

## IMMENSE PLATFORM SIMULATION AS A SERVICE SUBSCRIPTION TERMS AND CONDITIONS

### PLEASE READ THIS AGREEMENT CAREFULLY

This agreement (**agreement**) is a legal agreement between you (**Customer or you**) and **IMMENSE SIMULATIONS LIMITED** of International House, 36-38 Cornhill, London, EC3V 3NG, England (**Immense or we**) for:

- The Immense Platform (**Software Platform**); and
- Online background information (**Documentation**).

**OPERATING SYSTEM REQUIREMENTS:** The Software Platform is accessed over the internet and therefore you may access the platform from multiple combinations of hardware, browser and operating system. While we test our solutions across many common combinations, our recommendations for full functionality and performance are set out in the Documentation.

If you are entering into these terms and conditions on behalf of a business, company, or other legal entity, you represent that you have the authority to bind such business or entity to this agreement, in which case the terms “you,” “your,” or “user” refer to such business or entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the Services.

We license use of the Software Platform and Documentation to you on the basis of this agreement. We do not sell the Software Platform or Documentation to you. We remain the owners of the Software Platform and Documentation at all times.

### AGREED TERMS

#### 1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Asset Library:** a library of components made up of raw data and derived data components from third parties including without limitation HERE Europe BV, HERE North America LLC (together and individually, **HERE**) and Streetlight Data, Inc (**Streetlight**) which have been configured to be simulation-ready and compatible with the Software Platform.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are allocated User Subscriptions and authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2, as detailed in the Order Form and always in accordance with the terms of this agreement.

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

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or that would reasonably be regarded as confidential, including the information identified as Confidential Information in clause 11.5 or clause 11.6.

**Configuration:** The combination of settings entered by an Authorised User to instruct a particular simulation to be executed on the Software Platform. This may include references to the contents of the Asset Library and any uploaded Customer Data.

**CPI:** the Consumer Prices Index (all items) (United Kingdom).

**Customer Data:** the data inputted by the Customer, Authorised Users, or Immense on the Customer's behalf, for the purpose of using the Services or facilitating the Customer's use of the Services, as applicable.

**Dashboard Data:** the visualisation of the Output Data as rendered by software components embedded in the Software Platform for an Authorised User to view and interpret the Output Data.

**Data Product:** data provided by Streetlight which is sublicensed to the Customer pursuant to this agreement.

**Data Protection Legislation:** the UK Data Protection Legislation and any other relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Documentation:** the document made available to the Customer by Immense online via the Software Platform or such other web address notified by Immense to the Customer from time to time which sets out a description of the Services and background information for the Services.

**Effective Date:** the date upon which the Initial Subscription Term begins, as detailed in the Order Form.

**Excess Scenario Hours Fees:** The fees payable pursuant to clauses 9.5 and 9.6 where a Customer exceeds the Scenario Hours included in its Licence Package.

**Initial Subscription Term:** the initial term of this agreement as set out in the Order Form.

**Intellectual Property Rights:** means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

**Licence Package:** the type of licence to the Services as set out in the Customer's Order Form.

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

**Order Form:** the order form which forms part of this agreement and is entered into between the Customer and Immense setting forth certain details including but not limited to the Subscription Fees, the Initial Subscription Term, and the number of User Subscriptions ordered.

**Output Data:** the results created by the Simulation Engine.

**Renewal Period:** the period described in clause 14.1.

**Scenario Hours:** the compute processing hours included in a Customer's Licence Package.

**Services:** the subscription services, including access to the Software Platform and Dashboard Data, provided by Immense to the Customer under this agreement via <http://platform.immense.ai/> or any other website or API notified to the Customer by Immense from time to time.

**Simulation Engine:** the element of the Software Platform which takes the Asset Library components, the Customer Data and the Configurations keyed in by an Authorised User to use the Simulation Engine across the compute infrastructure to render Output Data.

**Software Platform:** The Immense platform, that is, the online software applications provided by Immense as part of the Services and includes the Asset Library, the User Interface and the Simulation Engine.

**Subscription Fees:** the subscription fees payable by the Customer to Immense for the User Subscriptions, as set out in the Order Form.

**Subscription Term:** has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** Immense's policy for providing support in relation to the Services as provided by Immense to the Customer.

**Tableau:** Tableau Software, LLC.

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

**User Interface:** the user-facing element of the Software Platform.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle

Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

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

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

- 1.2 Clause and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any statute, statutory provision, enactment, order, regulation or other instrument is to be construed as a reference to such statute, enactment, order, regulation or other instrument from time to time replacing, extending, consolidating or amending the same.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail but not fax.
- 1.10 References to clauses are to the clauses of this agreement.

## 2. User Subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Immense hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during

the Subscription Term for the Customer's internal business operations and professional services.

**2.2** In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased as set out in the Order Form;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) it will not reassign any User Subscription to a different individual Authorised User any more frequently than once per month; and
- (d) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;

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

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

and Immense 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.

**2.4** The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
- (b) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software Platform and/or Documentation (as applicable) in any form or media or by any means; or

- (c) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software Platform; or
- (d) attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software Platform, or
- (e) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (f) publicly divulge performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software Platform, or
- (g) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (h) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (i) by using reasonable efforts introduce or permit the introduction of, any Virus or Vulnerability into Immense's network and information systems.

**2.5** The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Immense.

**2.6** The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer. The Customer may, however, authorise employees, agents and independent contractors of Customer to access and use the Services as Authorised Users in accordance with the terms of this agreement.

**3. Additional user subscriptions**

**3.1** Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order Form and Immense shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

**3.2** If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Immense by e-mail to [sales@immense.ai](mailto:sales@immense.ai). Immense shall evaluate such request for additional User Subscriptions and promptly respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld or delayed). Where Immense approves the request, Immense shall activate the additional User Subscriptions within ten working days of its approval of the Customer's request.

**3.3** If Immense approves the Customer's request to purchase additional User Subscriptions, the Customer shall provide to Immense valid approved purchase order information acceptable to Immense and any other relevant valid, up-to-date and complete contact and billing details pursuant to clause 4 and, within 30 days from receipt of Immense's invoice, pay to Immense the relevant fees for such additional User Subscriptions as set out in the Order Form. If such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Immense for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

**3.4** Immense may from time to time contact the Customer to offer additional User Subscriptions if the Customer's account is used in a way which makes clear its need for additional User Subscriptions pursuant to clause 2.2.

#### **4. Services**

**4.1** Immense shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

**4.2** Immense shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for when planned and unscheduled maintenance need to be carried out. Both planned and unscheduled maintenance will be undertaken at times to cause the least disruption and with as much notice in advance as possible. Notwithstanding any other rights or remedies available to Customer, Customer shall be refunded in the next invoice cycle, or if the agreement has terminated, within thirty (30) days from the termination of the agreement, on a pro-rata basis any prepaid fees in respect of the Services for the duration of any unavailability of the Services where such unavailability exceeds 24 hours.

**4.3** Immense will, as part of the Services and in consideration of the fees set out in the Order Form, provide the Customer with Immense's standard customer support services during Normal Business Hours in accordance with Immense's Support Services Policy in effect at the time that the Services are provided. Immense may amend the Support Services Policy in its sole and reasonable discretion from time to time provided that (i) any amendments shall not without reasonable prior notification materially diminish the level of support provided to the Customer and (ii) Immense shall give reasonable prior written notice and provide a copy of the amended Support Services Policy.

#### **5. Customer data**

**5.1** The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

**5.2** Immense shall follow its archiving procedures for Customer Data as set out in its Security and Backup Policy available via the Software Platform. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Immense shall be for Immense to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by Immense in accordance with the archiving procedure described in its Security and Backup Policy. Immense shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party through no fault of Immense. Immense shall be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by a third party acting on behalf of Immense.

**5.3** Immense shall, in providing the Services, comply with its Security and Backup Policy relating to the privacy and security of the Customer Data available via the Software Platform, as such document may be amended from time to time by Immense in its sole discretion.

**5.4** The Customer acknowledges and agrees that the Customer Data shall not include any Personal Data as set out in the Data Protection Legislation.

**5.5** Both parties will comply with all applicable requirements of the Data Protection Legislation in connection with this agreement.

**5.6** The Customer acknowledges that any personal data it shares with Immense may be collected, used, and disclosed as described in Immense's [Privacy Policy](#). By entering into this agreement the Customer acknowledges that Immense will process any personal data which the Customer may provide as set out in Immense's [Privacy Policy](#).

#### **6. Third party providers**

**6.1** Other than as expressly set out in this agreement, including pursuant to clauses 6.4, 7.1 and 7.6, Immense makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, any third-party content.

**6.2** The Software Platform may contain or be provided with components which are licensed from third parties ("Third Party Code"), including components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon your written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

**6.3** The Software Platform embeds a software licensed by Tableau and the Customer's use of the Services will also

require adherence to the Tableau End User Licence Agreement. For the avoidance of doubt, use of the Services and/or Software Platform will not require the Customer to enter into a contractual relationship with Tableau.

- 6.4** Asset Library components are derived from third party data providers. While we make reasonable commercial efforts to validate and ensure fitness for purpose of the Asset Library components Immense accepts no liability for the accuracy of the third party data for the intended Customer use case.

**The following are mandatorily included in this agreement:**

- 6.5** StreetLight and its third-party licensors retain all title to, and, except as expressly and unambiguously licensed herein, all rights and interest in (i) the Data Product and all copies, versions, enhancements and derivative works thereof (by whomever produced) and all related documentation and materials; and (ii) any and all copyrights, patent rights, trade secret rights and other intellectual property and proprietary rights therein throughout the world (**Proprietary Rights**) in the foregoing.
- 6.6** No Re-identification. With respect to the use of the Data Products, End-User represents and warrants that: (i) it does not have the ability to use the Data Products to determine the identity of any specific person; (ii) it shall make no attempt to obtain data permitting it to use Data Products to determine the identity of any person; (iii) it will not accept any information from any third party that permits the use of the Data Products to make such an identification; and (iv) it will make no such identification.

## **7. Immense's obligations**

### **7.1** Immense represents and warrants that:

- (a) it will provide the Services in accordance with applicable laws;
- (b) the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care;
- (c) the Services will be performed in a manner consistent with general industry standards applicable to the provision of the Services;
- (d) it will perform its obligations set out in this agreement in a timely and efficient manner;
- (e) the functionalities of the Services and Software Platform will not be materially decreased during the Subscription Term without reasonable prior notification; and
- (f) the Services and the Software Platform do not infringe any Intellectual Property Rights of any third party.

- 7.2** The warranty at clause 7.1(b) shall not apply to the extent of any non-conformance which is caused by use of the Services by Customer contrary to Immense's instructions. If the Services do not conform with the foregoing warranty,

Immense will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 7.1(b).

### **7.3** Immense:

- (a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free;
  - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
  - (iii) the Software Platform or the Services will be free from Vulnerabilities.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 7.4** Subject to clause 2.4 this agreement shall not prevent either Party from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

- 7.5** Immense warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

- 7.6** Immense makes every effort to ensure the components of the Asset Library rendered to the user are free from errors but does not warrant the Asset Library components or Asset Library component features are accurate. The boundaries and names shown and the designations used in the some components of the Asset Library do not imply official endorsement or acceptance by Immense.

- 7.7** Immense shall use reasonable efforts not to introduce or permit the introduction of, Viruses or Vulnerabilities into Customer's network and information systems.

- 7.8** Immense shall contact the Customer at least 45 days prior to the end of the Initial Subscription Term and any subsequent Renewal Period to notify the Customer of the forthcoming renewal of the agreement pursuant to clauses 9.6 and 14.1.

## **8. Customer's obligations**

The Customer shall:

- (a) provide Immense with:

- (i) all necessary co-operation as reasonably required in relation to this agreement; and
- (ii) all necessary access to such information as may be reasonably required by Immense;

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

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Immense may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for its receipt of the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Immense in writing from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Immense'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. Charges and payment

- 9.1 Subject to Immense providing the Services in accordance with the terms and conditions of this agreement, the Customer shall pay the Subscription Fees to Immense for the User Subscriptions in accordance with this clause 9 and the Order Form.
- 9.2 The Customer shall on or before the Effective Date provide to Immense valid approved purchase order information acceptable to Immense and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its approved purchase order information to Immense, Immense shall invoice the Customer:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 14.1, at least 14 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days from receipt of such invoice.

- 9.3 If Immense has not received payment within 45 days from the date of receipt of an invoice, and without prejudice to any other rights and remedies of Immense:

- (a) Immense may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Immense shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue from 30 days of receipt by the Customer of an invoice on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Immense's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling unless explicitly set out in the Order Form;
- (b) are, subject to clauses 4.2 and 13.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to Immense's invoice(s) at the appropriate rate.

- 9.5 If, at any time whilst using the Services, the Customer exceeds the amount of Scenario Hours specified in accordance with its Licence Package, Immense shall charge the Customer, and the Customer shall pay, Immense's then current Excess Scenario Hours Fees. Immense's Excess Scenario Hours Fees current as at the Effective Date are set out in the Order Form.

- 9.6 Immense shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the Excess Scenario Hours Fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 45 days' prior written notice to the Customer and the Order Form shall be deemed to have been amended accordingly.

## 10. Proprietary Rights

- 10.1 The Customer acknowledges and agrees that Immense and/or its licensors own all Intellectual Property Rights in the Services including the Software Platform and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation. Any copyright notices and trade marks may not be removed.

**10.2** Immense represents and warrants that it has all the rights in relation to the Services, the Software Platform and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

**10.3** NOT USED.

**10.4** For the avoidance of doubt, the Dashboard Data may be used and downloaded by Authorised Users in accordance with clause 6.3.

**10.5** Subject always to clause 2.4 and to the extent that Immense and its licensors own Intellectual Property Rights in the Output Data Immense hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable (for breach and at expiry or termination of this agreement) limited licence during the Term to permit its Authorised Users to download and analyse the Output Data for the Customer's internal business operations and professional services.

**10.6** Immense acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Data. The Customer grants to Immense a limited royalty-free, non-exclusive, worldwide revocable licence to use the Customer Data for the duration of this agreement solely for:

- (i) the purpose of rendering a simulation in the Software Platform and for displaying to the Customer the results of the simulation in Output Data and in Dashboard Data.
- (ii) resolving any issues reported in the Services by the Customer.

**10.7** The Customer's configurations of the Services, the Output Data produced by its End Users' operation of the Immense Platform and the Customer's Dashboard Data will be treated as Confidential Information for the purposes of this agreement. However, Immense reserves the right to monitor and use the Customer's interaction with and use of the Services solely as necessary for providing ongoing support, maintenance, fixes and improvement of the performance of the Services to the Customer.

**10.8** Immense shall not use, share or display the Customer's Output Data and the Customer's Dashboard Data in any way directly or indirectly in the provision of its services and Software Platform to its other customers.

## **11. Confidentiality**

**11.1** Each party may receive, observe or be given access to Confidential Information from the other party in order to perform its obligations under this agreement. Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;

- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

**11.2** Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than as necessary for the implementation of this agreement provided that if a party makes available the other party's Confidential Information to a third party in compliance with this clause 11, the disclosing party shall (a) inform such third party of the confidential nature of the Confidential Information before disclosure; and (b) procure that the third party complies with the confidentiality obligations in this agreement as if they were a party. The disclosing party shall be responsible for any breach of confidentiality caused by such third party.

**11.3** Each party shall ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

**11.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

**11.5** The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Immense's Confidential Information.

**11.6** Immense acknowledges that the Customer Data, the Customer's Output Data and the Customer's Dashboard Data are the Confidential Information of the Customer.

**11.7** No party shall make, or permit any person to make, any public announcement or press release concerning this agreement or the relationship between the Parties or use other Party's logo or name without the prior written consent of the other party, except as and to the extent required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

**11.8** The above provisions of this clause 11 shall survive termination of this agreement, howsoever arising, for three years from the day of its expiry or termination.

## 12. Indemnity

**12.1** The Customer shall defend, indemnify and hold harmless Immense against any loss, damage or costs (including without limitation court costs and reasonable legal fees) incurred in connection with claims, demands, suits or proceedings made or brought against Immense arising out of or in connection with the Customer's use of the Services and/or Documentation in breach of this agreement, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Immense takes all reasonable steps to mitigate any losses, damages, expenses and costs identified in this clause 12.1;
- (c) Immense provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (d) the Customer is given sole authority to defend or settle the claim.

**12.2** Immense shall defend, indemnify and hold harmless the Customer against any loss, damage or costs (including without limitation court costs and reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings made or brought against the Customer:

- (a) by a third party proving with evidence that the use of the Services and/or the Software Platform and/or the Documentation as contemplated hereunder infringes the Intellectual Property Rights of a third party;
- (b) by Tableau arising out of or in connection with the use of the Services and/or the Software Platform and/or the Documentation as contemplated hereunder.

## 13. Limitation of liability

**13.1** Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results, including but not limited to Output Data and Dashboard Data) obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Immense shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Immense by the Customer in connection with the Services, or any actions taken by Immense at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

**13.2** Nothing in this agreement excludes or limits the liability of:

- (a) either party, for death or personal injury caused by negligence;

- (b) either party, for fraud or fraudulent misrepresentation;
- (c) either party, breach of confidentiality under clause 11.

**13.3** Subject to clause 13.1 and clause 13.2:

- (a) Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) Except for the Customer's breach of clauses 2.2, 2.3 and 2.4, and the liabilities arising under the indemnities given under clauses 12.1 and 12.2, either Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total annual Subscription Fees paid or payable for the User Subscriptions pursuant to this agreement as set out in the Order Form.

**13.4** Either Party's total aggregate liability arising under any of the indemnities pursuant to clause 12.2 of this agreement shall be limited to twice the total annual Subscription Fees paid or payable for the User Subscriptions pursuant to this agreement as set out in the Order Form.

## 14. Term and termination

**14.1** This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

**14.2** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment, which is thirty (30) days from the date of receipt of an invoice, and remains in default for not less than 45 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement 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 this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(d) to clause 14.2(j) (inclusive); or

- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

#### 14.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) Immense shall, after thirty (30) days from the effective date of termination or expiry of this agreement, safely delete or otherwise destroy the Customer Data and any outputs of the Customer's use of the Services in its possession or control in accordance with its Security and Backup Policy; and
- (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

#### 15. Force majeure

Neither party shall have liability to the other under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (provided these do not involve the workforce of Immense), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm (a "Force Majeure Event") provided that the Customer is notified of such an event and its expected duration.

#### 16. Conflict

**16.1** If there is an inconsistency between any of the provisions in the main body of this agreement, the policies referred to in this agreement (the "**Policies**"), the Tableau End User Licence Agreement and the Order Form, a term contained in a document higher in the list below shall have priority over one contained in a document lower in the list:

- (a) Order Form;
- (b) Main body of this agreement;
- (c) the Tableau End User Licence Agreement; and
- (d) the Policies.

**16.2** All conflicting terms in any purchase order or other business form employed by the Customer, including any electronic invoicing portals, vendor registration processes, or forms related to individuals being on your premises for professional services, are void, and any such document relating to this agreement shall be for administrative purposes only and shall have no legal effect.

**17. Variation**

**17.1** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17.2** Immense may modify this agreement from time to time by giving notice to the Customer through Immense's online user interfaces and the modified agreement will become effective when the Customer or any of its Authorised Users log in to use the Services.

**18. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**19. Rights and remedies**

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

**20. Severance**

**20.1** If any provision or part-provision of this agreement 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 agreement.

**20.2** If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**21. Entire agreement**

**21.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**21.2** Each party acknowledges that in entering into this agreement 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 agreement.

**21.3** Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

**21.4** Nothing in this clause shall limit or exclude any liability for fraud.

**22. Assignment**

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

**22.2** Immense may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement provided that it gives reasonable prior written notice to the Customer. Immense shall be responsible for the acts or omissions of its sub-contractors or other third parties as though they were its own and their compliance with its obligations under this agreement.

**23. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**24. Third party rights**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**25. Notices**

**25.1** Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to other party's email address as set out in clauses 25.2 and 25.3 below.

**25.2** A notice to Immense shall be deemed to have been received if sent by e-mail to [legal@immense.ai](mailto:legal@immense.ai) at the time of transmission or if delivery is not in business hours, at 9 am on the first Business Day following delivery.

**25.3** A notice to the Customer shall be deemed to have been received if sent by e-mail to [A] (as set out in the Order Form) at the time of transmission or if delivery is not in business hours, at 9am on the first Business Day following delivery.

**25.4** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any method of dispute resolution.

**26. Language**

The official, controlling and governing version of this agreement shall be exclusively the English language version irrespective of any language into which this agreement may be translated.

**27. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**28. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims) save that either party may seek injunctive relief in any jurisdiction.

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