Thinking Software
WORKFORCE MANAGEMENT SOLUTIONS

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RotaOne System and Services Terms & Conditions

These RotaOne System and Services Terms & Conditions (the "**Terms**") are effective as of the Effective Date (defined below) and, in conjunction with any other terms and conditions which are incorporated herein by reference, comprise the Customer's licence to use the RotaOne Time & Attendance Platform, other applications and related services offered by Restranaut Limited (d/b/a Thinking Software) (Company Registration Number 02110245, whose registered office is at The Old Farm Asthall Leigh, Witney, Oxon, Oxfordshire, OX29 9PX ("**Supplier**") and subscribed to or purchased by Customer, as set forth in the Quotation. By accepting the Quotation from Supplier, Customer agrees to be bound by the **Terms** which, together with the Quotation(s), shall constitute the "**Agreement**".

1. Definitions and Structure

1.1. Any capitalised terms not otherwise defined in the Agreement shall have the meaning set forth below:

1.1.1. **Applicable Data Protection Laws**: means the Data Protection Act 2018 (also known as the General Data Protection Regulation or GDPR) and any act of UK parliament which brings this into force, and any other applicable data protection laws and regulations regarding the privacy and the protection of "personal data" or "personally identifiable information" (as defined by such laws);

1.1.2. Associated Company: an entity that controls, is directly or indirectly controlled by, or is under common control with, a party to the Terms. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty per cent (50%) of the voting power to elect directors of the entity, or (ii) greater than fifty per cent (50%) of the ownership interest in the entity;

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

1.1.4. **Change of Control:** shall be any change in the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly;

1.1.5. **Confidential Information:** information that is proprietary or confidential of a party and is: (i) clearly labelled as such; (ii) identified as Confidential Information in clause 6; or (iii) which may be reasonably regarded in the circumstances to be deemed to be Confidential Information of a party;

1.1.6. **Customer:** the legal entity contracting with supplier to use the Services. The Customer is the account Debtor with respect to the fees payable under the Terms.

1.1.7. **Customer Contact Email Address**: the email address notified by Customer to Supplier, to which all notices shall be sent to Customer.

1.1.8. **Documentation:** any document(s) made available to Customer by Supplier in printed form or online via such web address(s) notified by Supplier to Customer from time to time;

1.1.9. **Effective Date:** the Date of Customer's acceptance of Supplier's Quotation;

1.1.10. **Fees:** the Subscription Fees (together with any additional Purchase Fees or Support Fees as agreed by Customer) payable by Customer to Supplier, as set forth in the Quotation;

1.1.11. **Hardware:** the hardware and other goods purchased by Customer and provided by Supplier for use in connection with the System.

1.1.12. **Hardware Warranty Period:** means in respect of the Hardware purchased by Customer, the full extent of the Manufacturer's Warranty available at the time of Hardware delivery to Customer.

1.1.13. **Hosting:** the Hosting Location of the Cloud Facility from which Customer is served depends on the mapping of Customer's Region/Country to the available Cloud Facilities on the Effective Date.

1.1.14. **Implementation Services:** the technical and consultative services provided by Supplier to Customer, in the course of making the System available to Customer.

1.1.15. **Intellectual Property Rights**: intellectual property rights including without limitation rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;

1.1.16. **Customer:** the legal entity contracting with **Supplier** to use the **System**. The Customer is the account Debtor with respect to the fees payable under the Quotation.

1.1.17. **Maintenance Releases:** an update to the **System** and related components which provides patches, corrects bugs, errors, or faults, or otherwise amends or updates the System.

1.1.18. **Maintenance Release Frequency:** the interval at which Supplier will usually perform Maintenance Releases.

1.1.19. **Normal Business Hours:** 8.30 am to 5:30 pm local UK time, each Business Day;

1.1.20. **Quotation**: The Quotation (or Quotation(s)) form Supplier's Offer to Customer for the use of the System or the provision of associated System Hardware or other Goods or Services required by Customer.

1.1.21. **Service Level Agreement ("SLA") Supplier's** Service Benchmarks, as further described in clause 3.

1.1.22. **SMS Texting Services** SMS stands for Short Message Service. It is a text messaging service that allows the exchange of short text messages between mobile devices. SMS messages typically have a maximum length of 160 characters and can be sent and received on various mobile networks. Although SMS Messages are generally extremely rapid and reliable, SMS messages are by their very nature not guaranteed to be delivered rapidly, or ever.

1.1.23. **Site Infrastructure**: where an Access Control (or similar) Platform is used in conjunction with the RotaOne System, the Site Infrastructure is the Access Control arrangement of Readers, Doors, Areas and other similar Equipment (whether actual or virtual)

1.1.24. **Supply of Services:** Supplier's Obligations and Representations on the Supply and Support of **System**.

1.1.25. **System:** the RotaOne Time & Attendance, Scheduling, Musterd Evacuation, Roll Call and/or other functionality licenced to Customer by Supplier.

1.1.26. **Time & Materials Basis**: means that any services provided by the Supplier will be charged at the Supplier's then-current standard hourly or daily rates (as applicable), together with any reasonable expenses (expenses to be agreed in advance), and invoiced based on the actual time spent and materials used in providing such services, unless otherwise expressly agreed in writing**.**

1.2. The **Agreement**, together with any appended Schedules, comprise Customer's right to use the System, and shall be effective and binding on **Customer** and **Supplier** from the **Effective Date**.

1.3. **Customer** will place a binding Purchase Order accepting the **Quotation**. The **Quotation** is deemed accepted by the **Supplier** on the date of receipt of the **Customer** Purchase Order.

1.4. **Customer** agrees that with respect to the **Quotation**, neither its rights nor its obligations are transferable to other entities without the express written consent of the **Supplier**.

2. System Licence

2.1. Subject to **Customer** paying the **Fees** and observing the **Agreement, Supplier** hereby grants to **Customer** a non-exclusive, non-transferable, non-sublicensable licence to use the **System**.

2.2. To the extent that **Customer** has appointed a System Integrator, consultant or similar body ("Third Party"), such Third Party may access the **System** only to such extent as is necessary to enable them to assist with the implement or operation of the **System** for **Customer**; provided that both **Customer** and each Third Party accept their obligations to comply with the **Agreement** prior to such access, including without limitation non-disclosure of **Supplier** Confidential Information, and **Customer** shall, upon request, provide written confirmation to **Supplier** of the existence of such an understanding. **Customer** shall be liable for any breaches by Third Party of the **Agreement**. **Supplier** has no other obligations nor makes any other commitments to the Third Party under the **Agreement**.

2.3. In consideration for **Supplier's** grant of its System License, **Customer** shall not:

2.3.1. take any action which would jeopardise **Supplier's** rights and title to the **System**;

2.3.2. remove or change the labels, instructions or trademark signs contained in the **System**;

2.3.3. observe, investigate or test the functioning of the **System** to determine the ideas and principles that underlie any element of the **System** or, except as expressly permitted by applicable law, disassemble, reverse engineer or decompile the **System** or any part, or otherwise derive its source code;

2.3.4. make the **System** accessible to third parties or to employees other than those who have been appointed by **Customer** to work in connection with the **System**, including any Third Party;

2.3.5. duplicate the **System** or make changes or modifications to the core functionality or source code of the **System** or otherwise create any derivative work of any part of the **System**.

2.3.6. permit the core functionality or the source code of the **System** to be combined with, or become incorporated in, any other system or software;

2.3.7. use the **System** to provide any service related to the **System**, to or for the benefit of any third party, or use the **System**, develop System or products which are competitive with any of the System; and/or

2.3.8. sell, licence, sublicence, distribute, assign or otherwise transfer to a third party the **System** or any copy thereof, in whole or in part, without the express prior written consent of **Supplier**.

2.4. In consideration for **Supplier's** grant of its System License, **Customer** shall:

2.4.1. comply with the obligations and licence restrictions set forth in clause 3 of the **Agreement** and the **Quotation**;

2.4.2. provide **Supplier** with all necessary co-operation and access to such information as may be required by **Supplier** for the provision of the **System** and Support.

2.4.3. comply with all applicable laws and regulations with respect to its activities under the **Terms**;

2.4.4. ensure that its employees, agents and subcontractors use the **System** in accordance with the **Terms**, and shall be responsible for any breaches of the **Terms** by such users;

2.4.5. obtain and shall maintain all necessary licenses, consents, and permissions necessary for **Supplier**, its agents and subcontractors to perform their obligations under the **Terms**;

2.4.6. ensure that its network and systems comply with the relevant specifications provided by **Supplier** from time to time;

2.4.7. maintain whatever fall-back systems it deems necessary to protect its employees, agents, subcontractors, property, data and the environment in the event of any failure of the **System** or in the event of any termination of the **Agreement**.

2.4.8. inform the **Supplier** of <u>any</u> changes to the **Site Infrastructure,** as changes of this nature could impact the performance and delivery of the RotaOne Service.

2.4.9. **Supplier** may make available one or more "Apps" to **Customer** (e.g., the Musterd Roll Call and Evacuation App, the RotaOne Self-Service App and other App(s) from time to time). Where **Customer** uses such App(s), **Customer** acknowledges that these App(s) will generally require an Internet Connection, and it is **Customer's** responsibility to provide, at **Customer's** cost, Internet

Connectivity (via WiFi, a suitable Mobile Data Connection or other method agreed between **Customer** and **Supplier**) to the App(s). **Customer** further acknowledges that where such App(s) are used by **Customer** to assist with **Customer's** Roll Call, Site Sweep and or associated evacuation processes, the App(s) are not intended to be relied upon as the **Customer's** sole roll call and evacuation method; as such, the **Customer** shall ensure that it has in place whatever alternative system it deems necessary to protect its employees, agents, subcontractors, property, data and the environment against a failure of the App(s).

2.5. **Supplier** may include in its **System** functionality which periodically monitors and reports to **Supplier** the scope and use of the **System**. **Customer** acknowledges that this is for the purpose of increasing the security and auditability of the **System**.

2.6. **Customer** hereby grants to **Supplier** a non-exclusive, worldwide, fully paid-up, royalty-fee, perpetual, irrevocable right and licence to use, disclose, modify, reproduce, licence, distribute, commercialise and otherwise freely exploit any feedback, comments, requirements or suggestions, and all related Intellectual Property Rights, made by the **Customer** and its Affiliates with respect to the Products (the "Feedback"), without restriction of any kind and without any right of accounting. **Customer** acknowledges and agrees that **Supplier** owns all rights, title and interests, including all Intellectual Property Rights, in all software developments, enhancements, changes, updates or materials relating to the Products and documentation created by **Supplier**, its Affiliates or subcontractors, that are based on or incorporate any Feedback, and **Supplier** is not limited or restricted in any way in its future use of such software developments, enhancements, changes, updates, materials or documentation, and that such use constitutes neither an unauthorised disclosure of **Customer's** Confidential Information nor an infringement of any Intellectual Property Rights, and that it shall not bring any claim of any kind against **Supplier** in connection with such use. Nothing in this Agreement shall be construed so as to prevent **Supplier** from using techniques, ideas and other know-how (including Feedback from **Customer**) gained during the performance of this **Agreement** in the furtherance of its own business.

2.7. Except as otherwise set out in the **Agreement**, **Supplier** expressly reserves all rights to the **System**, including without limitation, to publish, duplicate, process, use or exploit the **System**.

2.8. **Customer** acknowledges that the **System** may contain open source code, freeware or shareware ("**Open Source Code**"). **Supplier** does not charge any licence **fee** to **Customer** for its use of such Open Source Code. Certain licence conditions may apply to the Open Source Code. **Customer** hereby accepts such conditions and acknowledges that, to the extent required by the conditions, **Supplier** excludes any warranties, indemnities and liabilities in respect of **Customer's** use of such Open Source Code. To the extent there is a conflict between the **Agreement** and the Open Source Terms, the Open Source Terms shall prevail over the **Agreement** regarding the Open Source Code only.

3. **Supply of Services**

3.1. Subject to **Customer's** compliance with the **Agreement**, **Supplier** will supply the **System** to **Customer** via the **Supplier's** Website, whether this is in **Supplier's** Cloud or the **Customer's** own hosting platform.

3.2. **Supplier** does not guarantee:

3.2.1. that the supply or use of the **System** will be uninterrupted or error-free;

3.2.2. the performance of the **System**, unless it has been expressly agreed in writing by **Supplier**;

3.2.3. that there will not be System-related problems caused by accident, fire, power changes, other hazards, or acts of God or other events outside of **Supplier's** reasonable control;

3.2.4. use of the **System** with any third-party System, hardware or services if such third-party System, **hardware** or services cause problem(s) reported by **Customer**;

3.2.5. System-related problems caused by misuse, improper testing, unauthorised attempts to repair, modifications or customisations to the **System** by **Customer** or any other cause beyond the range of the intended use of the **System**;

3.2.6. any third-party System, **hardware** and/or services; or

3.2.7. that the **System** will achieve **Customer's** intended results, nor that the **System** has been developed to meet the individual requirements of **Customer**.

3.3. Where **Customer** has purchased **Hardware**, **Supplier** will pass on the applicable manufacturer's warranty which is made available with such **Hardware** and such warranty shall apply in respect of **Customer's** use of such **Hardware**.

3.4. Where **Customer** has purchased **SMS Texting Services**, **Customer** acknowledges that these Services are supplied to **Customer** on a "fair use" basis.

3.5. To the maximum extent permitted by applicable law, the warranties and remedies provided in this clause 3 are exclusive and in lieu of all other warranties, terms and conditions, express, implied or statutory, including warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a purpose, satisfactory quality and non-infringement, all of which are, to the maximum extent permitted by applicable law, excluded by **Supplier** and its Associated Companies.

3.6. The **Agreement** shall not prevent **Supplier** 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 the **Agreement**.

3.7. **Support** will be provided for the **System** (and any **Hardware** purchased by the **Customer** from the **Supplier**). **Support** will be delivered via the telephone and/or internet ("Remote Access"), and **Customer** must provide **Supplier** with connectivity through both these channels. In circumstances where Remote Access is not available, the **Supplier** reserves the right to make a charge for Time, Mileage and Expenses incurred in providing on-site installation or support visits, should these be required. **Support** is available in English, during **Normal Business Hours**, together with emergency cover on UK Public Holidays. Requests for **Support** outside **Normal Business Hours** must be logged on the **Supplier's** Web Portal, details of which have been provided to the **Customer**.

3.8. **SLA ("Service Level Agreement")**: Where **Supplier** is unable to immediately resolve a **Customer** Support Issue, **Supplier** will use reasonable commercial endeavours to make an initial response within 4 hours (during **Normal Business Hours**).

3.9. Work which involves moving an existing installation of the **System** to different or replacement servers is not included within the scope of Support, and any such work is chargeable separately on a time-and-materials basis.

3.10. **Supplier** shall use reasonable commercial endeavours to make the **System** available 24 hours a day, seven days a week, except for:

3.10.1. planned maintenance carried out during maintenance windows (as notified or not) from time to time;

3.10.2. any emergency maintenance. **Supplier** will use reasonable commercial endeavours to perform such emergency maintenance outside of **Normal Business Hours,** and where possible to give **Customer** notice in advance of such emergency maintenance.

3.10.3. Support does not cover any hardware or associated equipment on which the **System** is installed, nor any hardware or software not purchased from **Supplier**. Where **Supplier** has supplied **Hardware** to **Customer**, **Customer** agrees to provide the **Hardware** with all necessary power and connectivity.

3.10.4. **Supplier** may require remote access to provide Support, and in such cases, the following terms shall apply:

3.10.4.1. **Customer** shall upon request provide to **Supplier** remote access for the time required to perform the Support required (without restriction to the country in which the Supplier support team is located), via a technical standard procedure as defined by **Supplier** and shall install all necessary software components as required to receive such remote Support.

3.10.4.2. **Customer** shall grant to **Supplier** all necessary authorisations to enable remote or other analysis of a support incident (which may include for example access to the databases of **Customer**)

3.10.4.3. **Customer** acknowledges that failure to grant access to **Supplier** may lead to delays in or prevent the provision of Support in a timely and efficient manner.

3.10.4.4. During the remote provision of Support, **Customer** shall use reasonable commercial endeavours to ensure **Supplier** only has access to areas that are strictly necessary for the provision of Support, and shall to the extent possible restrict access to areas containing confidential, personal, or protected data or materials.

3.10.5. If **Customer** does not provide the required access and/or information necessary for **Supplier** to provide the Support within five (5) Business Days of request by **Supplier**, **Supplier** reserves the right to close the relevant incident, and shall not be liable to **Customer** for any delay or failure to correct or resolve such incident reported by **Customer**.

3.10.6. As part of providing Support, **Supplier** will deliver and licence to Customer **Maintenance Releases** for the **System** when required and in the form which **Supplier**, at its sole discretion, determines to be appropriate (which may be by way of a local fix or patch of the **System** or a temporary by-pass solution). **Supplier's** Maintenance Release Policy is to perform **Maintenance Releases** in line with **Supplier's Maintenance Release Frequency**, usually once per week.

3.11. Subject to clause 3, **Supplier** shall make the **System** initially available to **Customer** by an agreed date. Delivery of the **System** shall occur on the date the **Implementation Services** are commenced on behalf of **Customer** by **Supplier**.

3.12. Where **Hardware** is purchased by **Customer**, the **Hardware** will be delivered to the delivery address as indicted in the **Customer's** Purchase Order, or otherwise agreed in writing by email, and in respect of such **Hardware**, the following shall apply:

3.12.1. Any estimated delivery dates for the **Hardware** given by **Supplier** are approximate only and time of delivery is not of the essence.

3.12.2. Risk in and responsibility for the **Hardware** shall pass to **Customer** on delivery of the **Hardware** to **Customer's** delivery address. **Customer** will be protected by the Manufacturer's Warranty on any **Hardware** which is "dead-on-arrival".

3.12.3. Title and ownership to the **Hardware** shall only pass to the **Customer** once **Supplier** receives payment in full (cleared funds) for it.

3.12.4. Until title to the **Hardware** has passed to the **Customer**, the **Customer** shall (i) store and maintain the **Hardware** in satisfactory condition (including not destroying or changing the **Hardware** or packaging and not mixing it with other products); (ii) keep it insured against all risks for its full price from the date of delivery of such **Hardware**; and (iii) give **Supplier** such information relating to the **Hardware** as **Supplier** may require from time to time.

3.12.5. **Supplier** may recover **Hardware** to which title has not passed to the **Customer**. **Customer** grants **Supplier** and its agents a license to enter (at a mutually agreed time) any premises where such **Hardware** (to which title has not passed) is or may be stored to inspect, count and recover it.

4. Charges and payment

4.1. **Customer** shall pay the **Fees** to **Supplier** as set out in the **Quotation** and in accordance with this clause 4. Unless otherwise agreed in the **Quotation**, **Supplier** shall invoice **Customer** for the **Fees** in accordance with clause 4.

4.2. **Customer** shall no later than the **Effective Date** provide to **Supplier** valid, up-to-date, and complete billing information.

4.3. **Fees**. **Supplier** will invoice **Customer** for the **Fees** payable by **Customer** in accordance with the invoice/payment schedule set out in the **Quotation**. All Invoices: (i) shall be payable in the Currency specified in the **Quotation**; (ii) are non-cancellable and non-refundable; and (iii) are exclusive of value added tax, which shall be added to the Invoices at the appropriate rate.

4.4. If **Supplier** has not received payment of an invoice by the applicable due date(s), and without prejudice to any other rights and remedies of **Supplier**:

4.4.1.interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of **Supplier's** bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and/or

4.4.2. **Supplier** may, without further notice to **Customer**, suspend the **System** until such overdue payment is received in full by **Supplier**.

4.5. In the event **Customer** exceeds the scope of use of the **System** as set forth in the **Terms** and the **Quotation**(s), **Supplier** shall be entitled to invoice **Customer** for the additional **fees** for such additional use (such additional **fees** being calculated on a basis proportional to the **Quotation**), on or after the date of request for such additional use or the date of exceeding the scope of use, as applicable.

5. Proprietary rights

5.1. All Intellectual Property Rights in and to the (i) **System** and all related and underlying software and applications, (ii) the **Documentation**, and (iii) any updates, modifications or enhancements thereto are owned by and shall remain with **Supplier** and/or its licensors. There are no implied licenses under the **Agreement**, and any rights not expressly granted under the **Agreement** are reserved by **Supplier** or its licensors.

5.2. All Intellectual Property Rights in and to the **Hardware** are owned by and shall remain with the Hardware manufacturer. Nothing in the **Agreement** shall be construed as conferring or granting any rights in favour of **Customer** in relation to the intellectual property rights in the **Hardware**.

5.3. Except as expressly stated herein, the **Agreement** does not grant **Customer** any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the **System** or the **Documentation**.

6. Confidentiality

6.1. Each party may be given access to Confidential Information from the other party to perform its obligations under the **Agreement**. A party's Confidential Information shall not be deemed to include information that:

6.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

6.1.2. was in the other party's lawful possession before the disclosure;

6.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

6.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or

6.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

6.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third-party or use the other's Confidential Information for any purpose other than the performance of the **Agreement**.

6.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, agents or subcontractors in violation of the **Agreement**.

6.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

6.5. **Customer** acknowledges that details of the **System** and the **Documentation**, together with any changes, updates, or any enhancements thereto and the results of any performance tests of the **System** constitute a part of **Supplier's** Confidential Information.

6.6. **Supplier** acknowledges that **Customer** Data is the Confidential Information of **Customer**.

6.7. The above provisions of this clause 6 shall survive termination of the **Agreement**, however arising, for a period of five (5) years except for any information of a party which is deemed to be a trade secret for which the obligations of confidentiality hereunder shall survive for as long as such information remains a trade secret.

7. Data Protection

7.1. Each party shall comply with **Applicable Data Protection Laws** in connection with the exercise of its rights and the performance of its obligations under the **Agreement**. **Supplier** acknowledges that **Customer** is acting as a data controller and **Supplier** will be the data processor in respect of any personal data of **Customer**, including its employees, contractors, consultants, agents and any other persons who have access to **Customer's** premises ("**Customer Personal Data")** which **Supplier** may access and/or process in the provision of Support. The type of Customer Personal Data which may be processed by **Supplier** and the purpose and duration of such processing are set forth in this Clause 7.

7.2. To the extent that **Supplier** processes any such **Customer** Personal Data, **Supplier** shall:

7.2.1. only process such Customer Personal Data in accordance with this clause 7 and any other written instructions from **Customer** and not for its own purposes;

7.2.2. ensure that people processing the Customer Personal Data are subject to the same duties of confidence as set out in the **Agreement** between **Supplier** and **Customer**;

7.2.3. on termination of the **Agreement**, or at the written direction of the **Customer**, then at **Customer's** option, either securely destroy (to the extent technically practicable) or return such Customer Personal Data to **Customer** and delete existing copies (to the extent technically practicable), except where **Supplier** is required by law to keep a copy and subject to any rights in the **Agreement** to use anonymised **Customer** Data post termination;

7.2.4. not transfer any such **Customer** Personal Data outside of the European Economic Area unless it has complied with its obligations under Applicable Data Protection Laws in ensuring adequate safeguards in relation to such transfer, and without undue delay, notified **Customer** of such transfer.

7.2.5. if **Supplier** receives a request, notification or complaint from a data subject or a regulatory authority which is addressed to, or intended for, **Customer**, promptly pass on such request, notification, complaint or communication to **Customer**;

7.2.6. assist the **Customer**, at the **Customer's** cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the **Applicable Data Protection Laws** with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.2.7. implement and maintain appropriate technical and organisational measures to protect **Customer** Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of **Customer** Personal Data and having regard to the nature of the Customer Personal Data which is to be protected. As a minimum, these should include any requirements under **Applicable Data Protection Laws** and the requirements set out in the **Agreement**; and

7.2.8. notify **Customer** without undue delay if it becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to Customer Personal Data (a "**Security Incident"**) and provide sufficient detail of the Security Incident for **Customer** to act to remedy the Security Incident.

7.3. **Customer** consents to **Supplier** appointing sub-processors of such **Customer** Personal Data under the Terms, provided that **Supplier** has entered or (as the case may be) will enter with such sub-processors into a written agreement incorporating terms which are the same as or substantially similar to those set out in this clause. **Supplier** will make available to **Customer** a list of its then current sub-processors upon request by Customer. As between **Customer** and **Supplier**, **Supplier** shall remain fully liable for all acts or omissions of any sub-processors appointed by **Supplier** pursuant to the Terms and this clause.

7.4. **Supplier** shall maintain complete and accurate records necessary to demonstrate its compliance with this clause 7 and shall allow **Customer** and its respective auditors or authorised agents, at **Customer's** own cost and expense and upon reasonable prior written notice, to conduct audits or

inspections during the Term and for 12 months thereafter. Any such audit shall be conducted in a manner that ensures minimum disruption to **Supplier's** day to day business operations. The purposes of an audit pursuant to this clause shall be to verify that **Supplier** and its Sub-processors (if applicable) are processing **Customer** Personal Data in accordance with the obligations under the Terms and **Applicable Data Protection Law**.

7.5. **Customer** represents and warrants to **Supplier** that it has and will maintain in place all necessary and appropriate consents or other legal justifications to enable the lawful transfer to and processing by **Supplier** of any **Customer** Personal Data for the purposes of the Terms in compliance with the **Applicable Data Protection Laws**.

Customer further represents and warrants that it has and will maintain in place all necessary and appropriate consents to enable, at the direction of **Customer**, the lawful transfer by **Supplier** of **Customer** Personal Data to any third party designated by **Customer**. To the fullest extent possible, **Customer** indemnifies **Supplier** in respect of any such transfer of **Customer** Personal Data, and **Customer** accepts the entire risk and responsibility for the legality and accuracy of the **Customer** Personal Data so transferred.

7.6. Nothing in the Terms shall relieve **Supplier** of its own direct responsibilities and liabilities under **Applicable Data Protection Laws**.

7.7. For the purposes of this clause 7 the terms **"data controller"**, **"personal data"**, **"process"** and **"processing"** shall have the meaning set out in the **Applicable Data Protection Laws** and **"sub-processors"** shall mean the third-party sub-processors appointed by **Supplier** for the processing of **Customer** Personal Data under the Terms.

7.8. **Customer Personal Data Processed:**
Supplier may access and process any **Customer** Personal Data which is transmitted through (i) Customer's use of the **System**. Such data may include biometric or similar types of personal identity information, including but not limited to an employee's name, home and work phone number, business and home email address, home address, access pass number, payroll identification number, pay rate/level and any other personal information which may be contained in databases accessed by **Supplier** in the provision of the **System**.
Purpose:
Supplier processes such Customer Personal Data solely for the purposes of providing the **System** to **Customer**, and in accordance with the **Agreement**.

Duration:
Supplier will process such **Customer** Personal Data for the duration of the **Agreement** and for a period of up to 30 days after termination of the **Agreement**, to allow for the deletion and/or return of **Customer** Personal Data to **Customer**. **Customer** Personal Data will only be returned at the express written request of **Customer**, such request to be made within 30 days after Termination of the **Agreement**, and to include clear instructions as to how the **Customer** Personal Data will be received by **Customer**.
For Regulatory purposes, **Supplier** may preserve **Customer** Data for a further period of up to 90 days after termination of the **Agreement**.

7.9. Customer's Request for "Direct Access" to Customer's Personal Data
Customer may request **Supplier** to provide "Direct Access" to **Customer** Personal Data, often but not limited to the purpose of **Customer's** requirement for special reporting and other processing beyond the scope of **Supplier's** provision to **Customer**. **Customer** acknowledges that such Direct Access takes place entirely at **Customer's** risk and responsibility. To the fullest extent possible, such Direct Access is provided without warranty, on an unsupported basis. **Customer** may request Support in conjunction with this access, and where **Supplier** provides it, such **Support** will be provided on a **Time & Materials Basis**. To the fullest extent possible, **Customer** indemnifies **Supplier** for any costs or losses arising from **Customer's** Direct Access to **Customer** Personal Data.

7.10 It may be necessary for **Supplier** to install Databases for **Customer's** use, on **Customer's** own infrastructure, or infrastructure controlled or operated by **Customer** ("on-premises Databases"). In this event, **Customer** acknowledges that **Customer** has ultimate responsibility and control over the type and security capabilities of these Databases.

8. Indemnity

8.1 **Customer** shall defend, indemnify and hold harmless **Supplier** against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with (i) **Customer** Data, and/or (ii) **Customer's** use of the **System** and/or Documentation, provided that:

8.2 **Customer** is given prompt notice of any such claim;

8.3 **Supplier** provides reasonable co-operation to **Customer** in the defence and settlement of such claim, at **Customer's** expense; and

8.4 **Customer** is given sole authority to defend or settle the claim.

8.5 As of the **Effective Date**, **Supplier** is not aware of any claim that the **System** or **Documentation** infringes any patent, copyright, trademark, database right or right of confidentiality, and **Supplier** disclaims and shall not have any liability to indemnify **Customer** against any such claims that may be made against **Customer** in the future.

8.6 Subject to clause 8, in the event of such a claim being made in the future, and in **Supplier's** sole discretion, **Supplier** may procure the right for **Customer** to continue using the **System**, replace or modify the **System** so that it becomes non-infringing or terminate the **Agreement** on 10 Business Days' written notice to **Customer**, in which case **Supplier** shall refund any pre-paid Fees paid by **Customer** for the period after the date of such termination without any additional liability or obligation to pay damages or other additional costs to **Customer**.

8.7 In no event shall **Supplier**, its employees, agents and subcontractors be liable to **Customer** to the extent that the alleged infringement is based on:

8.8 a modification of the **System** or **Documentation** by anyone other than **Supplier**; or

8.9 **Customer's** use of the **System** or **Documentation** in a manner contrary to the instructions given to **Customer** by **Supplier**; or

8.10 **Customer's** use of the **System** or **Documentation** after notice of the alleged or actual infringement from **Supplier** or any appropriate authority.

8.11 The foregoing and clause 8 constitute **Customer's** sole and exclusive rights and remedies, and **Supplier's** (including **Supplier's** employees, agents and sub-contractors) entire obligations and liability, for infringement of any patent, copyright, trademark, database rights or right of confidentiality.

9. Limitation of liability

9.1. Subject to clauses (and subclauses 9.1, 9.2, 9.3, 9.4, **Supplier'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 the **Agreement** shall be limited to the total **Fees** paid to **Supplier** during the 12-month period immediately preceding the date on which the claim arose.

9.2. Except as expressly and specifically provided in the **Agreement**:

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

9.2.2. all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the **Agreement**.

9.3. Nothing in the **Agreement** excludes the liability of **Supplier** for death or personal injury caused by **Supplier's** negligence; for fraud or fraudulent misrepresentation; or for any other liability which cannot be excluded by law.

9.4. **Supplier** shall not 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 the **Agreement**, whether or not such losses or damages are foreseeable.

10. Term and Termination

10.1. The **Agreement** shall, unless otherwise terminated as provided in this clause 10, commence on the **Effective Date** and shall continue indefinitely unless either party gives the other party written notice of cancellation of a minimum of 90 days, such notice to be considered delivered by email only to accounts@thinking-software.com. **Customer** acknowledges that, subject to clause 4.3, any **Fees** paid (whether monthly, quarterly or annually) are non-refundable and non-cancellable.

10.2. Without affecting any other right or remedy available to it, either party may also terminate the **Agreement** with immediate effect by giving written notice to the other party if:

10.2.1. the other party fails to pay any amount due under the **Agreement** on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

10.2.2. the other party commits a material breach of any other term of the **Agreement** which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

10.2.3. the other party shall have a receiver or administrative receiver appointed over it or any of its assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an Order to that effect or if the other party shall become subject to an administration Order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business or is subject to any analogous event or proceeding in any applicable jurisdiction.

10.3. On termination of the **Agreement** for any reason:

10.3.1. all rights and licenses granted to **Customer** under the **Agreement** shall immediately terminate;

10.3.2. each party shall return and make no further use of any equipment, property, **Documentation** or other items (and all copies of them) belonging to the other party;

10.3.3. **Customer** shall pay all unpaid fees owing to **Supplier** up to the date of termination; and

10.3.4. any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the **Agreement** which existed at or before the date of termination shall not be affected or prejudiced.

11. General

11.1. Force majeure. **Supplier** shall have no liability to **Customer** under the **Agreement** if it is prevented from or delayed in performing its obligations under the Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of **Supplier** or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental Order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of

suppliers or sub-contractors. **Supplier** will notify **Customer** of such an event and where possible an estimate of its expected duration.

11.2. Conflict. If there is an inconsistency between any of the provisions in the main body of the **Agreement** and any appended Schedules, the provisions in the main body of the **Agreement** shall prevail.

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

11.4. Waiver. No failure or delay by a party to exercise any right or remedy provided under the **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.

11.5. Rights and remedies. Except as expressly provided in the **Agreement**, the rights and remedies provided under the **Agreement** are in addition to, and not exclusive of, any rights or remedies provided by law.

11.6. Severance. If any provision (or part of a provision) of the **Agreement** is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

11.7. Entire agreement. The **Agreement**, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into the **Agreement** it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the **Agreement** or not) relating to the subject matter of the **Agreement**, other than as expressly set out in the **Agreement**. In the event of any conflict between the **Agreement** and any terms set out in the **Quotation**, the **Agreement** shall prevail.

11.8. Assignment. **Customer** shall not, without the prior written consent of **Supplier**, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Terms. **Supplier** may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Terms.

11.9. No partnership or agency. Nothing in the **Agreement** is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

11.10. Non-Solicitation. **Customer** shall not, without the prior written consent of **Supplier**, at any time from the **Effective Date** of the **Agreement** to the expiry of 12 months after termination of the **Agreement**, solicit or entice away from **Supplier** or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of **Supplier**.

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

11.12. Notices. Any notice required to be given under the **Agreement** shall be in writing and shall be delivered by email only (in the case of Notices to **Supplier**, then accounts@thinking-software.com. In the case of notices to **Customer,** then the currently notified **Customer Contact Email Address**). A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

11.13. Governing law and jurisdiction. The **Agreement** and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any

disputes or claim arising out of or in connection with the **Agreement** or its subject matter or formation (including non-contractual disputes or claims).

11.14. Export.

11.14.1. If **System** is subject to the export and import control laws of any country, including without limit the laws of the United States and the United Kingdom, **Customer** agrees that it will not submit the **System** to any government agency for licensing consideration or other regulatory approval without the prior written consent of **Supplier**, and will not export System to countries, persons or entities prohibited by such laws. **Customer** is also responsible for complying with all applicable governmental regulations of the country where **Customer** is registered, and any foreign countries with respect to the use of the System by **Customer** and/or its Associated Companies as applicable.

11.14.2. **Customer** acknowledges that the supply of the **System** (including patches, fixes, updates, upgrades and new versions) may be subject to the prior obtaining of export and/or import authorizations from the competent authorities, and that this process may considerably delay or prevent the Supply of the **System**. **Customer** shall support **Supplier** in obtaining any required authorization by providing information and/or declarations, including for example End-User Certificates, as may be requested by **Supplier**.