

**Data Candy (UK) Limited T/A SmartTrace**  
**Terms and Conditions**

Last Updated: 21 September 2021

**Our Terms and Conditions**

**1. These terms**

- 1.1 **What these terms cover.** These are the terms and conditions on which we supply Products to you, whether these are goods, services or digital content included and referred to on our website.
- 1.2 **Why you should read them.** Please read these terms carefully before you use our site and submit your order to us. These terms tell you who we are, how we will provide Products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.
- 1.3 **Are you a business customer or a consumer?** In some areas you will have different rights under these terms depending on whether you are a business or consumer. You are a consumer if:
- You are an individual.
  - You are buying Products from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).
- 1.4 **Your responsibility.** It is entirely your responsibility whether a consumer or business to ensure that all contact details are kept up to date and we are informed as soon as possible of any updates. We cannot be held liable for any loss, damage or Products going missing if you have failed to provide us with the correct contact details.
- 1.5 **If you are a business customer this is our entire agreement with you.** If you are a business customer these terms constitute the entire agreement between us in relation to your purchase. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **2. Information about us and how to contact us**

- 2.1 **Who we are.** We are Data Candy (UK) a company registered in England and Wales trading as 'SmartTrace'. Our company registration number is 13102481 and our registered address is at UNIT 3, Varley Business Centre, St James Street, Manchester, M40 8EL. Our registered VAT number is 369874036.
- 2.2 **How to contact us.** You can contact us by telephoning our customer service team at 01208 420 999 or by writing to us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk) or by post at UNIT 3, Varley Business Centre, St James Street, Manchester, M40 8EL.
- 2.3 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.
- 2.4 **"Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.

## **3. Our contract with you**

- 3.1 **How we will accept your order.** Our acceptance of your order will take place when we email you to accept it, at which point a contract will come into existence between you and us.
- 3.2 **If we cannot accept your order.** If we are unable to accept your order, we will inform you of this and will not charge you for the Product. This might be because the Product is out of stock, because of unexpected limits on our resources which we could not reasonably plan for because we have identified an error in the price or description of the Product or because we are unable to meet a delivery deadline you have specified.
- 3.3 **Your order number.** We will assign an order number to your order and tell you what it is when we accept your order. It will help us if you can tell us the order number whenever you contact us about your order.

**Service Availability.** Our site, including but not limited to all advertising, is directed at promoting our Products to people residing in the United Kingdom. We do not represent that content available on or through our site is appropriate for use or available in other locations. You are solely responsible for evaluating the fitness for a particular purpose of any downloads, programs and text available through this site. Redistribution or republication of any part of this site or its content is prohibited, including such by framing or other similar or any other means, without the express written consent of the Company.

## **4. Our Products**

- 4.1 For the purposes of this agreement, the term 'Products' shall be used to refer to the services and digital content we provide to you via our [www.smartrace.org.uk](http://www.smartrace.org.uk), including but not limited to the website itself, registration of your pet(s) in our SmartTrace

database, storage of their details in our on-line account, and provision of round the clock customer support in the event your pet(s) are stolen or lost.

4.2 **Products may vary slightly from their pictures.** The images of the Products on our website are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device's display of the colours accurately reflects the colour of the Products. Your Product may vary slightly from those images.

4.3 **Product packaging and format may vary.** The packaging and format of the Product may vary from that shown in images on our website.

## 5. **Your rights to make changes**

If you wish to make a change to the Product you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the Product (if any), the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract (see clause 8 – Your rights to end the contract).

## 6. **Our rights to make changes**

6.1 **Minor changes to the Products.** We may change the Product:

- (a) to reflect changes in relevant laws and regulatory requirements. These changes may affect the use and effect of the Product; and
- (b) to implement minor technical adjustments and improvements, for example to address a security threat. These changes will not affect your use of the Product.

6.2 **More significant changes to the Products.** In addition, we may make the following changes to the Product(s), but if we do so we will notify you and you may then contact us to end the contract before the changes take effect and, where appropriate, receive a refund for any Products paid for but not received.

6.3 **Updates to digital content and our website.** We may update or require you to update digital content, provided that the digital content shall always match the description that we provided to you before you placed the order. This includes any updates and changes to our site from time to time to reflect changes to our Products, users' needs and our business priorities and needs. We will try to give you reasonable notice any major changes. Our site is available free of charge. We do not guarantee that it, or any content on it, will always be available or be uninterrupted. We may suspend or withdraw or restrict the availability of all or any part of our site for business and operational reasons. We will try to give you reasonable notice of any suspension or withdrawal. You are also responsible for ensuring that all persons who access our site through your internet

connection are aware of these terms of use and other applicable terms and conditions, and that they comply with them.

## 7. Providing the Products

7.1 **Delivery costs.** Where appropriate, the costs of delivery will be as displayed to you on our website.

7.2 **When we will provide the Products.** During the order process we will let you know when we will provide the Products to you. If the Products are ongoing services or subscriptions, we will also tell you during the order process when and how you can end the contract.

- (a) **If the Products are goods.** If the Products are goods we will contact you with an estimated delivery date, which will be within 30 days after the day on which we accept your order.
- (b) **If the Products are one-off services.** We will begin the services on the date agreed with you during the order process. The estimated completion date for the services is as told to you during the order process.
- (c) **If the Product is a one-off purchase of digital content.** We will make the digital content available for download by you as soon as we accept your order.
- (d) **If the Products are ongoing services or a subscription to receive goods or digital content.** We will supply the services, goods or digital content to you until either the services are completed or the subscription expires (if applicable) or you end the contract as described in 8 or we end the contract by written notice to you as described in 10.

7.3 **We are not responsible for delays outside our control.** If our supply of the Products is delayed by an event outside our control ('**Force Majeure Event**') then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. In such circumstances, we shall be entitled to a reasonable extension of the time for performing such obligations. However, if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any Products you have paid for but not received. A Force Majeure Event includes but is not limited to the following:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;

- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent];
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

7.4 **If you are not available when the Product is delivered.** Where appropriate, if no one is available to take delivery and the Products cannot be delivered without your presence or input, we will contact you informing you of how to rearrange delivery.

7.5 **If you do not re-arrange delivery.** If you do not collect the Products from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery or collect them, we will contact you for further instructions and may charge you additional costs and any further costs associated with the delay and subsequent delivery. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and 10.2 will apply.

7.6 **What will happen if you do not give required information to us.** We may need certain information from you so that we can supply the Products to you, for example, pet details. If so, this will have been stated in the description of the Products on our website. We will contact you to ask for this information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and 10.2 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying the Products late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

7.7 **Reasons we may suspend the supply of Products to you.** We may have to suspend the supply of a Product to:

- (a) deal with technical problems or make minor technical changes;
- (b) update the Product to reflect changes in relevant laws and regulatory requirements;
- (c) make changes to the Product as requested by you or notified by us to you (see 6).

7.8 **Your rights if we suspend the supply of Products.** We will contact you in advance to tell you we will be suspending supply of the Product, unless the problem is urgent or an emergency. If we have to suspend the Product for longer than 90 days in any 12-month

period, we will adjust the price so that you do not pay for Products while they are suspended. You may contact us to end the contract for a Product if we suspend it, or tell you we are going to suspend it, in each case for a period of more than 90 days and we will refund any sums you have paid in advance for the Product in respect of the period after you end the contract.

- 7.9 **We may also suspend supply of the Products if you do not pay.** If you do not pay us for the Products when you are supposed to (see 14.4) and you still do not make payment within [7] days of us reminding you that payment is due, we may suspend supply of the Products until you have paid us the outstanding amounts. We will contact you to tell you we are suspending supply of the Products. We will not suspend the Products where you dispute the unpaid invoice (see 14.7). We will not charge you for the Products during the period for which they are suspended. As well as suspending the Products we can also charge you interest on your overdue payments (see 14.6).

## 8. Your rights to end the contract

- 8.1 **You can always end your contract with us.** Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing, when you decide to end the contract and whether you are a consumer or business customer:

- (a) **If what you have bought is faulty or misdescribed you may have a legal right to end the contract** (or to get the Product repaired or replaced or re-performed or to get some or all of your money back), **see** 12 if you are a consumer and 13 if you are a business;
- (b) **If you want to end the contract because of something we have done or have told you we are going to do, see 8.2;**
- (c) **If you are a consumer and have just changed your mind about the Product, see 8.3.** You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions;
- (d) **In all other cases (if we are not at fault and you are not a consumer exercising your right to change your mind), see clause 8.6.**

- 8.2 **Ending the contract because of something we have done or are going to do.** If you are ending a contract for a reason set out at (a) to (e) below the contract will end immediately and we will refund you in full for any Products which have not been provided and you may also be entitled to compensation. The reasons are:

- (a) we have told you about an upcoming change to the Product or these terms which you do not agree to (see 6.2);
- (b) we have told you about an error in the price or description of the Product you have ordered and you do not wish to proceed;
- (c) there is a risk that supply of the Products may be significantly delayed because of events outside our control;

- (d) we have suspended supply of the Products for technical reasons, or notify you we are going to suspend them for technical reasons, in each case for a period of more than [90 days]; or
- (e) you have a legal right to end the contract because of something we have done wrong.

8.3 **Exercising your right to change your mind if you are a consumer (Consumer Contracts Regulations 2013).** If you are a consumer then for most Products bought online you have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.

8.4 **When consumers do not have a right to change their minds.** Your right as a consumer to change your mind does not apply in respect of:

- (a) digital Products after you have started to download or stream these;
- (b) services, once these have been completed, even if the cancellation period is still running;
- (c) Products sealed for health protection or hygiene purposes, once these have been unsealed after you receive them;
- (d) sealed audio or sealed video recordings or sealed computer software, once these Products are unsealed after you receive them; and
- (e) any Products which become mixed inseparably with other items after their delivery.

8.5 **How long do consumers have to change their minds?** If you are a consumer, how long you have to change your mind depends on what you have ordered and how it is delivered.

- (a) **Have you bought services and/or digital content?** If so, you have 14 days after the day we email you to confirm we accept your order. However, once we have completed the services you cannot change your mind, even if the period is still running. If you cancel after we have started the services, you must pay us for the services provided up until the time you tell us that you have changed your mind.
- (b) **Have you bought goods?**, if so you have 14 days after the day you (or someone you nominate) receives the goods, **unless**:
  - (i) **Your goods are split into several deliveries over different days.** In this case you have until 14 days after the day you (or someone you nominate) receives the last delivery.
  - (ii) **Your goods are for regular delivery over a set period.** In this case you have until 14 days after the day you (or someone you nominate) receives the first delivery of the goods.

8.6 **Ending the contract where we are not at fault and there is no right to change your mind.** Even if we are not at fault and you are not a consumer who has a right to change their mind (see clause 8.1), you can still end the contract before it is completed, but you may have to pay us compensation. A contract for goods or digital content is completed when the Product is delivered, downloaded or streamed and paid for. A contract for services is completed when we have finished providing the services and you have paid for them. If you want to end a contract before it is completed where we are not at fault and you are not a consumer who has changed their mind, just contact us to let us know. The contract will end immediately and we will refund any sums paid by you for Products not provided but we may deduct from that refund (or, if you have not made an advance payment, charge you) reasonable compensation for the net costs we will incur as a result of your ending the contract.

9. **How to end the contract with us (including if you are a consumer who has changed their mind)**

9.1 **Tell us you want to end the contract.** To end the contract with us, please let us know by doing one of the following:

- (a) **Phone or email.** Call customer services on 01208 420 999 or email us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk). Please provide your name, home address, details of the order and, where available, your phone number and email address.
- (b) **By post.** simply write to us at that address, including details of what you bought, when you ordered or received it and your name and address.

9.2 **Returning Products after ending the contract.** Where appropriate, if you end the contract for any reason after Products have been dispatched to you or you have received them, you must return them to us. You must either return the goods in person to where you bought them, post them back to us at our address. Please call customer services on 01208 420 999 or email us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk) for a return label or to arrange a collection. If you are a consumer exercising your right to change your mind you must send off the goods within 14 days of telling us you wish to end the contract.

9.3 **When we will pay the costs of return.** We will pay the costs of return:

- (a) if the Products are faulty or misdescribed;
- (b) if you are ending the contract because we have told you of an upcoming change to the Product or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong; or

In all other circumstances (including where you are a consumer exercising your right to change your mind) you must pay the costs of return.

9.4 **How we will refund you.** If you are entitled to a refund under these terms we will refund you the price you paid for the Products, by the method you used for payment. However, we may make deductions from the price, as described below.



9.5 **When we may make a deduction from refunds if you are a consumer exercising your right to change your mind.** If you are exercising your right to change your mind:

- (a) We may reduce your refund of the price (excluding delivery costs) to reflect any reduction in the value of the goods, if this has been caused by your handling them in a way which would not be permitted in a shop. If we refund you the price paid before we are able to inspect the goods and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount.
- (b) The maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method we offer. For example, if we offer delivery of a Product within 3-5 days at one cost but you choose to have the Product delivered within 24 hours at a higher cost, then we will only refund what you would have paid for the cheaper delivery option.
- (c) Where the Product is a service, we may deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when you told us you had changed your mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the contract.

9.6 **When your refund will be made.** We will make any refunds due to you as soon as possible. If you are a consumer exercising your right to change your mind then:

- (a) If the Products are goods and we have not offered to collect them, your refund will be made within 14 days from the day on which we receive the Product back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product back to us. For information about how to return a Product to us, see clause 9.1(a).
- (b) In all other cases, your refund will be made within 14 days of your telling us you have changed your mind

**10. Our rights to end the contract**

10.1 **We may end the contract if you break it.** We may end the contract for a Product at any time by writing to you if:

- (a) you do not make any payment to us when it is due;
- (b) you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Products;
- (c) you do not, within a reasonable time, allow us to deliver the Products to you or collect them from us.

10.2 **You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 10.1 we will refund any money you have paid in advance for Products we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

10.3 **We may withdraw the Product.** We may write to you to let you know that we are going to stop providing the Product. We will let you know at least 90 days in advance of our stopping the supply of the Product and, where appropriate, will refund any sums you have paid in advance for Products which will not be provided.

## 11. If there is a problem with the Product

**How to tell us about problems.** If you have any questions or complaints about the product, please contact us. You can telephone our customer service team at 01208 420 999 or write to us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk) or by post at UNIT 3, Varley Business Centre, St James Street, Manchester, M40 8EL.

## 12. Your rights in respect of defective Products if you are a consumer

12.1 If you are a consumer we are under a legal duty to supply Products that are in conformity with this contract. See the box below for a summary of your key legal rights in relation to the Products. Nothing in these terms will affect your legal rights.

### Summary of your key legal rights

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.

If your Product is **goods**, the Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected lifespan of your Product your legal rights entitle you to the following:

- a) Up to 30 days: if your goods are faulty, then you can get an immediate refund.
- b) Up to six months: if your goods can't be repaired or replaced, then you're entitled to a full refund, in most cases.
- c) Up to six years: if your goods do not last a reasonable length of time you may be entitled to some money back.

See also clause 8.3.

If your Product is **digital content**, the Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality:

- a) If your digital content is faulty, you're entitled to a repair or a replacement.
- b) If the fault can't be fixed, or if it hasn't been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back
- c) If you can show the fault has damaged your device and we haven't used reasonable care and skill, you may be entitled to a repair or compensation

See also clause 8.3.

If your Product is **services**, for example, the Consumer Rights Act 2015 says:

- a) You can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it.
- b) If you haven't agreed on a price beforehand, what you're asked to pay must be reasonable.
- c) If you haven't agreed on a time beforehand, it must be carried out within a reasonable time.

See also clause 8.2.

**12.2 Your obligation to return rejected Products.** If you wish to exercise your legal rights to reject products you must either return them in person to where you bought them, post them back to us or (if they are not suitable for posting) allow us to collect them from you. We will pay the costs of postage or collection. Please call customer services on 01208 420 999 or write to us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk) to arrange a return/collection.

### **13. Your rights in respect of defective Products if you are a business**

**13.1** If you are a business customer we warrant that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), any Products which are goods shall:

- (a) conform in all material respects with their description; and
- (b) be free from material defects in design, material and workmanship.

**13.2** Subject to clause 13.3, if:

- (a) you give us notice in writing during the warranty period within a reasonable time of discovery that a Product does not comply with the warranty set out in clause 13.1;
- (b) we are given a reasonable opportunity of examining such Product; and
- (c) you return such Product to us at our cost,  
we shall, at our option, repair or replace the defective Product, or refund the price of the defective Product in full.

**13.3** We will not be liable for a Product's failure to comply with the warranty in clause 13.1 if:

- (a) you make any further use of such Product after giving a notice in accordance with clause 13.2(a);
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product or (if there are none) good trade practice;
- (c) the defect arises as a result of us following any drawing, design or specification supplied by the Customer;
- (d) you alter or repair the Product without our written consent; or

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 13.4 Except as provided in this clause 13, we shall have no liability to you in respect of a Product's failure to comply with the warranty set out in clause 13.1.
- 13.5 These terms shall apply to any repaired or replacement Products supplied by us under clause 13.2.
- 14. Price and payment**
- 14.1 **Where to find the price for the Product.** The price of the Product (which includes VAT) will be the price indicated on the order pages when you placed your order. We take all reasonable care to ensure that the price of the Product advised to you is correct. However please see clause 14.3 for what happens if we discover an error in the price of the Product you order.
- 14.2 **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your order date and the date we supply the Product, we will adjust the rate of VAT that you pay, unless you have already paid for the Product in full before the change in the rate of VAT takes effect.
- 14.3 **What happens if we get the price wrong?** It is always possible that, despite our best efforts, some of the Products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the Product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the Product's correct price at your order date is higher than the price stated to you, we will contact you for your instructions before we accept your order. If we accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may end the contract, refund you any sums you have paid and require the return of any goods provided to you.
- 14.4 **When you must pay and how you must pay.** We accept payment with Visa, Visa Debit, Mastercard, Solo, Maestro, Electron and Laser Card. We also accept payments via PayPal and Klarna. When you must pay depends on what product you are buying. When you must pay depends on what Product you are buying:
  - (a) For **goods**, you must pay for the Products before we dispatch them. We will not charge your credit or debit card until we dispatch the Products to you.
  - (b) For **digital content**, you must pay for the Products before you download them.
  - (c) For **services**, we will invoice you monthly in advance for the services until the services are completed. You must pay each invoice within 7 days after the date of the invoice.
- 14.5 **Our right of set-off if you are a business customer.** If you are a business customer you must pay all amounts due to us under these terms in full without any set-off,

counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14.6 **We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

14.7 **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date. Please do bear in mind the following:

- (a) The cost of products and services may fluctuate in foreign countries. All prices advertised are subject to such changes.
- (b) Only one promotion code can be used per order, with special events or generic promotion codes. In an attempt to take advantage of any promotion code/voucher etc. we have the right to cancel any order(s) placed multiple times at the same address using a voucher, but under different names as this constitutes an abuse of these terms and conditions.

## 15. **Our responsibility for loss or damage suffered by you if you are a consumer**

15.1 **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

15.2 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the Products as summarised at clause 12.1 and for defective products under the Consumer Protection Act 1987.

15.3 **When we are liable for damage to your property.** If we are providing services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the services.

15.4 **When we are liable for damage caused by defective digital content.** If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill we will either repair

the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

15.5 **We are not liable for business losses.** If you are a consumer we only supply the Products to you for domestic and private use. If you use the Products for any commercial, business or resale purpose our liability to you will be limited as set out in clause 16.

15.6 **We are not responsible for viruses and you must not introduce them.** We do not guarantee that our site will be secure or free from bugs or viruses. You are responsible for configuring your information technology, computer programmes and platform to access our site. You should use your own virus protection software. You must not misuse our site by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to our site, the server on which our site is stored or any server, computer or database connected to our site. You must not attack our site via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will cooperate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use our site will cease immediately.

## 16. **Our responsibility for loss or damage suffered by you if you are a business**

16.1 Nothing in these terms shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) defective Products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

16.2 Except to the extent expressly stated in 13.1 all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

16.3 Subject to 16.1:

- (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between us; and

- (b) our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the cost paid by you at the time of purchase.

## 17. How we may use your personal information

- 17.1 **How we will use your personal information.** We will only use your personal information as set out in our [Privacy Policy](#).

## 18. Other important terms

- 18.1 **Notices.** Unless stated otherwise in these terms, notices given by you to us must be given to us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk). We may give notice to you at either the e-mail or postal address you provide to us when placing an order. Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped (first class) and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 18.2 **Intellectual Property Rights (IP).** All IP in or arising out of or in connection with the Products (other than IP in any materials provided by you) is owned by us. This includes but isn't limited to any of our trademarked logo(s), brand name(s) and Products and IP in our website. You are not permitted to use them in any capacity without obtaining our prior written approval, unless it is part of material you are using as permitted under clause 18.4.
- 18.3 **You must keep your account details safe.** If in the provision of Products, you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these terms of use. If you know or suspect that anyone other than you knows your user identification code or password, you must promptly notify us at [hello@smartrace.org.uk](mailto:hello@smartrace.org.uk).
- 18.4 **How you may use material on our site.** You may print off one copy, and may download extracts, of any page(s) from our site for your personal use and you may draw the attention of others within your organisation to content posted on our site. However, you must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text. Our status (and that of any identified contributors) as the authors of content on our site must always be acknowledged. You must not use any part of the content on our site for commercial purposes without obtaining a licence to do so from us or our licensors. If you print off, copy or download any part of our site in breach of these terms of use, your right to use

our site will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

- 18.5 **Rules about linking to our site.** You may link to our home page, provided you have obtained our prior written consent and do so in a way that is fair and legal and does not damage our reputation or take advantage of it. You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. You must not establish a link to our site in any website that is not owned by you. Our site must not be framed on any other site, nor may you create a link to any part of our site other than the home page. We reserve the right to withdraw linking permission without notice. If you do create a link to a page of this website without our consent, you do so at your own risk and the exclusions and limitations set out above under the heading “Our responsibility for loss or damage suffered by you” will apply. This means you will be responsible for any loss or damage we suffer as a result of such action. If you wish to link to or make any use of content on our site other than that set out above, please contact us.
- 18.6 **Do not rely on the information on our site.** Unless otherwise confirmed by us in writing, the content on our site is provided for general information only. It is not intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our site. Although we make reasonable efforts to update the information on our site, we make no representations, warranties or guarantees, whether express or implied, that the content on our site is accurate, complete or up to date.
- 18.7 **We are not responsible for websites we link to.** Where our site contains links to other sites and resources provided by third parties, these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. We have no control over the contents of those sites or resources, nor do we monitor or review the content of such websites. Opinions expressed or material appearing on such websites are not necessarily shared or endorsed by us and should not be regarded as the publisher of such opinions or material. Please also be aware that we are not responsible for the privacy practices, or content, of these sites. We encourage our users to be aware when they leave our site & to read the privacy statements of these sites. You should evaluate the security and trustworthiness of any other site connected to this site or accessed through this site yourself, before disclosing any personal information to them. This Company will not accept any responsibility for any loss or damage in whatever manner, howsoever caused, resulting from your disclosure to third parties of personal information.
19. **User-generated content is not approved by us.** Our website may include information and materials uploaded by other users of the site, including to bulletin boards and chat rooms. This information and these materials have not been verified or approved by us. The views expressed by other users on our site do not represent our views or values.
- 19.1 **Variation to these terms.** We have the right to revise and amend these terms from time to time to reflect changes in market conditions affecting our business, changes in



technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities or for any other reason at our sole discretion which we may decide.

- 19.2 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation.
- 19.3 **You need our consent to transfer your rights to someone else (except that you can always transfer our guarantee).** You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- 19.4 **Nobody else has any rights under this contract (except someone you pass your guarantee on to).** This contract is between you and us. No other person shall have any rights to enforce any of its terms.
- 19.5 **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 19.6 **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Products, we can still require you to make the payment at a later date.
- 19.7 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 19.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

### **There are other terms that may apply to you**

These terms of use refer to the following additional terms, which also apply to your use of our site and your purchase and use of our goods and service:

- Our [Privacy Policy](#), if you would like to learn more about how we may use your personal information.
- Our [Cookie Policy](#), which sets out information about the cookies on our site.

By using our site, you accept these terms and conditions. By using our site, you confirm that you accept these terms of use and that you agree to comply with them. If you do not agree to these terms, you must not use our site. We recommend that you print a copy of these terms for future reference.

## Schedule 1 Model Cancellation Form for consumer customers

*(Complete and return this form only if you wish to withdraw from the contract)*

To:

Data Candy (UK) t/a SmartTrace,  
UNIT 3, Varley Business Centre,  
St James Street,  
Manchester,  
M40 8EL

Phone number: 01208 420 999

Email: [hello@smarttrace.org.uk](mailto:hello@smarttrace.org.uk)

I hereby give notice that I cancel my contract of supply of the following Products, ordered on \_\_\_ / \_\_\_ / \_\_\_ and received on \_\_\_ / \_\_\_ / \_\_\_.

Name of consumer:

Address of consumer:

Signature of consumer:

Date: \_\_\_ / \_\_\_ / \_\_\_