

# Synthesized: Terms and Conditions

## RECITALS:

- (A) Customer wishes to access and use the Licensed Package to create, process, share and analyse Synthesized Data (having regard to the Licensed Package and number of Datasets specified in the relevant Order).
- (B) These terms and conditions (the “**Terms and Conditions**”) are incorporated into the Order executed by the Parties and together form the Agreement relating to the subject matter of that Order.
- (C) The Agreement governs and conditions the nature and scope of the services to be provided by Licensor to Customer.

## THE PARTIES AGREE AS FOLLOWS:

### 1. INTERPRETATION

#### 1.1. The following definitions apply to this Agreement:

- (a) “**Access Protocols**”: means the user log-in credentials, together with the network link required to enable Authorised Users to set their password, necessary to access, and have active access protocols for, the Licensed Package.
- (b) “**Affiliate**”: means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
- (c) “**Authorised Users**”: means those Customer Personnel who are authorised by the Customer to access and use the Licensed Package and any Synthesized Data in accordance with the terms of this Agreement.
- (d) “**Business Day**”: means any day which is not a Saturday, Sunday or public holiday.
- (e) “**Commencement Date**”: means the date after the date of expiry of the Trial Period.
- (f) “**Contract Year**”: means each period of one (1) year commencing on and including the Commencement Date and each anniversary thereof during the Term.
- (g) “**Customer Data**”: means any data, media, information or other content owned by Customer or licensed to Customer by a third party and comprised within a Dataset.
- (h) “**Dataset**”: means one set of Customer Data of the Dataset Size, to be inputted by Customer (or by Authorised Users on behalf of Customer) into the Licensed Package in order to be Synthesized and further processed by Customer.
- (i) “**Dataset Size**”: means the Dataset size set out in the Order Form.
- (j) “**Documentation**”: means the then-current version of the user manual published by Licensor that describes the Licensed Package and its use, operation, features and functionality.

- (k) **"Fees"**: means any or all of the fees and charges set out in an Order, including the Trial Period Fees and the On-Premise Fees.
- (l) **"Intellectual Property Rights"**: means all copyright and related rights, patents, rights to inventions, utility models trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- (m) **"Licensed Package"**: means the On-Premise Software as specified in an Order.
- (n) **"Licensor"**: means Synthesized Limited, a company incorporated and registered in England and Wales with company number 10903020 whose registered office is at 41 Luke Street, London EC2A 4DP, UK.
- (o) **"Licensor Content"**: means any data, media, information or other content that is accessible via the Licensed Package, excluding any Customer Data and any Synthesized Data.
- (p) **"Licensor Technology"**: means (i) the On-Premise Software; (ii) the Documentation; (iii) the Licensor Content; (iv) any and all other technology and software owned or used by Licensor, any associated processes, materials, tools, and business methods relating thereto; (v) in respect of (i) and (iv), any benchmarking, analytics or technical data relating to the performance or operation thereof; and (vi) in respect of each of (i) to (v), any and all Intellectual Property Rights therein or thereto.
- (q) **"Losses"**: means all losses, liabilities, damages, costs, claims, charges, demands, actions, proceedings and expenses (including legal and professional fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- (r) **"On-Premise Fees"**: means any or all of the fees and charges set out in an Order in respect of the On-Premise Software, including the Licence Fees and the Implementation Fees.
- (s) **"On-Premise Software"**: means the version of Licensor's on-premise software, in object code form, specified in an Order, as well as any Updates thereto, which may be used to create, process, share and analyse Synthesized Data, together with any Licensor Content comprised therein or accessed thereby and includes the relevant Documentation.
- (t) **"Order"**: means the order form signed by the Parties, which incorporates these Terms and Conditions.
- (u) **"Personnel"**: means a Party's employees, agents, consultants or contractors.
- (v) **"Supplemental Terms and Conditions"** means the supplemental terms and conditions set out in Annex One to this Agreement which shall apply where the On-Premise Software form part of the Licensed Package.

- (w) **“Support Services”**: means the Support Services set out in the Order Form.
  - (x) **“Synthesized”** means processed, using the Licensor Technology, to create new, synthetic data, such that any individual or entity to whom any input data (including any Dataset) relates cannot be identified, directly or indirectly, by Licensor or any third party.
  - (y) **“Synthesized Data”**: means any and all Datasets which have been Synthesized.
  - (z) **“Term”**: means the Trial Period, any Initial Term and any Renewal Term(s).
  - (aa) **“Upgrade”**: means a new version of the On-Premise Software, incorporating new features and enhancements.
  - (bb) **“Update”**: means a revision to the On-Premise Software to provide bug fixes, correction and minor enhancements.
- 1.2. To the extent not defined in this Clause 1, the capitalised terms set out in an Order shall have the meaning given to them therein.
  - 1.3. References to **“Clauses”** in this Agreement are references to the clauses of these Terms and Conditions and references to **“Paragraphs”** are to the paragraphs of the Schedules to this Agreement.
  - 1.4. A **“person”** includes a natural person, corporate or unincorporated body.
  - 1.5. Any reference to this Agreement terminating shall, where the context requires, include a reference to this Agreement terminating by expiry of the Term.
  - 1.6. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular and references to one gender are references to the other genders.
  - 1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  - 1.8. The words **“include”** and **“including”** (or similar) shall be construed as illustrative only and shall not limit the sense of the description, definition, phrase or term(s) that comes before the relevant term.
  - 1.9. Any reference to an English legal term for any action, remedy, method or judicial proceedings legal document, legal status, court, official, or any other legal concept shall, in respect of any other jurisdiction than England be deemed to include the legal term which most nearly approximates in that jurisdiction to the English legal term.
  - 1.10. Any reference to the **“Parties”** means Licensor and Customer and **“Party”** shall mean one of them.
  - 1.11. In the event of a conflict or inconsistency between the terms (i) set out in an Order, (ii) set out in these Terms and Conditions, and (iii) set out in any Supplemental Terms and Conditions, the following order of precedence shall apply, with a term contained in a document higher in the list below having priority over one contained in a document lower in that list:
    - (a) an Order;
    - (b) Supplemental Terms and Conditions; and
    - (c) these Terms and Conditions.

## **2. COMMENCEMENT AND DURATION**

2.1. Unless terminated earlier pursuant to the terms of Clause 15, this Agreement shall:

- (a) commence on the Effective Date for the Initial Term.

## **3. FEES**

3.1. All Fees are payable in advance, unless otherwise agreed by the Parties in the relevant Order.

3.2. Where:

- (a) the Customer has not given notice to Licensor pursuant to Clause 15 to terminate the Agreement at any time during the Trial Period, the Agreement will continue for the Initial Term and any Renewal Term(s) in accordance with Clause 2.1(a) and 2.1(b) and any Trial Period Fees paid by the Customer will be credited to the Customer by way of deduction from the first invoice in respect of the Fees for the Initial Term (i.e. the first Contract Year); or
- (b) the Customer has given notice to Licensor pursuant to Clause 15 to terminate the Agreement at any time during the Trial Period, the Customer shall not be entitled to any credit, discount or refund in respect of any Trial Period Fees paid.

3.3. Licensor will issue an invoice for the Fees (or the Trial Period Fees only, where Clause 3.2(b) applies) to Customer. Unless otherwise agreed in an Order, all invoices are payable within thirty (30) days of the invoice date.

3.4. Licensor may increase the Subscription Fees and Licence Fees (as applicable) on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the second Contract Year and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index at the beginning of the last month of the previous Contract Year.

3.5. In addition to any other rights or remedies available to Licensor, if the Customer fails to pay any sums by the due date:

- (a) any portion of any sums that is not paid when due and payable will accrue interest equal to five percent (5%) per annum above the base lending rate from time to time of Silicon Valley Bank, accruing on a daily basis and being compounded quarterly, from the time the indebtedness arose, with interest on all overdue interest accruing at the same rate and calculated and payable in the same manner until fully paid, whether before or after judgment; and
- (b) Licensor may (i) require Licensee to immediately suspend all access to and use of the On-Premise Software, and/or (ii) immediately suspend any and all other parts of its services, until payment of the sums is made by the Customer in full.

## **4. USE OF LICENSED PACKAGE**

4.1. Subject to Customer's and its Authorised Users' continuing compliance with this Agreement (including payment of all Fees due and payable in accordance with Clause 3), and subject to any Supplemental Terms and Conditions, Licensor hereby grants Customer a personal, non-exclusive, non-sublicensable, non-transferable right for its Authorised Users to access

and use the features and functions of the Licensed Package and Documentation during the Term as part of Customer's internal business operations to process the number of Datasets set out in the Order in order to create Synthesized Data, and to process and analyse that Synthesized Data.

- 4.2. The licence outlined in Clause 4.1 is subject to the number of User Subscriptions and number of Datasets of the Dataset Size set out in the relevant Order.
- 4.3. Customer is solely responsible for the acts and omissions of Authorised Users. Customer shall immediately notify Licensor of any unauthorised use of any Authorised User's Access Protocols. Licensor will not be liable for any Losses arising from Customer's failure to ensure each Authorised User maintains the confidentiality of its Access Protocols.
- 4.4. In relation to the Authorised Users, Customer undertakes that:
  - (a) it shall ensure that:
    - (i) only Authorised Users access the Licensed Package; and
    - (ii) each Authorised User maintains the confidentiality of the Access Protocols; and
  - (b) it will not allow or suffer any Access Protocols allocated to an Authorised User to be used by more than one individual Authorised User; and
  - (c) it shall immediately notify Licensor if any Authorised User ceases to be employed or otherwise engaged by Customer.
- 4.5. Subject to Clause 4.6 and Clause 4.7, Customer may, from time to time during the Term, purchase the right to process additional Datasets (in excess of the number set out in the Order at that time) in accordance with the provisions of this Agreement.
- 4.6. If the Customer wishes to purchase the right to process additional Datasets, the Customer shall notify Licensor in writing. Licensor shall evaluate such request for additional Datasets and respond to the Customer with approval or rejection of the request.
- 4.7. If Licensor approves the Customer's request to process additional Datasets, any such additional Datasets will be priced according to the table set out in the Order.
- 4.8. Licensor may carry out ongoing monitoring or otherwise conduct an audit of Licensed Package usage at any time (including in respect of the number of users and the number of Datasets Synthesized). If any such audit reveals that the number of Datasets Synthesized exceeds the number of Datasets set out in the Order, then without prejudice to Licensor's other rights, Customer shall pay to Licensor an amount equal to such underpayment, calculated as if each additional Dataset that should have been paid for was purchased by the Customer in accordance with Clause 4.7. The Customer shall pay the underpayment within ten (10) Business Days of being notified by Licensor of such underpayment.
- 4.9. Unless otherwise agreed between the Parties and set out in an Order Form, the Licensed Package does not include Upgrades thereto. Any right to access and use Upgrades shall be subject to (i) payment by Customer of Fees in respect thereof as agreed between the Parties and set out in an Order Form (or, absent any such agreement, Licensor's standard fees in respect thereof); and (ii) the terms of this Agreement, including this Clause 4 and Clause 5.

## 5. RESTRICTIONS

- 5.1. Customer shall not, nor shall it instruct or permit, procure, enable or request any third party (including its Authorised Users and its Personnel) to, take any action designed or intended to:
- (a) use the Licensed Package or Documentation (or any part thereof) in any manner or for any purpose that is inconsistent with this Agreement;
  - (b) provide or otherwise make the Licensed Package or Documentation (or any part thereof) available to any third parties;
  - (c) use the Licensed Package or Documentation (or any part thereof) to:
    - (i) create, market or distribute any product or service that is competitive with the Licensed Package or any other part of the Licensor Technology; or
    - (ii) act as a service bureau on behalf of, or otherwise provide processing or services support to, any third party;
  - (d) introduce to the Licensed Package any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other equivalent code, software routine or instructions designed or intended to disrupt, disable, harm or otherwise impede in any manner the operation of the Licensed Package or any device or system owned or controlled by Licensor or any third party, or which otherwise may damage or destroy any data or file;
  - (e) modify, copy, resell, rent, lease, sub-licence, load, merge, adapt or translate the whole or any part of the Licensed Package or Documentation (or any part thereof);
  - (f) contest, challenge or otherwise make any claim or take any action adverse to Licensor’s ownership of, or interest in, the Licensor Technology (or any part thereof);
  - (g) re-use, disseminate, copy, or otherwise use the Licensed Package or Documentation (or any part thereof) in a way that infringes, misappropriates, or violates any Intellectual Property Rights or other right of Licensor or any third party; or
  - (h) remove, alter, obscure Licensor’s trade mark, copyright notice or any other proprietary notice from the Licensed Package or Documentation (or any part thereof).
  - (i) interfere with the proper working of the Licensed Package;
  - (j) circumvent, disable, or interfere with security-related features of the Licensed Package or features that prevent or restrict use, access to, or copying the Licensed Package, or that enforce limitations on use of the Licensed Package;
  - (k) reverse engineer, decompile, unbundle, disassemble, or create derivative works based on, the whole or any part of the Licensed Package unless, and to the limited extent that, applicable laws of Customer’s jurisdiction require Licensor to give Customer the right to do so to obtain information necessary to render the Licensed Package interoperable with other software; provided, however, that Customer must first request such information from Licensor, and Licensor may (in its sole discretion) either provide such information to Customer or impose reasonable conditions on such use of the source code for the Licensed Package to ensure that Licensor and its

licensors' proprietary rights in the source code for the Licensed Package are protected.

## **6. WARRANTIES AND SUPPORT SERVICES**

- 6.1. Subject to Clause 17.1, Licensor warrants that during the Term, the Licensed Package will materially conform to the then-current Documentation when used in accordance therewith and the terms of this Agreement.
- 6.2. The warranty set forth in Clause 6.1 shall not apply:
- (a) in the event that Customer or any Authorised User has breached any of the restrictions outlined in Clause 5; or
  - (b) to any defects or issues arising as a result of any use of the Licensed Package in combination with other products, hardware, equipment, software, or data not expressly authorised by Licensor to be used with the Licensed Package.
- 6.3. Licensor's sole liability, and Customer's sole remedy, for breach of the warranty in Clause 6.1 shall be Licensor's use of commercially reasonable efforts to remedy defects covered by such warranty in accordance with the Support Services.
- 6.4. Each Party warrants and represents on an ongoing basis that it has, and undertakes that it shall continue to have for the duration of this Agreement the requisite power, capacity and authority to enter into this Agreement and to carry out the obligations under this Agreement.

## **7. CUSTOMER DEPENDENCIES**

- 7.1. In order to permit Licensor to provide Authorised Users with access to the Licensed Package in accordance with the terms of this Agreement, Customer shall ensure that:
- (a) it shall implement and maintain effective security policies and procedures to prevent unauthorised disclosure of Access Protocols and unauthorised access to the Licensed Package;
  - (b) it shall make available to Licensor its employees and other staff members (in such number and with such level of seniority) as may be reasonably required in the circumstances to address any issue with the implementation, provision or cessation of access to the Licensed Package; and
  - (c) it shall comply with any additional dependencies set out in the Supplemental Terms and Conditions.
- 7.2. Licensor shall be relieved from any failure to comply with its obligations to provide Authorised Users with access to the Licensed Package, if and to the extent that Licensor can demonstrate that such failure was caused by Customer's failure to meet any obligation or dependency on Customer outlined above or otherwise set out in the Supplemental Terms and Conditions.

## **8. OWNERSHIP OF LICENSOR TECHNOLOGY**

- 8.1. As between the Parties, Licensor retains sole ownership of all right, title and interest, including all Intellectual Property Rights, in and to the Licensor Technology.

- 8.2. Customer will not acquire any right, title or interest in or to the Licensor Technology (subject only to the limited licences granted under Clause 4.1) and Licensor reserves all rights therein and thereto not expressly granted in this Agreement.

## **9. CUSTOMER DATA**

- 9.1. As between the Parties, Customer retains sole ownership of all right, title and interest, including all Intellectual Property Rights, in and to Customer Data and Synthesized Data.
- 9.2. Licensor shall not obtain any right, title or interest in or to the Customer Data or Synthesized Data, except that Licensor shall be permitted to use the Customer Data and Synthesized Data in accordance with the licence granted in Clause 9.3.
- 9.3. Customer hereby grants to Licensor a non-exclusive, worldwide, royalty-free licence, irrevocable during the Term, to use the Customer Data and Synthesized Data solely for the purpose of providing the services set out in this Agreement.
- 9.4. Licensor shall not be responsible for any loss, destruction, alteration of Customer Data or Synthesized Data caused by any Authorised User or any other third party (other than any subcontractor engaged by Synthesized in accordance with Clause 17.3). However, Licensor undertakes a duty to keep such Customer Data and Synthesized Data confidential and accepts that both Customer Data and Synthesized Data is included in the definition of Confidential Information. Accordingly, Licensor accepts that it shall be responsible, subject to the restrictions outlined in Clause 12, for any disclosure of such Customer Data or Synthesized Data caused by actions taken by the Licensor and/or its Affiliates.
- 9.5. Customer warrants and represents on an ongoing basis that, and undertakes that, throughout the Term it shall have, the necessary rights, power, consents and authority to transmit Customer Data and Synthesized Data to Licensor under, and in the fashion described in, this Agreement and to grant Licensor the licence to use Customer Data and Synthesized Data in Clause 9.3.
- 9.6. Customer will indemnify, defend and hold Licensor and its officers, directors, employees and agents harmless from and against any and all Losses arising from or in connection with, Customer's breach of the warranty, representation and/or undertaking given in Clause 9.5.
- 9.7. Customer will be responsible for maintaining back-up copies of all Customer Data and Synthesized Data residing in or relying in any way on the Licensor Technology.

## **10. DATA PROTECTION**

- 10.1. Customer warrants and represents on an ongoing basis, and further undertakes, that it shall not (and shall ensure that its Personnel shall not) cause Licensor (or any subcontractor engaged by Synthesized in accordance with Clause 17.3) to process any personal data (as the terms "personal data" and "process" are defined under the General Data Protection Regulation 2016/679 and/or the UK Data Protection Act 2018).
- 10.2. Customer will indemnify, defend and hold Licensor and its officers, directors, employees and agents harmless from and against any and all Losses arising from or in connection with, Customer's breach of the warranty, representation and/or undertaking given in Clause 10.1.

## **11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 11.1. Subject to the remainder of this Clause 11, Licensor shall indemnify Customer from and against Losses incurred by Customer as a result of amounts awarded in judgment or settlement of any third party claim or proceeding against Customer that Customer's use of the Licensed Package, within the scope of the rights of use granted to Customer under this Agreement, infringes the Intellectual Property Rights of a third party ("**IPR Claims**").
- 11.2. Customer shall notify Licensor in full, accurate and complete detail in writing promptly after it becomes aware of any event or any allegation, claim, demand, proceeding or other action, which it believes may give rise to a claim for indemnification under Clause 11.1 (an "**Indemnified Claim**").
- 11.3. Customer shall:
- (a) allow Licensor sole authority to control the defence and settlement of any Indemnified Claim;
  - (b) provide Licensor with all reasonable cooperation in the defence of such Indemnified Claim; and
  - (c) not settle or compromise any Indemnified Claim or make any admission of liability without the express prior written consent of Licensor.
- 11.4. Notwithstanding Clause 11.1 or any provision of this Agreement to the contrary, Licensor shall have no liability whatsoever to Customer in respect of any IPR Claims based on or arising directly or indirectly as a result of:
- (a) Customer exceeding the scope of any right, licence or consent to use the Licensed Package under this Agreement;
  - (b) any use of the Licensed Package not in accordance with this Agreement or the Documentation;
  - (c) any use by the Licensor of Customer Data or Synthesized Data in accordance with this Agreement;
  - (d) any use by Customer or any third party of Customer Data or Synthesized Data;
  - (e) a breach by Customer or any third party of any of the restrictions outlined in Clause 5;
  - (f) any use of the Licensed Package in combination with other products, hardware, equipment, software or data not expressly authorised by Licensor to be used with the Licensed Package; or
  - (g) any modification of the Licensed Package by any person other than Licensor or its expressly authorised agents or any third party that performs any element of the services described in this Agreement for or on behalf of Licensor.

## **12. CONFIDENTIAL INFORMATION**

- 12.1. In this Agreement, "**Confidential Information**" means any information that is clearly labelled or identified as confidential or ought reasonably be treated as being confidential and includes the Licensor Technology and Customer Data.
- 12.2. Confidential Information excludes any information which:

- (a) is or becomes publicly known other than through a breach of this Agreement;
  - (b) was in the receiving Party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving Party and that independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.3. Each Party will hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party unless that third party is subject to an equivalent duty of confidentiality.
- 12.4. Neither Party will use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.5. Each Party will take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Personnel in breach of the terms of this Agreement.
- 12.6. This Clause 12 will survive termination of this Agreement.

### **13. MARKETING**

- 13.1. Customer acknowledges and agrees that Licensor may include the Customer's name and a description of the technology and services provided to the Customer under this Agreement, in case study marketing content, lists of or references to any of Licensor's clients on its website and/or in proposals, and in other marketing materials.

### **14. LIMITATION OF LIABILITY**

- 14.1. Nothing in this Agreement limits or excludes liability of Customer to pay Licensor any sums due under this Agreement.
- 14.2. Except as expressly and specifically provided in this Agreement, each Party disclaims all terms, warranties and conditions (whether express or implied) relating to the subject matter hereof (including, in respect of Licensor, in relation to the Licensed Package, Synthesized Data, any services, their use and the results of such use).
- 14.3. Nothing in this Agreement limits or excludes the liability of either Party:
- (a) for death or personal injury caused by its negligence;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) under any indemnity given by it; or
  - (d) for any other act, omission, or liability which may not be limited or excluded by applicable law.

- 14.4. Subject to Clause 14.3, Licensor shall not in any circumstances be liable to Customer whether in contract, tort (including for negligence), breach of statutory duty (howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - (b) any loss or corruption of data or information (whether direct or indirect);
  - (c) any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
  - (d) the Customer's failure to comply with any applicable law, regulation (including financial services regulation) or code of best practice as a result of, or in relation to, its use of the Licensed Package;
  - (e) any use of any Access Protocols by any third party;
  - (f) any loss or liability (whether direct or indirect) arising as a result of Customer's, or any third party's use of, or reliance upon, Customer Data or Synthesized Data.
- 14.5. Subject to the remainder of this Clause 14, Licensor's total aggregate liability in each Contract Year (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise) arising in connection with the performance or contemplated performance of this Agreement shall under no circumstances exceed one hundred per cent (100%) of all Fees paid by Customer pursuant to and in accordance with this Agreement in such Contract Year.

## **15. TERMINATION**

- 15.1. Either Party may terminate this Agreement. In addition, the Customer may also terminate this Agreement at any time in with a 30 day written notice.
- 15.2. 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 the other Party:
- (a) commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so; or
  - (b) becomes insolvent or unable to pay its debts (as defined in section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, suffers the presentation of any petition, the making of any order shall or the passing of any resolution for its winding up (except for the purposes of a bona fide solvent amalgamation or reconstruction), bankruptcy or dissolution, otherwise proposes or enters into any composition or arrangement with its creditors or any class of them, ceases to carry on business or claims the benefit of any statutory moratorium, or undergoes any similar or equivalent process in any jurisdiction.
- 15.3. The Parties acknowledge and agree that failure by Customer to pay any sums when due shall constitute a "material breach" for the purposes of Clause 15.2(a).

## **16. CONSEQUENCES OF TERMINATION**

16.1. On termination of this Agreement:

- (a) notwithstanding Clause 3, Customer shall promptly (and in any event within ten (10) Business Days of the date of termination) pay Licensor any outstanding balances owing to Licensor under this Agreement or relevant part thereof;
- (b) any and all extant Statements of Work will terminate automatically without requirement of notice;
- (c) any and all licences, permissions and authorisations granted to Customer and/or its Authorised Users by Licensor under this Agreement will terminate automatically; and
- (d) each Party will promptly return all Confidential Information received from the other Party, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed.

16.2. Any obligation to return, destroy or permanently erase Confidential Information outlined in Clause 16.1(d) shall not apply to any Confidential Information that is retained by Licensor on electronic back-up media made in the ordinary course of business and from which it cannot readily be isolated from other information and deleted, provided that, in each case, the applicable provisions of this Agreement relating to data security and Confidential Information shall continue to apply to any such Confidential Information.

16.3. Any provision of this Agreement that either expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect, including: Clause 1 (Interpretation), Clause 3 (Fees), Clause 5 (Restrictions), Clause 8 (Ownership of Licensor Technology), Clause 9 (Customer Data), Clause 12 (Confidentiality), Clause 13 (Marketing), Clause 14 (Limitation of Liability), Clause 16 (Consequences of termination), Clause 17.6 (Waiver), Clause 17.7 (Rights and remedies), Clause 17.8 (Severance), Clause 17.9 (Entire agreement), Clause 17.10 (No partnership or agency), Clause 17.11 (Rights of third parties), Clause 17.12 (Notices), Clause 17.14 (Governing law), and Clause 17.15 (Jurisdiction).

16.4. Termination of this Agreement shall not affect 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 this Agreement which existed at or before the date of termination.

17. **GENERAL**

17.1. **Open source software.** Certain elements of the Licensed Package are subject to “open source” or “free software licenses” (for the purposes of this Clause 17.1, “**Open Source Software**”). Customer acknowledges that certain elements of such Open Source Software are owned by third parties. No Open Source Software is licensed under any provision of this Agreement under which Licensor grants Customer any licence to use Licensed Package; instead, each item of Open Source Software is licensed under the terms of the end-user licence that accompanies such Open Source Software (for the purposes of this Clause 17.1, each an “**OSS Licence**”). Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any OSS Licence. If required by any OSS Licence, Licensor shall make available relevant pieces of Open Source Software available upon written request.

- 17.2. **Force Majeure.** No Party will be in breach of this Agreement nor liable for any failure to perform its obligations under this Agreement if that failure results from circumstances beyond its reasonable control (for the purposes of this Clause 17.2, a “**Force Majeure Event**”). If a Force Majeure Event continues for three (3) months, the unaffected Party may terminate this Agreement by giving thirty (30) days’ written notice to the other Party.
- 17.3. **Subcontracting.** Licensor may engage any third party to perform its obligations under this Agreement, provided that Licensor shall remain fully liable to Customer for performance of such obligations (subject to the exclusions and limitations outlined herein).
- 17.4. **Assignment.** The Customer will not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, without the prior written consent of Licensor provided that Customer may freely assign this Agreement (in whole, but not in part) to any of its Affiliates. Customer agrees to provide Licensor with reasonable advance notice in the event that it proposes to assign this Agreement to an Affiliate.
- 17.5. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 17.6. **Waiver.** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.7. **Rights and Remedies.** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.8. **Severance.** If any provision or part-provision of this Agreement shall be held to be invalid, illegal, void or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 17.8 shall not affect the validity and enforceability of the rest of this Agreement. If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.9. **Entire agreement.** The Agreement constitutes the entire agreement and understanding between the Parties relating to the matters contemplated by this Agreement and supersedes all previous agreements (if any and whether in writing or not) between the Parties in relation to such matters. The Parties acknowledge and agree that, except as otherwise expressly provided for in this Agreement, they are not entering into this Agreement on the basis of, and are not relying on and have not relied on, any statement, representation, warranty or other provision (in any case whether oral, written, expressed or implied) made, given, or agreed to by any person (whether a Party to this Agreement or not) in relation to the subject matter of this Agreement, provided that nothing in this Agreement shall exclude any Party from liability for fraud or fraudulent misrepresentation.

- 17.10. **No Partnership or Agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.11. **Rights of Third Parties.** A person who is not a Party to this Agreement shall not be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 17.12. **Notices.** Any notice required to be given under this Agreement will be in writing and will be sent to the email addresses for contractual notices set out in the Order. Notices will be deemed to have been received at the time of transmission as shown by the sender's records (or if sent outside business hours, at 9am on the first Business Day following dispatch). A Party may change its details given on the Order by giving written notice to the other Party.
- 17.13. **Counterparts.** The Agreement (or any part thereof requiring signed execution) may be signed in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered by a Party, shall be an original and such counterparts taken together shall constitute one and the same agreement. Electronic copies of signatures by the authorised representatives of the Parties (e.g., PDF scans) are enforceable just as though they were original wet-ink signatures.
- 17.14. **Governing law.** The Agreement and all matters arising from it (including any dispute relating to the existence, validity or termination of this Agreement or any contractual or non-contractual obligation) shall be governed by, and construed in accordance with the laws of England and Wales.
- 17.15. **Jurisdiction.** In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement (including any dispute relating to the existence, validity or termination of this Agreement or any contractual or non-contractual obligation) (for the purposes of this Clause 17.15, "**Proceedings**") each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of England and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inappropriate forum provided that a judgment or order of any court may be enforced in any court of competent jurisdiction.