

WHYTELIST.ME

SOFTWARE AS A SERVICE SUBSCRIPTION TERMS OF USE (“TERMS OF USE”)

These Terms of Use were last updated on 17 January 2025

whyteлист.me (“**Software**”) is a software application made available to subscribers via the internet on a pay-per-use basis for the purpose of providing subscribers with a zero-trust, anti-spam solution designed to help prevent emails arriving from senders unknown to the intended recipients.

All use of the Software and Services is subject to these Terms of Use which are for business use only and not for individual/consumer use. Please read these Terms of Use carefully (including, but not limited to, clause 13 (limitation of liability clause). By subscribing to the Software and Services, you represent and warrant that you: (a) are an authorised representative of the Subscriber (as defined below); (b) have the authority to bind the Subscriber to these Terms of Use and (c) agree to be bound by these Terms of Use on behalf of that Subscriber.

If you do not agree to be bound by these Terms of Use, you should not sign up for the Software/Services and should immediately cease using the Software/Services. We reserve the right to update these Terms of Use from time to time. Changes will be made to this page by updating the last updated date above and posting the updated Terms of Use on this page. We may email you from time with notification of changes to our Terms of Use but it is your responsibility to check this page regularly and any changes made to it. If you do not wish to accept the Terms of Use (as updated) you must immediately stop using and accessing the Software/Services.

For the purposes of these Terms of Use, the “**Subscriber**” is the entity identified during the sign-up process.. The “**Supplier**” means whyteлист.me, a trading name of, Kapturepoint Ltd, a limited liability company incorporated and registered in England and Wales with company number 14184812 whose registered office is at 9 Oxford Court, Manchester, England M2 3WQ.

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms of Use.

Authorised Users: those employees, agents and independent contractors of the Subscriber who are authorised by the Subscriber to use the Services and the Documentation, as further described in clause 2.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union or other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Documentation: any documents made available to the Subscriber by the Supplier online via the Supplier portal .

Effective Date: the date on which the Subscriber completes the sign-up process for the Software and Services.

Initial Subscription Term: subject to clause 14.1, 12 months from the end of the Free Trial Period (as defined at clause 14.1).

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Proposed Recipients: individuals to whom Authorised Users wish to send emails or other communications using the Services;

Renewal Period: the period described in clause 14.12.

Services: the subscription services for the Software provided by the Supplier to the Subscriber under these Terms of Use via www.whyte.com or any other website notified to the Subscriber by the Supplier from time to time.

Software: the whyte.com software application.

Subscriber Data: the data inputted by the Subscriber, Authorised Users, or the Supplier on the Subscriber's behalf for the purpose of using the Services or facilitating the Subscriber's use of the Services, including data about Proposed Recipients.

Subscription Fees: the subscription fees payable by the Subscriber to the Supplier for the User Subscriptions, as notified to the Subscriber as part of the sign-up process.

Subscription Term: has the meaning given in clause 14.12 (being the Free Trial Period, and the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Subscriber pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Terms of Use.

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms of Use.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms of Use.
- 1.8 A reference to a statute or statutory provision includes all subordinate legislation made as at the date of these Terms of Use under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of these Terms of Use; references to paragraphs are to paragraphs of the relevant schedule to these Terms of Use.

2. User subscriptions

- 2.1 Subject to the Subscriber purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of these Terms of Use, the Supplier hereby grants to the Subscriber a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the

Services and the Documentation during the Subscription Term solely for the Subscriber's internal business operations.

2.2 In relation to the Authorised Users, the Subscriber undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for any machine, equipment or system on which the Software is installed/used and that each Authorised User shall keep their password confidential;
- (d) it shall promptly provide details of the number of Authorised Users to the Supplier on the Supplier's written request at any time or times;
- (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to audit compliance with these Terms of Use. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Subscriber's normal conduct of business; and
- (f) if any of the audits referred to in clause 2.2(e) reveal that the Subscriber has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Subscriber shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the Subscription Fees set out at www.whyte.com/subscribe within 10 Business Days of the date of the relevant audit.

2.3 The Subscriber shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Subscriber, to disable the Subscriber's access to any material that breaches the provisions of this clause.

2.4 The Subscriber shall not:

- (a) 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 these Terms of Use:
 - (i) 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
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
- (b) 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
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 21.1, 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
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Services or the Supplier's network and information systems.

2.5 The Subscriber 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, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Subscriber only, and shall not be considered granted to any subsidiary or holding company of the Subscriber.

3. Additional user subscriptions

3.1 Subject to clause 3.2 and clause 3.3, the Subscriber may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number of Authorised Users set by the Subscriber on the Supplier portal, or if not set by the Subscriber, as set out during the sign-up process, and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Terms of Use.

- 3.2 If the Subscriber wishes to purchase additional User Subscriptions, the Subscriber shall log in to the customer portal at: www.whytelistme/login (or such other website as notified to the Subscriber from time to time) to purchase such additional User Subscriptions.
- 3.3 If the number of additional User Subscriptions exceeds 10% of the number of Authorised Users as referred to above at clause 3.1, the Subscriber shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out at www.whytelist.me (or such other website as notified to the Subscriber from time to time) and, if such additional User Subscriptions are purchased by the Subscriber part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Subscriber on and subject to the terms of these Terms of Use.
- 4.2 Subject to clause 7.3, the Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week.
- 4.3 The Supplier will, as part of the Services and at no additional cost to the Subscriber, provide the Subscriber with the Supplier's standard customer support services during Normal Business Hours. Standard customer support services are the reasonable efforts of the Supplier to be available to assist the Subscriber with demonstrable problems that the Subscriber encounters with the Software.

5. Data protection

- 5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This **Error! Bookmark not defined.** 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.2 By entering into these Terms of Use, and accessing, using, and providing information to or through the Services, Subscriber consents, and shall procure all required consents from its personnel, representatives and agents (including Authorised Users) to all actions taken by the Supplier with respect to the Subscriber Data in compliance with the then-current version of the Supplier's privacy policy, available at www.whytelist.me/privacypolicy (or such other website as notified to the Subscriber from time to time). In the event of any inconsistency or conflict between the terms of the then-current privacy policy and these Terms of Use, the privacy policy will take precedence.
- 5.3 The parties acknowledge that the Subscriber Data is processed by the Supplier as a processor for the purposes of the Data Protection Legislation.

5.4 Without prejudice to the generality of clause 5.1, the Subscriber will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data (including Subscriber Data) to the Supplier for the duration and purposes of these Terms of Use so that the Supplier may lawfully use, process and transfer this data in accordance with these Terms of Use, including in relation to the role outlined in clause 5.3.

6. Third party providers

The Subscriber acknowledges that the Services interact with and/or may enable or assist it to access, the software, applications and/or website content of, correspond with, and purchase products and services from, third parties via third-party websites (including, without limitation, Microsoft 365) and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party software, applications, website, or any transactions completed, and any contract entered into by the Subscriber, with any such third party. Any contract entered into, and any transaction completed with any third party, or via any third-party website, is between the Subscriber and the relevant third party, and not the Supplier. The Supplier recommends that the Subscriber refers to the third party's terms and conditions and privacy policy prior to using the relevant third-party software, applications and/or website. The Supplier does not endorse or approve any third-party software, applications and/or website nor the content of any of the third-party software, applications and/or website made available via the Services or with which the Software and/or the Services interact.

7. Supplier's obligations

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

7.2 The Supplier's obligations at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the terms of clause 7.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Subscriber's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 The Supplier:

(a) does not warrant that:

- (i) the Subscriber's use of the Services will be uninterrupted or error-free; or
- (ii) that the Services, Documentation and/or the information obtained by the Subscriber through the Services will meet the Subscriber's requirements; or
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses; and

- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Subscriber acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms of Use.

7.5 In the event of any loss or damage to Subscriber Data, the Subscriber's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Subscriber Data from the latest back-up of such Subscriber Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data caused by any third party.

8. Subscriber's obligations

8.1 The Subscriber shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to these Terms of Use; and
 - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Subscriber Data, security access information and configuration services;
- (b) without affecting its other obligations under these Terms of Use, comply with all applicable laws and regulations with respect to its activities under these Terms of Use;
- (c) carry out all other Subscriber responsibilities set out in these Terms of Use in a timely and efficient manner. In the event of any delays in the Subscriber's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Terms of Use and shall be responsible for any Authorised User's breach of these Terms of Use;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms of Use, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in these Terms of Use, solely responsible for procuring, maintaining and securing 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 Subscriber's network connections or telecommunications links or caused by the internet.

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

9. Charges and payment

9.1 The Subscriber shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and the pricing as set out at www.whytelist/me/subscribe (or such other website as notified to the Subscriber from time to time).

9.2 The Subscriber shall, on the Effective Date, provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Subscriber provides:

- (a) its credit card details to the Supplier, the Subscriber hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Subscriber:
 - (i) at the start of the Initial Subscription Term for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.2, at least 30 days prior to each subsequent anniversary of the start of the Initial Subscription Term for the Subscription Fees payable in respect of the next Renewal Period,

and the Subscriber shall pay each invoice within 30 days after the date of such invoice.

9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, on no less than 5 Business Days' notice to the Subscriber and without liability to the Subscriber, disable the Subscriber's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in these Terms of Use:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 The Supplier shall be entitled to increase the Subscription Fees, and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 at the start of each Renewal Period upon 90 days' prior notice to the Subscriber. If the actual number of User Subscriptions for the previous period is more than that for which the Subscriber has paid Subscription Fees, the Supplier shall invoice the Subscriber for the additional Subscription Fees and the Subscriber shall promptly following receipt of such invoice pay such additional Subscription Fees.

10. Proprietary rights

10.1 The Subscriber acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, these Terms of Use does not grant the Subscriber any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms of Use.

11. Confidentiality

11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of these Terms of Use in connection with these Terms of Use, including but not limited to:

- (a) the existence and terms of these Terms of Use or any agreement entered into in connection with these Terms of Use;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:

- (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (c) any information developed by the parties in the course of carrying out these Terms of Use.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

11.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

11.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with these Terms of Use (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of the disclosure.
- 11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms of Use are granted to the other party, or to be implied from these Terms of Use.
- 11.8 On earlier termination or expiry of these Terms of Use, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
 - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 14 (Termination).
- 11.9 No party shall make, or permit any person to make, any public announcement concerning these Terms of Use 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.
- 11.10 Except as expressly stated in these Terms of Use, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 11.11 The above provisions of this clause 11 shall continue to apply after earlier termination or expiry of these Terms of Use for a period of 7 years from earlier termination or expiry of these Terms of Use].

12. Indemnity

- 12.1 The Subscriber shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Subscriber's use of the Services and/or Documentation, provided that:
- (a) the Subscriber is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Subscriber in the defence and settlement of such claim, at the Subscriber's expense; and
 - (c) the Subscriber is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Subscriber, its officers, directors and employees against any claim that the Subscriber's use of the Services or Documentation in accordance with these Terms of Use infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Subscriber for any amounts awarded against the Subscriber in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Subscriber does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Subscriber to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms of Use on 30 Business Days' notice to the Subscriber without any additional liability or obligation to pay liquidated damages or other additional costs to the Subscriber.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Subscriber to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Subscriber's use of the Services or Documentation in a manner contrary to the instructions given to the Subscriber by the Supplier; or
 - (c) the Subscriber's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Subscriber's breach of these Terms of Use.
- 12.5 The foregoing and clause 13.3(b) state the Subscriber's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire

obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

13.1 Except as expressly and specifically provided in these Terms of Use:

- (a) the Subscriber assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Subscriber, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any Subscriber Data, information, instructions or scripts provided to the Supplier by the Subscriber in connection with the Services, or any actions taken by the Supplier at the Subscriber'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 these Terms of Use; and
- (c) the Services and the Documentation are provided to the Subscriber on an "as is" basis.

13.2 Nothing in these Terms of Use excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3 SUBJECT TO CLAUSE 13.1 AND CLAUSE 13.2:

- (A) THE SUPPLIER SHALL HAVE NO LIABILITY FOR ANY:
 - (I) LOSS OF PROFITS,
 - (II) LOSS OF BUSINESS,
 - (III) WASTED EXPENDITURE,
 - (IV) DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES,
 - (V) LOSS OR CORRUPTION OF DATA OR INFORMATION, OR
 - (VI) ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES; AND
- (B) THE SUPPLIER'S TOTAL AGGREGATE LIABILITY TO THE SUBSCRIBER (INCLUDING IN RESPECT OF THE INDEMNITY AT CLAUSE 12.2), IN RESPECT OF ALL BREACHES OF DUTY OCCURRING WITHIN ANY CONTRACT YEAR SHALL NOT EXCEED THE CAP. IF BREACHES COMMITTED IN MORE THAN ONE CONTRACT YEAR GIVE RISE TO A SINGLE CLAIM OR A SERIES OF CONNECTED CLAIMS, THE SUPPLIER'S TOTAL LIABILITY FOR THOSE CLAIMS SHALL NOT EXCEED THE SINGLE HIGHEST ANNUAL CAP FOR THOSE CONTRACT YEARS.
- (C) IN CLAUSE 13.3(B):

- (I) THE CAP IS THE GREATER OF THE TOTAL SUBSCRIPTION FEES PAID IN THE CONTRACT YEAR IN WHICH THE BREACHES OCCURRED;
- (II) A CONTRACT YEAR MEANS A 12-MONTH PERIOD COMMENCING ON THE START OF THE INITIAL SUBSCRIPTION TERM OR ANY ANNIVERSARY OF IT.

13.4 References to liability in this clause 13 include every kind of liability arising under or in connection with these Terms of Use including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.5 Nothing in these Terms of Use excludes the liability of the Subscriber for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

14.1 The Subscriber shall have an initial 60 day free trial period from the Effective Date to use the Software and Services (**Free Trial Period**). The Subscriber may terminate the Free Trial Period at any time during the Free Trial Period, without further obligation to the Supplier, by notifying the Supplier in writing. On such termination, the terms of clause 14.4 shall take effect. If the Subscriber does not terminate the Free Trial Period in accordance with the foregoing, the Initial Subscription Term shall automatically commence.

14.2 These Terms of Use shall, subject to the Free Trial Period, and unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these Terms of Use shall be automatically renewed 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 Subscription Term or any Renewal Period, in which case these Terms of Use shall terminate upon the expiry of the Initial Subscription Term or applicable Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of these Terms of Use;

and the Free Trial Period, and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.3 Without affecting any other right or remedy available to it, either party may terminate these Terms of Use with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under these Terms of Use on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of these Terms of Use and (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 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(c) to clause 14.3(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Terms of Use is in jeopardy.

14.4 On termination of these Terms of Use for any reason:

- (a) all licences granted under these Terms of Use shall immediately terminate and the Subscriber shall immediately cease all use of the Services and/or the Documentation;
- (b) subject to clause 11.11, each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) subject to clause 11.11, the Supplier may destroy or otherwise dispose of any of the Subscriber Data in its possession unless the Supplier receives, no later than 10 days after the effective date of the termination of these Terms of Use, a written request for the delivery to the Subscriber of the then most recent back-up of the Subscriber Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Subscriber within 30 days of its receipt of such a written request, provided that the Subscriber has at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Subscriber shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Subscriber Data. The Supplier will retain copies of Subscriber Data for a period of 7 years following expiry or earlier termination of these Terms of Use solely for the purposes of statutory record keeping and audit requirements and subject always to clause 11; 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 Terms of Use which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

Neither party shall be in breach of these Terms of Use or otherwise liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 3 months, the party not affected may terminate these Terms of Use by giving not less than 30 days' written notice to the affected party.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of these Terms of Use and the Schedules, the provisions in the main body of these Terms of Use prevail.

17. Waiver

- 17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

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

19. Severance

- 19.1 If any provision or part-provision of these Terms of Use is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms of Use.
- 19.2 If any provision or part-provision of these Terms of Use is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

- 20.1 These Terms of Use (and the information given to the Subscriber during the sign-up process) constitute the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that in entering into these Terms of Use it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms of Use.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms of Use.

21. Assignment

- 21.1 The Subscriber shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Terms of Use.

21.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms of Use.

22. No partnership or agency

Nothing in these Terms of Use 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).

23. Third party rights

23.1 These Terms of Use do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Use.

24. Communications

24.1 If the Supplier has to contact the Subscriber, the Supplier will do so by email or by pre-paid post to the address provided by the Subscriber during the sign-up process.

24.2 If the Subscriber has to contact the Supplier, the Subscriber may do so via the Supplier portal, or by pre-paid post to the address specified at the top of these Terms of Use.

24.3 Any notice shall be deemed to have been received:

- (a) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (b) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

24.4 For the avoidance of doubt service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution may not be served by email.

25. Governing law

These Terms of Use 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 interpreted in accordance with the law of England and Wales.

26. 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 these Terms of Use or its subject matter or formation (including non-contractual disputes or claims).