

Hiverge Terms and Conditions

These Hiverge Terms and Conditions (“**Terms and Conditions**”) are between Hiverge Ltd, a company registered in England and Wales, with company number 15650207 and registered address 20 Station Road, Cambridge, England, CB1 2JD (“**Hiverge**”) and the customer listed on the Order Form (“**Customer**”), and are effective as of the effective date stated on the first Order Form (the “**Effective Date**”) or the date Customer or an Authorised User first starts using the Services, whichever is earlier. Hiverge and Customer are each a “**party**” and together the “**parties**”.

1. Definitions

1.1 The following terms (and their grammatical variants provided the initial letter is capitalised), when used in these Terms and Conditions or an Order Form will have the following meanings:

“**Affiliates**” an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition.

“**AI Models**” means artificial intelligence, deep learning or machine learning (collectively, “AI”) processing or computing models (whether trained or untrained), including related algorithms, weights, parameters, structure and architecture.

“**AI Technology**” means (a) AI Models, (b) other techniques that enable computers to mimic human intelligence, including (i) deep learning, machine learning, and other AI technologies and algorithms, software, or systems that make use of or employ neural networks, and (ii) statistical learning algorithms or reinforcement learning, and (c) software, hardware and other technologies used to train, test and/or deploy any of the foregoing.

“**Authorised Users**” employees and other personnel of Customer who are authorised to use the Platform by Customer. The number of Authorised Users (if limited to a specific number) is agreed in the relevant Order Form.

“**Background IP**” all Intellectual Property created, developed or conceived by or on behalf of Hiverge: (a) prior to the Effective Date; or (b) independently of any Order Form.

“**Commercially Reasonable Efforts**” with respect to activities of a party, those efforts and resources typically used by that party to achieve or fulfil a similar objective or obligation that was in its own interest in similar circumstances but in any event no less than the effort and resource that would be used by a similar company acting reasonably in such circumstances, provided, however, that the party will not be required to sacrifice its commercial interests in order to achieve or fulfil such objective.

“**Confidential Information**” any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information which: (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by receiving party without use of or reference to the disclosing party’s Confidential Information.

“**Configuration Data**” any code, content or configuration data that is provided to the Platform by Customer or an Authorised User for the purpose of fine-tuning or customizing the Services to a specific need or use-case.

“**Contract Year**” each successive 12-calendar-month period commencing on the Effective Date or an anniversary thereof.

“**Control**” beneficial ownership of fifty percent (50%) or more of the voting power or equity in an entity or under English law, the legal power to direct or

cause the direction of the general management, of the company, partnership or other legal entity.

“**Customer Data**” means (i) any source code, object code, data, information, content, or material that the Customer (including its Authorised Users) uploads, submits, stores in, or transmits through the Platform, including Input; and (ii) Output.

“**Documentation**” any documentation for the Services produced by Hiverge and delivered or made available by Hiverge to Customer.

“**Initial Service Term**” means a period of twelve (12) months commencing on the Effective Date.

“**Input**” any and all code, data or other materials submitted to the Platform by Customer or an Authorised User and includes Configuration Data.

“**Intellectual Property**” all patents, rights to inventions, copyright and related rights, moral rights, database rights, trademarks and tradenames, rights to goodwill and to sue for passing off, rights in designs, 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 (and rights to apply) for, and renewals and extensions of and rights to claim priority from such rights and all similar or equivalent rights and forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Liable**” and “**Liability**” any liability arising under, out of or in connection with these Terms and Conditions and any Order Form, whether or not foreseeable or in the contemplation of the parties at any time, in or under contract, tort (including negligence), breach of statutory duty, misrepresentation, indemnity, restitution or otherwise.

“**Losses**” any losses, damages, Liabilities, costs, charges, and expenses, including reasonable legal fees and/or penalties.

“**Order Form**” a work order form, quote or other similar digital document or web-based process entered into by each of the parties (or its Affiliate) that references these Terms and Conditions and sets forth the specific subscription length for the Services, pricing thereof and other commercial terms and is executed by both parties.

“**Output**” any and all content, algorithmic results, or other output generated or executed by the Platform in response to Input and delivered to Customer.

“**Permitted Purpose**” means the specific and limited use of the Platform by Customer and Authorised Users for their internal business operations and any other purposes expressly set out in the relevant Order Form.

“**Platform**” Hiverge’s cloud-based solution that uses AI Technology to automate the design and optimization of algorithms for critical, complex optimization challenges.

“**Services**” the provision of the Platform.

“**System Data**” anonymised and aggregated data collected by Hiverge regarding the Services and the use of the Services by Customer and Authorised Users that does not identify or permit identification of Customer or any Authorised User. System Data does not include Customer Data.

“**Term**” the Initial Service Term and any subsequent renewal term.

2. Platform

2.1 Subject to these Terms and Conditions, Hiverge will make the Platform available to Customer pursuant to these Terms and Conditions and the applicable Order Form, and hereby grants Customer a non-exclusive, non-sublicensable (except for Clause 2.5), non-transferable, right during the Term to permit the number of Authorised Users specified in the relevant Order Form (or an unlimited number if no cap is stated) to access and use the Platform for the Permitted Purpose.

2.2 If the Order Form states that the number of Authorised Users is capped, Customer may purchase access for additional Authorised Users by email agreement with Hiverge. Additional access for Authorised Users will be charged at the rate set out in the relevant Order Form (or if no rate is set out, at Hiverge’s then-current standard rate) from the next calendar month until the end of the Term. If the Order Form states that additional access for Authorised Users is to be purchased in batches, Customer will pay the full price of the next batch once its usage exceeds the access permitted under the current batch.

2.3 Hiverge may, from time to time, develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Services and Documentation (“**Platform Updates**”). Customer hereby authorises Hiverge to provide Platform Updates to the Services provided that such updates do not have a material adverse effect on the functionality or performance of the Services.

2.4 Hiverge may, from time to time, develop additional features and functionality to the Services and Documentation which are distinct to the current Services, but which may be used in conjunction with the Services (“**New Packages**”). Customer hereby agrees that Hiverge is under no obligation to provide these New Packages, but that Hiverge may, at its discretion, communicate an offer to Customer for trial use of such features to allow Customer to access these New Packages for a period and cost to be agreed between the parties. New Packages, once provided to Customer, form part of the Services provided.

2.5 Customer shall ensure that Authorised Users do not share access keys, passwords, usernames, or individual accounts/invitations to use the Services or make the Services available to any unauthorised third party. Customer undertakes to keep all access keys, passwords, usernames, or individual accounts and invitations secure and take reasonable steps to prevent access by unauthorised individuals. Customer is responsible for the acts and omissions of any individual that uses the Services with accounts that were provided to Customer or have been registered to an Authorised User.

2.6 Customer agrees that Hiverge may change, deprecate or republish application programming interfaces for the Services, and that it is Customer’s responsibility to ensure that requests that Customer makes to the Services are compatible with the then-current application programming interfaces for the Services.

2.7 Customer shall comply with any usage limits set out in the relevant Order Form and refrain from utilising the Services in a manner that excessively consumes Hiverge’s resources or causes substantial degradation to the services provided by Hiverge to its other customers. Hiverge may employ reasonable technical measures to curtail Customer’s overuse of computing resources, ensuring the overall quality of services for its customer base.

2.8

Without prejudice to Clause 13, Hiverge may withdraw any Services and terminate the part(s) of any Order Form governing such Services in the event that Hiverge ceases to make such Services available to its customers generally. In such circumstances, Hiverge will use Commercially Reasonable Efforts to give Customer 6 months’ prior written notice. Customer agrees that nothing stated herein shall limit Hiverge in any way from determining in its sole discretion how to provide the Services and Hiverge may modify, supplement, enhance, or otherwise change (including through routine upgrades and bug fixes) the Services (in whole or part) including the technical, functional, administrative and operative methods of supply of the same wherever Hiverge deems necessary (in its sole discretion) to: (a) comply with applicable law; (b) address unforeseen or imminent dangers or risks (including fraud, malware, spam, data breaches, cybersecurity or other risks); or (c) address actual or potential changes in the organisation of its business, technical systems or requirements.

3. Data Security

3.1 Customer has sole responsibility for ensuring the legality, reliability, integrity, accuracy, and quality of Customer Data (excluding Outputs). In the event of any loss or damage to Customer Data, Customer’s sole and exclusive remedy shall be for Hiverge to use Commercially Reasonable Efforts to assist Customer in restoring the lost or damaged Customer Data.

3.2 Customer will implement and adhere to appropriate technical and organisational IT security measures in accordance with good industry practice and will use and adhere to any IT security procedures which Hiverge may notify to Customer from time to time.

3.3 Hiverge shall use Commercially Reasonable Efforts to implement and maintain information security measures that are consistent with those made available by its third-party hosting provider. Customer acknowledges that Hiverge does not guarantee error-free or uninterrupted security and that Hiverge’s obligations under this Clause are limited to passing through the security controls of its hosting provider.

4. Licence Restrictions

4.1 The rights granted herein are subject to the following restrictions (the “**Licence Restrictions**”). Customer will not (and shall procure Authorised Users do not) directly or indirectly:

4.1.1 reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the Services, unless and to the extent allowable under applicable law or as expressly permitted by Clause 2.1;

4.1.2 remove or alter the conditions of use, any copyright notices and other identification disclaimers as they may appear on the Services or the Documentation;

4.1.3 use the Services for any purpose that is classified as ‘prohibited’ or ‘high-risk’ under Regulation (EU) 2024/1689, the EU AI Act;

4.1.4 use the Services in connection with any unlawful, illegal, discriminatory, fraudulent, deceptive, offensive, violent, pornographic, unethical, immoral, inappropriate or harmful purpose or activity;

- 4.1.5 frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation;
- 4.1.6 attempt to probe, scan or test the vulnerability of the Services, breach the security or authentication measures of the Services without proper authorisation or wilfully render any part of the Services unusable for any user;
- 4.1.7 use automated spiders, readers, data mining or scraping techniques or other services that would produce a load on the Platform that is not consistent with normal use by a human;
- 4.1.8 upload, transmit, or otherwise include in any Input any personal data or other information relating to an identified or identifiable individual;
- 4.1.9 use the Services, nor upload any Customer Data in a manner that causes the distribution or execution by means of the Services of: (a) any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies; (b) any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer; or (c) any content or material that is unlawful, illegal, discriminatory, fraudulent, deceptive, offensive, violent, pornographic, unethical, immoral, inappropriate or harmful;
- 4.1.10 use or access the Services or Intellectual Property of Hiverge: (a) to develop a product or service that is competitive with Hiverge's products or services; or (b) to engage in competitive analysis or benchmarking against products or services provided by third parties that are similar to the Services;
- 4.1.11 transfer, distribute, resell, lease, license, or assign the Services or use the Services to provide a service to a third party, other than as set out under these Terms and Conditions or the applicable Order Form;
- 4.1.12 conduct or request that any other person conduct any load testing or penetration testing on the Services without the prior written consent of Hiverge;
- 4.1.13 allow the Services to become the subject of any charge, lien or encumbrance; or
- 4.1.14 otherwise use the Services: (a) in violation of applicable law; (b) to infringe or violate third party rights; or (c) other than for the Permitted Purposes or stated in the applicable Order Form.
- 5.2 Customer will: (a) comply with applicable laws; (b) be responsible for all use of the Services under its account; (c) use Commercially Reasonable Efforts to prevent unauthorised access to or use of the Services and Customer Data and notify Hiverge promptly of any unauthorised access or use of the same; and (d) be responsible for obtaining and maintaining any equipment, software and ancillary software, services or data needed to connect to, access or otherwise use the Services, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services, and Hiverge will have no Liability for such failure.
- 5.3 Customer will: (a) obtain all authorisations, consents and licenses required to use the Platform and for the Platform to process Customer Data; and (b) provide all notices and disclosures required for Authorised Users to use the Platform, including any required disclosures concerning the use of artificial intelligence.

6. Fees

6.1 Customer will pay Hiverge the fees set forth in the relevant Order Form (or, if no fees are stated, Hiverge's then current prices) ("**Fees**"). Fees are exclusive of all compute costs incurred in connection with Customer's use of the Platform, including processing power, memory usage, and computational resources. Such costs shall be calculated based on actual resource consumption and invoiced monthly, and payable in accordance with the payment terms set out in the relevant Order Form. Compute costs may vary based on usage patterns and processing requirements.

6.2 Except as otherwise specified herein or in any applicable Order Form, Fees are: (a) quoted and payable in the currency set forth in the relevant Order Form; and (b) non-cancellable and non-pro-ratable for partial months or years, and non-refundable, except as expressly set forth herein.

6.3 If Customer's use of the Services exceeds the Service usage capacity set forth in the relevant Order Form or otherwise requires the payment of additional fees (as set out in the relevant Order Form), Customer shall be billed for such usage, Clause 2.2 shall apply and Customer agrees to pay the additional fees on demand.

6.4 If Customer fails to pay any amounts to Hiverge (including Fees) that are not disputed pursuant to Clause 7.5, Hiverge may charge a debt collection fee of 5% and interest on the overdue amount from the due date up to (but excluding) the date of actual payment, after as well as before judgment at 8% per annum above the base rate of the Bank of England on any outstanding balance, or the maximum permitted by law, whichever is lower. Such interest shall accrue on a daily basis, be compounded monthly and is payable on demand.

6.5 If Customer disputes any amount that Hiverge believes is due, Customer shall notify Hiverge in writing within 14 days of Hiverge requesting such amount, and the parties shall act reasonably and in good faith to resolve such dispute.

6.6 All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "**Taxes**"). Customer will be solely responsible for payment of all Taxes, except for those based on the income of Hiverge. Customer will not withhold any Taxes from any amounts due to Hiverge unless such withholding or deduction is required by applicable law. In such event, the amount of such payment due from Customer shall be increased to an amount which (after making such withholding or deduction) leaves an amount equal to the payment which would have been due if no such withholding or deduction had been required.

5. Customer Responsibilities

5.1 Hiverge's provision of the Services is dependent on Customer providing or procuring all reasonably required cooperation and materials as reasonably required and any other reasonable requirements as may be specified by Hiverge in writing from time to time. Customer will provide the same in a diligent and timely manner and Hiverge is not Liable to the extent its breach of an Order Form is caused by Customer's breach of this Clause.

7. Proprietary Rights and Confidentiality

- 7.1 As between the parties, Hiverge exclusively owns all right, title and interest in and to the Services (and the skills, know-how and methodologies used to provide the Services), Background IP (and all improvements, enhancements or modifications thereto), System Data and Hiverge's Confidential Information, and Customer exclusively owns all right, title and interest in and to Customer Data and Customer's Confidential Information. To the extent that any right, title or interest in Customer Data vests in Hiverge, Hiverge hereby assigns (by way of present assignment of future rights to the maximum extent permissible by law) all such right, title and interest in Customer Data to Customer and shall, at Customer's reasonable request and expense, execute such documents and do such things as may be reasonably required to give full effect to this assignment.
- 7.2 Customer may from time to time provide Hiverge with suggestions or comments for enhancements or improvements, new features or functionality or other feedback. Hiverge will have: (a) full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality; and (b) an unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such suggestions or comments in connection with its products and services.
- 7.3 Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of these Terms and Conditions and it will not disclose the same to any third party without the other party's prior written consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information: (a) to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with this Clause; and (b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its Commercially Reasonable Efforts to minimise such disclosure to the extent permitted by applicable law). Neither party will disclose the non-public terms of these Terms and Conditions to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers. Each party agrees to exercise due care in protecting the Confidential Information from unauthorised use and disclosure. In the event of actual or threatened breach of the provisions of this Clause or the Licence Restrictions, the non-breaching party will, notwithstanding anything in these Terms and Conditions, be entitled to seek immediate injunctive and other equitable relief in any jurisdiction, 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 these Terms and Conditions.
- 7.4 Notwithstanding anything to the contrary, Customer agrees that Hiverge and its Affiliates is hereby granted a non-exclusive, non-transferable, sub-licensable (directly and indirectly through multiple tiers), fully paid-up worldwide right and licence to use Customer Data to: (a) provide the Services; (b) monitor the number of Authorised Users; (c) monitor Customer's compliance with and enforce these Terms and Conditions and any Order Form; (d) determine the Fees (or other amounts) paid and payable by Customer; and (e) create System Data.
- 7.5 The Services may contain Intellectual Property, including open-source software owned by third parties. Such third-party Intellectual Property may be licensed by Hiverge or the third party to Customer under separate or different terms and conditions

("Third Party Terms") and are not licensed to Customer under these Terms and Conditions. Such Third Party Terms are available on request and Customer agrees to comply with such Third Party Terms, including any obligation to pay any fees due to third parties directly to the relevant third party. Customer agrees to indemnify Hiverge in respect of Losses that Hiverge incurs as a result of any breach by Customer of the Third Party Terms applicable to such third-party Intellectual Property. Notwithstanding the foregoing, Hiverge shall not use Customer Data to train, improve or develop the Services, any AI Models or Hiverge Background IP.

8. Warranties

- 8.1 Each party warrants and represents to the other that it: (a) has full power and authority to enter into and perform its obligations under these Terms and Conditions; (b) shall obtain and maintain all necessary licences, clearances, permissions, and consents necessary to carry out all of its obligations under these Terms and Conditions, provide any information, data or other materials that it provides hereunder, and to permit the other party to use the same as contemplated hereunder; and (c) shall employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of its obligations under these Terms and Conditions.
- 8.2 Hiverge warrants that the Platform will conform in all material respects with the relevant Documentation. If Hiverge breaches the foregoing warranty, then to the extent allowable by applicable law, Customer's exclusive remedy shall be repair or replacement (as determined by Hiverge) of the deficient element(s) of the Platform. If Hiverge cannot repair or replace the deficient element(s) of the Platform, in each case so they are as warranted herein, Customer shall be entitled to a pro-rata refund of the Fees paid to Hiverge for such deficient element(s) of the Platform.

9. Disclaimers

- 9.1 Except as expressly set forth herein, the Services are provided on an "as is" and "as available" basis. To the extent allowable by applicable law, each party disclaims all warranties and conditions express or implied, including merchantability, satisfactory quality, title, non-infringement, and fitness for a particular purpose. Hiverge does not warrant that the Services will: (a) be provided free from interruption, errors or defects; (b) run on any particular computer system or browser; (c) be accurate, complete, reliable, secure, useful, fit for purpose or timely; (d) be validated, verified, or suitable for use by Customer or any third party; (e) meet Customer's requirements or expectations, including specific optimisation or performance outcomes; (f) will be suitable for, or capable of being used by, Customer or any third party in connection with any commercial or operational process; or (g) comply with applicable law. Customer acknowledges the Services may contain bugs or viruses and shall use appropriate anti-virus software.
- 9.2 Customer acknowledges that certain Services utilise AI Models which are probabilistic and may result in bugs, errors, or misinterpretation of inputs. Hiverge does not warrant that Inputs will be understood or that human intervention will not be required, and shall not be Liable for any misinterpretation, inaccuracy or errors. It is the sole responsibility of Customer and Authorised Users to review and decide the manner in which they use Output or proceed in response to Output. Customer shall, and shall procure that Authorised Users, use independent judgement and discretion before using or relying on AI Technology or Output without human review. Customer is solely Liable for monitoring and approving any use of Output, and any decision or action or omissions taken or arising from Output.

9.3	Customer acknowledges AI Technology limitations, including that Output may: (a) contain errors or be unreliable; (b) be repetitive due to algorithmic constraints; (c) misunderstand language nuances; (d) lack emotional understanding; (e) perpetuate training data biases; and (f) struggle with complex reasoning tasks. Output is provided "as is". Hiverge makes no warranties, representations, conditions, guarantees or undertakings with respect to any AI Technology or Output. To the extent permitted by law, Hiverge shall not be Liable for any Losses arising from AI Technology or Output. Customer remains solely responsible for validating Output accuracy and exercising independent judgement before taking any actions based on AI Technology or Output.	
9.4	Customer acknowledges that the Platform uses third party AI Models, the operation, availability and accuracy of which are outside of Hiverge's control. Hiverge disclaims all Liability for errors, downtime or other issues arising from third party AI Models.	
10.	Third Party Claims	
10.1	Customer will defend Hiverge against any claim, demand, suit, or proceeding (" Claim ") made or brought against Hiverge (whether by an individual, a business or a government authority) in connection with (a) Customer's breach of applicable laws; (b) Customer Data; (c) Customer's Confidential Information; or (d) Customer's or any Authorised User's use, reliance on, or integration of the Services, and will indemnify Hiverge for any Losses in connection with any such Claim.	12.2
10.2	In connection with any Claim: (a) Hiverge will promptly notify Customer of such Claim in writing; (b) Customer will have the sole and exclusive authority to defend and/or settle such Claim (provided that it may not settle any Claim without Hiverge's prior written consent, which will not be unreasonably withheld, conditioned or delayed where it unconditionally releases Hiverge of all associated Liability); and (c) Hiverge shall reasonably cooperate with Customer in connection therewith.	
11.	Liability	
11.1	Nothing in these Terms and Conditions excludes or restricts any Liability that cannot be excluded or restricted under applicable law.	
11.2	Subject to Clause 11.1, Hiverge is not Liable for any: (a) loss of actual or anticipated profits; (b) loss of sales, business or revenue; (c) loss of agreements or contracts; (d) wasted expenditure (excluding Fees paid under these Terms and Conditions); (e) loss of anticipated savings; (f) loss of or damage to reputation or goodwill; (g) loss of use or corruption of software, data or information, (h) Losses incurred as a result of criminal or civil proceedings arising from the use of the Platform, in each case (a) to (h), whether direct or indirect; or (i) indirect, special, incidental, consequential or punitive damages of any character, even if informed of their possibility in advance.	12.3
11.3	Subject to Clause 11.1, the total aggregate Liability of Hiverge in any Contract Year will not exceed the amounts paid by Customer under the applicable Order Form during that Contract Year.	
12.	Term and Termination	
12.1	The Term of these Terms and Conditions will commence on the Effective Date and continue for the Initial Service Term unless terminated as set forth below. Except as set forth in such Order Form, the Initial Service Term will automatically renew for successive renewal terms equal to the length of the Initial Service Term on Hiverge's then current prices, unless either party provides the other party with written notice of non-renewal at least three (3) months prior to the end of the then-current Term.	
	Each party may terminate these Terms and Conditions upon written notice to the other party if: (a) there are no Order Forms then in effect; (b) the other party commits any material breach of these Terms and Conditions and fails to remedy such breach 30 days after written notice of such breach, provided, however, that if such breach is capable of remedy but cannot be remedied within such period and the breaching party initiates actions to remedy the breach and thereafter diligently pursues such actions, the breaching party shall have such additional period as is necessary in the circumstances to cure the breach; or (c) subject to applicable law, the other party's liquidation occurs, there is the commencement of dissolution proceedings or an assignment of substantially all of its assets for the benefit of creditors occurs, or if the other party becomes the subject of bankruptcy, insolvency or similar proceeding that is not dismissed within 60 days.	12.4
	Following termination of an Order Form for any reason: (a) Customer shall pay Hiverge on demand all sums (not disputed pursuant to Clause 6.5) due to it howsoever arising from these Terms and Conditions; (b) other than the licences in Clauses 7.4 (c) to (e) (which are perpetual), all rights and licences granted under these Terms and Conditions shall terminate and Customer's access to the Services relevant to that Order Form shall be disabled; (c) each party shall promptly return to the other or otherwise dispose of (as the other party may instruct), all materials, documents (including Documentation) or papers whatsoever including Confidential Information of the other party which are in its possession or under its control in whatever form they are recorded or stored, including any electronic or digital storage media; and (d) the parties shall have no further obligations or rights under these Terms and Conditions with respect to that Order Form, without prejudice to those which have accrued to either party prior to termination.	12.5
	Upon termination of these Terms and Conditions, all Order Forms and all rights and obligations will immediately terminate except that accrued payment obligations and any terms or conditions that by their nature should survive such termination will survive, including the Licence Restrictions and provisions relating to proprietary rights and confidentiality, disclaimers, indemnification, limitations of liability, termination and the general provisions below. Nothing in this Clause will relieve Customer of its obligation to pay Hiverge any amounts (including Fees) that are due as at the effective date of such termination.	
	Hiverge shall be entitled to suspend or restrict access to all or part of the Services: (a) where it is entitled to terminate these Terms and Conditions pursuant to Clause 12; (b) to carry out scheduled or emergency maintenance (in which case Hiverge shall use Commercially Reasonable Efforts to minimise the disruption caused to Customer); (c) if Customer fails to pay any amounts that are not disputed pursuant to Clause 6.5, provided that Hiverge has given Customer thirty (30) days advance notice of the suspension; and (d) if Hiverge reasonably believes Customer is in breach of the Licence Restrictions.	
13.	General	
13.1	Hiverge and/or its third-party representatives (including designated auditor), may on reasonable notice during normal business hours request copies of information relating to the Customer's compliance	

- with these Terms and Conditions. The cost of an audit shall be borne by Hiverge, except where a breach of these Terms and Conditions or an underpayment of amounts payable to Hiverge under these Terms and Conditions is identified, in that case, the amounts due and the costs of the audit shall be borne by Customer and payable on demand. The rights in this Clause shall continue for three (3) years after termination of these Terms and Conditions.
- 13.2 During the Term and for 12 months thereafter, neither party shall, directly or indirectly, on its own behalf or on behalf of any other person or entity: (a) recruit, solicit, or offer employment to any of the other party's employees or contractors; or (b) induce any of the other party's employees or contractors to terminate their engagement with such party. Any breach of the foregoing will obligate the breaching party to pay the other party an amount equal to the annual base salary of the person recruited, solicited, or induced plus reasonable recruitment costs in replacing the person.
- 13.3 Customer agrees that Hiverge may refer to Customer's name and trademarks in Hiverge's marketing materials and website. Customer agrees that Hiverge may prepare and publish a case study about Customer and Customer's use of Services. Following the successful roll-out of Services, Hiverge shall prepare and publish a press release announcing Customer's use of Services.
- 13.4 Neither party hereto may assign or otherwise transfer these Terms and Conditions, in whole or in part, without the other party's prior written consent, except that Hiverge may assign these Terms and Conditions without consent to an Affiliate or a successor to all or substantially all of its assets or business related to these Terms and Conditions. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null or void. Subject to the foregoing, these Terms and Conditions will be binding on the parties and their successors and assigns.
- 13.5 No amendment or modification to these Terms and Conditions, nor any waiver of any rights hereunder, will be effective unless agreed to in writing by both parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of these Terms and Conditions will not be deemed a waiver of future enforcement of that or any other provision.
- 13.6 A person who is not a party to these Terms and Conditions shall not have any rights under or in connection with it whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.7 Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.
- 13.8 If a court of competent jurisdiction determines that any provision of these Terms and Conditions is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of these Terms and Conditions will remain in full force and effect and bind the parties according to its terms.
- 13.9 Each party irrevocably agrees that these Terms and Conditions (and any non-contractual obligations arising out of or in connection with them and any claim or dispute in relation to their formation) shall be interpreted and governed by the laws of England, and subject to the exclusive jurisdiction of the courts of London, England.
- 13.10 Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, by overnight delivery or by email (provided no automated bounce back is received). Notices to the parties must be sent using the details stated in the relevant Order Form.
- 13.11 These Terms and Conditions and all Order Form constitute the entire agreement and understanding between the parties relating to their subject matter and supersede any previous agreements, discussions, correspondence, negotiations, drafts, promises, assurances, warranties, representations and/or undertakings between the parties including any usage or custom and any terms arising through any course of dealing relating to such subject matter.
- 13.12 Each party agrees that in entering these Terms and Conditions all statements, representations, warranties and undertakings on which it relies are incorporated into these Terms and Conditions and it does not rely on (and shall have no remedy in respect of) any statement, representation (including any misrepresentation), warranty or undertaking (whether negligently or innocently made) of any person (whether party to these Terms and Conditions or not) (in each case whether contractual or non-contractual) which is not expressly set out in these Terms and Conditions. Without prejudice to: (a) any other provision of these Terms and Conditions limiting the remedies available to either party, each party agrees that it will have no remedy in relation to these Terms and Conditions for innocent or negligent misrepresentation, negligent misstatement or mistake based on any statement in or made in relation to these Terms and Conditions; and (b) the indemnification obligations contained herein and either party's ability to seek injunctive or equitable relief in any court of competent jurisdiction for actual or threatened misuse of its Intellectual Property or Confidential Information, the only remedy available to each party in relation to any breach of these Terms and Conditions shall be for damages for breach of contract under the terms of these Terms and Conditions.
- 13.13 Neither party will be deemed in breach hereunder for any cessation, interruption, delay or failure in the performance of its obligations due to causes beyond its reasonable control ("**Force Majeure Event**"), including earthquake, flood, or other natural disaster, act of God, labour controversy, civil disturbance, terrorism, war (whether or not officially declared), pandemic, cyber-attack (including denial of service attacks), failure of any third party or Customer software, hardware or communications network, or any change in or the adoption of any law, regulation, judgment or decree. Other than as expressly required herein, Hiverge shall not be obliged to take any action to prevent or mitigate Force Majeure Events.
- 13.14 Any words following the terms 'including', 'include', 'in particular', 'for example', 'i.e.', 'other' and 'otherwise' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. In the event of any conflict between the Clauses of these Terms and Conditions, the documentation incorporated into these Terms and Conditions by reference and any Order Form, the Order Form shall prevail, followed by the documentation incorporated by reference and finally these Terms and Conditions. References to Clauses are to Clauses in these Terms and Conditions and headings shall not affect the interpretation of these Terms and Conditions. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. A reference to a party includes that party's personal representatives, successors and permitted assignees. Unless the context requires otherwise, words in

the singular include the plural and vice versa and a reference to one gender shall include a reference to the other genders. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision. A reference to these Terms and Conditions or to any other agreement or document referred to in these Terms and Conditions is a reference to these Terms and Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Terms and Conditions) from time to time. A reference to writing or written includes e-mail but not fax. When a number is expressed both in words and numbers, in the event of a conflict the words shall be deemed correct.