

[Cerbos Cloud](#)

[Beta](#)

## Subscription Terms

These are the Subscription Terms (Terms) of Zenauth Ltd (trading as Cerbos), incorporated and registered in England and Wales with company number 13249733, whose registered office is at 103 Albert Bridge Road, London, Greater London, United Kingdom, SW11 4PF (Supplier).

The Customer agrees to contract on the basis of these Terms and in doing so agrees that they prevail over any other terms which the Customer may seek to impose or introduce, including (without limitation) any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by the Customer.

Any person acting on behalf of the Customer represents and warrants that they have the legal right and authority to bind the Customer to the terms of the Agreement.

### 1. Interpretation

#### 1.1. The following definitions and rules of interpretation apply:

- **Agent Component:** that part or element of the Software which is operated in or on the Customer's systems or network and which the Customer is responsible for maintaining and updating to enable the Supplier to provide the Services and/or Support.
- **Agreement:** the agreement between the Customer and the Supplier comprising: (i) these Terms, (ii) the Order, and (ii) any documents specifically referred to or incorporated into these Terms.
- **Applicable Package:** the particular service package taken or elected for use by the Customer, whether Free, Growth or Enterprise Package(s), as set out in the Order.

- **Authorised Support Contacts:** the agreed Customer personnel authorised to act as the Customer contact in connection with the provision of Support.
- **Authorised Users:** those employees, officers and agents of the Customer who are authorised to use the Services and the Documentation.
- **Background IPR:** any Intellectual Property Rights which are owned or licensed by a party prior to this Agreement or developed or acquired during the term, but independently, of this Agreement.
- **Business Day:** a day other than a Saturday, Sunday or public holiday in England.
- **Charges:** the charges payable for the Services, as set out in the Order, and any which apply in accordance with the Pricing Structure.
- **Confidential Information:** all and any confidential information (in whatever form) whether or not marked as such including but not limited to commercial, financial, marketing and technical information relating to the disclosing party's business, services, products, clients, consultants, employees, suppliers, finances, proprietary computer software, website, know how, trade secrets, intellectual property, future product plans, future project plans and documentation in any form or medium whatsoever whether disclosed orally or in writing relating to any of the foregoing (including copies thereof).
- **Contract Period:** the relevant period of the Agreement, whether it be the Initial Term or a Renewal Period.
- **Customer:** the customer identified in the Order.
- **Customer Data:** any data provided and/or inputted by the Customer or its Authorised Users, including all and any data or information relating to the Customer's usage of the Software, but excluding Third Party Content.
- **Customer Personal Data:** any Personal Data Processed by the Supplier on behalf of the Customer.
- **Customisations:** any customisations, developments, enhancements or modifications of the Software or the Documentation created during or pursuant to the Agreement.
- **Data Protection Laws:** means (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data, (ii) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data. The terms 'Controller', 'Processor',

'Process(ing)', 'Data Subjects' and 'Personal Data' shall have the meaning given to them in the UK GDPR.

- **Documentation:** the documentation made available to the Customer by the Supplier from time to time relating to the Software and/or Services, including user instructions.
- **Effective Date:** the date from which the Agreement commences, as set out in the Order.
- **Enterprise Package:** the Supplier's enterprise software package, details of which are available at <https://cerbos.dev/cloud/pricing>.
- **EU GDPR:** means EU General Data Protection Regulation 2016/679;
- **Free Package:** the Supplier's free software package, details of which are available at <https://cerbos.dev/cloud/pricing>.
- **Growth Package:** the Supplier's growth software package, details of which are available at <https://cerbos.dev/cloud/pricing>.
- **Initial Term:** the initial term of the Agreement, as set out in the Order, which (for the avoidance of doubt) shall begin after any Trial Period.
- **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.
- **Order:** the Supplier order which accompanies these Terms.
- **Payment Terms:** the terms applying to invoicing and/or payment, as set out in the Order or otherwise agreed in writing.
- **Paid-For Packages:** the Growth or Enterprise Package(s), as applicable.
- **Pricing Structure:** the pricing structure for the Paid-For Packages, details of which are at <https://cerbos.dev/cloud/pricing>.
- **Services:** the software as a service subscription services, including access to the Software, which are comprised in the Applicable Package.
- **Service Commencement Date:** the date that provision of the Services commences, as specified in the Order.

- **Service Levels:** the service levels for the Support, as set out at <https://cerbos.dev/cloud/pricing>, or otherwise agreed in writing.
- **Software:** the software applications and functionality relevant to the Applicable Package, as described in the Order.
- **Standard Support Hours:** 8.00am to 6.00pm GMT Monday on Business Days.
- **Subprocessor:** any third party processor appointed by the Supplier in accordance with clause 9.6.
- **Support:** the support applicable to the Paid-For Packages, details of which are available at <https://cerbos.dev/cloud/pricing>.
- **Term:** the entire term of the Agreement, commencing on the Effective Date and including any applicable Trial Period, the Initial Term, and any Renewal Period(s).
- **Trial Period:** if agreed, a period prior to the Initial Term during which the Customer may trial the Growth Package in order to evaluate its suitability.
- **User Subscriptions:** where applicable, per-user subscriptions for use of the Services.
- **User Terms:** means such terms of use applicable to Authorised Users as are made available by the Supplier from time to time.
- **Third Party Content:** any third party content or offerings, including any comprised in the Services.
- **UK GDPR:** has the meaning given to it in the Data Protection Act 2018.
- **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, malware and other similar things or devices.

## 2. Commencement & term

2.1. The Agreement shall commence on the Effective Date. Where a Trial Period applies, the Initial Term shall start at the end of the Trial Period unless terminated in accordance with clause 17.1; otherwise the Initial Term shall run from the Effective Date unless otherwise agreed in writing. At the end of the

Initial Term, the Agreement shall automatically renew for successive periods of 12 months (each a Renewal Period), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or Renewal Period, as applicable; or
- (b) otherwise terminated in accordance with the provisions of the Agreement.

2.2. The Agreement shall automatically continue beyond any agreed Trial Period unless terminated pursuant to clause 17.1.

2.3. The Agreement supersedes all and any previous agreements in relation to the Services, including (without limitation) any non-disclosure agreements entered into by the parties in anticipation of the provision of the Services.

### 3. Charges and payment

#### Free Package/Trial Period

3.1. No charges shall apply to the Free Package or during any agreed Trial Period. However, Charges will apply automatically in the event that (i) the Customer upgrades from the Free Package to any Paid-For Package, or (ii) the Trial Period is not terminated pursuant to clause 17.1.

#### Paid-For Packages

3.2. The Supplier shall invoice the Customer and the Customer will pay all Charges, each in accordance with the Payment Terms. The Charges are a commitment for the entire Contract Period.

3.3. All amounts and Charges:

- (a) shall be payable in GBP unless otherwise agreed;
- (b) are non-cancellable and non-refundable, save in the event the Agreement is terminated pursuant to clause 17.2 as a result of the Supplier's breach, in which case the Customer shall be entitled to the refund of any Charges which apply to the period after termination;
- (c) are payable in full, net of all charges, and without set-off, deduction or withholding; and

(d) are exclusive of value added tax or other local taxes, which shall be added to the Supplier's invoice(s) at the appropriate rate.

3.4. The Supplier may increase the Charges upon service of 30 days' notice prior to the expiry of the Initial Term or Renewal Period, as applicable. The Customer agrees to the Pricing Structure and accepts that where any agreed or contracted usage is exceeded, the Charges will be amended or increased automatically in line with the Pricing Structure.

#### 4. Services

4.1. In consideration of the Customer's compliance with the terms of this Agreement, including (where applicable) payment of any Charges, the Supplier shall provide the Services in accordance with the Documentation, and make available the Software and Documentation to the Customer, from the Service Commencement Date. The Supplier grants the Customer a non-exclusive, non-sub-licensable, non-transferable licence for the use of the Software by Authorised Users for the Customer's internal business purposes only. During any Trial Period, the Customer agrees to use the Software exclusively for the purpose of evaluating its suitability for use in the Customer's business. The Supplier shall use commercially reasonable endeavours to provide the Services on a 24/7 basis, except for:

(a) planned maintenance notified by the Supplier; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 hours' notice in advance.

4.2. The Supplier reserves the right to make changes to the Services which are necessary to comply with applicable law or other regulatory requirements, or which do not materially affect the nature or quality of the Services and shall notify the Customer of any such changes. Save as aforesaid, either party may request changes to the nature or scope of the Services, which shall be submitted in writing and be of sufficient detail to enable the other party to assess the scope and/or impact of the proposed change. Any change shall be effective only once agreed by both parties, each party agreeing not to unreasonably withhold or delay consent.

4.3. The Supplier shall ensure that the personnel engaged in providing the Services will be suitably qualified and have the necessary levels of skill and expertise required to carry out any tasks for which they are responsible. The

Supplier may make changes to personnel if needed and provide replacements of similar status and experience.

4.4. Any Third Party Content will be used by the Customer solely in accordance with the applicable third party terms of use. The Customer is responsible for compliance with the said third party terms and hereby agrees that its exclusive rights and remedies in respect of the Third Party Content shall be against the applicable third party owner or licensor.

4.5. The rights provided under this clause 4 are granted to the Customer only, and unless otherwise agreed in writing by the Supplier shall not be considered granted to any subsidiary or holding company of the Customer or any associated or affiliated company.

## 5. Support

5.1. Support shall be provided only in respect of Paid-For Packages and during any Trial Period. Free Package Customers shall have access to community chat, available via the Services, but Support obligations shall not apply unless otherwise agreed in writing.

5.2. Support shall be provided to Authorised Support Contacts during Standard Support Hours in accordance with the Service Levels.

5.3. The Supplier shall be under no obligation with respect to the provision of Support, and the Service Levels shall not apply, to the extent any issue or fault arises from:

(a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;

(b) failure to maintain or update the Agent Component or maintain the necessary environmental conditions for use of the Software;

(c) use of the Software in combination with any equipment or software not authorised or approved by the Supplier;

(d) any breach of the Customer's obligations under this Agreement howsoever arising;

(e) any modification not authorised by the Supplier; or

(f) operator error.

## 6. User subscriptions

6.1. In relation to Authorised Users, the Customer undertakes that: (i) each Authorised User shall comply with the enrolment process prescribed by the Supplier from time to time for the Services; (ii) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the maximum number of Authorised Users as set out in the Order; (iii) it will not, unless otherwise agreed, allow or suffer any account to access the Services to be used by more than one individual Authorised User; (iv) each Authorised User shall keep a secure password for their use of the Services and Documentation, change the password no less frequently than monthly and keep it strictly confidential; (v) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 7 days of the Supplier's written request at any time or times; (vi) in the event that an Authorised User leaves the employment or engagement of the Customer or where the employment or engagement of an Authorised User is transferred, the Customer shall: (a) disable such individual's passwords and shall not issue any new passwords for that Authorised User's account; or (b) where the Supplier controls the enrolment or removal of Authorised Users, immediately inform the Supplier so that it may disable such individual's passwords; and (vii) it is responsible for ensuring that Authorised Users are aware of the terms of this Agreement and other applicable terms and conditions, and that they comply with them. For the avoidance of doubt, once a licence has been allocated to an individual Authorised User, such licence cannot be reassigned or transferred at any time without the prior written consent of the Supplier.

6.2. Additional User Subscriptions may be added at any time, subject to payment of the then applicable fees. The Customer accepts that where any agreed or contracted usage is exceeded, Charges will be amended or increased automatically in line with the Pricing Structure, notwithstanding clause 4.2. User subscriptions may only be decreased at the start of the next Renewal Period by providing written notice at least 30 days' prior to the Contract Period expiry date.

## 7. Customer's obligations

7.1. The Customer shall:

(a) provide the Supplier with:



- (i) all necessary co-operation in relation to the Agreement; and
- (ii) such documents, data, drawings, plans, diagrams, designs, reports, specifications or other information as the Supplier may reasonably require; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services, and ensure all information is complete, true and accurate in all material respects;
- (b) appoint a representative, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- (c) make available such Customer staff and applicable sub-contractors or suppliers (if any) as may be required for the Supplier to provide the Services and ensure that they co-operate fully with the Supplier in all material respects;
- (d) carry out all Customer responsibilities in a timely and efficient manner;
- (e) maintain and update the Agent Component at all times;
- (f) obtain and maintain all licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement;
- (g) ensure that its network, systems and (where applicable) hosting providers comply with the relevant specifications or standards provided by the Supplier from time to time;
- (h) 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; and
- (i) comply with all applicable laws and regulations with respect to its activities under the Agreement.

7.2. The Customer acknowledges that the Supplier's ability to provide the Services depends on the Customer satisfactorily complying with the obligations stated in this Agreement and that should the Customer delay or fail to perform any such obligations then the Supplier will not be liable in any way for any delay, loss or damage, cost increase or other consequences arising from such failure.

7.3. The Customer shall not access, store, distribute or transmit any Viruses, or breach the terms of clause 7.4 below. The Customer shall not, 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 the 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 and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(d) use the Services and/or Documentation to provide services to third parties, unless otherwise agreed in writing; or

(e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

(f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 7.

7.4. The Customer undertakes to use the Services, the Software and the Platform only for lawful purposes and that it shall not, and shall not permit or enable others to, use the same in any way (i) that breaches any applicable local, national or international law or regulation, (ii) that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect, (iii) for the purpose of harming or attempting to harm anyone, including minors, or in any manner which will, or is likely to, infringe the personal rights of others, (iv) that will, or is likely to, infringe the copyright, trade mark, trade secret or other intellectual property rights of others; (v) in connection with any defamatory, indecent, obscene, offensive, threatening or abusive conduct or activity, (vi) for any immoral purposes; or (vii) to knowingly transmit any data, send or upload any material that contains viruses, trojan horses, ransomware, worms, time-bombs, bots, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation

of any computer software or hardware; or (viii) in any way that is inconsistent with these Terms.

7.5. The Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused and/or loss arising by any information, content, instructions or scripts provided to the Customer and/or generated in connection with the Services. Notwithstanding anything to the contrary in this Agreement, the Supplier does not warrant or undertake that use of the Services by the Customer will enable the Customer to comply with any applicable legal or contractual obligation and the Customer assumes sole responsibility for the same.

7.6. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.

## 8. Customer Data

8.1. The Customer shall own all right, title and interest in and to Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.

8.2. The Customer hereby grants to the Supplier (i) the right to use the Customer Data for all purposes connected with the Supplier's performance of its obligations under this Agreement, including the provision of Services and Support, and (ii) a non-exclusive, royalty-free, world-wide, irrevocable licence to retain and use Customer Data for the Supplier's commercial business purposes, including for development of services and software and/or provision of benchmarking and other services to Supplier customers, on the basis that the Supplier shall anonymise the Customer Data so that it does not identify the Customer, its users or its business. The Customer agrees that the provisions of clause 10 (Confidentiality) shall not apply with respect to the Supplier's said usage.

8.3. The Supplier's liability in relation to any data loss or corruption of Customer Data will be limited to that resulting from its failure to comply with any contractual commitments regarding data backup, if any, and the Supplier does not otherwise accept responsibility for data loss or damage of any kind. The Customer acknowledges and agrees that it will provide the Supplier with

only a copy of the Customer Data, the original version of which the Customer shall retain and be responsible for ensuring its security and backup.

8.4. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

8.5. The Customer accepts that the processing of electronic communications is a fundamental requirement for the provision of the Services and consents to the interception and storage of electronic communications and Customer Data in connection with the Services. The Customer accepts that electronic communications involve transmission over the Internet, and over other networks, which are outside the Supplier's control and accepts the risks associated with the same, including risks of delays, failures and loss/damage, and potential access by unauthorised parties.

## 9. Processing of Customer Personal Data

9.1. With respect to the parties' rights and obligations under the Agreement (and solely to the extent that Supplier processes any Customer Personal Data pursuant to the Agreement), the parties agree that Customer is the Controller and that Supplier is the Processor.

9.2. The Supplier agrees to:

(a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of the Customer Personal Data and against accidental loss or destruction or damage, by:

(i) taking reasonable steps to ensure the reliability of any Supplier personnel who have access to the Customer Personal Data; and

(ii) ensuring a level of security appropriate to the harm that may result from such unauthorised or unlawful processing or accidental loss, destruction or damage and appropriate to the nature of the Customer Personal Data;

(b) process Customer Personal Data only in accordance with Customer's instructions; and

(c) provide to Customer such information regarding compliance with clauses 9.2(a) and 9.2(b) as it may from time to time reasonably require to enable

Customer to comply with its obligations as the data controller in respect of the Customer Personal Data.

9.3. The Supplier shall comply with all applicable Data Protection Laws in the Processing of Customer Personal Data. The provisions of Articles 28(3)(a) to 28(3)(h) of UK GDPR shall be incorporated into this Agreement as binding obligations on Supplier.

9.4. The Customer warrants and represents that (i) it has complied, and will at all relevant times comply, fully with all applicable laws in respect of the Customer Personal Data, including Data Protection Laws, (ii) it has a suitable legal basis for permitting the Supplier to Process the Customer Personal Data under the Agreement, and (iii) such Processing will not infringe third party rights, including the rights of any Data Subject.

9.5. The Customer hereby consents to the Supplier transferring Customer Personal Data to any country or territory outside the UK (including any specified in the Order) as reasonably necessary for the provision of the Services provided the Supplier complies with the requirements of the UK GDPR.

9.6. Customer hereby authorises Supplier to appoint (and permit each Subprocessor appointed in accordance with this clause 9 to appoint) Subprocessors in accordance with this section 9.2 and any restrictions in the Agreement provided that in doing so the Supplier complies with the terms of Article 28(4) UK GDPR. The Supplier will upon request provide the Customer with copies of its agreements with Subprocessors, which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement.

## 10. Confidentiality

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

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

(b) was in the other 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, which 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.

10.2. 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 the Agreement.

10.3. 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 the Agreement.

10.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

10.6. This clause 10 shall survive termination of the Agreement, however arising.

10.7. No party shall make, or permit any person to make, any public announcement concerning the 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. Third party providers and content

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase or acquire products or services from third parties, including Third Party Content and that it does so entirely at its own risk. 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.

## 12. Proprietary rights

12.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all right, title and interest, including intellectual property rights, in the Services, the Software and the Documentation, including all Customisations. The Customer acknowledges that: (i) the Software and Documentation is protected by copyright law and international treaty provisions, and (ii) the Software contains trade secrets of the Supplier (or its licensors). Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, Software or Documentation.

12.2. Each party shall own and retain all rights in or relating to its Background IPR. The Customer hereby grants to the Supplier a non-exclusive, royalty-free, world-wide, perpetual licence to use the Customer's Background IPR to the extent reasonably required in connection with the Supplier's performance of its obligations under this Agreement.

12.3. 'Cerbos', and the Cerbos logo are trade marks owned by the Supplier. All rights therein are specifically reserved.

## 13. Warranties

### Free Package and Trial Period

13.1. The Software and Services are provided free of charge for Free Package Customers and during any Trial Period and the Customer therefore agrees and accepts that the said Services and Software are provided as-is and on the basis set out in clause 13.8 below. The terms set out in clauses 13.2 to 13.7 do not apply to the Free Package or during any Trial Period.

### 13.2. Paid-For Packages

13.3. The Supplier shall perform the Services with reasonable skill and care and substantially in accordance with the Documentation.

13.4. The Supplier warrants that it is entitled to grant the licence set out in section 4.1 and that it has such rights in relation to the Services, the Software

and the Documentation as are necessary to grant the rights under, and in accordance with, the terms of the Agreement.

13.5. The Supplier represents and warrants that at the time the Software is first made available to the Customer, it (i) will be reasonably free of errors and capable of performing its functions when operating on the hardware and operating system environment specified by the Supplier, (ii) does not infringe third party Intellectual Property Rights.

13.6. The warranties do not cover: (i) any use by the Customer of the Services, the Software and/or the Documentation contrary to the terms of this Agreement or the Supplier's instructions; or (ii) the combination or incompatibility of the Services or the Software with anything not provided by the Supplier including any of the Customer's Equipment or any third party software; or (iii) modification or alteration of the Software or Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

13.7. If the Software infringes, or the Supplier considers that the Software may infringe, any third party Intellectual Property Rights, the Supplier shall have the right at its sole option and expense to: (i) modify the Software to cure the infringement; (ii) obtain a licence for the Customer to continue using the Software; or (iii) to withdraw the Software and refund to the Customer the payments under this Agreement.

13.8. Except as expressly set out in this Agreement, and in any case in respect of the Free Package and during any Trial Period, the Software, the Services, or elements of the Services provided by third parties are provided "as-is", "with all faults", and "as available". The Supplier excludes all warranties, whether express or implied, to the fullest extent permitted by law including all warranties as to fitness for purpose and satisfactory quality. In particular, but without prejudice to the generality of the foregoing, the Supplier does not warrant that the Software will meet the Customer's requirements, or will operate in combination with other programs that the Customer selects, or that the operation of the Software will be uninterrupted or error-free or that defects in the Services and/or the Software will be corrected or that the Services or Software will be secure or free from bugs or viruses or that the functions of the Services and/or the Software will operate in the combinations which the Customer selects for use.

## 14. Access to services



The Supplier does not guarantee that the Software and/or the Services, or any content therein, will always be available or be uninterrupted. Access to the Software and/or the Services is permitted on a temporary basis. The Supplier may suspend, withdraw, discontinue or change all or any part of the Software or Services, and in the event of any such suspension, withdrawal, discontinuance or change: (i) the Supplier will use reasonable endeavours to provide reasonable notice to Customer; (ii) the Supplier will notify the Customer of any impact on the Charges; and (iii) to the extent that such suspension, withdrawal, discontinuance or change materially affects the Software, Services or the Charges, the Customer may terminate the Agreement within 30 days of the relevant suspension, withdrawal, discontinuance or change, by giving written notice to the Supplier. The Supplier will not be liable to the Customer if for any reason the Software or Services are unavailable at any time or for any period.

## 15. Limitation of liability

15.1. This clause 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, officers, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with the Agreement;
- (b) in respect of any use made by the Customer of the Services, Software and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

15.2. Except as expressly and specifically provided in the Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation 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;
- (b) 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 the Agreement, including (without limitation) any implied term(s) as to satisfactory quality or fitness for purpose;

(c) the Supplier's responsibility with respect to Viruses shall be limited to using up to date commercial Virus checking software and the Customer accepts that the Supplier shall have no further responsibility or liability in that respect.

15.3. Nothing in the Agreement excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence;

(b) for fraud or fraudulent misrepresentation; or

(c) for any other liability which may not be excluded or limited under applicable law.

15.4. Subject to clause 15.3:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) 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, in each case whether direct or indirect, or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to (i) the amount of £500 with respect to any Free Package or during any Trial Period, and (ii) with respect to any Paid-For Packages, the total Charges paid or payable in respect of the Contract Period in which the liability arises.

## 16. Suspension

16.1. Without prejudice to any other right, power or remedy and without liability, the Supplier reserves the right to limit or suspend the Services:

(a) if it is reasonably necessary to protect the interests of the Customer or the Supplier, or the interests of any third party (including other customers) and/or to protect the security or operation of the Supplier's systems or network or those of its customers;

(b) if the Customer breaches any of the terms of the Agreement or the Supplier reasonably believes the Customer has breached or is about to breach;

(c) if the Customer fails to pay any Charges when due;

(d) if the Customer fails to cooperate regarding any suspected or actual breach of the terms of the Agreement; or

(e) if required to do so by law or further to a request from any regulatory or governmental authority.

16.2. The Supplier may also temporarily suspend all or any part of the Services for the purpose of repair, maintenance or improvement of any systems. The Supplier shall use all reasonable endeavours to keep any such suspensions to a minimum and to carry out such works outside normal working hours wherever possible.

16.3. The Supplier shall not be liable for any suspension of the Services under the above circumstances and the Customer shall not be entitled to any setoff, discount, refund or other credit as a result of such suspension and/or disconnection.

## 17. Termination

### During The Trial Period

17.1. Either party may terminate the Agreement any time during the Trial Period immediately on written notice, failing which the Agreement shall continue thereafter for the Initial Term. The Customer acknowledges and agrees that the Software will, or may, automatically “time out” or cease to operate at the end of the Trial Period if the Customer has not at that time accepted a Paid-For Package.

### Beyond Any Trial Period (or where a Trial Period does not apply)

17.2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party is or may be (in the reasonable opinion of the first party) unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator or similar appointed or calls a meeting of its creditors or ceases for any other reason to carry on business

17.3. On termination of the Agreement for any reason:

(a) All rights and licences granted under the Agreement shall immediately terminate;

(b) the Customer shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the Supplier;

(c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and

(d) 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.

## 18. Force majeure

The Supplier shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the 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, war, riot, civil commotion, epidemic, pandemic, 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.

## 19. Conflict

If there is an inconsistency between any of the provisions of the Agreement, the Terms shall prevail over the Order unless the Order specifically states otherwise.

## 20. Variations

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

## 21. Waiver

No failure or delay by a party to exercise any right or remedy provided under the 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.

## 22. Rights and remedies

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

## 23. Severance

23.1 If any provision (or part of a provision) of the 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.

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.

## 24. Entire agreement

24.1. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous

arrangement, understanding or agreement between them relating to the subject matter they cover.

24.2. Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

## 25. Assignment

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 the Agreement.

25.1 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 the Agreement.

## 26. No partnership or agency

Nothing in the 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).

## 27. Third party rights

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

## 28. Notices

28.1. Any notice required to be given under the 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 the Agreement, or

such other address as may have been notified by that party for such purposes.

28.2. 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.

## 29. Governing law

The 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.

## 30. 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).