FACILITY APPS TERMS & CONDITIONS

The Facility Apps Terms & Conditions, together with the Order Form, set out the basis upon which Facility Apps Limited (being the Supplier) will make available to the Client named in this Order Form the Facility Apps Mobile Workforce Management software and related services as detailed in this Order Form. By signing the Order Form or using the Software, the Client agrees to these Facility Apps Terms & Conditions.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Agreement:

Agreement	the agreement between the Supplier and the Client comprising these Facility Apps Terms & Conditions and the Order Form.
Authorised Users	those employees, agents and independent contractors of the Client who are authorised by the Client to use the Software and the Documentation.
Charges	the charges payable by the Client as set out in the Order Form and any charges for additional Usage Subscriptions in accordance with clause 2.4.
Client	the client named in the Order Form.
Client Data	means the Licensee Data as defined in the EULA.
Commencement Date	the commencement date set out in the Order Form. If no date is given the commencement date will be the date the Order Form is signed by the Client.
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 6.1.
Contract Year	a 12 month period commencing on the Commencement Date or any anniversary of it.
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including, insofar as directly applicable in the UK, the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003(SI 2003/2426) as amended.
Documentation	the document made available to the Client by the Supplier from time to time which sets out the System Requirements, user instructions and other information relating to the use of the Software.
EULA	the End User EULA Agreement in Schedule 1.

Hardware:	means, any hardware supplied by the Supplier and listed in the Front Sheets of this agreement.
Initial Subscription Term	the initial subscription term as set out in the Order Form which will commence on the Commencement Date. If no initial subscription term is set out in the Order Form, it will be 12 months from the Commencement Date.
Licensor	the licensor set out in the EULA.
Order Form	the order form accompanying these terms and conditions which sets out the details of the Software, Services, Usage Subscriptions and the Charges
Renewal Period	the period described in clause 10.1.
Services	the Set-up Services and Support Services. The Services do not include the Hosting Services.
Set-up Services	the set-up services detailed in the Order Form.
Software	the online software application and modules provided by the Supplier as set out in the Order Form.
Supplier	Facility Apps Limited, a company registered in England with company number 16100148 whose registered office is at Suite 3 506 Walton Summit Centre, Four Oaks Road, Bamber Bridge, United Kingdom, PR5 8AY.
Subscription Term	has the meaning given in clause 10.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
Support Services	the support services provided by the Supplier in accordance with the Support Services Policy. The level of Support Services purchased by the Client is as set out in the Order Form.
Support Service Desk	the contact for obtaining support in accordance with the Support Services Policy. The contact details for the Support Service Desk will be made available to the Client by the Supplier.
Support Services Policy	the Supplier's policy for providing support as made available to the Client by the Supplier from time to time.
System Requirements	the system requirements set out in the Documentation.
Usage Subscriptions	the usage subscriptions purchased by the Client pursuant to clause 5.1 which entitle the Client to access

	and use the Software and the Documentation in accordance with the Agreement in relation to the applicable number of Authorised Users, modules, sensors, sensor suppliers and other metrics as detailed in the Order Form.
Virus and **Vulnerability**	have the meanings given in the EULA.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 Where the context allows, references to the Agreement include the EULA.

1.4 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.

1.5 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular.

1.7 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as it is in force from time to time and includes all subordinate legislation made under that statute or statutory provision from time to time.

1.9 A reference to **writing** or **written** excludes fax but includes email.

1.10 References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.

2. USAGE SUBSCRIPTIONS

2.1 The Supplier is authorised by the Licensor to resell Usage Subscriptions for the Software subject to the terms of the EULA. Subject to the Client purchasing the necessary Usage Subscriptions in accordance with clause 2.4 and clause 5.1 and complying with the other terms and conditions of the Agreement, the Client will have the right to use the Software under the terms of the EULA during the Subscription Term solely for the Client's internal business operations.

2.2 Subject to clause 2.3 and clause 2.4, the Client may, from time to time during any Subscription Term, purchase additional Usage Subscriptions in excess of the number set out in the Order Form.

2.3 If the Client wishes to purchase additional Usage Subscriptions, the Client shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Usage Subscriptions and respond to the Client with approval or rejection of the request.

2.4 Where the Supplier approves a request for additional Usage Subscriptions:

2.4.1 the Supplier shall activate the additional Usage Subscriptions within 30 days of its approval of the Client's request; and

2.4.2 the Client shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the fees for such additional Usage Subscriptions; and

2.4.3 unless otherwise agreed by the Supplier in writing, if there is less than 12 months remaining on the Client's Initial Subscription Term or Renewal Period (as applicable) at the time the additional Usage Subscriptions are purchased by the Client, the Agreement will automatically renew for a Renewal Period as at the date the additional Usage Subscriptions are purchased by the Client.

3. SERVICES

3.1 The Supplier shall, during the Subscription Term, provide and perform the Services substantially in accordance with the Support Services Policy and the Documentation and with reasonable skill and care. If the Services do not conform with this clause 3.1, the Supplier will, at its expense, use reasonable commercially endeavours to correct any such non-conformance promptly. Such correction constitutes the Client's sole and exclusive remedy for any breach of the Supplier's obligations under this clause.

3.2 The Supplier's shall not be responsible for any non-performance or non-conformance of the Software or Services which is caused by:

3.2.1 use of the Software or Services contrary to the terms of the Support Services Policy or Documentation or contrary to the Supplier's instructions;

3.2.2 any failure of the Client or its Authorised Users to comply with the terms of the Agreement (including the EULA); or

3.2.3 modification or alteration of the Software by any party other than the Supplier, the Licensor or their duly authorised contractors or agents.

3.3 The Client acknowledges that the Supplier is a reseller of the Software and that the Software and Hosting Services are provided by the Licensor under the terms of the EULA which will form a direct contract between the Client and the Licensor. In the event of any issues with the Software or the Hosting Services, the Client shall contact the Supplier via the Support Services and the Supplier will endeavour to assist the Client with such issues (either itself or via liaison with the Licensor) but the Supplier will not be liable to the Client for any issues with the Software or the Hosting Services or for any non-performance by the Licensor.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

4.1.1 comply with the terms of the Agreement and the EULA;

4.1.2 provide the Supplier with all necessary co-operation in relation to the Agreement and all necessary access to such information as may be required by the Supplier in order to provide the Services;

4.1.3 without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;

4.1.4 carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

4.1.5 ensure that the Authorised Users use the Software, the Services and the Documentation in accordance with the terms and conditions of the Agreement (including the EULA) and shall be responsible for any Authorised User's breach of the Agreement;

4.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform the Services;

4.1.7 ensure that its network and systems comply with the System Requirements and be responsible for procuring, maintaining and securing its network connections and telecommunications links from its information technology systems to the servers hosting the Software; and

4.1.8 be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the data centres hosting the Software, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

5. CHARGES, EXPENSES AND PAYMENT

5.1 The Client shall pay the Charges to the Supplier in accordance with this the Order Form and this clause 5.

5.2 The Client shall reimburse the Supplier for any reasonable travel and subsistence costs incurred in relation to the provision of the Services.

5.3 The Client shall pay each invoice issued by the Supplier within 30 days of the date of such invoice.

5.4 If the Supplier has not received payment by the due date for payment and such payment remains outstanding for a further period of 14 days, and without prejudice to any other rights and remedies of the Supplier:

5.4.1 the Supplier may suspend the performance of the Services and disable (or procure that the Licensor disables) the Client's password, account and access to all or part of the Software and neither the Supplier nor the Licensor shall be under any obligation to provide any or all of the Services or Software while the invoice(s) concerned remain unpaid; and

5.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England

from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

5.5 All amounts and fees stated or referred to in the Agreement:

5.5.1 shall be payable in pounds sterling;

5.5.2 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

5.6 Where applicable, the Client shall ensure that any purchase order which it requires in order to process payment of the Supplier's invoices is generated and provided to the Supplier at least 5 working days prior to the point of issue of such invoices. If Supplier shall not be required to add the purchase order to its invoices if it is not provided by the Client in sufficient time.

5.7 The Supplier shall be entitled to increase the Charges with effect from 1 January in each year by giving the Client not less than 30 days' notice in writing. The Supplier will not increase the Charges during the first 12 months from the Commencement Date. An increase to the Charges will not exceed the lowest of 10% OR an amount equal to the RPI increase in the previous 12 months].

6. CONFIDENTIALITY

6.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives in connection with the Agreement, including but not limited to:

6.1.1 the terms of the Agreement;

6.1.2 any information that would be regarded as confidential by a reasonable business person relating to:

6.1.2.1 the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

6.1.2.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);

6.1.3 any information developed by the parties in the course of carrying out the Agreement.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

6.2 The provisions of this clause shall not apply to any Confidential Information that:

6.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

6.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

6.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

6.2.4 the parties agree in writing is not confidential or may be disclosed; or

6.2.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

6.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

6.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Agreement (**Permitted Purpose**); or

6.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 6.

6.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

6.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

6.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

6.5 The Supplier may disclose Confidential Information to the Licensor to enable the Licensor to perform its obligations and exercise its rights under the EULA.

6.6 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 the disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 6.6, it takes into account the reasonable requests of the other party in relation to the content of the disclosure.

6.7 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

6.8 On termination of the Agreement, each party shall:

6.8.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and

6.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable).

6.9 The above provisions of this clause 6 shall continue to apply after termination or expiry of the Agreement.

7. DATA PROTECTION

7.1 Each party will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, either party's obligations, responsibilities or rights under the Data Protection Legislation.

7.2 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

7.3 Where the Client (or its Authorised Users) inputs personal data into the Software or Services or otherwise provides personal data to the Supplier or the Licensor, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of that personal data by the Supplier and the Licensor.

7.4 Where the Supplier processes personal data as a processor on behalf of the Client in relation to the performance of the Services, the following processing terms will apply:

7.4.1 the Supplier shall process that personal data only on the documented written instructions of the Client (and the Client hereby instructs the Supplier to process personal data as necessary to perform the Services) unless the Supplier is required by UK law or the law of the EU or an EU member state (together "**Domestic Law**") to otherwise process that personal Data;

7.4.2 the Supplier shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

7.4.3 the Supplier shall ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

7.4.4 the Supplier shall not transfer any personal data outside of the UK or EEA unless the following conditions are fulfilled:

7.4.4.1 the Client or the Supplier has provided appropriate safeguards in relation to the transfer;

7.4.4.2 the data subject has enforceable rights and effective legal remedies; and

7.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation in relation to that transfer;

7.4.5 the Supplier shall assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach

notifications, impact assessments and consultations with supervisory authorities or regulators;

7.4.6 the Supplier shall notify the Client without undue delay on becoming aware of a personal data breach relating to the personal data which the Supplier is processing on behalf of the Client;

7.4.7 the Supplier shall at the written direction of the Client delete or return personal data and copies thereof to the Client on termination of the Agreement unless required by Domestic Law to store the personal data. In the event that the Client does not give the Supplier any directions following termination of the Agreement, the Supplier shall be entitled to delete the personal data once 30 days has expired following such termination;

7.4.8 the Supplier shall maintain records and information to demonstrate its compliance with this clause 7.4 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation; and

7.4.9 the Client consents to the Supplier using Microsoft, Google, Amazon Website Services and the sub-processors set out in the Licensor's Data Processing Agreement referenced in the EULA, as third-party processors of personal data under the Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business (or incorporating terms which are substantially similar to those set out in this clause 7.4) and in either case which reflect the requirements of the Data Protection Legislation.

7.5 This clause 7.5 sets out the scope of the processing to be performed by the Supplier under clause 7.4:

Nature and purpose of the processing: Processing of personal data as necessary for the performance of the Services;

Scope of the processing: storage, recording, editing, accessing, consulting, reviewing, deleting and such other processing which the Supplier performs in relation to the Services;

Duration of the processing: the duration of the Agreement and until the personal data is deleted by the Supplier;

Types of personal data: names, job title, personnel number, email address, telephone number, postal address, usage information relating to the use of the Software and the Services and other information relevant to the Services; and

Categories of Data Subject: Authorised Users and other personnel and contacts of the Client and its suppliers and contractors.

7.6 Where the Supplier process personal data as a controller in order to administer the Supplier's relationship with the Client or to exercise the Supplier's rights, the Supplier shall process such personal data as described in its Privacy Notice (a copy of which is available on the Supplier's website).

8. CLIENT INDEMNITY

8.1 The Client shall defend, indemnify and hold harmless the 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:

8.1.1 any claim made against the Supplier relating to the Client's use of the Software, Services, Hosting Services and/or Documentation, save for IPR Infringement Claims as set out in the EULA; and

8.1.2 the possession, use or reliance on the Client Data or any other information, materials or instructions given to the Supplier by the Client or its Authorised Users.

9. LIMITATION OF LIABILITY

9.1 Except as expressly and specifically provided in the Agreement:

9.1.1 the Client accepts responsibility for the selection of the Software, Services and Hosting Services to achieve the Client’s intended results and acknowledges that the Software, Services and Hosting Services have not been developed or designed to meet or support any individual requirements the Client may have, including any particular cybersecurity requirements the Client might be subject to, or any regulated activity that the Client may be engaged in;

9.1.2 the Client assumes sole responsibility for results obtained from the use of the Software, Services, Hosting Services and the Documentation by the Client, and for conclusions drawn from such use. Neither the Supplier nor the Licensor shall have any liability for any damage caused by errors or omissions in any Client Data, information, instructions or scripts provided to the Supplier or the Licensor by the Client, or any actions taken by the Supplier or the Licensor at the Client's direction;

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

9.1.4 the Software, Services, Hosting Services and the Documentation are provided to the Client on an "as is" basis.

9.2 The Client acknowledges that the Software, Services or Hosting Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier does not give any warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software, Services or Hosting Services.

9.3 Nothing in the Agreement excludes the liability of the Supplier or the Licensor:

9.3.1 for death or personal injury caused by that party's negligence; or

9.3.2 for fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.3 neither the Supplier nor the Licensor shall have any liability for any:

9.4.1 loss of profits,

9.4.2 loss of business or interruptions to business operations,

9.4.3 loss of savings or wasted expenditure,

9.4.4 depletion of goodwill and/or similar losses,

9.4.5 any special, indirect or consequential loss, costs, damages, charges or expenses.

9.5 Subject to clause 9.3 the total aggregate and collective liability of the Supplier and the Licensor to the Client, in respect of any Contract Year shall not exceed the Charges paid by the Client in that Contract Year.

9.6 The Licensor is granting the Client a licence under the terms of the EULA and the Supplier is providing the Set-up Services and Support Services. The Licensor will not have any liability to the Client for the performance by the Supplier of the Services under the Agreement or for any related disputes.

9.7 References to liability in this clause 9 include every kind of liability arising under or in connection with the Agreement (including the EULA) including but not limited to liability in contract (including by way of indemnity), tort (including negligence), misrepresentation, restitution or otherwise.

10. TERM AND TERMINATION

10.1 The Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, the Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

10.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

10.1.2 otherwise terminated in accordance with the provisions of the Agreement;

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

10.2 Without affecting any other right or remedy available to it, either party may 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 14 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 and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

10.2.3 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;

10.2.4 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;

10.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

10.2.6 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;

10.2.7 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 (being a company, partnership or limited liability partnership);

10.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

10.2.9 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;

10.2.10 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;

10.2.11 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 10.2.3 to clause 10.2.10 (inclusive); or

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

10.3 On termination of the Agreement for any reason:

10.3.1 all licences granted to the Client under the Agreement (including the EULA) shall immediately terminate and the Client shall immediately cease all use of the Software, Services, Hosting Services and the Documentation; and

10.3.2 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.

10.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

11. FORCE MAJEURE

Neither party shall be in breach of the Agreement or otherwise liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Agreement by giving written notice to the affected party.

12. VARIATION

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

13. WAIVER

13.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

13.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

14. 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.

15. SEVERANCE

15.1 If any provision or part-provision of the 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 the Agreement.

15.2 If any provision or part-provision of the Agreement is deemed deleted under clause 15.1 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.

16. ENTIRE AGREEMENT

16.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into the 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 the Agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

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

17. ASSIGNMENT

17.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, sub-licence, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement (including the EULA).

17.2 The Client agrees that the Supplier may assign or novate the Agreement to the Licensor upon written notice to the Client. In such circumstances, the Licensor will take over the performance of the Agreement as if the Licensor were the Supplier. Upon request the Client will sign an agreement with the Supplier and the Licensor to give effect to such assignment or novation.

18. 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).

19. THIRD PARTY RIGHTS

19.1 The Licensor shall be entitled to enforce the terms of the Agreement against the Client.

19.2 Subject to clause 19.1 the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

19.3 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

20. NOTICES

20.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:

20.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

20.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):

20.1.2.1 Supplier:

Supplier's registered office address, for the attention of Operations; or by email to accounts@facilityapps.co.uk

20.1.2.2 Client:

Client's registered office address; or

the Client's email address set out in the Order Form.

20.2 Any notice shall be deemed to have been received:

20.2.1 if delivered by hand, at the time the notice is left at the proper address;

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or

20.2.3 if sent by email, at 9.00 am on the business day after transmission.

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

21. GOVERNING LAW AND JURISDICTION

21.1 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 interpreted in accordance with the law of England and Wales.

21.2 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – EULA

This end user licence agreement (**EULA**) is a legal agreement between you (**Licensee** or **you**) and Facility Apps B.V., a limited liability company incorporated under the laws of the Netherlands, with its registered office in Purmerend, the Netherlands at Spinnekop 2 (1444GN), registered in the Dutch Chamber of Commerce under number 56651791 (**Licensor, us** or **we**) for:

a) the provision of the software set out in the Order Form entered into by you and our Authorised Reseller (**Software**);

b) the provision of hosting services in relation to the Software (**Hosting Services**);

c) the provision of any online documents provided in relation to the Software (**Software Documentation**).

1. LICENCE NOT SALE

We license use of the Software, the Hosting Services and Software Documentation to you on the basis of this EULA. We do not sell the Software, the Hosting Services or Software Documentation to you. We, or our licensors, remain the owners of the Software, the Hosting Services and Software Documentation at all times.

2. DEFINITIONS

2.1 The following defined terms are used in this EULA:

2.1.1 **Authorised Reseller** means the authorised reseller appointed by the Licensor for the marketing and distribution of the Software and Hosting Services. Details of the Licensor's authorised resellers are available from the Licensor.

2.1.2 **Authorised Users** means the employees, agents and independent contractors of you, your subsidiaries and affiliates, who you authorise to use the Software.

2.1.3 **Licensee Data** means the data inputted by or on behalf of you (including by your Authorised Users), for the purpose of using or facilitating your use of the Software and Hosting Services and any data generated by, or derived from, such inputted data.

2.1.4 **Order Form** means the Order Form entered into by you and our Authorised Reseller.

2.1.5 **Usage Subscriptions** means the usage subscriptions purchased by you from our Authorised Reseller, in accordance with the terms of the agreement you hold with our Authorised Reseller, which entitle you and your Authorised Users to access and use the Software, Hosting Services and the Documents in accordance with this EULA.

2.1.6 **Viruses** means 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.

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

3. LICENCE TERMS

3.1 In consideration of payment by you of the charges to our Authorised Reseller and you agreeing to abide by the terms of this EULA and your agreement with our Authorised Reseller, we grant to you a limited, non-exclusive, non-transferable, revocable licence, without the right to sublicense, to access and use the Software, the Hosting Services and Software Documentation on the terms of this EULA, solely for your internal business operations.

3.2 You shall:

3.2.1 provide the Licensor and the Authorised Reseller with:

3.2.1.1 all necessary co-operation in relation to this EULA; and

3.2.1.2 all necessary access to such information as may be required by the Licensor or the Authorised Reseller,

to the extent required to provide the Software, the Hosting Services and Software Documentation Services including but not limited to Licensee Data, security access information and configuration services;

3.2.2 without affecting your other obligations under this EULA, comply with all applicable laws and regulations with respect to your activities under this EULA; and

3.2.3 ensure that your network and systems comply with the relevant specifications provided by the Licensor or the Authorised Reseller from time to time.

3.3 You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Licensee Data. You hereby license us and our Authorised Reseller to use the Licensee Data for:

3.3.1 the proper performance and provision of the Software, the Hosting Services and Software Documentation and any services to be provided to you by our Authorised Reseller;

3.3.2 the purposes set out in our Privacy Notice as described in 7.2;

3.3.3 all other purposes relevant to the proper exercise of our rights and obligations under this EULA.

3.4 You undertake that:

3.4.1 the maximum number of Authorised Users that you authorise to access and use the Software, the Hosting Services and Software Documentation shall not exceed the number of subscriptions you have purchased from time to time;

3.4.2 you will ensure that each Authorised User shall keep a secure password for their use of the Software and that each Authorised User will keep their password confidential;

3.4.3 you will not allow or suffer any 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 Software, the Hosting Services or Software Documentation;

3.4.4 you shall permit the Licensor, the Authorised Reseller and their designated auditors to audit and verify that your use of the Software, the Hosting Services and Software Documentation does not exceed the total number of subscriptions purchased. This audit may take place physically on the Licensee's premises, or remotely, at the Licensor's or Authorised Reseller's option, and the Licensor or Authorised Reseller may deploy reasonable online audit tools for these purposes;

3.4.5 if an audits reveals that the Client has underpaid the Authorised Reseller, then without prejudice to the other rights of the Licensor and Authorised Reseller, the Client shall pay to the Authorised Reseller an amount equal to such underpayment;

3.4.6 you shall supervise and control use of the Software, the Hosting Services and Software Documentation and ensure they are used by your Authorised Users only in accordance with the terms of this EULA; and

3.4.7 you shall comply with all applicable technology control or export laws and regulations.

4. RESTRICTIONS

4.1 Except as expressly set out in this EULA or as permitted by any local law which is incapable of exclusion by agreement between the parties, you shall not:

4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, the Hosting Services and Software Documentation (as applicable) in any form or media or by any means;

4.1.2 attempt to de-compile, decipher, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form or determined all or any part of the Software or the Hosting Services including the source code, structure, algorithms, or underlying ideas;

4.1.3 attempt to disable any security devices or codes incorporated into the Software or the Hosting Services;

4.1.4 access all or any part of the Software, the Hosting Services or Software Documentation to build a product or service which competes with the Software, the Hosting Services or the Software Documentation;

4.1.5 use the Software, the Hosting Services or the Software Documentation to provide services to third parties;

4.1.6 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Hosting Services or Software Documentation available to any third party except the Authorised Users; or

4.1.7 attempt to obtain, or assist third parties in obtaining, access to the Software, the Hosting Services or the Software Documentation, other than as provided under this EULA.

4.2 You shall not use the Software or the Hosting Services to:

4.2.1 distribute or transmit any Viruses or Vulnerability and shall implement procedures in line with good industry practice to prevent such distribution or transmission;

4.2.2 store, access, publish, disseminate, distribute or transmit any material which:

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

4.2.2.2 facilitates illegal activity;

4.2.2.3 depicts sexually explicit images;

4.2.2.4 promotes unlawful violence;

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

4.2.3 is otherwise illegal or causes damage or injury to any person or property,

and we reserve the right, on no less than 14 days' prior written notice to you, such notice specifying the breach of this condition and requiring it to be remedied within the 14 day period, to disable your access to the Software, the Hosting Services and Software Documentation for the duration of time that the breach remains unremedied.

4.3 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Hosting Services and the Software Documentation and, in the event of any such unauthorised access or use, promptly notify us and our Authorised Reseller.

4.4 The rights provided under this EULA are granted to you only and shall not be considered granted to any of your subsidiaries or holding companies.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 You acknowledge that all intellectual property rights in the Software, the Hosting Services and Software Documentation anywhere in the world belong to us or our licensors, that rights in the Software, the Hosting Services and Software Documentation are licensed

(not sold) to you, and that you have no rights in, or to, the Software, the Hosting Services or the Software Documentation other than the right to use them in accordance with the terms of this EULA.

5.2 You acknowledge that you have no right to have access to any Software in source code form.

6. IPR INDEMNITY

6.1 We shall indemnify and defend you against any claim by a third party that the Software, Hosting Services or Software Documentation used in accordance with this EULA infringes any patent, copyright**,** trademark or other intellectual property right of that third party ("**IPR Infringement Claim**") provided that:

6.1.1 you promptly notify us and our Authorised Reseller of the IPR Infringement Claim in writing, specifying the nature of the IPR Infringement Claim in reasonable detail;

6.1.2 you allow us to have sole control of the defence and proceedings relating to the IPR Infringement Claim and any negotiations to settle or compromise the IPR Infringement Claim;

6.1.3 you shall not make any admission of liability, settlement or compromise in relation to the IPR Infringement Claim without our prior written consent; and

6.1.4 you shall provide us with reasonably information, assistance and cooperation in responding to and defending the IPR Infringement Claim.

6.2 We will not be liable under the above indemnity to the extent that the IPR Infringement Claim or any losses result from:

6.2.1 any Licensee Data or other materials or instructions provided by you;

6.2.2 the use of the Software, Hosting Services Software Documentation in combination with any other materials not supplied or approved by us;

6.2.3 your negligence, wilful misconduct or breach of this EULA or your agreement with our Authorised Reseller.

6.3 This condition 6 states our sole obligation and the sole liability of us and our Authorised Reseller for any infringement or claims of infringement of any patent, copyright, trademark or other intellectual property right with respect to the Software, Hosting Services and Software Documentation.

7. DATA PROTECTION

7.1 Where we process personal data as a processor on your behalf in relation to the performance of the Software, the Hosting Services and Software Documentation the terms set out in our FacilityApps Data Processing Agreement will apply.

7.2 Where we process personal data as a controller in order to administer our relationship with you or to exercise our rights, we shall process such personal data as described in our Privacy Notice.

7.3 We shall follow our standard archiving procedures for Licensee Data as in place from time to time (details of which are available upon request). In the event of any loss or damage to Licensee Data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged Licensee Data from the latest back-up of such Licensee.

7.4 You acknowledge that use of, or connection to, the internet provides the opportunity for unauthorised access by third parties and therefore we cannot guarantee the privacy and security of any Licensee Data or other information transmitted over or stored in any system connected to the internet or that any security precautions will be adequate or sufficient.

8. WARRANTY

8.1 We warrant that we will use commercially reasonable efforts to ensure that the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Software Documentation.

8.2 If you notify us and our Authorised Reseller in writing within 5 days of the appearance thereof of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Software Documentation in breach of the warranty under clause 8.1, we will, at our sole option, either: (a) repair or replace the Software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault; or (b) refund (or procure that our Authorised Reseller will refund) the charges paid by you in respect of the defective or non-confirming element of the Software for the period during which the warranty was breached.

8.3 We warrant that we will use commercially reasonable endeavours to make the Software available via the Hosting Services other than during periods of maintenance which we will endeavour to keep to a minimum and perform outside of normal business hours.

8.4 The warranties above do not apply:

8.4.1 if the defect or fault in the Software results from you having used the Software in breach of the terms of this EULA;

8.4.2 if the defect or fault is caused by hardware or software which is not provided by us;

8.4.3 if you are in breach of this EULA or the terms of your agreement with our Authorised Reseller; or

8.4.4 if the defect or fault is caused by a Force Majeure Event.

8.5 Except as expressly stated in this EULA, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software, Hosting Services and Software Documentation which might otherwise be implied into, or incorporated in, this EULA whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

9. TERMINATION

9.1 Notwithstanding any terms agreed by you and our Authorised Reseller, we may terminate this EULA immediately by written notice to you if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

9.2 On termination for any reason:

9.2.1 all rights granted to you under this EULA shall cease;

9.2.2 you must immediately cease all activities authorised by this EULA;

9.2.3 you must immediately and permanently delete or disable interfaces to the Software and Hosting Services from all computer equipment in your possession, and immediately destroy, delete or return to us (at our option) all copies of the Software Documentation and Software then the possession, custody or control of your or your Authorised Users and, in the case of destruction or deletion, certify to us that you have done so; and

9.2.4 we may destroy or otherwise dispose of any of the Licensee Data in our possession unless we receive, no later than 30 days after the effective date of the termination of this EULA, a written request for the delivery to you of the then most recent back-up of the Licensee Data.

10. FORCE MAJEURE

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by a Force Majeure Event. A Force Majeure Event is defined below in condition 10.2.

10.2 A Force Majeure Event means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

10.3 If a Force Majeure Event takes place that affects the performance of our obligations under this EULA:

10.3.1 our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Force Majeure Event; and

10.3.2 we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Force Majeure Event.

11. OTHER IMPORTANT TERMS

11.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.

11.2 You may only transfer your rights or your obligations under this EULA to another person if we agree in writing.

11.3 We may update the terms of this EULA at any time by giving written notice to you. Your continued use of the Software and Hosting Services following the deemed receipt of the

written notice shall constitute your acceptance to the terms of this EULA, as varied. If you do not wish to accept the terms of the EULA (as varied) you must immediately stop using and accessing the Software and Hosting Services on the deemed receipt of the written notice.

11.4 You acknowledge that in entering into this EULA you do 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 EULA.

11.5 You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this EULA.

11.6 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

11.7 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

11.8 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

11.9 This EULA, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 2 – PROVISION OF HARWARE

This Schedule 2 for the provision of hardware applies specifically to hardware provided by The Supplier on a subscription basis for the augmentation of the Software capabilities.

This Schedule 2 applies only if the Order specifies that Hardware will be provided by The Supplier.

1.1 Subject to the Client's payment of the One-Off Fee, The Supplier shall use reasonable endeavours to deliver the Hardware to the Client (at the Address agreed between the parties in writing) on or before the Provisioning Date.

1.2 The Client shall procure that its authorised representative is present to take delivery of the Hardware. Acceptance of delivery by such representative shall mean that the Client has examined the delivery and found the delivery to be complete and the Hardware is in good condition.

1.3 The Hardware shall remain the property of The Supplier, and except as set out in this Schedule 2, the Client shall have no right, title, or interest in, or to, the Hardware. The Client is permitted to possess and use the Hardware during the Initial Term and any renewal periods in accordance with the terms of this Contract.

1.4 The Client shall not hold itself out as the owner of the Hardware or tamper with any marks of identification, origin, or ownership on the same.

1.5 The risk of loss, theft, damage or destruction in the Hardware shall pass to the Client on delivery and shall remain at the Client's sole risk until they are returned to The Supplier in accordance with this Contract. The Client shall immediately notify The Supplier of any damage to, or loss of, the Hardware. The Client shall maintain suitable insurance to cover the full replacement cost of the Hardware.

1.6 The Client shall (and shall procure that the Licensed Users shall):

(a) ensure that the Hardware are kept safe and secure, and are not possessed or used by, or sold or let to, any third party;

(b) be responsible for agreeing to, and complying with, all third-party terms of use and licensing terms applicable to the Hardware and the software contained within them; and

(c) not: (i) modify the Hardware; (ii) use the Hardware with any equipment or peripherals which are not supplied or approved by The Supplier; (iii) use the Hardware outside of the manufacturer's recommended manner of use; and (iv) themselves, or permit any third party, to perform any support or maintenance in respect of the Hardware.

1.7 If the Client notifies The Supplier that there is a fault with any Hardware then, provided that such fault is not caused by the Client and / or the Licensed Users and does not result from any breach of this Contract, The Supplier will use reasonable endeavours to replace the same within a reasonable time of the fault being notified to The Supplier. Unless otherwise agreed in writing, delivery of replacement Hardware will be conditional on the simultaneous return of the faulty Hardware. If a returned item of Hardware: (a) is not faulty (as determined by The Supplier), then the Client shall pay an administration fee of £50 for each returned piece of Hardware; or (b) is faulty, and such fault is caused by the Client and / or the Licensed Users (as determined by The Supplier), then the Client shall reimburse The Supplier for the costs of any repairs required to put such Hardware in good and working condition.

1.8 If the Client notifies The Supplier of any Hardware that has been tampered with, damaged, removed, or lost will incur a charge equal to the cost of procuring a new replacement.

1.9 The battery life of sensors is based on a radio transaction every 15 mins, operations at room temperature and in a default configuration. Lifetime will vary based on operating environment and rate of transmissions the Client must procure to maintain these conditions. Where a sensors battery life runs down faster a replacement sensor will be provided for self-installation free of charge.

1.10 On termination of this Contract, the Client shall return the Hardware to such address required by The Supplier in good and working condition. The Client shall reimburse The Supplier for the costs of any repairs required to put the returned Hardware in good and working condition. If any Hardware are not returned in accordance with this 1.10 or are beyond repair when returned, the Client shall reimburse The Supplier for the cost of replacing such Hardware with new devices of the same specification.