

## Kit Prep Subscription Agreement

This subscription agreement is entered into between the supplier of Kit Prep, Tendable Limited (registered number 09954491), of Fox Court, 14 Grays Inn Road, London, WC1X 8HN ("**Supplier**") and you, the customer, whose details are set out below ("**Customer**").

This subscription agreement comprises: (a) the agreed terms set out in the Quote, together with the Customer-Specific Terms set out below ("**Agreed Terms**"); and (b) the subscription services terms and conditions appended in Appendix 1, including the Schedules to it (the "**Subscription T&Cs**"), together this "**Agreement**".

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be as follows: (1) the Agreed Terms; (2) any terms and conditions referred or linked to in the Subscription T&Cs; (3) the Subscription T&Cs (excluding the Schedules); and (4) the Schedules of the Subscription T&Cs..

### Customer-Specific Terms

The parties agree that the following amendments are made to the Subscription T&Cs:

- [insert agreed amendments]

By signing below each party confirms that it has read and understood the terms of this Agreement, and agrees to be bound by such terms from the Commencement Date.

### Signatories

Signed by an authorised representative for and on behalf of:

**Tendable Limited ("Kit Prep")**

Signed by an authorised representative for and on behalf of:

**[Customer name]**

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

## APPENDIX 1 – SUBSCRIPTION T&CS

### 1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation set out in Schedule 1 apply to this Agreement.

### 2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with its terms, this Agreement shall continue in force for the duration of the Initial Term and shall terminate at 23:59PM (GMT) on the last day of the Initial Term.

### 3. IMPLEMENTATION AND MOBILE APP SUBSCRIPTION

- 3.1 The Supplier will provide the Customer with implementation services to enable the Customer to use the Mobile App, as outlined in the Quote.
- 3.2 In the event that the Customer wishes Supplier to provide any bespoke development services in order to tailor the Mobile App for the Customer's organisation, such services shall be subject to separate terms to be negotiated by the parties in good faith.
- 3.3 Subject to the Customer's payment of the Subscription Fees and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, revocable right (without the right to grant sub-licences) to:

3.3.1 use and access, and to permit the Authorised Users to use and access, the Mobile App by accessing the Website via a supported web browser (as determined by Supplier from time to time); and/or

3.3.2 permit Authorised Users to download and use and access the Mobile App on the Authorised User's smartphone and tablet devices,

in each case in the Authorised Location on a software-as-a-service basis solely for the Purpose from the Service Commencement Date (and, solely to the extent necessary to assist the Supplier to perform the implementation services described in Clause 3.1 above, from the Commencement Date) for the duration of the Term. For the avoidance of doubt, the mechanism by which the Mobile App may be accessed (by supported web browser or Mobile App) will be specified in the Quote.

- 3.4 The Supplier may amend the Mobile App and the Service Description from time-to-time provided such amendments apply to the majority of customers for the Mobile App and do not materially and negatively impact the functionality, performance or security of the Mobile App. The Supplier shall inform the Customer of such amendments in accordance with the process set out in the Service Description.
- 3.5 The Customer acknowledges and agrees that the Supplier and its licensors own all Intellectual Property Rights in the Mobile App, Information, Software and the Service Description, including all subsequent copies of, and modifications, adaptations, amendments and additions to the same regardless of who made them. Except as expressly stated herein, this Agreement shall not grant the Customer any rights to, or in, any Intellectual Property Rights in respect of the Mobile App, Information, Software and the Service Description.
- 3.6 The Supplier and its licensors shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Mobile App any enhancement requests or feedback provided by the Customer and any Authorised Users, so long as the Customer is not identified in any way as the source of such feedback. For the avoidance of doubt, the Supplier shall not be obliged to implement any such enhancement requires or feedback

### 4. SUPPLIER OBLIGATIONS

- 4.1 The Supplier warrants that during the Term the Mobile App shall perform materially in accordance with the Service Description.
- 4.2 The Supplier shall perform its obligations under this Agreement in compliance with all applicable laws.
- 4.3 The Supplier shall use reasonable endeavours to ensure the Mobile App is available on a 24/7 basis, but the Supplier makes no representation, and gives no warranty or undertaking, that the operation or availability of the Mobile App will be uninterrupted or error-free.
- 4.4 If the Supplier fails to comply with the warranty at Clause 4.1, it shall use its reasonable endeavours to rectify, repair or correct such failure within a reasonable time. The warranty at Clause 4.1 shall not apply to the extent of any non-conformance, including unavailability, which is caused by: (a) the Customer's breach of this Agreement; (b) use of the Mobile App contrary to the Supplier's instructions; or (c) modification or alteration of the Mobile App by any party other than the Supplier or authorised Supplier Personnel.
- 4.5 The Customer acknowledges that the Supplier and/or the Supplier Personnel may from time to time carry out routine and emergency maintenance of the Mobile App. The Customer may be unable to access the Mobile App during any period in which routine or emergency maintenance is being carried out, though the Supplier will use its reasonable endeavours to keep disruption to and unavailability of the Mobile App to a minimum.
- 4.6 Without limitation to Clause 17.1 (Force Majeure), the Customer acknowledges that the Supplier has no direct control over the availability of bandwidth over the entirety of the internet and that, while the Supplier will use such

endeavours as the Supplier deems appropriate to facilitate the Mobile App, the Supplier shall not be responsible for delays caused by such unavailability.

- 4.7 Except as expressly provided in this Agreement, the Mobile App and the Information are provided “as is” and to the extent permitted by law, the Supplier disclaims all other conditions, warranties, representations, undertakings or other terms which might have effect between the parties with respect to the Mobile App and the Information, or be implied or incorporated into this Agreement, whether by statute, common law, custom or otherwise, including any implied conditions, warranties, undertakings or other terms relating to satisfactory quality, reasonable skill and care, fitness for any particular purpose, ability to achieve a particular result or arising from course of dealing or usage of trade. The Supplier does not warrant anything in relation to systems that do not make up the Mobile App or the connection to those systems.

#### **Support**

- 4.8 Support is not a substitute for training and Customer shall ensure that it provides appropriate training to its Authorised Users to educate them in how to use the Mobile App in accordance with this Agreement and the Service Description.
- 4.9 The Customer shall nominate [2] “super users” who shall have the right to contact the Kit Prep Help Desk in order to resolve issues with the Customer’s use of the Mobile App. All Authorised Users’ support queries shall be channelled through the super users, who shall provide initial triage for the queries.

### **5. DISCLAIMERS**

- 5.1 The Customer acknowledges that the Information should be used for information purposes only. Any Information generated by the Mobile App is not intended to, and should not be construed as, constituting any medical or healthcare advice of any kind.
- 5.2 Nothing in this Agreement, or the Customer’s or its Authorised User’s use of the Mobile App, shall constitute medical or healthcare advice, or any other professional advice. The Customer assumes all risks in acting upon any of the Information made available or produced in the access and use of the Mobile App. Under no circumstances shall the Supplier or any Supplier Personnel have any responsibility or liability for any decisions or advice, or any calculations arrived at when using or relying on any Information. Accordingly, the Customer acknowledges and agrees that it assumes sole responsibility for results obtained from the access and use of the Mobile App and any Information and for conclusions drawn from such access and use.
- 5.3 The Supplier does not warrant, represent, undertake or agree that: (a) the use of the Mobile App by the Customer or its Authorised Users will meet the Customer’s requirements nor that any recommendations derived from use of the Mobile App will deliver any particular benefits if implemented; (b) that the Information is complete, accurate or error-free; (c) defects in the Mobile App will be corrected; or (d) the functions of the Mobile App will operate in the combinations which the Customer selects for use. Under no circumstances shall the Supplier or the Supplier Personnel have any liability for any losses, claims, damages, costs or expenses caused by errors or omissions in any information, instructions or scripts provided to the Supplier and/or the Supplier Personnel by or on behalf of the Customer in connection with the Mobile App, or any actions taken by the Supplier and/or the Supplier Personnel at the Customer’s direction.

### **6. CUSTOMER’S OBLIGATIONS**

- 6.1 In relation to the Mobile App:

- 6.1.1 the Customer shall not (and shall ensure that its Authorised Users do not):

- 6.1.1.1 store, distribute or transmit any Virus, or any material, information or data through the Mobile App that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 6.1.1.2 use the Mobile App to collect or store any information (including notes, comments, images or any other content) from which any patient or other individual may be identified, input any such information to the Mobile App, or do anything which might infringe any patient’s privacy or dignity;
- 6.1.1.3 use the Mobile App in a way that could damage, disable, overburden, impair or compromise the Mobile App or Supplier’s systems or security or interfere with other users;
- 6.1.1.4 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Mobile App, Information, Software or Service Description;
- 6.1.1.5 access, develop, supply or market all or any part of the Mobile App in order to build a product or service which replicates, competes with or is substantially similar to the Mobile App;
- 6.1.1.6 attempt to undertake any security testing of the Mobile App without the prior written consent of the Supplier;
- 6.1.1.7 use the Mobile App to provide services to third parties (including any Affiliates of the Customer);
- 6.1.1.8 subject to Clause 17.5 (Assignment), transfer, temporarily or permanently, any of its rights under this Agreement; or

- 6.1.1.9 assist third parties in obtaining access to the Mobile App;
- 6.1.2 the Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Mobile App and shall notify the Supplier promptly of any such unauthorised access or use; and
- 6.1.3 the Supplier may audit the Customer's compliance with this Clause 6.1 by any lawful, technical means and the Customer shall provide all reasonable assistance and information to the Supplier necessary to establish that the Mobile App are only being accessed and used in accordance with this Agreement.
- 6.2 The Customer shall:
  - 6.2.1 provide the Supplier with all necessary co-operation in relation to this Agreement and access to such information as may be required by the Supplier in order to complete the implementation, provide support services and provide the Mobile App;
  - 6.2.2 shall ensure that the Authorised Users shall comply with any acceptable use policies specified or provided by the Supplier from time to time for the Mobile App;
  - 6.2.3 maintain sufficient licences to any software (from third parties or licensed by the Supplier separately to this Agreement) operated using or in conjunction with the Mobile App;
  - 6.2.4 and shall ensure the Authorised Users shall, maintain adequate internet connections and technical capabilities to access and use the Mobile App, including complying with the Minimum Technical Requirements. The Customer acknowledges that as between the parties, it is solely responsible for ensuring that its firewalls, security and privacy systems and settings, and other plug-ins or applications, do not interfere with or restrict the Customer's, or its Authorised Users', access and use of the Mobile App, and the Supplier and Supplier Personnel shall have no responsibility or liability in relation thereto;
  - 6.2.5 where Authorised Users access the Mobile App via the Mobile App, ensure that the Authorised Users download and install any updates to the Mobile App promptly;
  - 6.2.6 provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
  - 6.2.7 comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - 6.2.8 carry out all other Customer responsibilities set out in this Agreement 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, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary;
  - 6.2.9 before the Customer uses any updates to any third party software in a live environment, carry out testing updates to any third party software to its satisfaction, to ensure that such updates meet the Customer's own requirements without causing any issues with the Customer's use of the Mobile App; and
  - 6.2.10 undertake appropriate back-ups to its data and to secure media with such regularity and in such a manner so as to ensure that it can restore such data and media in the event of data loss or corruption from any cause.

## 7. AUTHORISED USERS AND LOCATIONS

- 7.1 In relation to Authorised Users:
  - 7.1.1 the Customer shall ensure that the Authorised Users comply with the terms of this Agreement, and shall be responsible for any acts and omissions of the Authorised User as if committed by the Customer itself;
  - 7.1.2 the Customer shall comply with the enrolment process for Authorised Users as set out in the Service Description;
  - 7.1.3 the Customer shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request at any time or times;
  - 7.1.4 the Customer shall ensure that each Authorised User:
    - a) keeps any password(s) for their use of the Mobile App secure and confidential and changes any password(s) promptly if they know or suspect that they have been compromised;
    - a) is required to comply with a password policy which tells users: (i) how to avoid choosing obvious passwords; (ii) not to choose common passwords; (iii) not to use the same password anywhere else, at work or at home; and (iv) where and how they may record passwords to store and retrieve them securely – for example, in a sealed envelope in a secure cupboard;
    - b) changes any password(s) no less frequently than once every ninety (90) days; and
    - c) that each Authorised User does not share their password(s) to allow any other employees, contractors (individuals or otherwise), representatives and agents of the Customer or any other individual or third party to access the Mobile App;
  - 7.1.5 in respect of any Authorised User, the Customer will not allow any Authorised User account to be used by more than one (1) individual Authorised User. If the Customer requires an Authorised User's account to be transferred to another individual, the Customer must provide the Supplier with full details of the new Authorised User (as specified by the Supplier) and the Supplier shall transfer the Authorised User account to the new individual as soon as reasonably practicable. The Customer may not request more than [two (2)] account transfers in any Year. Following any agreed reassignment of an Authorised User's account, the

previous Authorised User shall have no further right to access the Mobile App;

- 7.1.6 if an Authorised User leaves the employment or engagement of the Customer or where the employment or engagement of an Authorised User is transferred such that the Customer does not intend for them to have access to the Mobile App, the Customer shall promptly inform the Supplier so that the Supplier may disable such individual's passwords (which the Supplier shall do within a reasonable period of time); and
- 7.1.7 the Supplier may audit the Mobile App regarding the name and password for each Authorised User and, if such audit reveals that passwords have been provided to individuals who are not Authorised Users, the Supplier may, without prejudice to the Supplier's other rights; (a) disable such passwords (or require the Customer promptly to disable such passwords) and the Customer shall not issue any new passwords to such individuals; and/or (b) charge the Customer an additional subscription fee (calculated on a pro-rata basis against the Customer's then-current Subscription Fees) for the additional number of Authorised Users accessing and using the Mobile App.
- 7.2 If the Customer wishes to purchase the right to increase the number of Authorised Users, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Authorised Users and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). If the Supplier approves the Customer's request to purchase access for additional Authorised Users, the Customer shall, within thirty (30) calendar days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Authorised Users.
- 7.3 The Customer will not allow any Authorised User account to be used (including to access or use the Mobile App) outside of, or at any location or site other than, the relevant Authorised Location.
- 7.4 If the Customer wishes to purchase the right to access and use the Mobile App at locations other than Authorised Locations, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Authorised Locations and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). If the Supplier approves the Customer's request to purchase access for additional Authorised Locations, the Customer shall, within thirty (30) calendar days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Authorised Locations.
- 7.5 The Customer acknowledges that the Mobile App may provide functionality or features that enable Authorised Users to perform functions, order services or add further Authorised Users that may incur additional Subscription Fees (as specified in the Service Description and/or on the Mobile App itself) and the Customer agrees to be bound by the actions and orders performed by the Authorised Users (or any person who obtains access to the Mobile App as a result of a breach of this Agreement by the Customer) using the Mobile App and pay any additional Subscription Fees arising as a result.

## **8. SUBSCRIPTION FEES AND PAYMENT TERMS**

### ***Subscription Fees***

- 8.1 The Customer shall pay the Subscription Fees to the Supplier in accordance with this Clause 8 and the Agreed Terms.
- 8.2 The Supplier will invoice the Subscription Fees to the Customer in advance on an annual basis for payment within thirty (30) days of the date of any such invoice. The first invoice shall be issued on the Service Commencement Date. Sums shall be paid in full without set off or deduction. The Supplier reserves the right to make provision of the Mobile App subject to receipt of payment of the Subscription Fees.

### ***Payment Terms***

- 8.3 The Customer shall pay all sums due to the Supplier in cleared funds into the bank account nominated by the Supplier from time to time.
- 8.4 All sums due to the Supplier under or in relation to this Agreement are exclusive of any Sales Tax which shall be charged in addition in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Customer in full at the same time as payment is due under the relevant invoice.
- 8.5 If the Customer is or may be required under any law or regulation of any governmental entity or authority, domestic or foreign, to withhold or deduct any portion of any payment due to the Supplier pursuant to this Agreement and the Supplier is unable to reclaim or recover that deduction through the exercise of reasonable efforts, then the sum payable to the Supplier will be increased by the amount necessary to yield to the Supplier an amount equal to the sum it would have received had no withholdings or deductions been made.
- 8.6 If the Customer fails to make any payment in accordance with this Agreement, then the Supplier shall (without prejudice to its other rights and remedies) be entitled to:
  - 8.6.1 charge interest on the overdue amount at the lesser of the maximum rate allowed by law or a rate of 3% per month above the base rate of the Bank of England from time to time in force, compounded on a monthly basis, from the date on which such amount fell due until payment, whether before or after judgment; and/or
  - 8.6.2 suspend the Customer's and the Authorised Users' access to and use of the Mobile App until payment is made by the Customer in accordance with this Agreement.

- 8.7 The Customer shall provide accurate, current and complete information on the Customer's billing address and billing contacts, including email address and phone number, and will promptly notify the Supplier if this information changes.

## **9. CUSTOMER DATA AND DATA PROTECTION**

- 9.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall at all times have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and for ensuring that its use does not infringe the rights of any third parties.
- 9.2 The Customer hereby grants to the Supplier and the Supplier Personnel, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable licence to use the Customer Data for the purpose of providing the Mobile App and the exercise of the Supplier's rights under this Agreement (together with the right to sub-licence these rights to its hosting, connectivity and telecommunications service providers to the extent necessarily required for the performance of the Supplier's obligations) and for any requirements ancillary to the provision of the Mobile App (including any data analytics and service modelling specified in the Service Description). The Customer warrants to the Supplier that the use of the Customer Data in accordance with this Agreement will not: (a) breach any laws, statutes or regulations; (b) infringe the Intellectual Property Rights or other legal rights of any person; or (c) give rise to any cause of action against the Supplier, in each case in any jurisdiction and under any applicable law.
- 9.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data where such back-ups are made by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, its Authorised Users, the Customer's Affiliates or any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data hosting and back-up, in which case the Supplier's liability shall be subject to the limitations and exclusions set out in this Agreement, including those set out in this Clause and Clause 12).
- 9.4 To the extent that either party processes any personal data provided by the other party in connection with this Agreement, each party shall act as independent controllers in relation to such personal data and each party shall comply with its respective obligations under applicable Data Protection Legislation in relation thereto. The Customer shall promptly provide the Supplier with such reasonable cooperation, information and assistance as the Supplier may require from time to time to enable the Supplier to comply with its obligations under applicable Data Protection Legislation in relation to any personal data provided to the Supplier by the Customer or its Authorised Users. Each party agrees that it shall comply with the Kit Prep Privacy Policy
- 9.5 The Customer hereby grants the Supplier a non-exclusive, perpetual, sublicensable, worldwide, royalty-free licence to use, copy and aggregate (including with other third party data) any anonymous information (including anonymous information derived from the Customer Data) that is obtained by Kit Prep in connection with this Agreement, including in connection with the Customer's or any Authorised Users' use and access of the Mobile App for its own purposes, including but not limited to testing the Mobile App, benchmarking and further development of the Mobile App. Customer agrees that Supplier may anonymise personal data derived from Customer's or Authorised Users' use of the Mobile App in order to use the anonymised data for these purposes.
- 9.6 Each party shall at all times comply with good industry practice relating to data protection, and implementation and maintenance of information security policies, processes and (subject to Clause 9.3) back-up systems.

## **10. CONFIDENTIALITY**

- 10.1 The Recipient shall protect all Confidential Information which the Discloser provides to it (whether orally, in writing or in any other form) using the same standards as the Recipient applies to its own comparable Confidential Information but in no event less than reasonable measures. The Recipient may only use Confidential Information in connection with this Agreement and to the extent necessary for the purposes of this Agreement. The Recipient may provide its Permitted Users with access to Confidential Information on a strict "need to know" basis only. The Recipient shall ensure that each of its Permitted Users are bound to hold all Confidential Information in confidence to the standard required under this Agreement.
- 10.2 The Recipient's confidentiality obligations will not apply to information: (a) already known to it at the time of disclosure without restrictions on disclosure; (b) in the public domain or publicly available other than as a result of a breach of this Agreement; (c) provided to it by a third party who is under no such obligation of confidentiality; or (d) evidenced by contemporaneous written records as independently developed by it. The Recipient may disclose Confidential Information to its legal advisers to protect its own legitimate interests or to comply with any legal or regulatory requirements. If any court, regulatory authority or legal process requires the Recipient to disclose information covered by this confidentiality obligation, then the Recipient may make any such disclosure, provided that the Recipient will, to the extent permitted by law: (a) advise the Discloser promptly of any such requirement; (b) cooperate with the Discloser, at the Discloser's expense, in responding to the requirement; and (c) use all reasonable endeavours to consult with the Discloser with a view to agreeing the timing, manner and extent of the disclosure. If the Recipient is unable to inform the Discloser before the Confidential Information is disclosed, it shall (to the extent permitted by law) fully inform the Discloser immediately afterwards in writing of the disclosure and the Confidential Information that was disclosed.
- 10.3 Subject to the confidentiality provisions of this Clause 10, the Customer shall not prevent the Supplier or any of the Supplier's Affiliates from disclosing the existence of this Agreement, but not the content of this Agreement,

for their own marketing purposes.

- 10.4 All Confidential Information shall remain the property of the Discloser and the Discloser reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisaged by this Agreement shall (except as expressly agreed otherwise in this Agreement) operate to transfer, or operate as a grant of any licences or right to use, to any Intellectual Property Rights in the Confidential Information.
- 10.5 Each party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other party of the provisions of this Clause 10. Accordingly, it is agreed that either party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this Clause 10 by the other party, without prejudice to any other rights and remedies which that first party may have.
- 10.6 This Clause 10 shall remain in full force and effect notwithstanding any termination of this Agreement.

## 11. INDEMNITIES

- 11.1 The Customer shall indemnify, keep indemnified and hold the Supplier and the Supplier Personnel harmless against any and all damages, claims, actions, proceedings, losses and reasonable costs (including legal fees) and expenses arising from any third party claims or actions arising out of or in connection with: (i) the Customer's or the Authorised Users' use (or misuse) of the Mobile App in breach of this Agreement; and/or (ii) any breach of the Customer's warranty in Clause 9.2.
- 11.2 Subject to the provisions of this Clause 11.2 and Clauses 11.3 to 11.5, the Supplier shall indemnify the Customer and hold the Customer harmless in respect of all damages and reasonable costs (including court costs and legal fees) and expenses arising directly from an IPR Claim which is valid and enforceable in the legal jurisdiction in which the IPR Claim is commenced provided that:
  - 11.2.1 the Customer shall give the Supplier prompt notice of any actual or threatened IPR Claim;
  - 11.2.2 the Customer shall not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of the Supplier;
  - 11.2.3 the Supplier shall be entitled at any time to assume exclusive conduct of the IPR Claim (which shall include, but not be limited to, the exclusive right to conduct any proceedings or action, negotiate the settlement of the IPR Claim and to conduct all discussions and dispute resolution efforts in connection with the IPR Claim);
  - 11.2.4 the Customer shall, at the Supplier's request, cost and expense, give the Supplier all reasonable assistance in connection with the conduct of the IPR Claim (including taking such steps as is necessary to enable the Supplier to assume conduct of the IPR Claim pursuant to Clause 11.2.3); and
  - 11.2.5 the Customer takes all reasonable steps to mitigate any liabilities which are the subject of the indemnity in this Clause 11.2.
- 11.3 If any IPR Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its option and expense:
  - 11.3.1 obtain for the Customer the right to continue using the Mobile App in the manner permitted under this Agreement; or
  - 11.3.2 modify or replace the infringing part of the Mobile App so as to avoid the infringement or alleged infringement, but in such a way that does not materially adversely affect the functionality of the Mobile App; or
  - 11.3.3 terminate this Agreement immediately on notice to the Customer.
- 11.4 Under no circumstances shall the Supplier or any Supplier Personnel be liable to the Customer under Clause 11.2 or 11.3 (or otherwise) to the extent that the infringement (whether actual or threatened) is based on: (a) any changes, modifications, updates or enhancements made to the Mobile App other than by the Supplier or the Supplier Personnel; (b) any use of the Mobile App by the Customer or its Authorised Users in a manner contrary to the Supplier's instructions and/or in breach of this Agreement; or (c) the Customer's or its Authorised Users' use of the Mobile App after notice or becoming aware of the actual or threatened IPR Claim.
- 11.5 The provisions of Clauses 11.2 to 11.4 inclusive state the entire liability of the Supplier to the Customer in connection with an IPR Claim and shall be the Customer's sole and exclusive remedy in that regard.

## 12. LIMITATION OF LIABILITY

- 12.1 Nothing in this Agreement excludes or limits the liability of either party to the other for:
  - 12.1.1 death or personal injury caused by negligence;
  - 12.1.2 fraud or fraudulent misrepresentation by it or its employees; or
  - 12.1.3 any other liability that cannot be excluded or limited by law.
- 12.2 Subject to Clause 12.1, the Supplier and/or the Supplier Personnel shall not be liable whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation (whether innocent or negligent), restitution or otherwise for:

- 12.2.1 any loss of profits, loss of business, loss of savings, depletion of goodwill and/or similar losses, or pure economic loss or (subject to Clause 9.3) any loss of corruption of data or information (regardless of whether these types of loss or damage are direct, indirect or consequential); or
- 12.2.2 any special, indirect or consequential loss or damage whatsoever,  
in each case however arising under or in connection with this Agreement and even if the Supplier and/or the Supplier Personnel were aware of the possibility that such loss or damage might be incurred.
- 12.3 Subject to Clauses 12.1 and 12.2, the total aggregate liability taken together of the Supplier and the Supplier Personnel in respect of any and all causes of action arising in each Year under or in relation to this Agreement, whether arising in contract (including under any indemnities), tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise, shall in no event exceed the value of the Subscription Fees paid or payable by the Customer to the Supplier under this Agreement during the relevant Year in which the cause or causes of action arose (or, if no Subscription Fees have been paid or are payable by the Customer to the Supplier under this Agreement in a Year, the value of the Subscription Fees paid by the Customer to the Supplier under this Agreement in the last Year of the Term in which Subscription Fees were paid by the Customer).
- 12.4 For the purposes of calculating liability pursuant to Clause 12.3, where a cause of action arises in a Year and continues across subsequent Years and/or continues after the termination of this Agreement, then the cause of action shall be deemed to have arisen only in the Year in which such cause of action first arose.

### 13. **TERM, TERMINATION AND SUSPENSION**

- 13.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  - 13.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
  - 13.1.2 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [thirty (30)] days after being notified in writing to do so; or
  - 13.1.3 the other party suffers an Insolvency Event.
- 13.2 On termination of this Agreement for any reason:
  - 13.2.1 all licences granted under this Agreement shall immediately terminate and the Customer and the Authorised Users shall immediately cease all use of the Mobile App. For the avoidance of doubt and notwithstanding the foregoing sentence, any licences granted under this Agreement which are stated to be granted on a perpetual and irrevocable basis shall survive the termination of this Agreement for any reason and shall continue in full force and effect;
  - 13.2.2 the Supplier may immediately end the Customer's and the Authorised Users' use of and access to the Mobile App;
  - 13.2.3 the Customer shall immediately pay all sums and amounts payable to the Supplier under the terms of this Agreement;
  - 13.2.4 except to the extent permitted by this Agreement, each party shall return or destroy, and (in each case) make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party, including the other party's Confidential Information (except the Supplier may retain reasonable professional records of the Customer's and its Authorised Users' use of the Mobile App and shall be entitled to retain the Customer's Confidential Information for the purposes of internal audit, litigation and/or to comply with applicable laws);
  - 13.2.5 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession at any point thirty (30) days or more after termination of this Agreement;
  - 13.2.6 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 this Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
  - 13.2.7 any provisions which are necessary for the interpretation or enforcement of this Agreement shall continue in force notwithstanding termination.
- 13.3 the Supplier may suspend the Customer's, and its Authorised Users', right to access the Mobile App or use any portion or all of the Mobile App immediately upon notice to the Customer if it determines acting reasonably:
  - 13.3.1 that the Customer's (or an Authorised User's) use of or access to the Mobile App (a) poses a security risk to the Supplier, the Mobile App or any third party; (b) may adversely impact availability or performance of the Mobile App, the Software or the systems or software of any other customer of the Supplier; (c) may subject the Supplier or any third party to any liability; or (d) may be fraudulent; or
  - 13.3.2 that the Customer, or any Authorised User, is in breach of this Agreement or any other agreement by which software being used on or in conjunction with the Mobile App is licensed; and
  - 13.3.3 the Supplier shall reinstate the suspended Mobile App once it has established the cause of the suspension



has been remedied or ceased to exist. Where the cause of the suspension persists for more than thirty (30) days, the Supplier may immediately terminate this Agreement without incurring any liability to the Customer.

#### 14. ENTIRE AGREEMENT

- 14.1 This Agreement shall govern all transactions between the Supplier and the Customer with respect to the Mobile App. This Agreement shall apply to the exclusion of and shall prevail over any terms or conditions of contract, any order form, any purchase order, work order, invoice, or other document imposed or sought to be imposed by the Customer at any time. Any such terms are rejected by the Supplier and shall be without force or effect and the Customer hereby waives any and all rights it may have to rely on and enforce any such terms .
- 14.2 This Agreement constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, collateral warranties, collateral contracts, statements, representations and undertakings made by or on behalf of the parties, whether oral or written, in relation to that subject matter.
- 14.3 Each party acknowledges that in entering into this Agreement it has not relied upon any collateral warranties, collateral contracts, statements, representations or undertakings, whether oral or written, which were made by or on behalf of the other party in relation to the subject matter of this Agreement (together "**Pre-Contractual Statements**") and which are not set out in this Agreement. Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.
- 14.4 Nothing in this Clause shall exclude or restrict the liability of either party arising out of its pre-contractual fraudulent misrepresentation or fraudulent concealment.

#### 15. NOTICES

- 15.1 Subject to Clause 15.3, any notice required to be given under this Agreement shall be in writing in English and shall be delivered by hand, sent by pre-paid first-class or recorded delivery post or by email to the other party at its postal or email address (as applicable) as set out in the Quote, or such other address as may have been notified by that party for such purposes.
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am (GMT) on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time and date of transmission shown on the saved sent copy kept by the sender (or if delivery is not in business hours, at 9am (GMT) on the first Business Day following delivery).
- 15.3 This Clause 15 shall not apply to the service of legal proceedings.

#### 16. VARIATION

- 16.1 The Customer shall have If the Customer wishes the Supplier to proceed with any proposed variation, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Subscription Fees and any other relevant terms of this Agreement to take account of the change.
- 16.2 Supplier reserves the right, at its sole discretion, to make changes to any of the terms of these subscription T&Cs from time to time, provided that Supplier publishes details of the amendments on its website (the "**Website**"). Following publication of such changes on the Website, Supplier shall use all reasonable endeavours to:
- a) in respect of Material Changes, provide at least ninety (90) days written notice by email prior to such change taking effect; and
  - b) in respect of any other change that is not a Material Change, provide at least thirty (30) days written notice by email prior to such change taking effect; and
  - c) in respect of Material Changes or any other changes, where in Supplier's reasonable opinion either (i) applicable law requires a shorter period than that described in Clause 16.2(a) or 16.2(b); or (ii) the notice periods described in Clause 16.2(a) or 16.2(b) are not reasonably practicable, then in either case, provide such alternative written notice period as communicated by Supplier to Customer.
- 16.3 Where following receipt of such notice, Customer can promptly demonstrate to the reasonable satisfaction of Supplier that such change to these Subscription T&Cs or any terms linked to therein is materially detrimental to the Customer's use of the Mobile App, and where Supplier, acting reasonably, considers Customer has demonstrated the same (i) Supplier will confirm the same to the Customer in writing; and (ii) following receipt of such confirmation, Customer shall be entitled to terminate the Agreement effective from the last day of the calendar month following the month in which notice was served. Continued use of the Mobile App beyond such date and/or failure to raise any objection to the proposed change prior to the expiry of applicable notice period for such change as described in this Clause, shall in either case constitute deemed acceptance by Customer of such change.

#### 17. MISCELLANEOUS

- 17.1 Force Majeure. The Supplier shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport

or telecommunications network or the internet, 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. In such circumstances the Supplier shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three (3) months, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

- 17.2 No Waiver. The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement, this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 17.3 Rights and Remedies. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.4 Severance. If any provision, or part of a provision, of this Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise required by operation of applicable law. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.5 Assignment. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Customer shall enter into any further agreements reasonably required by the Supplier to give effect to any of the above.
- 17.6 Relationship of the Parties. Nothing in this Agreement is intended to, or shall be deemed to, establish or constitute any partnership or joint venture between any of the parties, create a relationship of principal and agent for any purpose between the parties, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.7 Authority. The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under, this Agreement.

## 18. **THIRD PARTY RIGHTS**

- 18.1 Subject to the Supplier Personnel being entitled to rely on and enforce the provisions of Clauses 5, 11 and 12, a person who is not a party to this Agreement may not enforce any of its provisions under any legislation otherwise entitling it to do so nor bring a claim for the recovery of any losses, liabilities, expenses or costs arising out of or relating to this Agreement or the Mobile App. The consent of any third party is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Agreement.
- 18.2 All claims brought by the Customer under or as a result of this Agreement (whether in contract, misrepresentation (whether tortious or statutory), tort (including negligence), restitution, breach of statutory duty or otherwise) shall be brought against the Supplier only and not any Supplier Personnel. The limitations and exclusions of liability set out in this Agreement shall apply to all such claims.

## 19. **GOVERNING LAW AND JURISDICTION**

- 19.1 This 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.
- 19.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) save that the Supplier may bring proceedings for injunctive relief in any alternative jurisdiction at its sole option in the case of breach or anticipated breach by the Customer of its obligations relating to confidentiality and Intellectual Property Rights as set out in this Agreement.

## Schedule 1 – Definitions and Interpretation

### 1. Definitions

#### 1.1 The following definitions apply in this Agreement:

| Word/phrase                        | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Affiliate</b>                   | in respect of a party, any entity that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with that party and any other entity agreed in writing by the parties as being an Affiliate in respect of either party.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Annual Subscription Fee</b>     | the annual subscription fee specified in the Quote, as may be amended in accordance with this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Authorised Locations</b>        | the authorised locations identified in the Quote (or otherwise agreed in accordance with Clause 7.4) in and from which the Customer and the Authorised Users may access and use the Mobile App in accordance with this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Authorised Users</b>            | the individual employee, agent or contractor of the Customer specified in the Quote (or otherwise agreed in accordance with clause 7.2) who are authorised by the Customer to access and use the Mobile App solely on behalf and for the benefit of the Customer in accordance with the terms of this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Business Day</b>                | any day which is not a Saturday, Sunday or public holiday in London.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Commencement Date</b>           | the commencement date specified in the Quote.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Confidential Information</b>    | any and all information or data, in whatever form or storage medium, whether tangible or intangible, and whether disclosed directly or indirectly before or after this Agreement by or on behalf of the Discloser to the Recipient in writing, orally, through visual means, or by the Recipient's evaluation, observation, analysis, inspection or other study of such information, data or knowledge, which is now or at any time after the date of this Agreement, owned or controlled by the Discloser. Confidential Information shall include trade secrets, discoveries, knowhow, designs, specifications, drawings, present or future products or services (including the provision of the Mobile App), inventions, prototypes, algorithms, software of any kind or nature, including, but not limited to the Software, object or machine codes, source codes (whether revealed in the provision of the Mobile App or disclosed by other means), computer models and applications, developments, processes, formulae, technology, engineering, architectures, hardware configuration information, diagrams, data, computer programs, business activities and operations, customer lists, reports, studies and other technical and business information and any other information which, by its nature, would reasonably be considered to be of a confidential nature either intrinsically or due to the context and circumstances in which it was disclosed, including, for the avoidance of doubt, information concerning the parties' customers, which is of a confidential nature, and the terms of this Agreement. The parties agree that the Information is the Supplier's Confidential Information. |
| <b>Control</b>                     | <p>(a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that party; (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that party; or (iii) give directions with respect to the operating and financial policies of the relevant party with which the directors or other equivalent officers of that party are obliged to comply; or</p> <p>(b) the holding beneficially of more than 50 per cent of the issued share capital of the relevant party (excluding any part of that issued share capital that carries no right to participate, or no right to participate beyond a specified amount, in a distribution of either profits or capital).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Customer Data</b>               | any data transferred to the Supplier by the Customer for input into the Mobile App, including any data input into the Mobile App by the Authorised Users.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Data Protection Legislation</b> | the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them, and all other applicable laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Discloser</b>                   | a party disclosing its Confidential Information to the Recipient, which in the case of the Customer may be the Customer and/or the Authorised Users.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Insolvency Event</b>            | <p>the occurrence of any one or more of the following events in relation to a party:</p> <p>(a) the party becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;</p> <p>(b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the party;</p> <p>(c) an administrative or other receiver, manager, trustee, liquidator, administrator</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                                       | <p>or similar person or officer is appointed to the party and/or over all or any part of the assets of the party;</p> <p>(d) the party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or</p> <p>(e) anything equivalent to any of the events or circumstances listed in limbs (a) to (d) (inclusive) occurs in any applicable jurisdiction.</p>                                                                                   |
| <b>Information</b>                    | means all data, records, reports, results, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other outputs or materials in whatever form, including but not limited to hard copy and electronic form, generated by or on behalf of the Supplier in the performance of this Agreement and made available under or in connection with this Agreement (including the provision of the Mobile App).                                                   |
| <b>Initial Term</b>                   | has the meaning given in the Quote.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Intellectual Property Rights</b>   | (a) patents, inventions, designs, copyright and related rights, database rights, knowhow and Confidential Information, trade marks (whether registered or unregistered) and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (b) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future; and (c) all applications, extensions and renewals in relation to any such rights. |
| <b>IPR Claim</b>                      | any claim or action against the Customer by any third party that the use of the Mobile App (or any part of the Mobile App) by the Customer or its Authorised Users in the Authorised Locations, in accordance with the terms of this Agreement, infringes the copyright of that third party.                                                                                                                                                                                                                                 |
| <b>Material Change</b>                | means a change to any of the Subscription T&Cs and any terms linked to within that, in the reasonable opinion of Supplier would be likely to be detrimental to the Customer's use of the Mobile App.                                                                                                                                                                                                                                                                                                                         |
| <b>Mobile App</b>                     | means the Kit Prep iOS application which is made available through the Apple App Store or enterprise distribution to be used by Authorised Users to access the Mobile App in accordance with the terms of this Agreement.                                                                                                                                                                                                                                                                                                    |
| <b>Minimum Technical Requirements</b> | the minimum technical requirements the Customer is required to meet in order to enable its Authorised Users to access and use the Mobile App in accordance with this Agreement (as may be notified by the Supplier from time to time, including in the Service Description).                                                                                                                                                                                                                                                 |
| <b>Mobile App</b>                     | the software-as-a-service (SaaS) solution that the Supplier provides to the Customer via the Mobile App pursuant to this Agreement.                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>party</b>                          | a party to this Agreement (and "parties" shall be construed accordingly).                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Permitted Users</b>                | (a) in relation to the Customer, its Authorised Users; and<br>(b) in relation to the Supplier, the Supplier Personnel.                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Purpose</b>                        | means the Customer's purpose for acquiring access to the Mobile App, as set out in the Quote.                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Quote</b>                          | means the final version of any quotation which refers to this Agreement and is signed on behalf of the Supplier and issued by the Supplier to the Customer and which is signed and returned by the Customer. For the avoidance of doubt, the signed quotation shall form part of this Agreement.                                                                                                                                                                                                                             |
| <b>Recipient</b>                      | a party receiving Confidential Information from the Discloser, which in the case of the Supplier may be the Supplier and/or the Supplier's Affiliates, as relevant.                                                                                                                                                                                                                                                                                                                                                          |
| <b>Sales Tax</b>                      | any applicable national, federal, state and local sales, use, value added, excise and other similar taxes, fees and surcharges that are legally or by custom borne by a purchaser of goods or services.                                                                                                                                                                                                                                                                                                                      |
| <b>Service Commencement Date</b>      | such date as Supplier shall make available the Mobile App to the Customer[, following completion of the implementation services].                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Service Description</b>            | the published specification for the Mobile App setting out (amongst other things) a description of the operation and functioning of the Mobile App, the services available via the Mobile App, and the Supplier's processes and procedures for maintaining the security, availability and performance of the Mobile App, as updated by the Supplier from time to time.                                                                                                                                                       |
| <b>Software</b>                       | the software used by the Supplier and/or any the Supplier Affiliates or sub-contractors in delivering the Mobile App.                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Subscription Fees</b>              | the Annual Subscription Fee, and any other subscription fees payable under or in connection with this Agreement by the Customer to the Supplier for the provision of the Mobile App (including pursuant to Clause 7).                                                                                                                                                                                                                                                                                                        |
| <b>Supplier Personnel</b>             | the Supplier's Affiliates and the Supplier's and its Affiliates' employees, directors, officers, agents and subcontractors.                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Term</b>                           | has the meaning given in Clause 2.3.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Virus</b>                          | 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                                                                                                         |

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|             | 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. |
| <b>Year</b> | the period of twelve (12) months commencing on the Commencement Date, and each and any period of twelve (12) months commencing on an anniversary of the Commencement Date subsequent thereto.                                               |

## 2. Interpretation

2.1 The following rules of interpretation shall apply in this Agreement:

- 2.1.1 The Clause and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
- 2.1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.1.4 Unless the context otherwise requires: (a) words in the singular shall include the plural and in the plural include the singular; and (b) a reference to one gender shall include a reference to the other genders.
- 2.1.5 A reference to **writing** or **written** includes e-mail.
- 2.1.6 References to Clauses are to the Clauses of the Subscription T&Cs. References to Schedules are references to the Schedules attached to the Subscription T&Cs.
- 2.1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and as amended by any subsequent statute or statutory provision. Where a change to a statute or statutory provision results in the Supplier and/or any the Supplier Affiliates or sub-contractors incurring additional or increased costs to achieve compliance in relation to the Mobile App, the Supplier reserves the right to charge fees to reflect such additional or increased costs on no less than thirty (30) days' prior written notice.
- 2.1.8 Any phrase introduced by the expressions **including**, **includes**, **in particular** or any similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.
- 2.1.9 The terms "**controller**", "**processor**", "**personal data**" and "**process**" shall be interpreted in accordance with the GDPR, or other applicable Data Protection Legislation in the relevant jurisdiction.