



## GREENORBIT MASTER SERVICES AGREEMENT TERMS AND CONDITIONS – USA

### BACKGROUND

- A. The Supplier owns the SaaS Software.
- B. The Supplier wishes to grant, and the Customer wishes to take, a licence to use the SaaS Software.
- C. The Supplier offers to provide a licence on the following terms and conditions which the Customer can accept by execution of these terms and conditions.

### OPERATIVE PROVISIONS

#### 1. Definitions and Interpretation

##### 1.1 Definitions

**Agreement** means these terms and conditions once executed by the Customer.

**Acceptance Date** means the date upon which the Software is accepted as provided by clause 6;

**Commencement Date** means the date specified in the Schedule;

**Confidential Information** means information that is by its nature confidential but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement;

**Delivery Date** means the date specified in the Schedule or as otherwise agreed by the parties;

**Designated Computer Equipment** means the equipment on which the Software is to be installed as specified in the Schedule;

**DMCA** means Federal Digital Millennium Copyright Act;

**GreenOrbit Parties** means the Supplier and its parents, subsidiaries, partners, affiliates, officers, directors, stockholders, managers, members, employees, agents, and licensors;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

**Licence** means the licence of Software granted pursuant to Section 2;

**Licence Fee** means the amount so specified in the Schedule;

**Location** means the place at which the Designated Computer Equipment is located as specified in the Schedule;

**Manual of Specifications** means the document which forms part of the Software and which contains technical information relating to the Software which is available on <https://learn.greenorbit.com>;

**Media** means the media on which the Software is recorded or printed;

**Moral Right** means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature,

which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this Agreement;

**New Release** means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the Software;

**SaaS** means software as a service;

**Schedule** means the schedule to this Agreement;

**Services** means services in support of the usage of Software to be provided by the Supplier to the Customer under this Agreement;

**Software** means the customizable SaaS computer program and related documentation as specified in the Schedule;

**Specifications** means the specification set out in the Manual of Specifications; and

**Supplier Materials** means the Services, Manual of Specifications, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Supplier or any subcontractor in connection with the Services or otherwise comprise or relate to the foregoing.

**Update** means software which has been produced primarily to overcome defects in the licenced Software.

## 1.2 Interpretation

- (a) Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders.
- (b) Headings are for ease of reference only and shall not affect the interpretation of this Agreement.

## 2. Licence and Duration

Subject to and conditioned on the Customer's and its authorized users' compliance with the terms and conditions of this Agreement, commencing on the Commencement Date, the Supplier grants a non-transferrable, non-exclusive licence to the Customer to use the Software during the term of this Agreement in accordance with the terms of this Agreement. Such use is limited to the Customer's internal use.

## 3. Conditions of Licence

- (a) The Supplier warrants that it has the authority to grant the Licence.
- (b) The Licence shall be non-transferable and non-exclusive to the Customer.
- (c) The Software must only be used on the Designated Computer Equipment, unless the consent of the Supplier is obtained to use the Software on alternative equipment. Such consent shall not be

unreasonably withheld.

- (d) The Supplier shall provide Updates or New Releases pursuant to this Agreement at no additional fee. Upon delivery of the Updates or New Releases to the Customer they would automatically become incorporated as an element of the Software governed by this Agreement.
- (e) The Customer will not create or permit to exist a security interest over the Software or documentation or in any modifications to, or enhancements, Updates or New Releases of, the Software or documentation. For the purposes of the foregoing, "security interest" means any mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of any obligation, or that gives a creditor priority over unsecured creditors.

#### 4. Delivery

The Supplier must deliver the Software to the Location on or before the Delivery Date.

#### 5. Installation

- (a) The Supplier shall provide a hosted platform for the installation of the Software at its managed Amazon Web Services platform and shall provide any appropriate services or support in respect of installation of the Software under this Agreement.
- (b) The Customer is responsible for a proper installation of the Software on its Designated Computer Equipment.

#### 6. Acceptance

- (a) Upon installation of the Software, the Customer will be responsible for ensuring that the Software is used in accordance with the Specifications.
- (b) If, during a period of 10 working days following the Commencement Date, the Software fails to perform substantially in accordance with the Specifications, it will be deemed not to be accepted.
- (c) If the Software is deemed not to be accepted pursuant to subclause (b), the Supplier will be given the opportunity to rectify the defect or replace the Software within a further period of 14 days.
- (d) If the Software fails to perform substantially in accordance with the Specifications during the 14-day period referred to in subclause (c), the Customer may, at its option, grant a further period during which satisfactory performance is to be achieved or alternatively terminate the Agreement.
- (e) The Software will be deemed accepted if it does not fail to substantially perform in accordance with the Specifications during any of the periods referred to in the preceding subclauses.
- (f) The Software will be deemed accepted if the Customer fails to install the Software within seven days of delivery.

#### 7. Manual of Specifications

- (a) The Supplier must deliver a copy of the Manual of Specifications to the Customer on or before the Delivery Date.
- (b) The Supplier warrants that the Manual of Specifications will be adequate to enable the Customer to operate the Software in the manner reasonably contemplated by the parties.
- (c) The Supplier must inform the Customer within reasonable time of any amendments to the Manual of Specifications which may become necessary.
- (d) The Customer acknowledges the Supplier's proprietary interest in the Manual of Specifications. The Customer will not copy the Manual of Specifications except where necessary to enable proper use of

the Software in the manner reasonably contemplated by the parties.

## 8. Support Services

- (a) The Supplier shall provide the Services to the Customer in accordance with GreenOrbit Support Service Level Agreement and GreenOrbit Cloud Service Level Agreement the terms and conditions of which are available at [www.greenorbit.com/terms](http://www.greenorbit.com/terms) and are expressly incorporated into this Agreement.
- (b) The Supplier shall provide the Customer with access to the Client Portal where the Supplier shall make available to the Customer Manual of Specifications and help desk assistance.
- (c) The Services do not replace the need for the Customer to maintain regular data backups or redundant data archives for the installation within their On Premise environment. THE SUPPLIER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.
- (d) The Customer has and will retain sole responsibility for: (a) all Customer data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of the Customer or any authorized user of Customer in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services (**Customer Systems**); (d) the security and use of the Customer's and its authorized users' access credentials; and (e) all access to and use of the Services and Supplier Materials directly or indirectly by or through the Customer Systems or its or its authorized users' access credentials, with or without the Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

## 9. Licence Fee

- (a) In consideration of the Licence and provision of Services, the Customer must pay the Licence Fee to the Supplier in accordance with the requirements of the Schedule.
- (b) The Licence Fee is exclusive of all taxes, duties and surcharges payable in respect of the Software, the Services and in respect of this Agreement.
- (c) The Customer shall pay all personal property, sales, use, value-added, withholding, and similar taxes arising from the transactions described in this Agreement, even if such amounts are not identified herein. To the extent the Customer is exempt from sales or other taxes, the Customer agrees to provide the Supplier with the appropriate exemption certificate.
- (d) The Customer shall reimburse the Supplier for out-of-pocket expenses incurred by the Supplier in connection with performing the Services.
- (e) If payment is not made within 30 days of the due date, interest will be payable by the Customer at the rate of 12 per cent per annum on the overdue amount and, if any payment is owing after 60 days from the due date, the Supplier will be entitled, in its sole discretion, to suspend the Licence and its remaining obligations under this Agreement and to re-possess or withhold access to the Software.
- (f) If the Customer disputes the whole or any part of the amount claimed in an invoice submitted by the Supplier pursuant to this Agreement, the Customer will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this Agreement. If it is subsequently resolved that a further amount is payable, the Customer will pay that amount together with interest at the rate of 12 per cent per annum.

## 10. Ownership and Intellectual Property Rights

- (a) The Supplier retains ownership of the Software whether in its original form or as modified by the Customer during the term of the Licence.

- (b) All Intellectual Property Rights in the Software are retained by the Supplier and its licensors. The Customer has no right, licence, or authorization with respect to any of the Supplier Materials except as expressly set forth in Section 2. The Customer hereby irrevocably grants all rights and permissions in or relating to the Customer's data as are necessary or useful to the Supplier, its subcontractors and the Supplier's personnel to enforce this Agreement and exercise the Supplier's and the Supplier's subcontractors' and the personnel's rights and perform the Supplier's obligations hereunder.
- (c) This Agreement nor access to the Software do not convey or transfer any ownership in the Intellectual Property Rights in or relating to, the Services, Supplier Materials, or third-party materials, whether expressly, by implication, estoppel, or otherwise, to the Customer.
- (d) Any trademarks, logos, and service marks displayed on the Software, including, without limitation, "GreenOrbit," are the property of the Supplier or other third parties. The Customer is not permitted to use these trademarks, logos, and service marks without the prior written consent of the Supplier or such third party that may own the marks. The Customer may not remove or obscure any copyright notice or other proprietary notices contained with the Software or any products, services, or content retrieved through the Software.
- (e) Any unauthorized use of the Intellectual Property Rights in or relating to, the Services, Supplier Materials, or third-party materials is strictly prohibited and eligible for prosecution to the fullest extent that the law provides.
- (f) Similarly, the Customer retains ownership in any content it creates or distributes with the Software (the "**Customer Content**").
- (g) Any unauthorised use of the Intellectual Property Rights in or relating to the Customer Content is prohibited.
- (h) Nothing in this Agreement affects the ownership of Moral Rights in the Software.

## 11. Copies

- (a) Subject to the DMCA the Customer must not copy the Software, in whole or in part.
- (b) The Customer may make such number of copies of the Software as is necessary to serve its internal needs for system's backup and security. All copies of the Software and the Media in which the copies are contained will be and remain the property of the Supplier.
- (c) The Customer must mark all copies of the Software and the Media in which the copies are contained with a notice of:
  - (i) the Supplier's ownership of the Software and the Media;
  - (ii) the confidentiality of the Software; and
  - (iii) such other information as the Supplier requires.
- (d) The Customer must maintain records of all copies of the Software made by it and the place at which those copies are situated. Such records must be furnished to the Supplier upon reasonable notice.
- (e) The Customer must notify the Supplier immediately on becoming aware of any unauthorized use or copying of the whole or any part of the Software or of the Manual of Specifications.
- (f) Immediately upon termination of this Agreement, the Customer must deliver up to the Supplier the Software (including all copies, authorized or otherwise), the Media and the Manual of Specifications, whether in their original form or as modified by the Customer.

## 12. Modifications

- (a) The Customer must not modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without the prior consent in writing of the Supplier.
- (b) If the Software is modified in accordance with subclause (a), the modifications must, unless the Supplier directs otherwise, be made in accordance with a written proposal submitted by the Customer to the Supplier.
- (c) The Customer shall fully indemnify and hold harmless the Supplier against any liability incurred if the modifications infringe the Intellectual Property Rights of a third person.
- (d) The Software as modified remains the property of the Supplier.
- (e) This Agreement shall continue to apply to the Software as modified.
- (f) This clause is subject to any right of modification arising pursuant to the DMCA.

## 13. Reverse Engineering

Except as expressly permitted by the DMCA, the Customer must not reverse assemble or reverse compile the Software or any part of the Software.

## 14. Security

- (a) The Customer will be responsible for protecting the Software and the Manual of Specifications at all times from unauthorized access, use or damage.
- (b) The Customer must not at any time allow the Software to be used to publish content of any nature that may be accessed by the public Internet unless explicitly agreed by the Supplier.
- (c) The Customer must not allow access to the Software to any users beyond and above the licenced number of users as specified in the Schedule.

## 15. Risk

Risk of loss or damage to the Software, the Media and the Manual of Specifications will pass to the Customer upon delivery of the Software to the Location.

## 16. Warranties

- (a) The Supplier warrants that the Software will perform substantially in accordance with the Specifications for a period of 90 days after the Acceptance Date.
- (b) If, within 90 days after the Acceptance Date, the Customer notifies the Supplier in writing of:
  - (i) the fact that the Software is not performing substantially in accordance with the Specifications; and
  - (ii) the alleged defects or errors, with sufficient particularity to enable the Supplier to remedy the defects or errors,

the Supplier must at its own expense, commence to examine the Software within three working days and, as soon as practicable thereafter, rectify the defect or replace the Software.

- (c) The warranty contained in subclause (b):

- (i) is subject to the Customer having fully complied with its obligations under this Agreement;
- (ii) is not a warranty that the results obtained from the Software will be in accordance with the Customer's expectations; and
- (iii) does not operate where the substantial non-performance arises in any respect from the installation of the Software, the nature or operation of the equipment on which the Software is used or the use of any materials or software not provided by the Supplier.

**17. Warranty, Indemnities and Liability**

- (a) The Supplier warrants that it has the right to grant the Licence to the Customer.
- (b) Subject to subclause (c), the Supplier shall indemnify and hold harmless the Customer against any claim made against the Customer by a third party alleging that the Software infringes the copyright of that third party.
- (c) The Supplier shall not be liable to the Customer under subclause (a) or (b) if:
  - (i) the Customer does not notify the Supplier of the other person's claim or of infringement of copyright within seven days after becoming aware of the claim;
  - (ii) the Supplier's ability to defend the claim has been prejudiced by the Customer's non-compliance with any of its obligations under this Agreement;
  - (iii) the Customer does not give the Supplier reasonable assistance in defending the claim;
  - (iv) the claim has arisen because of the use of the Software in combination with equipment, materials or computer programs not supplied or approved by the Supplier;
  - (v) the Customer does not permit the Supplier to have control of the defence of the claim and all related settlement negotiations; or
  - (vi) the alleged infringement arises from (A) Customer data, (B) modification of the Supplier Materials other than by or on behalf of Supplier or with the Supplier's written approval in accordance with the Supplier's written specification, or (C) failure to timely implement any New Releases, Updates, modifications, upgrades, replacements, or enhancements made available to the Customer by or on behalf of the Supplier.
- (d) The Customer agrees to indemnify, defend, and hold harmless the GreenOrbit Parties for, from, and against all losses, expenses, damages, and costs, including reasonable attorneys' fees, arising out of or relating to any violation of this Agreement by the Customer or any other actions connected with the Customer's use of the Software and the Services. The Customer's indemnification obligations include, without limitation, any claims arising out of acts or omissions by the Customer's employees or agents, and any other person or entity who gains access to the Software and the Services through the Customer's user names or passwords, either with the Customer's permission or as a result of the Customer's failure to use reasonable security measures.
- (e) If any of the Services or Supplier Materials are, or in the Supplier's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if the Customer's or any authorized user's use of the Services or Supplier Materials is enjoined or threatened to be enjoined, the Supplier may, at its option and sole cost and expense:
  - (i) obtain the right for the Customer to continue to use the Services and Supplier Materials as contemplated by this Agreement;
  - (ii) modify or replace the Services and Supplier Materials, in whole or in part, to seek to make the Services and Supplier Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or

replacements will constitute Services and Supplier Materials, as applicable, under this Agreement; or

(iii) by written notice to the Customer, terminate this Agreement, and require the Customer to immediately cease any use of the Services and Supplier Materials.

(f) THIS SECTION 17 SETS FORTH THE CUSTOMER'S SOLE REMEDIES AND THE SUPPLIER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## 18. Termination

(a) For the purpose of this Agreement, each of the following is a **Terminating Event**:

(i) the breach or threatened breach by either party of any of its material obligations under this Agreement;

(ii) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;

(iii) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;

(iv) the permanent discontinuance of use of the Software or any part of the Software by the Customer;

(v) the merger with or the takeover of either party by another person;

(vi) any event described in this Agreement as a Terminating Event; and

(vii) the purchase of the Software by the Customer pursuant to an agreement between the parties.

(b) This Agreement may be terminated immediately with effect from the date specified in the notice served under subclause (c) on the happening of a Terminating Event at the option of the affected party.

(c) If the Terminating Event is one specified in subclause (a)(i)-(vi), the affected party must give to the other party notice of the happening of that event and require the breach to be remedied or a written undertaking to be given that the breach will not occur, as the case may be. If the breach is not remedied or the undertaking not given (as the case may be) within 14 days of service of the notice the affected party may agree to waive its rights under this clause if satisfied that the happening of the Terminating Event has not in any way prejudiced its position under this Agreement. Alternatively, if the affected party does not waive its rights, this Agreement is at an end.

(d) Neither party shall be liable for the consequences of an occurrence of any event beyond its reasonable control.

(e) In the event that a Terminating Event specified in subclause (a)(i)-(vi) occurs, and the subject of that Terminating Event is the Customer's fault, the Customer shall immediately on termination return to the Supplier the Software and all copies of the Software, all revisions, enhancements and upgrades of the Software, the Media and the Manual of Specifications. Alternatively, if the Supplier requests, the Customer must destroy such Software, copies, revisions, enhancements and up-grades by erasing them from the Media and must certify in writing to the Supplier that they have been destroyed.

(f) The Licence will terminate upon termination of this Agreement.



- (g) Any termination of the Licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

**19. Implied Warranties and Limitation of Liability**

- (a) THE SOFTWARE AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, THE GREENORBIT PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE GREENORBIT PARTIES DO NOT WARRANT THAT THE SOFTWARE AND THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, THAT THE SOFTWARE AND THE SERVICES OR SERVERS THAT MAKE THE SOFTWARE AND THE SERVICES AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SOFTWARE AND THE SERVICES WILL MEET THE CUSTOMER'S APPLICABLE REQUIREMENTS.
- (b) THE CUSTOMER EXPRESSLY AGREES THAT THE CUSTOMER'S USE OF THE SOFTWARE AND THE SERVICES IS AT THE CUSTOMER'S SOLE RISK. IF THE CUSTOMER DOWNLOADS ANY CONTENT OR DATA, THE CUSTOMER DOES SO AT ITS OWN DISCRETION AND RISK. THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OWN COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OF ANY CONTENT OR DATA THROUGH THE SOFTWARE AND THE SERVICES. THE SUPPLIER RESERVES THE RIGHT TO RESTRICT OR TERMINATE THE CUSTOMER'S ACCESS TO THE SOFTWARE AND THE SERVICES OR ANY FEATURE OR PART THEREOF AT ANY TIME. THE GREENORBIT PARTIES ASSUME NO RESPONSIBILITY FOR THE DELETION OR MIS-DELIVERY OF, OR FAILURE TO STORE, ANY CONTENT, DATA, OR PERSONALIZATION SETTINGS.
- (c) THE SOFTWARE AND THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. THE SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- (d) THE CUSTOMER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE GREENORBIT PARTIES WILL NOT BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, PRODUCTION, BUSINESS, REVENUE, OR PROFIT, DIMINUTION IN VALUE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH DAMAGES WERE FORESEEABLE OR IF A GREENORBIT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR DAMAGES FOR LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, IN EACH CASE RESULTING FROM (I) THE CUSTOMER'S USE OR ACCESS OF, OR INABILITY TO USE OR ACCESS, THE SOFTWARE OR THE SERVICES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SOFTWARE AND THE SERVICES; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF THE CUSTOMER'S TRANSMISSIONS OR DATA; OR (IV) ANY OTHER MATTER RELATING TO THE SOFTWARE OR THE SERVICES.
- (e) IN NO EVENT WILL THE SUPPLIER'S TOTAL CUMULATIVE LIABILITY EXCEED THE AMOUNT PAID BY (AND NOT OTHERWISE REFUNDED TO) THE CUSTOMER TO THE SUPPLIER FOR USE OF THE SOFTWARE AND THE SERVICES DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.

**20. Confidentiality**

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information, except the parties may disclose Confidential Information to their respective employees, representatives and agents as required to fulfil their respective obligations under this Agreement.

- (b) A party will not be in breach of subclause (a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (e) This clause will survive the termination of this Agreement.

## 21. Privacy

- (a) In order to implement this Agreement, the parties acknowledge that a party may collect certain personal information about individuals connected with the other party.
- (b) Each party warrants to the other party to this Agreement that it has in place adequate policies and processes for handling personal information in compliance with applicable law.
- (c) Each party indemnifies the other against any reasonable loss, liability, cost or expense suffered or incurred by the other party as a consequence of any claim made against a party as a result of a breach of warranty in subclause (b).
- (d) The Customer acknowledges and agrees that the technical processing and transmission of certain personal information (including the possible transmission of certain personal information outside its country of origin) may be necessary to the Customer's use of the Software and the Services and content offered on or through Software and the Services, and consent to the Supplier's interception and storage of such personal information.
- (e) The Customer acknowledges and agrees that the Customer or the Supplier may be transmitting certain personal information over the Internet, and over various networks, only part of which may be owned and operated by the Supplier. The Customer agrees that the Supplier is not responsible for any portions of such personal information that are lost, altered, intercepted, or stored without authorization during the transmission across networks not owned and operated by the Supplier.

## 22. Legal Compliance

The Customer will comply with all applicable laws, statutes, ordinances, rules, and regulations regarding Customer's use of the Software and the Services, including, without limitation, those governing interstate commerce, export control, unfair competition, or false advertising.

## 23. 22. Taxes

In addition to paying the Licence Fee and any other amount payable or in connection with this Agreement (which is exclusive of taxes and similar assessments), Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Supplier's income, and will pay all such taxes, duties, and charges as invoiced by Supplier.

## 24. Dispute Resolution

- (a) If a dispute arises between the parties regarding any matter relating to this Agreement, then either party may notify the other party in writing of the dispute and provide particulars of the dispute. Within seven days of the service of such notice, the parties must meet in good faith and use their best endeavours to resolve such dispute to the parties' mutual satisfaction.
- (b) If the parties are unable to resolve the dispute under subclause (a), then the parties, by mutual agreement will appoint a mediator to mediate the dispute. If the parties cannot agree on the

appointment of a mediator within 20 days after the delivery of notice pursuant to subclause (a), either party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 25(d).

- (c) The parties involved in a dispute will bear their own costs incurred pursuant to this clause, except that they will share equally the costs relating to any mediator appointed under this clause.
- (d) Neither party will commence legal proceedings, other than on an urgent injunctive basis, without first completing the procedure set out in this clause.

## 25. General

### (a) Entire Agreement

This Agreement, together with the Schedule and other documents incorporated by reference herein, supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorized representative of the party.

### (b) Notices

All notices which are required to be given under this Agreement must be in writing and must be sent to the address of the recipient set out in the Schedule or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by prepaid letter or email. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by prepaid letter) or when on transmission by the sender (if sent by facsimile) or (if sent by email and unless agreed otherwise), when the email enters the recipient's mail server.

### (c) Assignment

Neither party shall assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder, without the prior written consent of the other party.

### (d) Governing Law; Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of North Carolina, USA, and the parties agree to submit to the jurisdiction of the courts and tribunals of that State. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Licence will be instituted exclusively in the federal or state courts of the State of North Carolina, in each case located in the city of Raleigh and Wake County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set at the beginning of this Agreement will be effective service of process for any suit, action, or other proceeding brought in any such courts.

### (e) Waiver

No waiver by any party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### (f) Variation

No variation of this Agreement will be effective unless in writing and signed by both parties.

### (g) Severability

Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement. Such invalidity shall not affect the validity of the remaining provisions of the Agreement.

(h) **Legal Effect**

This Agreement will become binding upon Customer and Supplier upon execution by the Customer.

(i) **Relationship of the Parties.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(j) **No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(k) **Force Majeure**

(i) No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's (**Impacted Party**) reasonable control, including, without limitation, the following force majeure events (**Force Majeure Events**): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the Impacted Party.

(ii) The Impacted Party must give notice within two (2) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party must use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 180 days following written notice given by it under this Section 24(h)(ii), the other party may thereafter terminate this Agreement upon 20 days' written notice.