

## Software Service Terms & Conditions (The Agreement)

### Parties:

- (1) Veesus Limited, incorporated and registered in England and Wales with the company number 08238107 and Incorporated on 3 October 2012 with a registered address at 59 Victoria Road, Surbiton, Surrey, England, KT6 4NQ. **(the Supplier)**.
- (2) Company, partnership or sole trader detailed in the account sign up process **(the Customer)**

### Background:

- (A) The Supplier has developed certain software applications and platforms, which it makes available to subscribers via the internet on a paid for basis for the purpose of storing and using and displaying 3D data, point cloud and other data.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to use the Supplier's service subject to the terms and conditions of this agreement.

### Operative Provisions:

#### 1. MEANINGS & INTERPRETATION

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

"Authorised Users"	those employees, agents and independent contractors the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.4.5.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Change of control"	the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.
"Customer Data"	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
"Effective Date"	the date this agreement is entered into online through the Supplier's online portal.
"EULA"	the End User Licence Agreement between the Supplier and Authorised Users.
"Guest User"	a user introduced by the Customer to the Supplier who can view the Services but does not have access to any of the interactive features of the Services.

"Initial Subscription Term"	the initial term of this agreement as signed up for in setting up the account
"Normal Business Hours"	8.00 am to 6.00 pm local UK time, each Business Day.
"Renewal Period"	the period described in clause 14.1.
"Service Level"	the service levels known as 'Viewer', 'Project' and 'Pro' each of which are described via <a href="http://www.veesus.com">www.veesus.com</a> or any other website notified to the Customer by the Supplier from time to time.
"Services"	the subscription services provided by the Supplier to the Customer under this agreement via <a href="http://www.veesus.com">www.veesus.com</a> or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
"Software"	the online software applications provided by the Supplier as part of the Services.
"Subscription Fees"	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the website <a href="http://www.veesus.com">www.veesus.com</a> depending on the type of service being provided to the Customer by the Supplier.
"Subscription Term"	has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
"Support Services Policy"	the Supplier's policy for providing support in relation to the Services as made available at <a href="http://www.veesus.com">www.veesus.com</a> or such other website address as may be notified to the Customer from time to time.
"User Subscriptions"	the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services in accordance with this agreement.
"Virus"	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

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

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

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

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail but not faxes.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. USER SUBSCRIPTIONS**

- 2.1 The Supplier shall supply the Services to the Customer as indicated on the Customer's sign up to the Services through the Supplier's online portal subject to the terms of this agreement.
- 2.2 The Customer will select the Service Level it requires to be provided by the Supplier when it signs up to the Services online through the Supplier's online portal and the Supplier shall provide the requested Services in accordance with the relevant Service Level.
- 2.3 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 2.4 In relation to the Authorised Users, the Customer undertakes that:
  - 2.4.1 the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
  - 2.4.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
  - 2.4.3 it shall ensure that Authorised User access will be limited to the Services purchased and access allocated to them;
  - 2.4.4 each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
  - 2.4.5 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
  - 2.4.6 it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

- 2.4.7 if any of the audits referred to in clause 2.4.6 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
  - 2.4.8 if any of the audits referred to in clause 2.4.6 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices of the relevant subscriptions within 10 Business Days of the date of the relevant audit.
- 2.5 The Customer shall not access, store, distribute or transmit or cause to transmit any Viruses, or any material during the course of its use of the Services that:
- 2.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 2.5.2 facilitates illegal activity;
  - 2.5.3 depicts sexually explicit images;
  - 2.5.4 promotes unlawful violence;
  - 2.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 2.5.6 is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.6 The Customer shall not:
- 2.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
    - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form all or any part of the Software; or
  - 2.6.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services; or
  - 2.6.3 use the Services to provide services to third parties; or
  - 2.6.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
  - 2.6.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; and

- 2.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.8 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.9 The Supplier will supply Services to each Authorised User in accordance with the Service Level purchased through the Supplier's online portal for and allocated to such Authorised User.
- 2.10 The Supplier will supply Services in accordance with the Service Levels detailed at Schedules 3 and/or 4 and/or 5 as appropriate and dependant on the Services Levels allocated to each Authorised User in accordance with this agreement.
- 2.11 If the Trial box is ticked on the front sheet of this agreement the Supplier will provide the Services as detailed in Schedule 6.

### **3. ADDITIONAL USER SUBSCRIPTIONS**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to reduce its number of User Subscriptions or purchase additional User Subscriptions, the Customer shall do so by amending its account through the Supplier's online portal. The changes to the Customer's account will be made immediately upon such request.
- 3.3 If the Customer requests to reduce the number of additional User Subscriptions or purchases additional User Subscriptions, the Customer shall pay to the Supplier the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable). No refunds will be given to the Customer by the Supplier in the event that the number of User Subscriptions are reduced.
- 3.4 If the Customer wishes to change to a different Service Level the Customer shall do so by amending its account through the Supplier's online portal.
- 3.5 If the Customer requests to change to a different Service Level the Customer shall pay to the Supplier the relevant fees for such additional Service Levels as set out in paragraph 5 of Schedule 1 and, if such Service Levels are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 3.6 The Customer may introduce Guest Users to the Services. Such Guest User's access will be governed by a separate End User Licence Agreement which they will need to agree to when accessing the Services.

### **4. SERVICES**

- 4.1 The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this agreement in accordance with the Service Levels purchased by the Customer.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week.
- 4.3 In the event that the Supplier needs to carry out maintenance to the Services the Supplier will provide the Customer with reasonable notice by email. The Supplier endeavours to carry out any maintenance outside of Normal Business Hours but this cannot be guaranteed.
- 4.4 The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer support services during Normal Business Hours by telephone or email.
- 4.5 The Customer may purchase enhanced support services separately at the Supplier's then current rates.

## 5. **CUSTOMER DATA**

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Customer acknowledges that it is responsible for the back-up of any Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data.
- 5.3 If the Supplier processes any personal data, including images and pointcloud data, on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
  - 5.3.1 the Customer acknowledges and agrees that the personal data, including images and pointcloud data, may be transferred or stored outside the UK the EU or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement;
  - 5.3.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data, including images and pointcloud data, to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - 5.3.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - 5.3.4 the Supplier shall process the personal data, including images and pointcloud data, only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time;
  - 5.3.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data, including images and pointcloud data, or its accidental loss, destruction or damage;
  - 5.3.6 the Customer acknowledges that this agreement may need to be amended in the future to ensure compliance with the General Data Protection Regulation once it has come into force.

## 6. **THIRD PARTY PROVIDERS**

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

## 7. **SUPPLIER'S OBLIGATIONS**

- 7.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
- 7.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 7.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## 8. **CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- 8.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to this agreement; and
  - (b) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
  - 8.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 8.1.4 ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
  - 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
  - 8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
  - 8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with the charges laid out when setting up account and based on any changes to the account thereafter
- 9.2 The Customer will be liable to pay for any over-limit bandwidth usage and the Customer will be charged automatically at the rate indicated when using the Services and the amount for any usage will be invoiced to you when the Customer is charged for their use of the Service on the last day of each month. The Customer will be notified when they reach 80% of their bandwidth limit.
- 9.3 The Customer shall make payment to the Supplier for provision of the Services on the Effective Date or on the nearest Business Day.
- 9.4 The Customer shall provide to the Supplier valid, up-to-date and complete payment card details acceptable to the Supplier when it registers to use the Services through the Supplier's online portal and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
  - 9.4.1 its payment card details to the Supplier, the Customer hereby authorises the Supplier and any third party payment gateway provider to bill such payment card:
    - (a) immediately for the for the Subscription Fees payable in respect of the Initial Subscription Term; or



- (b) subject to clause 14.1, on the last day of each month for the Subscription Fees payable in respect of the next Renewal Period; and the Customer shall pay the relevant Subscription Fees immediately upon request from the Supplier (Due Date).

9.5 If the Supplier has not received payment immediately for the relevant Subscription Fees the Customer's access to the Services will be terminated unless the Customer pays the Supplier within 14 days of the Subscription Fees Due Date.

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

9.6.1 shall be payable in pounds sterling; 9.6.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;

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

9.7 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 upon 30 days' prior notice to the Customer and shall be deemed to have been amended accordingly.

## 10. **PROPRIETARY RIGHTS**

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

10.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## 11. **CONFIDENTIALITY**

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

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

11.1.2 was in the other party's lawful possession before the disclosure;

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

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

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.9 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

## 12. **INDEMNITY**

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- 12.1.1 the Customer is given prompt notice of any such claim;
- 12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.3.1 a modification of the Services by anyone other than the Supplier; or

12.3.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or

12.3.3 the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.4 The foregoing and clause 13.3.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **13. LIMITATION OF LIABILITY**

13.1 Except as expressly and specifically provided in this agreement:

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

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

13.1.3 the Services are provided to the Customer on an "as is" basis.

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

13.2.1 for death or personal injury caused by the Supplier's negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

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

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

### **14. TERM AND TERMINATION**

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 1 month (each a Renewal Period), unless:

- 14.1.1 either party notifies the other party of termination, in writing, at least 7 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period;
  - 14.1.2 any Authorised User does not comply with the terms of the EULA which has been entered into;
  - 14.1.3 the Customer does not make payment for the Services within 14 days of the Due Date upon the request of the Supplier or any third party payment gateway provider; or
  - 14.1.4 otherwise terminated in accordance with the provisions of this agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 14.2 In the event that the Trial box is ticked on the front sheet of this agreement the Supplier will provide the Services as detailed in Schedule 6. This agreement will automatically terminate at the expiry of the duration of the trial and there will be no automatic transfer to another Service Level. However at the end of the trial period the Supplier will ask the Customer whether it wishes to proceed to purchase any of the other Service Levels and a new agreement would need to be entered into to reflect any new Service Levels which have been requested by the Customer. In the event that the Customer does not wish to opt in to any other Service Levels after the trial then the Customer will be responsible for removing any Customer Data, this will not be the responsibility of the Supplier.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 14.3.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
  - 14.3.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
  - 14.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 14.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 14.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 14.3.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - 14.3.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 14.3.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 14.3.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 14.3.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3.3 to clause 14.3.9 (inclusive);
  - 14.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 14.3.12 there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010.
- 14.4 On termination of this agreement for any reason:
- 14.4.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
  - 14.4.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
  - 14.4.3 the Customer Data will be deleted from the Supplier's software platform;
  - 14.4.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. **FORCE MAJEURE**

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

16. **CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

17. **VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. **RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. **SEVERANCE**

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

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

21. **ENTIRE AGREEMENT**

21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation or for anything else for which it would be unlawful for the parties to attempt to limit liability.

22. **ASSIGNMENT**

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

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

23. **NO PARTNERSHIP OR AGENCY**

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

**24. THIRD PARTY RIGHTS**

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

**25. NOTICES**

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

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

**26. GOVERNING LAW**

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

**27. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).