the Services, or (iii) a Non-BigChange Application provided by Customer (each a "Claim Against BigChange"), and will indemnify BigChange from any damages, attorney fees and costs finally awarded against BigChange as a result of, or for any amounts paid by BigChange under a settlement approved by Customer in writing of, a Claim Against BigChange, provided BigChange (A) promptly gives Customer written notice of the Claim Against BigChange, (B) gives Customer sole control of the defense and settlement of the Claim Against BigChange (except that Customer may not settle any Claim Against BigChange unless it unconditionally releases BigChange of all liability), and (C) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against BigChange arises from BigChange's breach of this Agreement, the Documentation or applicable Services Agreements.
- 9.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## **10. LIMITATION OF LIABILITY**

- 10.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF

ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE SIX MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **11. TERM, TERMINATION AND VARIATION**

**11.1 Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

**11.2 Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Services Agreement. Except as otherwise specified in a Services Agreement, subscriptions will automatically renew for additional one-year terms, unless either party gives the other written notice (email acceptable) at least 60 days before the end of the relevant subscription term. Except as expressly provided in the applicable Services Agreement, renewal will be at BigChange's applicable list price in effect at the time of the applicable renewal.

**11.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**11.4 Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the "Termination" section above, BigChange will refund Customer any prepaid fees covering the remainder of the term of all Services Agreements after the effective date of termination. If this Agreement is terminated by BigChange in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Services Agreements to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to BigChange for the period prior to the effective date of termination.

**11.5 Hardware upon Termination or Expiration.** In relation to hardware for which title has not passed to Customer, upon termination or expiration, BigChange shall be entitled to either, at BigChange's sole discretion: (1) require payment in full of any remaining balance therefor; or (2) repossess such hardware and Customer must: (a) arrange to disconnect and de-commission such hardware and pack them in accordance with BigChange instructions, (b) remove all personal data, sensitive data or passwords, and (c) return any such hardware to BigChange at Customer's expense, serviced and maintained in good repair and condition together with all related log books, manuals, records and handbooks, to such address in the United Kingdom as BigChange may reasonably specify.

**11.6 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Hardware upon Termination or Expiration", "Removal of Non-BigChange Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as BigChange retains possession of Customer Data.

**11.7 Variation.** By written notice, BigChange may make changes to this Agreement that do not materially change to Customer's rights or responsibilities, and such changes will come into effect on the date such notice is given. BigChange may make changes to this Agreement that materially change to Customer's rights or responsibilities, including price, by written notice no less than 90 days' notice prior to the expiration of the relevant subscription term, and such changes will come into effect from the commencement of the next subscription term (if any).

## **12. GENERAL PROVISIONS**

**12.1 Force Majeure.** Excluding a party's inability to pay debts as they come due, if the performance of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by circumstances beyond its reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

**12.2 Marketing.** Customer agrees that, while it is a BigChange customer, BigChange and its Affiliate can use its name and/or logo in marketing and promotion materials, collateral, presentations and publications.

- 12.3 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 12.4 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between BigChange and Customer regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Services Agreements) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Services Agreement, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 12.5 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 12.6 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.7 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 12.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 12.9 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Services Agreements), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, BigChange will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.10 Notices, Governing Law, and Venue.** Notices should be addressed to: 3175 Century Way, Thorpe Park, Leeds, England, LS15 8ZB, attn: General Counsel. This Agreement shall be governed by and construed in accordance with the laws of England, without regard to its conflict of laws principles. Any legal action or proceeding arising under this Agreement shall be brought exclusively in the state and federal courts located in London, England, and the parties hereby consent to the personal jurisdiction and venue of such courts.
- 12.11 Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email.