

## **AppThing “Software-as-a-Service” License**

### **PARTIES**

1. TeraCode Development Group, LLC, a Delaware Corporation having its principal office at 801 Brickell Avenue, 8<sup>th</sup> Floor, Miami, FL, 33141, (the “**Provider**”); and \_\_\_\_\_, a \_\_\_\_\_ having its principal office at \_\_\_\_\_ (the “**Customer**”).

### **AGREEMENT**

#### **1. Definitions**

- 1.1 In this Agreement, except to the extent expressly provided otherwise the following definitions shall apply:

**"Access Credentials"** means the usernames, passwords and other credentials enabling access to AppThing™ (hereafter “the SaaS Platform”), including both access credentials for the User Interface and access credentials for the API (if provided);

**"Agreement"** means this agreement including any Schedules, and any amendments to this Agreement that are executed in writing;

**"API"** means the application programming interface for the SaaS Platform defined by the Provider and made available by the Provider to the Customer for the purpose of retrieving data from the SaaS platform;

**"AppThing™"** means SaaS Platform, as provided as an application that runs on top of AWS IoT Core Services (“**AWS**”) and provides the ability to receive data from remotely connected devices over the Internet, store and retrieve the data in AWS and provide a customisable User Interface for the Customer and Customer’s End Users to visualise the data;

**"AWS"** means the AWS IoT Core Services provided by Amazon Web Services and

includes virtual Cloud-based servers, storage, processing and other services.

**"AWS Charges"** means the charges levied by AWS to the Customer for the hosting of data and are exclusive of the charges for the SaaS Platform license fees;

**"Business Day"** means any weekday other than a public holiday in the US;

**"Business Hours"** means the hours of 09:00 to 17:00 EST/EDT on a Business Day;

**"Charges"** means the following amounts:

- (a) the amounts and fees specified in Section 2 of Schedule 1 (SaaS Platform particulars);
- (b) such amounts as may be agreed in writing by the parties from time to time either as additional fees for the SaaS platform provided or for customization of the SaaS Platform at the behest of the Customer, but not additional services which shall be procured under a separate agreement between Provider and Customer;

**"Customer Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked or described as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential; and
  - (iii) excludes any information that is already in the public domain at the time of the disclosure;

**"Customer Data"** means all data uploaded to or stored on the SaaS Platform by the

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Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the SaaS Platform by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

**"Customer End User"** means any customer of the Customer in this Agreement that is properly authorised by Customer to use the SaaS Platform as either the whole or part of service or solution the Customer provides to its customer;

**"Customer Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but shall exclude any data that is considered Personally Identifying Information ("PII") (e.g. personal names, dates of birth, account numbers, etc.) with respect to which the Provider is a data controller and hereby agrees shall not, at any time, be stored or placed on the SaaS platform for any reason whatsoever;

**"Data Protection Laws"** means the UK GDPR and the EU GDPR and all other applicable laws relating to the processing of Personal Data;

**"Documentation"** means the documentation for the SaaS Platform produced by the Provider and delivered or made available by the Provider to the Customer, typically in a digital format;

**"Effective Date"** means the date of execution of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third

party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights, rights in designs and moral rights);

**"Mobile App"** means the version of the SaaS Platform application user interface that runs on mobile devices and/or tablets without modification or customisation and which may be made free available to Customer and Customer End-Users;

**"Personal Data"** means personal data under any of the Data Protection Laws of the USA, UK or EU;

**"Platform"** or **"SaaS Platform"** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system, and server software is installed;

**"SaaS Platform Defect"** means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer

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to use the SaaS Platform or Hosted Services;

- (b) any use of the SaaS Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement;
- (d) an incompatibility between the SaaS Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification; and/or
- (e) an interruption of AWS services outside the control of the Provider;

**"SaaS Platform Specification"** means the specification for the SaaS Platform and Hosted Services set out in Section 1 of Schedule 1 (Hosted Services particulars);

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**"Supported Web Browser"** means the current release from time to time of any web browser that the Provider agrees in writing shall be supported;

**"Term"** means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

**"User Interface"** means the interface for the SaaS Platform designed to allow individual human users to access and use the SaaS Platform and which may run on supported web browsers, mobile and/or tablet devices.

### 2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force for a period of 12 months from the Effective Date. At the end of 12 months, this Agreement shall automatically renew for a period of 12 months unless Customer informs Provider in writing of Customer's intent to terminate this Agreement no less than 30 days prior to the end of the Term as defined herein subject to termination in accordance with Clause 16 or any other provision of this Agreement.

### 3. SaaS Platform

- 3.1 The Provider shall provide, or shall ensure that the SaaS Platform will provide, to the Customer upon the Effective Date the Access Credentials necessary to enable the Customer to access and use the SaaS Platform.
- 3.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the SaaS Platform by means of the User Interface and the API for the intended business purposes of the Customer in accordance with the Documentation during the Term.
- 3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
  - (a) the User Interface may only be used through a Supported Web Browser, Mobile and/or Tablet device;
  - (b) the User Interface may only be used by the Customer and the Customer's End Users;
  - (c) the API may only be used by an application or applications approved by

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- the Provider in writing and controlled by the Customer.
- 3.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:
- (a) the Customer acknowledges it does not have the right to sub-license its right to access and use the SaaS Platform without the prior written permission of the Provider;
  - (b) the Customer must not permit any unauthorised person or application to access or use the SaaS Platform;
  - (c) the Customer must not make any alteration to the SaaS Platform except as permitted by the User Interface related to the logo, colors of the UI; and
  - (f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the SaaS Platform without the prior written consent of the Provider.
- 3.5 The Customer agrees to implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the SaaS Platform by means of the Access Credentials.
- 3.6 The Provider shall use all reasonable endeavours to maintain the availability of the SaaS Platform to the Customer, but does not guarantee 100% availability, specifically as relates to the unavailability of AWS services beyond the control of the Provider. Where the SaaS Platform is not available for use by the Customer in accordance with the specification, other than a set out in clause 3.7, for a period of more than 10 hours in any calendar month, the Provider shall rebate to the Customer such proportion of the charges relating to the unavailability of the SaaS Platform beyond such 10 hour period. Where the SaaS Platform is not available for more than 10 hours in each of 3 consecutive months, such unavailability shall entitle the Customer to exercise its rights under clause 16.2.
- 3.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
  - (b) a fault or failure of AWS, the Internet in general or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of this Agreement; or
  - (e) scheduled maintenance carried out in accordance with this Agreement.
- 3.8 The Customer must ensure that all persons using the SaaS Platform with the authority of the Customer or by means of the Access Credentials comply with Schedule 2.
- 3.9 The Customer must not use the SaaS Platform in any way that causes, or may cause, damage to the SaaS Platform or impairment of the availability or accessibility of the SaaS Platform.
- 3.10 The Customer must not use the SaaS Platform in any way that uses excessive SaaS Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the SaaS Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of SaaS Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 3.11 The Customer must not use the SaaS Platform:

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- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.12 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the SaaS Platform, either during or after the Term.
- 3.13 The Provider may suspend the provision of the SaaS Platform if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the SaaS Platform on this basis.
- 4. Scheduled maintenance**
  - 4.1 The Provider may from time to time suspend the SaaS Platform for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 4.
  - 4.2 The Provider shall, where practicable, give to the Customer at least 3 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the SaaS Platform or have a material negative impact upon the SaaS Platform.
  - 4.3 The Provider shall ensure that all scheduled maintenance is carried out outside standard Business Hours in the EST of the USA.
  - 4.4 The Provider shall ensure that, during each calendar month, the aggregate period during which the SaaS Platform are unavailable as a result of scheduled maintenance, or negatively affected by scheduled maintenance to a material degree, does not exceed 10 hours.
- 5. Support Services**
  - 5.1 The Provider shall provide the Support Services to the Customer during the Term.
  - 5.2 The Provider shall make available to the Customer a helpdesk.
  - 5.3 The Provider shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.
  - 5.4 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
  - 5.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk, and in any event, any such requests will be responded to within 24 hours of receipt by the Provider.
  - 5.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
- 6. Customer Data**
  - 6.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
  - 6.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not

infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

6.3 The Provider shall maintain its AWS systems, in conjunction with AWS services, such that Customer Data is available when the SaaS Platform is available, which includes ensuring that all Customer Data is stored in such a way as to prevent loss, accidental erasure, corruption or otherwise made unusable by the Customer for the intended purpose.

6.4 For the avoidance of doubt, Provider is not responsible for any loss of data due to a failure by AWS. In the event of any loss of data due to the failure of AWS, Provider will work with AWS to make reasonable efforts to restore data and act on behalf of Customer in managing the AWS response to such an incident.

6.5 Customer acknowledges that the SaaS Platform relies on AWS services to securely store Customer Data and that no physical backups of data shall be made by Provider and that Provider has no obligation to restore data in the event of an AWS failure. Customer is free to use the user interface to download data and store the same in a manner of their discretion.

## **7. Intellectual Property Rights**

7.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **8. Charges**

8.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

8.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being

exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 8.2.

8.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

8.4 The Provider reserves the right to increase the Charges by giving to the Customer not less than 90 days' written notice of the variation, providing that no such variation shall occur before the annual anniversary date of the Agreement and no such variation shall constitute a percentage increase that exceeds the lesser of 5% over the current Charges or an increase in line with CPI.

## **9. Payments**

9.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Section 2 of Schedule 1 (SaaS Platform particulars). If Provider provides discounts for pre-payment of Charges, Customer may avail themselves of such discounts in their sole discretion. Discounts only apply if paid within the time limits set forth for such discounts in Section 2 of Schedule 1 (SaaS Platform particulars).

9.2 The Customer must pay the Charges to the Provider within the period of 30 days following the receipt of an invoice issued in accordance with this Clause 9, providing that the Charges must in all cases be paid before the commencement of the period to which they relate.

9.3 The Customer must pay the Charges by bank transfer or check. There is a \$10.00 fee for processing a check payment.

9.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:

- (a) claim interest at a rate of 1.5% per month on any outstanding amount.

## **10. Provider's Confidentiality Obligations**

10.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than to provide the service on behalf of the Customer and then, in the provision of the SaaS Platform to the Customer.

10.2 Notwithstanding Clause 10.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

10.3 This Clause 10 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

10.4 The restrictions in this Clause 10 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

10.5 The provisions of this Clause 10 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

## **11. Data protection**

11.1 The Provider shall comply with the Data Protection Laws with respect to the processing of the Customer Data.

11.2 The Customer warrants that it shall not disclose any Personal Data, either of the Customer or the Customer End Users to the Provider under or in connection with this Agreement. The only data permitted to be stored via the platform is non-personal data or "machine data".

11.3 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of Customer Data infringes the Data Protection Laws.

- 11.4 As at the Effective Date, the Provider is hereby authorised by the Customer to engage Amazon Web Services et. al. (“AWS”), as sub-processors with respect to Customer Data, in order to make data available in the user interface for visualisation. AWS shall be used to receive, store and process machine data sent up to the Provider’s platform which runs atop AWS.
- 11.5 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organizational measures to ensure that it performs its obligations in accordance with this Agreement in respect of processing Customer Data and shall assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a Customer’s rights under the Data Protection Laws.
- 11.6 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of Customer Data, the notification of Customer Data breaches to the supervisory authority, the communication of Customer breaches to the Customer, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.6
- 11.7 The Provider must notify the Customer of any Customer Data breach affecting the Customer Data without undue delay and, in any case, not later than 72 hours after the Provider becomes aware of the breach.
- 11.8 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 11 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.8, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer and not more than once per calendar year) of the standard information security questionnaire of the Customer.
- 11.9 The Provider shall, at the choice of the Customer, delete all of the Customer Data from the SaaS Platform and AWS upon termination of this Agreement.
- 11.10 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Data with the Data Protection Laws and this Clause 11. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.10, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of this Agreement or any security breach affecting the systems of the Provider or AWS.
- 11.11 If any changes or prospective changes to the Data Protection Laws, where applicable, result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Customer Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.
- 12. Warranties**
- 12.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;

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- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
  - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 12.2 The Provider warrants to the Customer that:
- (a) the SaaS Platform will conform in all material respects with the SaaS Platform Specification;
  - (b) the SaaS Platform will be free from SaaS Platform Defects;
  - (c) the SaaS Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
  - (d) the SaaS Platform will incorporate security features reflecting the requirements of good industry practice.
- 12.3 The Provider warrants to the Customer that the SaaS Platform, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under US, UK or EU law.
- 12.4 The Provider warrants to the Customer that the SaaS Platform, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 12.5 If the Provider reasonably determines, or any third party alleges, that the use of the SaaS Platform by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the SaaS Platform in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - (b) procure for the Customer the right to use the SaaS Platform in accordance with this Agreement.
- 12.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 12.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.
- 13. Acknowledgements and Warranty Limitations**
- 13.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the SaaS Platform will be wholly free from defects, errors and bugs.
- 13.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the SaaS Platform will be entirely secure.
- 13.3 The Customer acknowledges that the SaaS Platform are designed to be compatible only with that software and those systems specified as compatible in the SaaS Platform Specification; and the Provider does not warrant or represent that the SaaS Platform will be compatible with any other software or systems.

13.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the SaaS Platform; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the SaaS Platform or the use of the SaaS Platform by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

#### **14. Limitations and Exclusions of Liability**

14.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in this Agreement:

- (a) are subject to Clause 14.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

14.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

14.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

14.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

14.6 Neither party shall be liable to the other party in respect of any loss of use or production.

14.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

14.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.

14.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

14.10 The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 3 month period preceding the commencement of the event or events.

14.11 The aggregate liability of each party to the other party under this Agreement shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 12-month period preceding the commencement of the event or events.

#### **15. Force Majeure Event**

15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

15.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and

- (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 15.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **16. Termination**

- 16.1 Either party may terminate this Agreement by giving to the other party at least 90 days' written notice of termination.
- 16.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement and such material breach is not cured within 10 days of receipt of written notice.
- 16.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under this Agreement).

## **17. Effects of termination**

- 17.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.12, 9.2, 9.4, 10, 11, 14, 17, 20 and 21.
- 17.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 17.3 Within 30 days following the termination of this Agreement for any reason the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement.

## **18. Notices**

- 18.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 18.2 and Section 3 of Schedule 1 (SaaS Platform particulars)):
- (a) delivered personally, sent by courier, or delivery service (including the USPS) with tracking capabilities in which case the notice shall be deemed to be received upon hand delivery or verification of delivery via a signature or tracking number; or
  - (b) sent by email in which case the notice shall be deemed to be received 2 Business Days following posting, providing that, if the stated time of

deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

- 18.2 The Customer's contact details for notices under this Clause 18 are as follows:

TOTO USA, Inc.  
1155 Southern Road  
Morrow, GA 30260  
Attn. Legal

- 18.3 The Provider's contact details for notices under this Clause 18 are as follows:

TeraCode, Inc.  
801 Brickell Ave, 8<sup>th</sup> Fl  
Miami, FL 33131  
Attn. Legal

- 18.4 The addressee and contact details set out in Clause 18.2 and Section 3 of Schedule 1 (SaaS Platform particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 18.

## **19. Subcontracting**

- 19.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.
- 19.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 19.3 Notwithstanding the provisions of this Clause 19 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract the hosting of the SaaS Platform to AWS, however, the Provider shall remain the primary resource and relation to the support and maintenance of elements of the SaaS Platform.

Nothing in this Agreement shall obligate AWS to Customer and the Provider assumes full responsibility for the proper use of AWS at all times the AWS service is available for use.

## **20. General**

- 20.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 20.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 20.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 20.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 20.6 Subject to Clause 14.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

20.7 This Agreement will be governed by the substantive laws of the State of Delaware, without regard to conflicts of laws principles. The application to this Agreement of the United Nations Convention on Contracts on Contracts for the International Sale of Goods is hereby expressly excluded.

20.8 All amounts of money payable hereunder shall be payable in U.S. dollars unless otherwise expressly stated or otherwise agreed.

## **21. Interpretation**

21.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

21.2 The Clause headings do not affect the interpretation of this Agreement.

21.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

21.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **22. Execution**

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** \_\_\_\_\_

\_\_\_\_\_  
BY:

\_\_\_\_\_  
NAME:

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
DATE:

**SIGNED BY TERACODE DEVELOPMENT  
GROUP, LLC.:**

\_\_\_\_\_  
BY:

\_\_\_\_\_  
NAME:

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
DATE: