

## Augnet Terms of Service

### Contents

#### Clauses

1.	The Augnet Services .....	1
2.	Changes to these Terms.....	2
3.	Your Augnet Accounts .....	2
4.	Access and Use of the Service .....	3
5.	Customer Data .....	3
6.	Restrictions and Requirements .....	4
7.	Changes to the Service .....	5
8.	Affiliates .....	5
9.	Fees, Payment, Taxes .....	5
10.	Intellectual Property and Confidentiality .....	6
11.	Confidentiality .....	6
12.	Representations and Warranties: Warranty Disclaimer .....	7
13.	Indemnity.....	9
14.	Limitation of Liability .....	10
15.	Term, Termination, Suspension .....	10
16.	Survival .....	11
17.	General .....	11
18.	Mediation.....	12

#### 1. The Augnet Services

- 1.1. In these “Terms”, “we,” “us,” “our” or “Augnet” means Augnet. The terms “you” “your” and “Customer” will refer to you.
- 1.2. When we refer to the “*Augnet Services*” in these Terms, we mean the AUGNET SMS Aware Managed Service, which is an SMS connectivity managed service where we manage your SMS suppliers and/or swap them out for our own suppliers. We use the Augnet Aware technology platform to intelligently route SMS traffic to achieve the quality standards set out in our Service Level Agreement (Augnet SLA) with you, the Customer.
- 1.3. To use the Service you, the Customer, must interact with us, Augnet, through the “*Customer Portal*” for all Service Management requirements and the technical connectivity integration point is the “*Augnet API*” which is an application programming interface for the Services (or feature of the Services) provided to you by us.
- 1.4. In order to provide you with the Augnet Services we will provide you with a phone number from which you will be required to send all SMS messages you want to send when using the Augnet Service. We may offer you the ability to choose a phone number from the range of phone numbers available to us to allocate, or alternatively we may just allocate a number to you. We will make it clear in the Customer Portal which option applies to you. You agree to follow the process set out in the Customer Portal.
- 1.5. Once you have been provided with that phone number you will be entirely responsible for the content of all SMS messages associated with that phone number. It is therefore your responsibility to ensure

that all the messages you send comply with our Acceptable Use Policy. If we are notified of content SMS messages from the phone number provided to you that does not comply with our Acceptable Use Policy and/or that is illegal then we fully reserve our rights under clause 15.3 to suspend your account with Augnet, thereby preventing you from using the Augnet Services subsequently.

- 1.6. You acknowledge that use of the phone number provided to you for using the Augnet Services is subject to separate rules in each jurisdiction to which you send SMS messages. As you are responsible for sending these SMS messages you accept that you are also responsible for ensuring that you comply with all local laws that apply to SMS messages in the jurisdictions to which you are sending those SMS messages.
- 1.7. When we refer to the “*Documentation*” we mean all of the Augnet Customer Portal & API instruction manuals and guides, code samples, manuals, guides, on-line help files and technical documentation made publicly available by us for the Services, and as may be updated from time to time. When we refer to the “*Customer Application*” we mean a software application, which includes any software application that you modify with developer tools provided by us, that interfaces with the Services and includes any services (web-based or other services) made available by you through that application.
- 1.8. To be eligible to register for an Augnet account in order to use the Augnet Services, you must register on the Customer Portal and follow the instructions set out within the Customer Portal. Thereafter you must link to the Augnet API.
- 1.9. If you are registering for an Augnet account in order to use the Services on behalf of an organisation, then you are agreeing to these Terms for that organisation and promising to Augnet that you have the authority to bind that organisation to these Terms (and, in which case, the terms “*you*” and “*your*” or “*Customer*” will refer to that organisation). However, where that organisation has a separate written agreement with Augnet covering the use of the Services, that agreement will govern such use.

## **2. Changes to these Terms**

- 2.1. We may revise these Terms from time to time and the new Terms will supersede older versions. Unless we say otherwise, revisions will be effective upon the effective date indicated at the top of these Terms. We will provide you with advance notice of any material revisions. This notice will be provided via the Augnet Customer Portal. For other revisions, we will update the effective date of these Terms at the top of the page. We encourage you to check the effective date of these Terms whenever you visit Augnet’s website or log in to your Augnet account. Your continued access or use of the Augnet Services constitutes your acceptance of any revisions. If you do not agree to the revisions, you should stop using the Services.

## **3. Your Augnet Accounts**

- 3.1. If you want to use our services, you will need to create an Augnet account on the Augnet Customer Portal. To create an Augnet account, you will need to give us some information about yourself when we ask for it. The information you provide must be true and kept up to date.
- 3.2. You are responsible for anything that happens under each of your Augnet accounts, including anything the users of your application do while using your application. For some phone numbers, we need to have a physical address on file for you. So, please send us your new physical address if you move.
- 3.3. You are solely responsible for all use (whether or not authorised) of the Services under your Augnet account(s) and any subaccount(s), including the quality and integrity of your Customer Data and each Customer Application (as defined below). You are also solely responsible for all acts and omissions of anyone who has access to or otherwise uses any Customer Application (“End Users”). You agree to try to prevent unauthorised access to or use of the Services and you will tell us promptly of any unauthorised access or use. We will not be liable for any loss or damage arising from unauthorised use of your Augnet account(s). You will be solely responsible, at your own expense, for acquiring, installing and maintaining all hardware, software and other equipment as may be necessary for you and each End User to connect to, access, and use the Services.

#### 4. Access and Use of the Service

- 4.1. We want to make our services available for you to use 24/7, but things happen that occasionally (very occasionally) make our services unavailable. We will make the Augnet Services available to you in accordance with the Augnet SLA set out in Schedule 1 to these Terms and which may be updated from time to time.
- 4.2. You may use the Augnet Services, on a non-exclusive basis, solely to:
  - (a) Use the Documentation and Augnet APIs as needed to develop your own “Customer Application”;
  - (b) Use and make the Augnet Services available to End Users in connection with the use of each Customer Application in accordance with the Documentation and our Acceptable Use Policy;
  - (c) Use the Augnet Services solely in connection with and as necessary for your activities pursuant to these Terms; and
  - (d) Allow your affiliates to use the Augnet Services pursuant to this Section 3 but subject at all times to the operation of Section 8 (Affiliates).

#### 5. Customer Data

- 5.1. Summary: please read our [Augnet privacy policy](#) to understand what we do with your data. If you don't want your data used that way, then, stop using our services immediately. We might have to use or disclose your data for one or more of the reasons below:
  - (a) If necessary, to provide you with our services;
  - (b) To address technical issues, provide support or maintain our services;
  - (c) If we need to protect Augnet, other customers, or the public;
  - (d) If there is an emergency; or
  - (e) If the law requires.

SMS is insecure by its nature, so please keep that in mind when using the services. There is nothing we can do about it, and therefore cannot be held responsible.

- 5.2. Use of Customer Data. In the remainder of this Section 4 the following terms have the meaning ascribed to them below:
  - (a) “*Customer Data*” consists of data and other information made available to us through the use of the Services under these Terms, including, Customer Usage Data and Customer Content.
  - (b) “*Customer Content*” shall mean (a) content exchanged by means of use of the Augnet Services, such as text, message bodies, voice and video media, images, and sound; (b) data stored on Customer's behalf via the Augnet Services such as communication logs; (c) personal data sent via the Augnet Services such as sender, recipient, and copy recipient identification information (first and last name), contact information (address, telephone number (fixed and mobile), email address, fax number), employment information (job title); and (d) any other personal data that the Customer chooses to send using the Augnet Services.
  - (c) “*Customer Usage Data*” shall mean data processed by Augnet for the purposes of transmitting, distributing, or exchanging Customer Content; including data used to trace and identify the source and destination of a communication, such as (a) individual data subjects' telephone numbers, data on the location of the device generated in the context of providing the Augnet Services, and the date, time, duration, and the type of

communication; and (b) activity logs used to trace and identify the source of Augnet Service requests, optimise and maintain performance of the Augnet Services, and investigate and prevent system abuse.

- (d) “*Customer Service Data*” shall mean aggregated, non-personally identifiable data or information (data or information that does not identify an entity or natural person as the source thereof) resulting from Customer’s and its End Users’ use and operation of the Augnet Services, including information relating to volumes, frequencies, bounce rates or any other information regarding the communications Customer or its End Users generate and send using the Augnet Services.

5.3. You acknowledge that you have read our “*Privacy Policy*” and understand that it sets out how we will collect, store, and use your Customer Data. If you do not agree with our Privacy Policies, then you must stop using the Services immediately.

5.4. You instruct us to use and disclose Customer Data as necessary to:

- (a) provide the Services consistent with Augnet's then-current Privacy Policy, Section 12.4, and this Section 5, including detecting, preventing, and investigating security incidents, fraud, spam, or unlawful use of the Services, and
- (b) respond to any technical problems or your queries and ensure the proper working of the Services. You acknowledge, that SMS is an insecure medium that is generally not encrypted in transit and security of information transmitted through the Internet can never be guaranteed and, accordingly, we are not responsible for any interception or interruption of any communications through the internet or for changes to or loss of Customer Data in connection with the Services.

5.5. Return and Deletion of Customer Usage Data & Customer Content: Upon termination of these Terms, we may retain, use, and disclose Customer Usage Data:

- (a) for Augnet’s accounting, tax, billing, audit, and compliance purposes;
- (b) to investigate fraud, spam, or unlawful use of the Services; and/or
- (c) as required by applicable law, provided that the retention, use, and disclosure of such Customer Usage Data for the foregoing purposes is subject to the confidentiality obligations as set out in Section 11. We shall anonymise or otherwise delete Customer Usage Data after we no longer require it for the foregoing purposes.

5.6. Customer Content within the Augnet Services. We provide you the ability to obtain a copy of and delete Customer Content via the Augnet Services. You agree that you are solely responsible for obtaining a copy of and deleting Customer Content via the Augnet Services. Upon termination of this Agreement, we will:

- (a) provide you thirty (30) days after the termination effective date to obtain a copy of any stored Customer Content via the Augnet Services;
- (b) automatically delete any stored Customer Content thirty days after the termination effective date; and
- (c) automatically delete any stored Customer Content on Augnet’s back-up systems sixty days after the termination effective date. Any Customer Content archived on Augnet’s back-up systems will be securely isolated and protected from any further processing, except as otherwise required by applicable Law.

5.7. Retention if required by law. Notwithstanding anything to the contrary in this Section 4, Augnet may retain Customer Content or any portion of it if required by applicable Law.

## **6. Restrictions and Requirements**

6.1. Augnet Services. With regard to the Augnet Services, you agree that:

- (a) Except as provided in Section 3, you will not transfer, resell, lease, license or otherwise make available the Augnet Services to third parties or offer them on a standalone basis;
- (b) You will not attempt to use the Augnet Services to access or allow access to Emergency Services;
- (c) You will ensure that the Augnet Services are used in accordance with all applicable law and third-party rights, as well as these Terms and our Acceptable Use Policy as amended from time to time;
- (d) You will ensure that we are entitled to use your Customer Data, as needed to provide the Augnet Services;
- (e) You will not use the Augnet Services in any manner that violates any applicable law; and
- (f) Except as allowed by applicable law, you will not reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any software provided in connection with the Augnet Services.

## **7. Changes to the Service**

- 7.1. We are always looking to innovate and make our services better, so our APIs and Augnet SLA may change over time. We will let you know in advance if any API changes aren't backwards-compatible. The features and functions of the Services, including the Augnet API and our Augnet SLA, may change over time. It is your responsibility to ensure that calls or requests you make to the Services are compatible with our then-current Services. Although we try to avoid making changes to the Augnet Services that are not backwards compatible, if any such changes become necessary, we will use reasonable efforts to let you know at least sixty (60) days prior to implementing those changes with respect to the Augnet Services.

## **8. Affiliates**

- 8.1. Your affiliates (businesses that your business controls) can use our services, but you and your affiliates will both be responsible for everything that your affiliates do when they're using our services, including violating of these terms. If your affiliates want to bring a claim against Augnet, then only you may do so on your affiliates' behalf.
- 8.2. Your affiliates mean any entity or person that controls you, is controlled by you, or under common control with you, such as a subsidiary, parent company, or employee. Similarly, if we refer to our affiliates, we mean an entity or person that controls us, is controlled by us, or is under common control with us. Your affiliates may use the Services pursuant to these Terms, provided that these Terms apply to your affiliates. You and your affiliates that use the Services will be jointly and severally responsible for the acts and omissions of your affiliates, including, but not limited to, their breach of these Terms. Any claim from any of your affiliates that use the Services pursuant to these Terms may only be brought against us by you on your affiliates' behalf.

## **9. Fees, Payment, Taxes**

- 9.1. You agree to pay the fees generated under your account(s) at the rates listed on our website at [www.augnet.com](http://www.augnet.com) and as may be accessed through the Augnet Customer Portal.
- 9.2. If you use our services in violation of these Terms we will charge you, and you shall pay, in accordance with Section 14, all additional costs, fines, or penalties we incur from a governmental or regulatory body or telecommunication provider because of your use of the Services in violation of these Terms.
- 9.3. Taxes. Unless otherwise stated in an Order Form, you shall be responsible for and shall pay all Taxes imposed on or with respect to the Services that are the subject of this Agreement whether such Taxes

are imposed directly upon you or upon us. “*Taxes*” mean all applicable national and local taxes, fees, charges, telecommunications provider (e.g., carrier) surcharges or other similar exactions, including, without limitation, sales and use taxes, excise taxes, VAT, other license or business and occupations taxes.

- 9.4. Should you be required by applicable Law to withhold any tax from any payment owed to us, then you may provide us with an exemption certificate or similar document to reduce or eliminate any such withholding. Upon receipt of such certificate or document, you shall thereafter reduce or eliminate, as the case may be, such withholding. You shall provide us with documents evidencing your payment of any such withheld Tax to applicable tax authorities.
- 9.5. You will pay Augnet for any Augnet Services you use. We will send you an invoice you via e-mail as a PDF on a monthly basis. You agree to pay all fees that you owe to Augnet in GBP Sterling, unless we agree to another currency in writing, no later than 30 days after the date of the invoice. If you don’t pay on time then we may charge interest at the rate of 8% per annum above the bank of England base rate until such time as the invoice is paid. If you are more than 30 days late in paying an invoice then we may suspend providing the Augnet Services to you until the applicable invoice(s) are paid.
- 9.6. Fee Disputes. You must notify us in writing if you dispute any portion of any fees paid or payable by you pursuant to these Terms. You must provide that written notice to us within sixty (60) days of the date we bill you for the charge you want to dispute, and we will work together with you to resolve the dispute promptly.

## 10. Intellectual Property and Confidentiality

- 10.1. **General.** As between you and Augnet, we exclusively own and reserve all right, title and interest in and to the Services, Documentation, our Confidential Information and Customer Service Data; as well as any feedback, recommendations, correction requests, or suggestions from you or any End User about the Services (“*Contributions*”). As between you and Augnet, you exclusively own and reserve all right, title and interest in and to each Customer Application and your Confidential Information.
- 10.2. Suggestions and Contributions. We welcome your Contributions about the Services. But please know that by submitting Contributions you agree that:
  - (a) we are not under any obligation of confidentiality with respect to your Contributions;
  - (b) we may use or disclose (or choose not to use or disclose) your Contributions for any purpose and in any way;
  - (c) we own your Contributions; and
  - (d) you are not entitled to any compensation or reimbursement of any kind from us under any circumstances for your Contributions.
- 10.3. **Use of Marks.** Subject to these Terms, each of us (“*Licensor*”) grants the other (“*Licensee*”) the right to use and display Licensor’s name, logo, and your use case using the Services (the “*Licensor Marks*”) on Licensee’s respective websites, in earnings calls, and in other promotional or publicly distributed materials solely in connection with its respective activities pursuant to these Terms. Licensee’s use of the Licensor Marks will be in accordance with the Licensor’s applicable usage guidelines (Augnet’s usage guidelines are available on [www.augnet.com](http://www.augnet.com)) and will inure to the benefit of Licensor. Licensee will not use, register, or take other action with respect to any of the Licensor Marks, except if permitted in writing by Licensor. Licensee will always use the then-current Licensor Marks and will not add to, delete from, or modify any of Licensor Marks. Licensee will not, at any time, misrepresent the relationship between Licensee and Licensor. Licensee will not present itself as an affiliate or other legal agent of the Licensor. Licensee’s right to use and display the Licensor Marks pursuant to this Section 10.3 will end automatically in the event these Terms terminate.

## 11. Confidentiality.

- 11.1. “*Confidential Information*” means any information or data, regardless of whether it is in tangible form, disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and

the circumstances surrounding disclosure. Confidential Information does not include any information which:

- (a) is publicly available through no fault of the receiving party;
- (b) was properly known to the receiving party, without restriction, prior to disclosure by the disclosing party;
- (c) was properly disclosed to the receiving party, without restriction, by another person without violation of the disclosing party's rights; or
- (d) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party.

11.2. The receiving party agrees that it will use the Confidential Information of the disclosing party solely in accordance with these Terms and it will not disclose such Confidential Information to any third party without the disclosing party's prior written consent, except as otherwise permitted hereunder; provided, however, subject to Section 4, Augnet may use and disclose your Confidential Information as necessary to provide the Services. The receiving party agrees to exercise due care in protecting Confidential Information of the disclosing party from unauthorised use and disclosure. The receiving party may disclose the Confidential Information of the disclosing party, in whole or in part to its employees, representatives, actual or potential investors and subcontractors. The receiving party may disclose the Confidential Information of the disclosing party as required by applicable Law provided that, prior to any such compelled disclosure, the receiving party will, if permissible:

- (a) promptly notify the disclosing party in writing to allow the disclosing party a reasonable opportunity to resist such disclosure and/or seek a protective order, and
- (b) reasonably cooperate with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure.

In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information of the disclosing party, but only as and to the extent necessary to legally comply with such compelled disclosure.

11.3. Injunctive Relief. The parties expressly acknowledge and agree that no adequate remedy may exist at law for an actual or threatened breach of this Section 11 and that, in the event of an actual or threatened breach of the provisions of this Section 11, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Section 11.

11.4. We both agree not to tell anyone else about confidential information that we get from each other. Also, we both agree to only use each other's confidential information as agreed to in these terms.

## **12. Representations and Warranties: Warranty Disclaimer**

12.1. **SUMMARY:** If you want to record or monitor calls, messages, or any other form of communications, then be warned that there are a lot of laws that govern these types of activities. You **MUST** comply with every law and regulation that applies. Augnet **STRONGLY SUGGESTS** that you don't do any of these things until the person(s) you want to record/monitor have given you permission to do so. If you break any applicable laws or regulations and, as a result, Augnet gets sued, investigated, etc., then you will pay for it all. You promise that you are only giving Augnet any customer data for which you've given required notices and gotten permission as required by law. In addition, we will only use and disclose this customer data following Section 4 above.

12.2. **Representations and Warranties: Recordings and Communications Monitoring.** If you record or monitor telephone calls, SMS messages, or other communications using the Services, then you represent and warrant that you will comply with all applicable Laws prior to doing so at all times. We make no representations or warranties with respect to recording or monitoring of telephone calls, SMS

messages, or other communications, and recommend that you always secure prior consent to record or monitor communications using the Services. You acknowledge that these representations, warranties, and obligations are essential to our ability to provide you with access to recording and monitoring features that are part of the Services, and you further agree to indemnify us and our affiliates in accordance with the terms of Section 13 (Indemnification) arising out of or related to your acts or omissions in connection with recording or monitoring telephone calls, SMS messages, or other communications, whether such claims arise under contract, tort, statute or other legal theory.

- 12.3. **Customer Data.** You represent and warrant that you have provided adequate notices and obtained the necessary permissions and consents to provide Customer Data to us for use and disclosure pursuant to Section 4 (Our Use of Customer Data).
- 12.4. **Services.** We represent and warrant that the Services will operate in accordance with applicable Documentation and will materially conform to any specifications contained therein. Augnet's sole obligation, and your sole and exclusive remedy, in the event of any failure by Augnet to comply with this Section 10.4 will be for Augnet to, at Augnet's option, re-perform the affected Services or refund to you the fees you actually paid for the affected Services.
- 12.5. Except for any of our explicit warranties in this Section 10 and our obligations in the Augnet SLA and support terms, we are offering our services "as is." Additionally, we have no liability associated with Sensitive Data (as defined in section 12.7) you choose to send through the Services.
- 12.6. **Warranty Disclaimer.** Without limiting our express warranties and obligations hereunder, we hereby disclaim any and all other warranties, express or implied, including, but not limited to warranties of merchantability, non-infringement, and fitness for a particular purpose and warranties related to third-party equipment, material, services, or software. Except for our express warranties set forth in this section 12 and our obligations set out in the Augnet SLA and the support terms, the services are provided "as is" to the fullest extent permitted by law. To the extent such disclaimer conflicts with applicable law, the scope and duration of any applicable warranty will be the minimum permitted under such law. Augnet will not be liable and will have no obligation to indemnify you for Sensitive Data (as defined in section 12.7) sent to Augnet.
- 12.7. **"Sensitive Data"** shall mean:
- (a) social security number, passport number, driver's license number, or similar identifier (or any portion thereof);
  - (b) credit or debit card number (other than the truncated (last four digits) of a credit or debit card), financial information, banking account numbers or passwords;
  - (c) employment, financial, genetic, biometric or health information;
  - (d) racial, ethnic, political or religious affiliation, trade union membership, or information about sexual life or sexual orientation;
  - (e) account passwords, mother's maiden name, or date of birth;
  - (f) criminal history; or
  - (g) any other information or combinations of information that falls within the definition of "special categories of data" under GDPR or any other applicable Law relating to privacy and data protection.
- 12.8. If we let you use our services that are still in Alpha or Beta testing, then you understand that they might contain bugs and defects. You understand that we don't make any promises that Alpha or Beta services won't have problems. You understand that we will not be liable for any damages from your use of Alpha or Beta services.
- 12.9. These Beta services are not generally available and may contain bugs, errors, defects or harmful components. Accordingly, Augnet is providing the beta services to you "as is." Augnet makes no



warranties of any kind with respect to the beta services, whether express, implied, statutory or otherwise, including any implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Notwithstanding anything in these terms to the contrary or any published documentation that states otherwise, Augnet does not warrant that the Beta services will be error-free or that they will meet any specified service level or will operate without interruptions or downtime. Augnet shall have no liability whatsoever for any harm or damage arising out of or in connection with a beta service.

### **13. Indemnity**

13.1. Indemnification by Augnet. We will defend, indemnify, and hold you harmless from and against all claims, demands, actions, suits, discovery demands, including, without limitation, third party subpoenas, government investigations or enforcement actions (“*Claim*”) brought or threatened against you by a third party and any damages, liabilities, losses, settlements, judgments, costs and expenses (including, without limitation, reasonable attorney’s fees and costs) (“*Losses*”) related thereto alleging the provision of the Services as permitted hereunder infringes or misappropriates a third party copyright, trade secret, or patent (“*Infringement Claim*”).

13.2. Infringement Options. If your use of the Services has become, or in Augnet’s opinion is likely to become, the subject of any Infringement Claim, Augnet may at its option and expense:

- (a) procure for you the right to continue using the Services as set forth herein;
- (b) modify the Services to make them non-infringing; or
- (c) if the foregoing options are not reasonably practicable, terminate these Terms and refund you any unused pre-paid fees.

This Section 13.2 states your exclusive remedy, for any Claim by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates a third party copyright, trade secret, trademark or patent.

13.3. Limitations. Augnet will have no liability or obligation with respect to any:

- (a) Claim and any Losses related thereto arising out of your use of the Services in breach of these Terms or
- (b) Infringement Claim and any Losses related thereto arising out of the combination, operation, or use of the Services with other applications, portions of applications, products, or services where the Services would not by themselves, and without modification, be infringing.

13.4. Indemnification by You. You will defend, indemnify and hold Augnet, its officers, directors, employees, agents, stockholders, and affiliates (“*Augnet Indemnified Parties*”) harmless from and against all Claims brought or threatened by a third party against a Augnet Indemnified Party and any Losses related thereto alleging or arising out of:

- (a) your or any of your End Users’ breach of or activities under these Terms;
- (b) your or any of your End Users’ use of the Services;
- (c) your failure to comply with any local laws in the way that you use the phone number we allocate you for using the Augnet Services; or
- (d) your acts or omissions in connection with the provision of each Customer Application, including, without limitation, any intellectual property Claims relating to each Customer Application.

13.5. **Conditions of Indemnification.** As a condition of the foregoing indemnification obligations:

- (a) the indemnified party (“*Indemnified Party*”) will promptly notify the indemnifying party (“*Indemnifying Party*”) of any Claim, provided, however, that the failure to give such

notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party was actually and materially prejudiced by such failure;

- (b) the Indemnifying Party will have the sole and exclusive authority to defend or settle any such Claim (provided that, the Indemnifying Party will obtain the Indemnified Party's consent in connection with any act or forbearance required by the Indemnified Party, which consent will not be unreasonably withheld); and
- (c) the Indemnified Party will reasonably cooperate with the Indemnifying Party in connection with the Indemnifying Party's activities hereunder, at the Indemnifying Party's expense. The Indemnified Party reserves the right, at its own expense, to participate in the defence of a Claim.

The Indemnifying Party, in connection with a Claim, will pay all Losses following notice of the Claim, which shall be provided in accordance with this Section 13.5 Notwithstanding anything herein to the contrary, the Indemnifying Party will not settle any Claims for which it has an obligation to indemnify pursuant to this Section 13 admitting liability or fault on behalf of the Indemnified Party, nor create any obligation on behalf of the Indemnified Party without the Indemnified Party's prior written consent.

#### **14. Limitation of Liability**

- 14.1. Indirect damages. Under no circumstances, whether in tort, contract, or otherwise, will either party be liable to the other party for any indirect, special, incidental, consequential or punitive damages of any character, including, without limitation, damages for loss of goodwill, lost profits, lost sales or business, work stoppage, computer failure or malfunction, lost data, or for any and all other damages or losses, even if a party had been advised, knew or should have known of the possibility of such damages. This section 14.1 shall not limit
  - (a) your liability arising from your breach of section 6 (restrictions and requirements) or section 10.3 (use of marks); or
  - (b) either party's indemnification obligations pursuant to these terms.
- 14.2. **Direct Damages.** Under no circumstances and under no legal theory, whether in tort, contract, or otherwise, will either party be liable to the other party for any direct damages, costs or liabilities in excess of the amounts paid or payable by you during the twelve (12) months preceding the incident or claim. This section 14.2 shall not limit:
  - (a) your liability arising from your breach of section 6 (restrictions and requirements), section 10 (fees, payment terms, and taxes), or section 10.3 (use of marks); or
  - (b) either party's indemnification obligations pursuant to these terms.
- 14.3. The provisions of this section 14 allocate the risks pursuant to these terms between the parties, and the parties have relied on the limitations set forth herein in determining whether to enter into these terms.
- 14.4. **Emergency services disclaimer.** The services are not intended to support or carry emergency calls or SMS messages to any emergency services. Neither Augnet nor its representatives will be liable under any legal or equitable theory for any claim, damage, or loss (and customer will hold Augnet harmless against any and all such claims) arising from or relating to the inability to use the services to contact emergency services.

#### **15. Term, Termination, Suspension**

- 15.1. **Term.** These Terms, as may be updated from time to time, will commence on the date they are accepted by you and continue until terminated in accordance with Section 15.2 (Termination) below ("*Term*").
- 15.2. **Termination.** Either party may terminate these Terms and close your Augnet account(s) for any reason upon thirty (30) days written notice to the other party. Notwithstanding the preceding sentence, if there is an Order Form(s) in effect, then these Terms will not terminate until such Order Form(s) have expired or been terminated. Augnet, at its sole discretion, may terminate these Terms and close your

Augnet account(s) in the event you commit any material breach of these Terms and fail to remedy that breach within five (5) days after Augnet provides written notice of that breach to you. You may also terminate these Terms in the event we commit a material breach of these Terms and fail to remedy that breach within five (5) days after providing written notice of that breach to us.

- 15.3. **Suspension** In addition to suspension of the Services for non-payment of fees as described in Section 8.5, we may also suspend the Services immediately upon notice for cause if:
- (a) you violate (or give us reason to believe you have violated) our Acceptable Use Policy;
  - (b) there is reason to believe the traffic created from your use of the Services or your use of the Services is fraudulent or negatively impacting the operating capability of the Services;
  - (c) we determine, in our sole discretion, that providing the Services is prohibited by applicable Law, or it has become impractical or unfeasible for any legal or regulatory reason to provide the Services; or
  - (d) subject to applicable Law, upon your liquidation, commencement of dissolution proceedings, disposal of your assets or change of control, a failure to continue business, assignment for the benefit of creditors, or if you become the subject of bankruptcy or similar proceeding.

However, we will use commercially reasonable efforts to provide you as much prior notice as possible of any situation that we are aware of that could lead to a right to suspend as described in this section 15.3. We will work with you to remedy any situation that could lead to a right to suspend if such situation can be remedied. Where possible we will limit any suspension as far as we can give the circumstances leading to the suspension (e.g., to certain phone numbers, sub-accounts or other subset of traffic).

## 16. **Survival**

- 16.1. Upon termination of these Terms, your payment obligations, the terms of this Section 16, and the terms of the following Sections will survive (i.e. still apply): Section 5 (Customer Data), Section 9 (Fees, Payment Terms, and Taxes), Section 10 (Intellectual Property Ownership and Confidentiality), Section 13 (Indemnity), Section 14 (Limitation of Liability;), Section 17 (General), and Section 18 (Mediation).

## 17. **General**

- 17.1. **Compliance with Laws.** Both you and Augnet will comply with the applicable Law relating to each of our respective activities pursuant to these Terms.
- 17.2. **No Waiver.** Our failure to enforce at any time any provision of these Terms or our Acceptable Use Policy, does not waive our right to do so later. And, if we do expressly waive any provision of these Terms or our Acceptable Use Policy, that does not mean it is waived for all time in the future. Any waiver must be in writing and signed by you and us to be legally binding.
- 17.3. **Assignment.** You will not assign or otherwise transfer these Terms, in whole or in part, without our prior written consent. Any attempt by you to assign, delegate, or transfer these Terms will be null and void. Augnet may assign these Terms, in whole or in part, without consent. Subject to this Section 17.3, these Terms will be binding on both you and Augnet and each of our successors and assigns.
- 17.4. **Relationship.** You and Augnet are independent contractors in the performance of each and every part of these Terms. Nothing in these Terms is intended to create or shall be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. You and Augnet will be solely responsible for all of our respective employees and agents and our respective labour costs and expenses arising in connection with our respective employees and agents. You and Augnet will also be solely responsible for any and all claims, liabilities or damages or debts of any type that may arise on account of each of our respective activities, or those of each of our respective employees or agents,

in the performance of these Terms. Neither you nor Augnet has the authority to commit the other of us in any way and will not attempt to do so or imply that it has the right to do so.

- 17.5. Unenforceability. Except as described in Section 18 (Mediation), if any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be limited or eliminated to the minimum extent necessary to make it enforceable and, in any event, the rest of these Terms will continue in full force and effect.
- 17.6. Any notice required or permitted to be given under these Terms will be given in writing to the receiving party by personal delivery, certified mail, return receipt requested, overnight delivery by a nationally recognised carrier or by email upon confirmation of receipt. Notices to Augnet shall be copied to [Jekaterina.orlova@augnet.co.uk](mailto:Jekaterina.orlova@augnet.co.uk)
- 17.7. Entire Agreement. Except as provided in these Terms and any attachments to these Terms, these Terms supersede all prior and contemporaneous proposals, statements, sales materials or presentations and agreements, oral and written. No oral or written information or advice given by Augnet, its agents or employees will create a warranty or in any way increase the scope of the warranties in these Terms. Any purchase order document or similar document provided by you shall be construed solely as evidence of your internal business processes, and the terms and conditions contained thereon shall be void and have no effect with regard to these Terms between you and Augnet and be non-binding against Augnet even if signed by Augnet after the date you accept these Terms.
- 17.8. Force Majeure. No failure, delay or default in performance of any obligation of a party shall constitute an event of default or breach of these Terms to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil or military authority; fire; strike, lockout or other labour dispute; flood, terrorist act; war; riot; theft; earthquake and other natural disaster. The party affected by such cause shall take all reasonable actions to minimise the consequences of any such cause.
- 17.9. Governing Law and Venue. These Terms will be governed by and interpreted according to the laws of England and Wales. Except as provided in Section 18 (Mediation), any legal suit, action or proceeding arising out of or related to these Terms or the Services shall be instituted in the courts of England and Wales and we each consent to the jurisdiction of these courts.

## **18. Mediation**

- 18.1. We both agree to mediate. If a dispute cannot be resolved through our Customer Support Team, you or any of your affiliates on one hand and Augnet and any of Augnet's affiliates on the other hand, all agree to resolve any dispute relating to these Terms or in relation to the Services by resorting to mediation as governed by CEDR, the Centre for Dispute Resolution. Therefore, we agree that we will try to resolve the dispute initially through negotiations with each other. Thereafter we shall appoint a mediator and if we cannot agree on a mediator, we will allow CEDR to appoint one for us. If we are able to resolve the dispute through mediation, we will sign up to a legally binding settlement reflecting what you and we have both agreed. Save for in relation to the exceptions set out in section 16.2 below we both agree that we will not resort to any formal court actions until such time as either you or we have exhausted mediation as a means of resolving our dispute
- 18.2. Exceptions to mediation. You and your affiliates on one hand, and Augnet and its affiliates on the other hand, agree that we will go to court to resolve disputes relating to:
  - (a) Your, your affiliates', Augnet's or Augnet's affiliates' intellectual property (e.g., trademarks, trade dress, domain names, trade secrets, copyrights or patents); or
  - (b) Your violation of our Acceptable Use Policy.

## Schedule 1

### Augnet Service Level Agreement

#### 1. Definitions:

The following defined terms apply to this SLA. Capitalised terms not defined below have the meanings ascribed to them in the Augnet Terms of Service, or other similar written agreement between the parties, as applicable ("Agreement").

(a) "Actual Monthly Uptime Percentage" =  $(A-B+C)/A$ , where:

A = Total Monthly Time (defined below);

B = Unavailable Monthly Time (defined below); and

C = Excluded Monthly Times (defined below).

(b) "Monthly Uptime Percentage Threshold" means the percentage listed in the table below under the heading, "Monthly Uptime Percentage Threshold."

(c) "Service Credit" means the dollar credit that Augnet will credit to a Customer's eligible account if the Actual Monthly Uptime Percentage is less than the Monthly Uptime Percentage Threshold, and which is calculated by multiplying the Service Credit percentage listed in the table below with respect to the Augnet Services, Customer's usage fees, in the applicable calendar month.

(d) "Total Monthly Time" means the total number of minutes in the applicable calendar month.

(e) "Unavailable Monthly Time" means the number of minutes in the applicable calendar month during which the Augnet APIs for the Augnet Services were unavailable for use.

Applicable Services	Monthly Uptime Percentage Threshold	Service Credit
"Services" as defined in the Agreement	99.95%	10% credit equivalent
During calendar months in which Customer has purchased the Augnet Services	99.99%	10% credit equivalent

#### 2. Service Commitments:

If, during any month throughout the Term, the Actual Monthly Uptime Percentage falls below the Monthly Uptime Percentage Threshold, then Customer will be eligible to receive a Service Credit, subject to Customer's compliance with Section 3 below.

### 3. Credit Request and Payment Procedures:

Augnet Services: To receive a Service Credit for the Augnet Services, Customer must submit a request to Augnet through the Augnet Customer Portal, available at <https://www.augnet.com/help/contact>, within thirty (30) days from the last day of the calendar month in which Customer claims Augnet failed to meet or exceed the Monthly Uptime Percentage Threshold. Availability of Augnet APIs for the Augnet Services is measured by a third party provider of performance and monitoring services (the "Monitoring Service"), that issues monthly uptime reports, available at <http://status.augnet.com>. Augnet will adjust the Monitoring Service's uptime results as necessary to account for any Excluded Monthly Times. All submissions must include: (i) "SLA Claim" as the subject of the ticket; (ii) the dates and times of Unavailable Monthly Time; and (iii) any documentation of the applicable outage. Each Service Credit will be applied to future amounts payable by Customer to Augnet for the Augnet Services. No refunds or cash value will be given. All SLA claims will be verified against the measurements of the Monitoring Service.

### 4. Excluded Monthly Times:

Notwithstanding any provision in this Agreement to the contrary, no Unavailable Monthly Time will be deemed to have occurred if downtime: (i) is caused by factors outside of Augnet reasonable control, including, without limitation, telecommunications provider-related problems or issues, Internet access or related problems occurring beyond the point in the network where Augnet maintains access and control over the Services; (ii) results from any actions or inactions of Customer or any third party (except for Augnet agents and subcontractors); (iii) results from the Customer Applications, Customer's equipment, software or other technology, Add-on services, or third party equipment, software or other technology (except for equipment within Augnet's direct control); (iv) occurs during Augnet's scheduled maintenance for which Augnet will provide at least twenty-four (24) hours prior notice; (v) occurs during Augnet's emergency maintenance (maintenance that is necessary for purposes of maintaining the integrity or operation of the Services), regardless of the notice provided by Augnet; or (vi) results from any alpha, beta, developer preview, development test bed environments, descriptions of similar import or not otherwise generally available Augnet features or products; or (vii) periods of Unavailable Monthly Time that are less than five (5) minutes of continuous unavailability in duration (collectively, the "Excluded Monthly Times").

### 5. Entire SLA Liability:

With respect to any failure of Augnet to meet the Monthly Uptime Percentage Threshold this SLA states Augnet sole and entire liability to Customer and is the Customer's sole remedy.