

ACEA HEALTH LIMITED – SUBSCRIPTION TERMS AND CONDITIONS

1 Definitions and Interpretation

1.1 In these Conditions:

Acea means Acea Health Limited incorporated and registered in England and Wales with company number 10364959 whose registered office is at Third Floor, 20 Old Bailey, London, United Kingdom, EC4M 7AN.

Agreement means the agreement between Acea and the Customer for the supply of Services incorporating these Conditions and the Order.

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.4.

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

Conditions means Acea's terms and conditions of supply set out in this document.

Confidential Information means any information which the disclosing party notifies to the receiving party at the time of disclosure to be confidential or information which the receiving party ought reasonably to have known is confidential whether expressly told so or not by the disclosing party provided that any confidential information which is already in the public domain (not otherwise in breach of this clause) or already known to the receiving party shall not constitute confidential information, including, without limitation, any information relating to the systems, operations, plans, intentions, market opportunities, potential and actual clients, surveys, know-how, trade secrets and business affairs in whatever form.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures means as defined in the Data Protection Legislation.

Customer means the person or firm who purchases the Services from Acea.

Customer Data means the data inputted by the Customer, Authorised Users, or Acea on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all 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 means the document made available to the Customer by Acea online via www.flynotes.co.uk or such other web address notified by Acea to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date means the date of the Agreement.

Initial Subscription Term means the initial term of the Agreement as set out in the Order.

Normal Business Hours means the hours between 8.30 am to 17.30 pm local UK time, each Business Day.

Order means the order for the Services from Acea placed by the Customer, as set out in Acea's online order process at www.flynotes.co.uk.

Renewal Period means the period described in clause 15.2.

Services means the subscription services provided by Acea to the Customer under these Conditions via www.flynotes.co.uk or any other website notified to the Customer by Acea from time to time, as more particularly described in the Documentation.

Software means the online software applications provided by Acea as part of the Services.

Subscription Fees means the subscription fees, payable by the Customer to Acea for the User Subscriptions, as set out in the Order.

Subscription Term means the term set out in the Quotation (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy means Acea's policy for providing support in relation to the Services as made available at www.flynotes.co.uk or such other website address as may be notified to the Customer from time to time.

UK Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

User Subscriptions means the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Conditions.

Virus means 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 and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

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. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular; and a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Conditions and shall include all subordinate legislation made as at the date of these Conditions under that statute or statutory provision.
- 1.6 A reference to writing or written includes e-mail but excludes faxes.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Agreement. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Agreement except to the extent that Acea otherwise agrees in writing.
- 2.3 Each Order by the Customer to Acea shall be an offer to purchase Services subject to these Conditions.

3 User Subscriptions

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms of these Conditions, Acea hereby grants to the Customer a non-exclusive, non-transferable right, 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 Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- 3.2.1 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;
- 3.2.2 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;
- 3.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than once each month and that each Authorised User shall keep his password confidential;
- 3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Acea within 5 Business Days of Acea's written request at any time or times;

- 3.2.5 it shall permit Acea or Acea's designated auditor to audit the Services in order to establish the name and password of each Authorised User and Acea's data processing facilities to audit compliance with these Conditions. Each such audit may be conducted no more than once per quarter, at Acea's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Acea's other rights, the Customer shall promptly disable such passwords and Acea shall not issue any new passwords to any such individual; and
 - 3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has underpaid Subscription Fees to Acea, then without prejudice to Acea's other rights, the Customer shall pay to Acea an amount equal to such underpayment as calculated in accordance with the prices set out in the Quotation within 10 Business Days of the date of the relevant audit.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.3.2 facilitates illegal activity;
 - 3.3.3 depicts sexually explicit images;
 - 3.3.4 promotes unlawful violence;
 - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.3.6 is otherwise illegal or causes damage or injury to any person or property;

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

3.4 The Customer shall not:

- 3.4.1 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 Conditions:
 - 3.4.1.1 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
 - 3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- 3.4.2 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
 - 3.4.3 use the Services and/or Documentation to provide services to third parties; or
 - 3.4.4 subject to clause 22.1, 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
 - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
 - 3.4.6 introduce or permit the introduction of, any Virus into Acea's network and information systems.
- 3.5 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, promptly notify Acea.
- 3.6 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 4 Additional User Subscriptions**
- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Quotation and Acea shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Conditions.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Acea in writing. Acea shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where Acea approves the request, Acea shall activate the additional User Subscriptions within 5 days of its approval of the Customer's request.
- 4.3 If Acea approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Acea's invoice, pay to Acea the relevant fees for such additional User Subscriptions as set out in the Order and, if such additional User Subscriptions are purchased by the Customer 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 Acea for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 5 Services**
- 5.1 Acea shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Conditions.
- 5.2 Acea shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- 5.2.1 planned maintenance carried out during the maintenance window of 9.00 pm to 5.00 am UK time; and
 - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Acea has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 Acea will, as part of the Services and at no additional cost to the Customer, provide the Customer with Acea's standard customer support services during Normal Business Hours in accordance with Acea's Support Services Policy in effect at the time that the Services are provided. Acea may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Acea's then current rates.

6 Customer Data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 6.2 Acea shall follow its archiving procedures for Customer Data as set out in its Privacy Policy available at www.flynotes.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended by Acea in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Acea shall be for Acea to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Acea in accordance with the archiving procedure described in its Privacy Policy. Acea 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 Acea to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 6.9).
- 6.3 Acea shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at www.flynotes.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Acea in its sole discretion.
- 6.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 6.5 The parties acknowledge that:
- 6.5.1 if Acea processes any personal data on the Customer's behalf when performing its obligations under these Conditions, the Customer is the controller and Acea is the processor for the purposes of the Data Protection Legislation; and
 - 6.5.2 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Acea's other obligations under these Conditions.
- 6.6 Without prejudice to the generality of clause 6.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal

data to Acea for the duration and purposes of the Agreement so that Acea may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's behalf.

- 6.7 Without prejudice to the generality of clause 6.4, Acea shall, in relation to any personal data processed in connection with the performance by Acea of its obligations under these Conditions:
- 6.7.1 process that personal data only on the documented written instructions of the Customer unless Acea is required by the laws of any member of the European Union or by the laws of the European Union applicable to Acea and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Acea is relying on Applicable Laws as the basis for processing personal data, Acea shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Acea from so notifying the Customer;
 - 6.7.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - 6.7.2.1 the Customer or Acea has provided appropriate safeguards in relation to the transfer;
 - 6.7.2.2 the data subject has enforceable rights and effective legal remedies;
 - 6.7.2.3 Acea complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 6.7.2.4 Acea complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - 6.7.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 6.7.4 notify the Customer without undue delay on becoming aware of a personal data breach;
 - 6.7.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
 - 6.7.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the Company if, in the opinion of Acea, an instruction infringes the Data Protection Legislation.

- 6.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 6.9 The Customer consents to Acea appointing third-party processors of personal data under these Conditions. Acea confirms that it will enter into a written agreement with such a third-party processor, incorporating terms which are substantially similar to those set out in this clause 6 and which will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Acea, Acea shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.
- 6.10 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

7 Third Party Providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Acea 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 website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Acea. Acea recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Acea does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8 Supplier's Obligations

- 8.1 Acea undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Acea's instructions, or modification or alteration of the Services by any party other than Acea or Acea's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

- 8.3 Acea does not warrant that the Customer's use of the Services will be uninterrupted or error-free, or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
- 8.4 Acea 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 Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 The Agreement shall not prevent Acea from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Conditions.
- 8.6 Acea warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Conditions.

9 **Customer's Obligations**

9.1 The Customer shall:

9.1.1 provide Acea with:

9.1.1.1 all necessary co-operation in relation to these Conditions; and

9.1.1.2 all necessary access to such information as may be required by Acea;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

9.1.2 without affecting its other obligations under these Conditions, comply with all applicable laws and regulations with respect to its activities under these Conditions;

9.1.3 carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Acea may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with these Conditions and shall be responsible for any Authorised User's breach of these Conditions;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Acea, its contractors and agents to perform their obligations under these Conditions, including without limitation the Services;

9.1.6 ensure that its network and systems comply with the relevant specifications provided by Acea from time to time; and

9.1.7 be, to the extent permitted by law and except as otherwise expressly provided in these Conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to

Acea'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.

10 Charges and Payment

10.1 The Customer shall pay the Subscription Fees to Acea for the User Subscriptions as set out in the Order.

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

10.2.1 its credit card details to Acea, the Customer hereby authorises Acea to bill such credit card:

10.2.1.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

10.2.1.2 subject to clause 15.1, at the start of each Renewal Period;

10.2.2 its approved purchase order information to Acea, Acea shall invoice the Customer:

10.2.2.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

10.2.2.2 subject to clause 15.1, at the start of each Renewal Period,

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

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

10.3.1 Acea may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Acea shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

10.3.2 Acea may be entitled to compensation arising out of a late payment and charge interest under the Late Payment of Commercial Debts (Interest) Act 1988, which shall accrue on a daily basis on such due amounts at the statutory rate from time to time over the then current base lending rate of Acea's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.4 All amounts and fees stated or referred to in these Conditions:

10.4.1 shall be payable in pounds sterling;

10.4.2 are, subject to clause 14.4, non-cancellable and non-refundable;

10.4.3 are exclusive of value added tax, which shall be added to Acea's invoice(s) at the appropriate rate.

10.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Acea shall charge the Customer, and the Customer shall pay, Acea's then current excess data storage fees. Acea's excess data storage fees current as at the Effective Date are set out in the Quotation.

10.6 Acea shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3, the support fees payable pursuant to clause 5.3 and/or the excess storage fees payable pursuant to clause 10.5 at the start of each Renewal Period upon 30 days' prior notice to the Customer.

11 **Proprietary Rights**

11.1 The Customer acknowledges and agrees that Acea and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these Conditions do not grant the Customer 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.

11.2 Acea 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, the terms of these Conditions.

12 **Confidentiality**

12.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, clients, consultants or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's Confidential Information:

12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions.

13 **Indemnity**

13.1 The Customer shall defend, indemnify and hold harmless Acea 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 Customer's use of the Services and/or Documentation, provided that:

13.1.1 the Customer is given prompt notice of any such claim;

- 13.1.2 Acea provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 13.1.3 the Customer is given sole authority to defend or settle the claim.
- 13.2 Acea shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with these Conditions infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 13.2.1 Acea is given prompt notice of any such claim;
 - 13.2.2 the Customer provides reasonable co-operation to Acea in the defence and settlement of such claim, at Acea's expense; and
 - 13.2.3 Acea is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, Acea may procure the right for the Customer 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 the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Acea, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 13.4.1 a modification of the Services or Documentation by anyone other than Acea; or
 - 13.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Acea; or
 - 13.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Acea or any appropriate authority.
- 13.5 The foregoing and clause 14.4 state the Customer's sole and exclusive rights and remedies, and Acea's (including Acea's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14 **Limitation of Liability**

- 14.1 Except as expressly and specifically provided in these Conditions:
 - 14.1.1 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. Acea shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Acea by the Customer in connection with the Services, or any actions taken by Acea at the Customer's direction;
 - 14.1.2 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 Conditions; and

- 14.1.3 the Services and the Documentation are provided to the Customer on an “as is” basis.
- 14.2 Nothing in these Conditions excludes the liability of Acea:
 - 14.2.1 for death or personal injury caused by Acea’s negligence; or
 - 14.2.2 for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2, Acea shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - 14.3.1 loss of profits;
 - 14.3.2 loss of business,
 - 14.3.3 depletion of goodwill and/or similar losses;
 - 14.3.4 loss or corruption of data or information;
 - 14.3.5 pure economic loss; or
 - 14.3.6 for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement.
- 14.4 Acea’s total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 15 **Term and Termination**
 - 15.1 The Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term.
 - 15.2 After the Initial Subscription Term, the Agreement shall be automatically renewed for subsequent renewal terms of successive periods of 1 month (each a **Renewal Period**), unless either party notifies the other party of termination, in writing, at least 1 month before the end of the Initial Subscription Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period.
 - 15.3 The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
 - 15.4 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:
 - 15.4.1 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;

- 15.4.2 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 60 days after being notified in writing to do so;
 - 15.4.3 the other party repeatedly breaches any of the terms of these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Conditions;
 - 15.4.4 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;
 - 15.4.5 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;
 - 15.4.6 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;
 - 15.4.7 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;
 - 15.4.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 15.4.9 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;
 - 15.4.10 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;
 - 15.4.11 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 15.5.4 to clause 15.5.10 (inclusive); or
 - 15.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.5 On termination of the Agreement for any reason:

- 15.5.1 all licences granted under these Conditions shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 15.5.2 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;
- 15.5.3 Acea may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 6.7.3, unless Acea receives, no later than ten days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Acea shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer 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 Customer shall pay all reasonable expenses incurred by Acea in returning or disposing of Customer Data; and
- 15.5.4 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.

16 **Force Majeure**

Acea 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 Acea or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, 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.

17 **Variation**

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

18 **Waiver**

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

19 **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.

20 **Severance**

20.1 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.

20.2 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.

21 **Entire Agreement**

21.1 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.

21.2 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 these Conditions.

22 **Assignment**

22.1 The Customer shall not, without the prior written consent of Acea, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

22.2 Acea 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.

23 **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).

24 **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.

25 **Notices**

25.1 Any notice required to be given under these Conditions shall be in writing and shall be delivered by hand, or sent recorded delivery to the other party at its address set out in the Order, or such other address as may have been notified by that party for such purposes.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid airmail or recorded delivery shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

26 **Governing law and jurisdiction**

26.1 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.

26.2 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).