

Horsefly

Platform Analytics and API Package terms and conditions

Part 1 – Contract Terms

AGREED TERMS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply throughout this Contract.

“AIRT”: means AI Recruitment Technologies Ltd, trading as Horsefly, company number 07651107 whose registered office is at Upper Floor, The Granary, Stanley Grange, Ormskirk Road, Knowsley, Prescott, Merseyside, L34 4AT.

“API”: the Horsefly Analytics application programming interface described in the Specification, the API Documentation, and any other related API materials made available to Client by AIRT including, without limitation, through its website at developer.horseflyanalytics.com as each may be updated from time to time by incorporation of a Maintenance Release or Feedback.

“Authorised User”: those individuals who are authorised by AIRT to use the Services having been assigned unique login credentials to access the Horsefly Platform and/or to access the API via the API Key.

“Business Day”: a day other than a Saturday, Sunday or public holiday in England.

“Contract”: the contract between AIRT and the Customer for the supply of the Services in accordance with this Contract and the Order Form.

“Customer”: the person or persons specified as such in the Order Form.

“Data”: all data published or made available through the API or the Horsefly Platform, along with any related metadata.

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

“Effective Date”: the date of commencement of this Contract being the date on which the last party signs the Order Form, unless otherwise stated on the Order Form.

“Fair Use Policy”: AIRT’s fair use policy available on the AIRT’s website.

“Feedback”: all suggestions, comments, or other feedback regarding the Horsefly Platform, API or Data provided by or on behalf of the Customer.

“Horsefly Platform”: AIRT’s “Horsefly” labour market analytics platform available at horseflyanalytics.com.

“Initial Subscription Term”: the initial term of the Contract as set out in the Order Form, which shall commence on the Effective Date unless otherwise stated on the Order Form.

“Intellectual Property Rights”: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

“Maintenance Release”: a release of the Horsefly Platform or the API that corrects faults or amends or upgrades) the Horsefly Platform or the API, but which does not constitute a New Version and/or does not add new features or functions which are offered for purchase for additional fees.

“New Version”: any new version of the Horsefly Platform or the API which from time to time is publicly marketed and offered for purchase by AIRT in the course of its normal business.

“Order Form”: the Order Form attached to this Contract relating to the Customer.

“Renewal Term”: has the meaning set out in clause 16.2.

“Retail Prices Index”: the Retail Prices Index (RPI) (United Kingdom).

“Services”: means the provision of access to the API and/or the Horsefly Platform as the context requires.

“Subscription Fees”: the subscription fees payable by the Customer to AIRT as set out in the Order Form.

“Tax”: all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or other liabilities in the nature of taxation wherever chargeable and in any applicable jurisdiction together with any penalty, fine, surcharge, interest, charges or costs relating to the same.

“Term”: has the meaning set out in clause 16.2.

“UK Data Protection Legislation”: the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data as may be amended from time to time.

“Unauthorised Access”: means access to, or use of the Services by a third party using the Customers or its Authorised Users’ credentials or API Key whether or not deliberately facilitated by the Customer.

“Usage Data”: has the meaning set out in clause 4.2.

“Virus”: any thing or device (including any software, code, file or program) 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program 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 and Part headings shall not affect the interpretation of this Contract.
- 1.3 References to clauses and Parts are to clauses and Parts to this Contract and any reference to this Contract includes each of Parts 1 to 3 (inclusive).
- 1.4 A reference to **this Contract** or to any **other agreement or document referred to in this Contract** is a reference to this Contract or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 BASIS OF CONTRACT

- 2.1 The Order Form constitutes an offer by the Customer to subscribe for the Services in accordance with this Contract.
- 2.2 The Order Form shall only be deemed to be accepted when AIRT confirms acceptance of the Order Form to the Customer and the Contract shall come into existence on the Effective Date.
- 2.3 The terms of this Contract apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.4 The additional terms set out in Part 2 shall apply in respect of the Horsefly Platform only, and the additional terms set out in Part 3 shall apply in respect of the API only.

3 SUBSCRIPTION

- 3.1 In consideration of the Subscription Fees paid by the Customer to AIRT, AIRT
- 3.1.1 shall, during the Term, provide the Services on and subject to the terms of these terms and conditions; and
 - 3.1.2 grants a non-exclusive, non-transferable right to use the Services in accordance with this Contract for the duration of the Term solely for the Customer's business operations (the "**Subscription**").
- 3.2 AIRT shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 3.2.2 unscheduled maintenance performed outside normal business hours, provided that the Supplier has used reasonable endeavours to give the Customer at least four normal business hours' notice in advance.
- 3.3 AIRT will, as part of the Services and at no additional cost to the Customer, provide the Customer with AIRT's standard customer support services during normal business hours subject to its support fair use policy. If AIRT at any time considers that the Customer is likely to be in breach of its support Fair Use Policy (insofar as it relates to Customer support services) it shall advise the Customer and request that it reduces such usage appropriately.
- 3.4 The Customer acknowledges that the Services involve analysing data collected from third parties websites. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such third-party websites or data.
- 3.5 The Customer undertakes that:
- 3.5.1 it shall not use the Horsefly Platform, API, or the Data in any manner or for any purpose that infringes, misappropriates, or otherwise infringes any Intellectual Property Right or other right of any person, or that violates any applicable law;
 - 3.5.2 it shall (and shall ensure that each Authorised User shall) comply at all times with the Fair Use Policy;

3.5.3 it shall not (and shall ensure each Authorised User does not), except to the extent expressly permitted in the Contract:

3.5.3.1 pass or allow access to the Horsefly Platform, API or any of the Data to any third party;

3.5.3.2 access all or any part of the Horsefly Platform, API or Data to build a product and/or service which competes with the API or the goods or services provided by AIRT (or any part of them); or

3.5.3.3 commercially exploit, sell, license or distribute the Horsefly Platform, API or Data;

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

3.5.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.5.4.2 facilitates illegal activity;

3.5.4.3 depicts sexually explicit images;

3.5.4.4 promotes unlawful violence;

3.5.4.5 is discriminatory based on race, gender, religious belief, sexual orientation or disability; or

3.5.4.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and AIRT 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.

3.6 Except as expressly stated in this clause 3, the Customer shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Horsefly Platform, API or Horsefly Platform, in whole or in part (except to the extent that applicable law overrides this provision or any part hereof).

3.7 The Customer shall not use the Horsefly Platform, API or Data other than as specified in this clause 3 without the prior written consent of AIRT.

- 3.8 Should AIRT discover or have reason to believe that there has been Unauthorised Access or use of the Horsefly Platform, API or Data other than as specified in this clause 3 then, without prejudice to AIRT's other rights, AIRT may, in its sole discretion:
- 3.8.1 terminate this Contract, or suspend the Customer's access to and use of the Horsefly Platform, API and Data, on written notice with immediate effect;
 - 3.8.2 require the Customer to pay, for broadening the scope of the licences granted under this Contract to cover the unauthorised use, an amount equal to the fees which AIRT would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 10.8, from such date to the date of payment; and/or
 - 3.8.3 suspend the Customer's access to the Services until the sum reserved to clause 3.9.2 has been paid in full.
- 3.9 The Customer shall use all reasonable endeavours to prevent any Unauthorised Access and in the event of any Unauthorised Access, promptly notify AIRT.
- 3.10 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 PERSONAL DATA

- 4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 4.2 AIRT may collect certain information about the Customer and its personnel, representatives and agents, including Authorised Users, in connection with the Services, as set out in the then-current version of AIRT's privacy policy, available at horseflyanalytics.com/privacy-policy ("**Usage Data**"). This may include information collected through the API or Horsefly Platform. By entering into this Contract, and accessing, using, and providing information to or through the API or Horsefly Platform, the Customer consents, and shall procure all required consents from its personnel, representatives and agents (including End Users) to all actions taken by AIRT with respect to the Usage Data in compliance with the then-current version of AIRT's privacy policy. In the event of any inconsistency or conflict between the terms of the then-current privacy policy and this agreement, the privacy policy will take precedence.
- 4.3 The parties acknowledge that the Usage Data is processed by AIRT as a controller for the purposes of the Data Protection Legislation.

4.4 If AIRT processes any personal data on behalf of the Customer when performing its obligations as set out in this Contract, the parties acknowledge that the Customer shall be the data controller and AIRT shall be a data processor and in any such case:

4.4.1 the Customer acknowledges and agrees that 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 AIRT's other obligations under these terms and conditions;

4.4.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to AIRT so that AIRT may lawfully use, process and transfer the personal data in accordance with these terms and conditions on the Customer's behalf.

4.5 Each party agrees that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data (including Usage Data) or its accidental loss, destruction or damage.

5 AUDIT

5.1 AIRT, or its representative, may physically or remotely monitor and audit the Customer's use of the Services in order to ensure that the Customer is complying with the terms of this Contract

5.2 Where any of the audits referred to in clause 5.1 reveal, or AIRT otherwise discovers or has reason to believe that the API or Data has been used or accessed other than in accordance with this Contract then, without prejudice to AIRT's other rights, AIRT may at its sole discretion:

5.2.1 suspend the Customer's access to the Services while it investigates the matter further; and/or

5.2.2 require the Customer to pay to AIRT an amount equal to the relevant part of the Fee for a period equal to the Initial Subscription Term for each third party and who has had Unauthorised Access, and/or

5.2.3 terminate the Contract immediately.

5.3 The Customer shall keep complete and accurate records to demonstrate its compliance with the terms of this Contract, and shall make such records available for inspection by AIRT, or AIRT's representative, as part of the audit referred to in clause 5.1.

6 CONFIDENTIALITY

- 6.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- 6.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 6.1.2 was in the other party's lawful possession before the disclosure;
 - 6.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 6.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 6.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2 Each party shall, during the Term of this Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Contract) nor without the prior written consent of the other disclose to any third party (except its professional advisers or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Contract, or subsequently comes lawfully into the possession of such party from a third party.
- 6.3 For the avoidance of doubt the Horsefly Platform, API and the Data and the API Key shall be considered the confidential information of AIRT for the purposes of this Contract.
- 6.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 6.5 AIRT shall be entitled to reference the Customer as a user of the Horsefly Platform, API and the Data in AIRT's general marketing literature, including on AIRT's website and other online platforms. The reference to the Customer for these purposes may include a reference to the Customer's corporate name and to any of its trade names and trade marks.
- 6.6 Save as provided for in clause 6.5, no party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any

governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

6.7 The above provisions of this clause 6 shall survive termination of this Contract, however arising.

7 INTELLECTUAL PROPERTY RIGHTS AND FEEDBACK

7.1 All use by the Customer of AIRT Marks, if any, will comply with any usage guidelines that AIRT may specify from time to time. The Customer acknowledges that the Customer's use of AIRT Marks in connection with this Licence will not create any right, title, or interest in or to AIRT Marks in favour of the Customer and all goodwill associated with the use of AIRT Marks will inure to the benefit of AIRT.

7.2 The Customer will promptly notify AIRT if the Customer becomes aware of any infringement of any Intellectual Property Rights in the Services, the Horsefly Platform, API, Data, Feedback and AIRT Marks and will fully co-operate with AIRT in any legal action taken by AIRT to enforce AIRT's Intellectual Property Rights.

7.3 The Customer acknowledges that all Intellectual Property Rights in the Services, the Horsefly Platform, API, Data, Feedback and AIRT Marks, belong and shall belong to AIRT, and the Customer shall have no rights in or to the same other than the right to use them in accordance with the terms of this Contract.

7.4 AIRT undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Services, the Horsefly Platform, API, Data or AIRT Marks (or any part thereof) in accordance with the terms of this Licence infringes the UK Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim.

7.5 For the avoidance of doubt, clause 7.4 shall not apply where the Claim in question is attributable to:

7.5.1 possession or use of the Services, the Horsefly Platform, API, Data or AIRT Marks (or any part thereof) by the Customer other than in accordance with the terms of this Licence;

7.5.2 use of the Services, the Horsefly Platform, API or Data in combination with any hardware or software not supplied or specified by AIRT if the infringement would have been avoided by the use of the API or Data not so combined; or

7.5.3 use of a non-current release of the Services, the Horsefly Platform, the API, or Data.

- 7.6 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, AIRT's obligations under clause 7.4 are conditional on the Customer:
- 7.6.1 as soon as reasonably practicable, giving written notice of the Claim to AIRT, specifying the nature of the Claim in reasonable detail;
 - 7.6.2 not making any admission of liability, agreement or compromise in relation to the Claim;
 - 7.6.3 giving AIRT and its professional advisers all reasonable support and access to its staff, facilities and documentary information as is necessary for the purpose of assessing the Claim; and
 - 7.6.4 taking such action as AIRT may reasonably request to avoid, dispute, compromise or defend the Claim.
- 7.7 If any Claim is made, or in AIRT's reasonable opinion is likely to be made, against the Customer, AIRT may at its sole option and expense:
- 7.7.1 procure for the Customer the right to continue to use the Services, the Horsefly Platform, the API, Data or AIRT Marks (or any part thereof) in accordance with the terms of this Licence;
 - 7.7.2 modify the Services, the Horsefly Platform, the API, Data or AIRT Marks so that the same ceases to be infringing;
 - 7.7.3 replace the Services, the Horsefly Platform, the API, Data or AIRT Marks with non-infringing versions; or
 - 7.7.4 terminate this Licence immediately by notice in writing to the Customer and refund any of the Fees paid by the Customer as at the date of termination (less (i) a reasonable sum in respect of the Customer's use of the Services, the Horsefly Platform, the API or Data to the date of termination or, if greater (ii) a pro-rated amount to reflect the amount of the Initial Term or Renewal Term which has expired as at the date of termination) on return of all copies thereof.
- 7.8 This clause 7 constitutes the Customer's exclusive remedy and AIRT's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 11.
- 7.9 In respect of Feedback:
- 7.9.1 AIRT shall not be obliged to take any action in response to the Feedback.

- 7.9.2 All rights, title and interest in any Feedback shall vest in AIRT on creation. The Customer hereby assigns to AIRT absolutely with full title guarantee all right, title and interest in and to the Feedback and any and all Intellectual Property Rights therein in each case for the whole term including any renewals, reversions, revivals and extensions and together with all related rights and powers arising or accrued.
- 7.9.3 Without prejudice to its other rights and remedies (including under this Contract), AIRT will be free to use, disclose, reproduce, distribute, implement in Horsefly Platform or API and otherwise commercialise all Feedback provided by the Customer without obligation or restriction of any kind.

8 CUSTOMER OBLIGATIONS

8.1 The Customer shall:

- 8.1.1 provide AIRT with all necessary co-operation in relation to this Contract in order to provide the Services;
- 8.1.2 without affecting its other obligations under this Contract, comply with all applicable laws and regulations with respect to its activities under this Contract;
- 8.1.3 carry out all of its responsibilities set out in this Contract 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, AIRT may adjust any agreed timetable or delivery schedule as reasonable necessary.
- 8.1.4 ensure that the Authorised Users use the Services in accordance with this Contract and shall be responsible for any Authorised User's breach of this Contract;
- 8.1.5 obtain and maintain all necessary licences, consents and permissions necessary for AIRT, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;
- 8.1.6 comply with all local laws and regulations relating to the Services and advise AIRT promptly if the Services breach or are in contravention of any of the same;
- 8.1.7 ensure that its network and systems comply with the relevant specifications provided by AIRT from time to time; and
- 8.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to AIRT'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.

9 FEES

- 9.1 The Customer shall pay the Subscription Fees to AIRT in accordance with this clause 9 and as set out in the Order Form.
- 9.2 Unless otherwise set out in the Order Form:
- 9.2.1 the Subscription Fees in respect of the Initial Subscription Term shall be invoiced in advance on the Effective Date; and
 - 9.2.2 the Subscription Fees in respect of each Renewal Term shall be invoiced on or before the first Business Day of each Renewal Term.
- 9.3 Unless otherwise set out in the Order Form, all invoices under this Contract are payable within 30 days of the date of the invoice.
- 9.4 All amounts and fees stated or referred to in this Contract and the Order Form:
- 9.4.1 shall be payable in pounds sterling or other currency as confirmed in the Order Form;
 - 9.4.2 are, subject to clause 11.4.2, non-cancellable and non-refundable;
 - 9.4.3 are exclusive of Tax and AIRT shall provide the Customer with a valid Tax invoice.
- 9.5 The Customer shall pay any duties or taxes imposed on the supplies made under this Contract and shall reimburse AIRT for any such duties or taxes paid by AIRT. If the Customer is required to make any deduction for or on account of tax from any payment due under this Contract ("**Tax Deduction**") then the amount of the payment due under this Contract shall be increased so that AIRT receives an amount equal to the amount that would have been received by it, had the Customer not been required to make any Tax Deduction.
- 9.6 If the Customer fails to make any payment due to AIRT under this Contract by the due date for payment, then, without limiting AIRT's other rights and remedies, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.7 AIRT shall increase the Subscription Fees automatically at the start of each Renewal Term to reflect increases in its costs of supplying services under this Contract indicated by the percentage increase in the Retail Prices Index during the previous year plus 2% or 2% during any time when the Retail Prices Index during the previous year is less than zero.

10 INDEMNITY

- 10.1 The Customer shall defend, indemnify and hold harmless AIRT 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.
- 10.2 AIRT shall defend the Customer, its officers, directors and employees against any claim that the Services infringe 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:
- 10.2.1 AIRT is given prompt notice of any such claim;
- 10.2.2 the Customer provides reasonable co-operation to AIRT in the defence and settlement of such claim, at AIRT's expense; and
- 10.2.3 AIRT is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim, AIRT 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 these terms and conditions on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall AIRT, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 10.4.1 a modification of the Services or (any part of them) by anyone other than AIRT; or
- 10.4.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by AIRT; or
- 10.4.3 the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
- 10.4.4 the Customer's use of the Services in a manner which breaches or contravenes local laws or regulations.
- 10.5 The foregoing and clause 11.4.2 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub- contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11 LIMITATION OF LIABILITY

11.1 This clause 11 sets out the entire financial liability of AIRT to the Customer:

11.1.1 arising under or in connection with the Contract;

11.1.2 in respect of any use made by the Customer of the Services or any part of them; and

11.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.

11.2 All references to "AIRT" in this clause 11 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of AIRT, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 17.14.

11.3 Except as expressly and specifically provided in this Contract:

11.3.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. AIRT shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AIRT by the Customer in connection with the Services, or any actions taken by AIRT at the Customer's direction;

11.3.2 the Customer is responsible for all acts and omissions of Authorised Users in connection with their use of the Services and the Data, if any. Any act or omission by an Authorised User that would constitute a breach of this Contract if taken by the Customer will be deemed a breach of this Contract by the Customer; and

11.3.3 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 this Contract; and

11.3.4 the Services are provided to the Customer on an "as is" basis.

11.4 Except as expressly provided for in clause 11.5:

11.4.1 AIRT shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

11.4.1.1 special damage even if AIRT was aware of the circumstances in which such special damage could arise;

- 11.4.1.2 loss of profits;
- 11.4.1.3 loss of anticipated savings;
- 11.4.1.4 loss of business opportunity;
- 11.4.1.5 loss of goodwill;
- 11.4.1.6 loss or corruption of data,

provided that this clause 11.4.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 11.4.2 or any other claims for direct financial loss that are not excluded by any of categories 11.4.1.1 to 11.4.1.6 inclusive of this clause 11.4.1; and

- 11.4.2 the total liability of AIRT, whether in contract, tort (including negligence) or otherwise and whether in connection with this Contract or any collateral contract, shall in no circumstances exceed a sum equal to the total Fees paid during the 12 months preceding the date on which the claim arose.

- 11.5 The exclusions in clause 11.3 and 11.4 shall apply to the fullest extent permissible at law, but AIRT does not exclude liability for:

- 11.5.1 death or personal injury caused by the negligence of AIRT, its officers, employees, contractors or agents;
- 11.5.2 fraud or fraudulent misrepresentation;
- 11.5.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 11.5.4 any other liability which may not be excluded by law.

12 EXPORT

- 12.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 12.2 Each party undertakes:

- 12.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 12.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

13 DURATION AND TERMINATION

- 13.1 Unless terminated earlier in accordance with this clause 13 or otherwise set out in the Order Form, this Contract shall commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods of time equal to the Initial Subscription Term (each a “**Renewal Term**”) unless either party gives the other party written notice of non-renewal at least 60 calendar days before the commencement of the next Renewal Term. The Initial Subscription Term, together with each Renewal Term, shall be deemed to be a “**Term**”.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
 - 13.2.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 7 (seven) days after being notified in writing to make such payment;
 - 13.2.2 the other party commits a material breach of any other term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 13.2.3 the other party repeatedly breaches any of the terms of these terms and 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 terms and conditions;
 - 13.2.4 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or
 - 13.2.5 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);

- 13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
 - 13.2.7 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 11.2.4 and to clause 11.2.6 (inclusive);
 - 13.2.8 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 13.2.9 there is a change of control of the Customer (in which circumstances only AIRT may terminate this Contract in accordance with this clause); and
 - 13.2.10 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.
- 13.3 For the purposes of clause 13.2.2, a material breach means a breach that has a serious effect on the benefit the terminating party would otherwise derive from this Licence or otherwise over any 2 (two) month period during its term.
- 13.4 The parties agree that where the Customer's access to either the API or the Horsefly Platform is terminated in accordance with clause 13.3, then the Customer's access to the remaining Service will also be terminated.
- 13.5 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 13.6 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 13.7 On termination for any reason:
- 13.7.1 all rights and licences granted to the Customer under this Contract shall cease;
 - 13.7.2 the Customer shall cease all activities authorised by this Contract;
 - 13.7.3 the Customer shall immediately pay to AIRT any sums due to AIRT under this Contract; and

13.7.4 the Customer shall immediately delete or return to AIRT (at AIRT's option) all copies of the Horsefly Platform, the API and Data then in its possession, custody or control and, in the case of deletion, certify to AIRT that it has done so.

13.8 Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.

14 SUB-LICENSING

14.1 The Customer shall not:

14.1.1 sub-license, assign or novate the benefit or burden of this Contract in whole or in part;

14.1.2 allow the Horsefly Platform, API, Data or any of its rights under this Contract to become the subject of any charge, lien or encumbrance; and

14.1.3 deal in any other manner with any or all of its rights and obligations under this Contract,

without the prior written consent of AIRT, such consent not to be unreasonably withheld or delayed.

14.2 AIRT may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Contract, provided it gives written notice to the Customer.

14.3 Notwithstanding clause 6 a party assigning any or all of its rights under this Contract may disclose to a proposed assignee, on a confidential basis, any information in its possession that relates to this Contract or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 14.3 shall be made until notice of the identity of the proposed assignee has been given to the other party.

15 FORCE MAJEURE

Neither party shall be in breach of this Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 (two) months, the party not affected may terminate this Licence by giving 7 (seven) days' written notice to the affected party.

16 NOTICES

- 16.1 Any notice required to be given shall be in writing and sent to the party at the address or email address set out in the Order Form or as otherwise notified in writing to the other party.
- 16.2 This clause 16.2 sets out the delivery methods for sending a notice to a party and for each delivery method, the date and time when the notice is deemed to have been received:
- 16.2.1 if delivered by hand, at the time the notice is left at the address;
 - 16.2.2 if sent by pre-paid first class post or other next working day delivery service providing proof of postage, at 9.00am on the second Business Day after posting;
 - 16.2.3 if sent by pre-paid airmail providing proof of postage, at 9.00am on the fifth Business Day after posting; or
 - 16.2.4 if sent by email, at the time of transmission.
- 16.3 If deemed receipt under clause 16.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 16.3, business hours 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.4 This clause 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17 GENERAL

- 17.1 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representative).
- 17.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.3 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive 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.
- 17.4 Except as expressly provided for in the Contract, the rights and remedies provided for under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.5 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

- 17.6 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 17.7 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 17.8 Nothing in clauses 17.5 to 17.7 shall limit or exclude any liability for fraud.
- 17.9 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 17.10 If any provision or part-provision of this Contract is deemed deleted under clause 17.9 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.11 The Customer shall not, without the prior written consent of AIRT, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 17.12 AIRT 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 Contract.
- 17.13 Nothing in these terms and conditions 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).
- 17.14 Otherwise than as expressly set out, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 17.15 This Contract 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.
- 17.16 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Part 2 – Horsefly Platform Terms

1 Supply of the Horsefly Platform

- 1.1 The Supplier shall make the Horsefly Platform available to the Customer within 10 Business Days of the Effective Date following completion of its configuration processes to the Customer's account.
- 1.2 The Supplier shall at its own expense provide the Customer with training on how to use the Horsefly Platform either at the Customer's premises or remotely online (in each case at the Supplier's sole discretion).

2 Further Customer Obligations

- 2.1 The Customer undertakes that:
 - 2.1.1 it will not allow or suffer its Subscription to be used or accessed by anyone who is not an Authorised User;
 - 2.1.2 each Authorised User shall keep a secure password for his use of the Services, that such passwords shall be changed no less frequently than every two months and that each Authorised User shall keep his password confidential;
 - 2.1.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to AIRT within 5 Business Days of AIRT's written request at any time or times;

Part 3 – API Terms

1 Definitions

1.1 The following definitions apply in this Part 3.

"AIRT Marks": AIRT's proprietary trade marks, trade names, branding, or logos made available for use in connection with the API or Data pursuant to this Contract.

"API Call": each request for data relating to a specific geographic location made from an Application via the API to interact with the Horsefly Platform. Where a single request contains multiple location queries (whether submitted individually or as a batch), each location query shall constitute a separate API call.

"API Documentation": means the API documentation made available to the Customer by AIRT.

"Application": any applications develop by, or on behalf of, the Customer to interact with the API.

"Excess Usage Fees": as defined in clause 3.5 of this Part 3.

"Fair Use Limits": means 250,000 API Calls per year.

2 Licence

2.1 In addition to the rights granted under clause 3, AIRT grants to the Customer a non-exclusive licence during the Term:

2.1.1 for the Authorised Users to access the API solely for the purposes of:

2.1.1.1 internally developing the Applications that will communicate and interoperate with the Horsefly Platform for the Release Purpose;

2.1.1.2 making API Calls in compliance with the Fair Use Limits;

2.1.2 to display the Data received from the API, together with any Derived Data, within the Application for the Release Purpose;

2.1.3 to display, at the Customer's choice and discretion, certain AIRT Marks save that where the same is displayed they must be accompanied by the phrase "powered by Horsefly" and displayed in compliance with any brand guidelines issued by AIRT from time to time.

- 2.2 The Customer's sole means of accessing the API, for the purposes of clause 2.1 of this Part 3, shall be via the API Key.

3 Additional Customer obligations

- 3.1 In order to use and access the API, the Customer must obtain an API Key which will be provided on completion of registration via the registration link which will be emailed to the Customer's registered email address. The Customer may not share the API Key with any third party, must keep the API Key and all log-in information secure, and must use the API Key as the Customer's sole means of accessing the API. The API Key may be replaced at any time by AIRT on notice to the Customer.

- 3.2 The Customer undertakes that it shall:

- 3.2.1 keep a complete and accurate record of:

- 2.2.1.1 its Authorised Users;
- 2.2.1.2 its development of the Application;
- 2.2.1.3 its use of the API and the Data;
- 2.2.1.4 its other obligations under this Contract;

and produce such records to AIRT on request from time to time;

- 3.2.2 notify AIRT as soon as it becomes aware of any unauthorised use of the API, or the Data by any person;

- 3.2.3 not make API Calls in excess of the Fair Use Limits;

- 3.2.4 not remove any proprietary notices from the API or Data;

- 3.2.5 not design or permit the Applications to disable, override, or otherwise interfere with any Supplier-implemented communications to end users, consent screens, user settings, alerts, warning, or the like;

- 3.2.6 not use the API, including in any of the Applications, to replicate or attempt to replace the user experience of Horsefly Platform or to produce a platform to provide labour market talent intelligence and insights;

- 3.2.7 not attempt to cloak or conceal the Customer's identity or the identity of the Applications when requesting authorisation to use the API or making an API Call;

- 3.3 The Customer shall monitor the use of the API for any activity that breaches applicable laws, rules, and regulations or any terms and conditions of this Contract, including any fraudulent, inappropriate, or potentially harmful behaviour, and promptly restrict any offending users of the Applications from further use of the Applications.
- 3.4 In addition to the Subscription Fees, if at any time the Customer exceeds the Fair Use Limits in regards to the API Licence, it shall pay an excess usage fee of £0.50 per API Call ("**Excess Usage Fees**") and any Excess Usage Fees shall be invoiced in arrears on the first Business Day of the Quarter following the Quarter during which such Excess Usage Fees were incurred.

4 Maintenance Releases

The Customer is required to make any change to the Application that is required for integration as a result of any Maintenance Release at the Customer's sole cost and expense as soon as reasonably practicable after receipt.