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## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Terms.

**Aggregated Data** means data, including Customer Data, which has been Anonymised and that is tracked across time and which is not confined to one Customer or Authorised User.

**Allocation Card** means the card provided by the Supplier to the Customer to activate the Base Station in accordance with the Licence Agreement;

**Anonymised** means that is not likely, acting reasonably and having regard to other data available, to identify a living individual from the anonymised information.

**Authorised Users** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in condition 5.5.

**Authorised Representative** means a director, company secretary or other nominated representative of the Customer, duly authorised to bind the Customer to these Terms and/or the Licence Agreement, as such authorised representative is more particularly detailed in the Customer Agreement.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for normal, over the counter business.

**Charges** means the purchase price of equipment together with the Subscription Fees.

**Cloud** means the delivery of the Services over the internet,

**Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 13.6.

**Customer Agreement** means the agreement entered into by the Customer and the Supplier to purchase Equipment and Services.

**Customer Data** means the data, including any Personal Data, inputted by the Authorised Users for the purpose of using the Services and for which the Customer is responsible.

**Documentation** means the documents provided by the Supplier for the Software, in either printed text or machine readable form, including, where necessary, technical documentation, program specification and operations manual.

**Effective Date** means the last date of signing of Customer Order.

**Equipment** means (i) the HAVmeter; (ii) the ATEX HAVmeter; (iii) the Base Station; (iv) the HAVwear; (v) the Docking Station; and (vi) all other ancillary products and equipment that is offered for sale by the Supplier from time to time and each variation of these and any ancillary products thereafter as has been developed or as may be developed.

**HAV Unit Subscriptions** means the HAVmeter and/or HAVwear subscriptions purchased by the Customer pursuant to condition 11.1 which permit the maximum number of HAVmeters and/or HAVwears licensed for use by the Customer and Authorised Users in accordance with the Customer Order and these Terms.

**Hosting Services** means the services that the Supplier provides to the Customer as provided by a third party provider of hosting services to enable Authorised Users to access and use the Software.

**Initial Subscription Term** means the term that is more particularly described and detailed in the Customer Agreement.

**Licence Agreement** means the licence agreement for Software, which shall be signed by an Authorised Representative of the Customer upon first use of the Software and/or Services.

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

**Operator Card** means the card provided by the Supplier to the Customer to enable the Base Station or Docking Station to identify the Authorised Users and permit access by the Authorised Users to the Services.

**Password** means the alphanumeric code provided by the Supplier to the Customer and its Authorised Users to enable access to the Software and the Services.

**Personal Data** means data relating to a living individual who can be identified from that data.

**PIN** means the personal identification number provided on an Allocation Card by the Supplier to the Customer to (i) activate the Base Station in accordance with the Licence Agreement; and (ii) enable the Base Station to identify the Customer.

**Privacy Policy** means the Supplier's privacy policy may be made available to the Customer upon request to the Supplier or otherwise available via the Supplier's website.

**Purchase Order** means the Customer's order for Equipment and/or Services.

**Purchase Price** means the price for the Equipment as specified in the Customer Order.

**Renewal Period** means the period described in condition 16.1.

**Services** means the subscription services provided by the Supplier to the Customer under these Terms as more particularly described in the Customer Order and which services shall include, for the avoidance of doubt, the provision of the Hosting Services through a third party provider and use of the software.

**Software** means the software which enables the use of the Services.

**Specification** means the data sheets for the Equipment, which data sheets are available via the Supplier's website [www.reactec.com](http://www.reactec.com);

**Subscription Fees** means the subscription fees payable by the Customer to the Supplier for the HAV Unit Subscriptions, as set out in the Customer Order.

**Subscription Term** means has the meaning given in condition 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy** means the Supplier's policy for providing support in relation to the Services as made available at [www.reactec.com](http://www.reactec.com) or such other website address as may be notified to the Customer from time to time.

**Terms** means the Supplier's terms and conditions for the use of the reporting services as the same may be amended by the Supplier from time to time.

**Third Party Software** means the third party software incorporated in to the Software or otherwise used in the provision of the Services.

**Third Party Terms** means the additional terms and conditions for any third party provider of (i) the Hosting Services; and/or (ii) the provision of the Cloud or any other part of the Services; and/or (iii) Third Party Software.

**Unique Identifier** means the national insurance number and/or employee pay roll number or other unique identifier that will enable any individual Authorised User to be identified.

**Virus** 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.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.

- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to conditions and schedules are to the conditions and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

## **A. EQUIPMENT TERMS AND CONDITIONS**

### **2. DELIVERY OF EQUIPMENT**

- 2.1 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Customer Order. Each instalment shall be a separate Customer Order and no cancellation or termination by either party of any one Customer Order relating to an instalment shall entitle the Customer to repudiate or cancel any other Customer Order or instalment.
- 2.2 No order which has been acknowledged by the Supplier may be cancelled by the Customer, except where such cancellation is confirmed in writing by the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 2.3 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Customer Order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the Customer Order. Time is not of the essence as to the delivery of the Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.
- 2.4 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 2.5 The Customer shall be responsible (at the Customer's cost) for preparing the Customer premises for (i) the installation of the Equipment; and/or (ii) the provision of training by the Supplier. The Customer shall be responsible for the provision of all necessary access and facilities reasonably required to install the Equipment and (if applicable) provide training to the Customer. If the Supplier is prevented from carrying out installation and/or training on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- 2.6 The Customer shall be deemed to have accepted the Equipment when the Customer has had seven days to inspect it after delivery.
- 2.7 The Supplier shall be responsible for any damage, shortage or loss in transit, provided that (i) the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery of the Equipment; and (ii) the Equipment has been handled in accordance with the Supplier's stipulations. Any remedy under this condition 2.7 shall be limited, at the option of the Supplier, to the replacement or repair of any Equipment which is proven to the Supplier's satisfaction to have been lost or damaged in transit.

- 2.8 Where the Supplier agrees to provide and the Customer agrees to purchase further Equipment other than the Equipment detailed in the Customer Agreement, such agreement shall be embodied in a Purchase Order. Each order for further Equipment shall be made under, and shall incorporate, these Terms (as the same may be varied or otherwise amended from time to time).
- 3. QUANTITY AND DESCRIPTION**
- 3.1 The quantity and description of the Equipment shall be as set out in the Customer Order. The Supplier shall use reasonable endeavours to ensure that the Equipment shall correspond in all material respects to any applicable Specification.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Customer Order.
- 3.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 3.4 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation. Where the Supplier is not the manufacturer of ancillary Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.
- 3.5 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment
- 3.6 The Customer shall test and inspect the Equipment on delivery to ensure that it complies with the requirements of the Customer Order.
- 4. RISK AND TITLE**
- 4.1 The Equipment shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Customer Order. The Supplier shall off-load the Equipment at the Customer's risk.
- 4.2 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:
- 4.2.1 the Equipment; and
- 4.2.2 all other sums which are or which become due to the Supplier from the Customer on any account.
- 4.3 Until ownership of the Equipment has passed to the Customer under condition 4.2, the Customer shall:
- 4.3.1 hold the Equipment in trust on behalf of the Supplier;

- 4.3.2 maintain the Equipment (at no cost to the Supplier) in satisfactory condition and store the equipment so that it remains readily identifiable as the Supplier's property;
  - 4.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
  - 4.3.4 keep the Equipment insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 4.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 16 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.
- 4.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.
- 4.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this condition 4 shall remain in effect.
- 4.7 The Supplier may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.
- 5. SERVICES**
- 5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Terms and the Licence Agreement. The Customer hereby agrees and acknowledges that it shall be bound to accept the terms of and enter into the Licence Agreement upon the first use of the Software and the Services by the Customer. The Customer hereby warrants and undertakes that an Authorised Representative of the Customer shall sign or otherwise accept the Licence Agreement prior to the Customer commencing use of the Software and the Services.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during the maintenance window of [10.00 pm to 2.00 am UK time] or such other maintenance window as may be stipulated in any Third Party Terms; and
  - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance.



- 5.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 5.4 Subject to the Customer purchasing the HAV Unit Subscriptions in accordance with the Customer Agreement and condition 11.1, the restrictions set out in this condition 5.4 and the other terms and conditions of (i) these Terms; (ii) any Third Party Terms; and (iii) the Licence Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Software, the Documentation and the Services during the Subscription Term solely for the Customer's internal business operations.
- 5.5 In relation to the Authorised Users, the Customer undertakes that:
- 5.5.1 the maximum number of HAVmeters and/or HAVwears used by the Customer and/or the Authorised Users to access and use the Services shall not exceed the number of HAV Unit Subscriptions it has purchased from time to time;
  - 5.5.2 each Authorised User shall keep secure and confidential (i) their Password; and (ii) their Operator Card, for their use of the Services and shall not permit any other person, including but not limited to, any other Authorised User to use either their Password and/or their Operator Card;
  - 5.5.3 it shall be responsible for managing the access rights of Authorised Users to the Services;
  - 5.5.4 it shall permit the Supplier to audit the Services in order to establish (i) the number of HAVmeters and/or HAVwears being utilised by the Customer and/or the Authorised Users in the provision of the Service; (ii) the number of Unique Identifiers being utilised in the provision of the Services; and (iii) the name and email address of each Authorised User who has access rights to the Services. Such audit may be conducted at any time by the Supplier's monitoring of the Services;
  - 5.5.5 if any of the audits referred to in condition 5.5.4 reveal that the number of HAVmeters and/or HAVwears being utilised by the Customer exceeds the number of HAV Unit Subscriptions and thus the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the price for such HAV Unit Subscriptions as set out in the Customer Agreement (as the same may have been increased in accordance with condition 11.6 hereof) within 10 Business Days of the date of the relevant audit; and
- 5.6 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 5.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;



- 5.6.2 facilitates illegal activity;
- 5.6.3 depicts sexually explicit images;
- 5.6.4 promotes unlawful violence;
- 5.6.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 5.6.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Services if the Customer or any Authorised User breaches the provisions of this condition.

5.7 The Customer shall not:

- 5.7.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (a) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
  - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 5.7.2 access all or any part of the Services in order to build a product or service which competes with the Services and/or the Documentation; or
- 5.7.3 use the Services to provide services to third parties; or
- 5.7.4 subject to condition 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- 5.7.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this condition 5; and

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

5.9 The rights provided under this condition 5 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## **B. SERVICES TERMS AND CONDITIONS:**

### **6. HAV UNIT SUBSCRIPTIONS**

6.1 The Customer's use of the Software and the Services shall be subject always to the Customer entering to a Licence Agreement and the terms and conditions contained therein.

6.2 The Customer's use of the Services and the Software and the Hosting Service shall be subject always to any Third Party Terms and:

6.2.1 the Customer shall defend, indemnify and hold harmless the Supplier against all 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) a breach of any Third Party Terms howsoever arising by the Customer or its Authorised Users or other employees, agents or representatives or other third parties acting upon the instruction of the Customer; and/or (ii) a breach of any Third Party Terms by the Supplier, or a third party where such breach is attributable in whole or in part, directly or indirectly to an act or omission of the Customer or its Authorised Users, employees, agents or representatives or other third parties acting upon the instruction of the Customer.

6.2.2 the Supplier may treat the Customer's breach of any Third Party Terms as a material breach of these Terms and terminated the Agreement in accordance with condition 13.2.2 hereof; and

6.2.3 the Supplier makes no representations or commitment and shall have no liability or obligation whatsoever in relation to the content of or the obligations of the Customer under any such Third Party Terms and the Customer hereby acknowledges and undertakes that the Customer shall assume all liability in relation to any Third Party Terms in respect of the Customer and/or the Authorised User's use of the Services.

6.3 The rights provided under this condition 6 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **7. CUSTOMER DATA**

7.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, quality, appropriateness and intellectual property ownership or right to use of the Customer Data. The Supplier shall not be responsible or liable for the deletion, corruption, destruction, damage, loss or failure to store any of or all of the Customer Data. Sole responsibility and liability for all Customer Data uploaded via the Software to the Cloud and/or Hosting Services resides and remains solely with the Customer at all times.

7.2 In the event of any loss or damage to the Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier (subject always to the provisions and/or limitations contained within any Third Party Terms) to use reasonable commercial endeavours to restore (if possible) the lost or damaged Customer Data from the latest back-up (if any) of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of the Customer Data caused by any third

party (including (but not limited to), for the avoidance of doubt, those third parties sub-contracted by the Supplier to perform services related to the Customer Data maintenance and back-up and/or provision of the Cloud and/or the Hosting Services).

- 7.3 The Supplier shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data. Such Privacy Policy shall be provided to the Customer, upon the Customer's request, either in writing or otherwise made available at [www.reactec.com](http://www.reactec.com) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 7.4 In the event that the Agreement is terminated (save for termination caused by the Customer's breach of these Terms and/or any Third Party Terms, or the terms of the Licence Agreement in accordance with condition 16.2, 16.3.1 or 16.3.2 hereof), the Supplier shall, to the extent that it is reasonably possible to do so, make available to the Customer a file of the Customer Data within 30 days of termination if (i) the Customer so requests the same in writing; and (ii) the Customer advises the Supplier in writing of the name and contact details of the Customer's data protection officer or such other nominated representative of the Customer to whom that data should be sent. The Supplier reserves the right to withhold, remove, discard or delete the Customer Data without notice for any breach, including (without limitation) the Customer's failure to make any relevant payments of the Charges, a material breach of these Terms by the Customer or a breach of any Third Party Terms by the Customer or a repeated or continuous breach of these Terms by the Customer. Where the Terms, any Third Party Terms and the Licence Agreement are terminated by the Customer in accordance with conditions 16.2, 16.3.1 or 16.3.2 hereof, the Customer's right to access or use the Customer Data shall cease immediately and the Supplier shall have no obligation to maintain (to the extent that the Supplier so maintains), forward or otherwise deal with the Customer Data other than in accordance with this condition 7.4.
- 7.5 If the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under these Terms or any Third Party Terms, the parties agree that the Customer shall be the Data Controller (as defined in the Data Protection Act 1998) and the Supplier shall be a Data Processor (as defined in the Data Protection Act 1998) and in any such case:
- 7.5.1 the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to use the Services and the Supplier's other obligations under these Terms and/or any Third Party Terms and that the Supplier shall have no liability for an loss, destruction, damage, alteration or disclosure of the Customer Data that occurs as a result of such transfer or storage outside the EEA or the country where the Customer and Authorised Users are located;
- 7.5.2 the Customer warrants that the Customer is entitled to transfer the relevant Personal Data to the Supplier so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with these Terms and/or any Third Party Terms and/or the Licence Agreement on the Customer's behalf;

- 7.5.3 the Customer warrants that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 7.5.4 the Supplier shall process the personal data only in accordance with the terms of these Terms and the Licence Agreement and any lawful instructions reasonably given by the Customer from time to time, provided always that the Customer hereby acknowledges and agrees to the Supplier processing the Customer Data for the purposes of creating Aggregated Data; and
- 7.5.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 7.6 The Customer fully and effectively indemnifies and holds harmless the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs arising out of any breach of:
- 7.6.1 the warranties provided by the Customer for the benefit of the Supplier in this condition 7; or
- 7.6.2 the Personal Data Protection requirements by the Customer or an Authorised User or other third party.
- 7.7 The Customer acknowledges that (i) all Intellectual Property Rights in the Aggregated Data are the property of the Supplier or its licensors as the case may be and the Customer shall have no rights in or to the Aggregated data; and (ii) the Supplier may utilise the Aggregated Data as the Supplier shall see fit, including the sale, licence, publication or other distribution of the Aggregated Data.
- 8. SUPPLIER'S OBLIGATIONS**
- 8.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.
- 8.2 Notwithstanding the foregoing in condition 8.1, the Supplier:
- 8.2.1 does not warrant that the Customer's use of the Services and/or the Documentation will be uninterrupted or error-free; or that the Services and/or the Documentation and/or the information obtained or reports created by or data available to the Customer through the Services will meet the Customer's requirements; and
- 8.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and/or the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 These Terms shall not prevent the 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 these Terms.

- 8.4 The Supplier warrants that to the best of its knowledge it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.
9. CUSTOMER'S OBLIGATIONS
- 9.1 The Customer shall:
- 9.1.1 provide the Supplier with:
- (a) all necessary co-operation in relation to these Terms and the Licence Agreement; and
  - (b) all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including but not limited to the Customer Data, security access information and configuration services;
- 9.1.2 comply with all applicable laws and regulations with respect to its activities under these Terms and the Licence Agreement;
- 9.1.3 carry out all other Customer responsibilities set out in these Terms, any Third Party Terms and/or the Licence Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 9.1.4 ensure that the Authorised Users use the Services in accordance with the terms and conditions of these Terms, any Third Party Terms and the Licence Agreement and shall be responsible for any Authorised User's breach of these Terms and/or any Third Party Terms and/or the Licence Agreement;
- 9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms, and/or any Third Party Terms and the Licence Agreement, including without limitation the Services;
- 9.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 9.2 The rights provided under this condition 9 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## 10. PROPRIETARY RIGHTS

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Equipment, the Software, the Services and/or the Documentation. Except as expressly stated herein, neither these Terms nor the Licence Agreement grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Equipment and/or Services or the Documentation.
- 10.2 The Supplier confirms that to the best of its knowledge it has all the rights in relation to the Equipment, the Services and/or the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms.

## C. GENERAL TERMS AND CONDITIONS

### 11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay to the Supplier (i) the Purchase Price for the Equipment; (ii) the Subscription Fees for the HAV Unit Subscriptions; in accordance with this condition 11.1 and the Customer Agreement; and (iii) any underpayment in Subscription Fees in accordance with condition 5 hereof.
- 11.2 If so requested by the Supplier, the Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or authorisation to initiate a direct debit or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
- 11.2.1 its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card for the Charges payable in respect of the Initial Subscription Term in advance in accordance with Customer Agreement.
- 11.2.2 its approved purchase order information to the Supplier, the Supplier shall invoice the Customer quarterly or annually in advance for the Charges payable in respect of the previous month in accordance with Customer Agreement and the Customer shall pay each invoice within 14 days of the date of such invoice.
- 11.2.3 its authorisation to initiate a direct debit on the Customer's account, the Customer shall provide details of its bank account, including sort code, account number and account name and shall duly authorise the Supplier to collect the Charges in advance by direct debit in accordance with the Customer Agreement.
- 11.3 If the Supplier has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- 11.3.1 the Supplier may, without liability to the Customer, disable the Customer's Password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;

- 11.3.2 the Supplier may, without liability to the Customer, exercise the Supplier's rights in accordance with condition 5 hereof to acquire possession of the Equipment from the Customer; and
- 11.3.3 interest shall accrue on a daily basis on such due amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.4 All amounts and fees stated or referred to in these Terms:
- 11.4.1 shall be payable in pounds sterling;
- 11.4.2 are, subject to condition 15.5.2, non-cancellable and non-refundable;
- 11.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 11.5 If at any time whilst using the Services, the Supplier deems that the Customer has exceeded the amount of storage space reasonably made available to the Customer within the Cloud, the Supplier reserves the right to charge the Customer and the Customer shall pay the Supplier's then current data storage fees, notified to the Customer by Supplier in writing from time to time.
- 11.6 The Supplier shall be entitled to increase the Subscription Fees, the Purchase Price and/or the excess storage fees payable pursuant to condition 11.5 at any time upon 90 days' prior notice to the Customer and the Customer Order shall be deemed to have been amended accordingly.
- 12. WARRANTY**
- 12.1 The Supplier warrants to the Customer that the Equipment is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this condition 12 at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within twelve months of delivery.
- 12.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in condition 12.1 unless:
- 12.2.1 the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and
- 12.2.2 after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost for the examination to take place there.
- 12.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in condition 12.1 if:
- 12.3.1 the Customer makes any use of Equipment in respect of which it has given written notice under condition 12.2.1; or



- 12.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment and/or the Services or (if there are none) good trade practice; or
- 12.3.3 the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.
- 12.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the twelve month period.
- 12.5 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment and/or the Services caused by (i) improper use of the Equipment and/or the Services; or (ii) use outside its normal application; or (iii) exceptional use of the Equipment, which exceptional use shall be deemed to be use of the Equipment in out with the Specification , if applicable and/or the parameters of use as may be detailed in a data sheet, which the Customer may request from the Supplier in writing or as such data sheet is otherwise made available by the Suppliers via the Supplier's website from time to time.
- 12.6 Any extended warranty shall be agreed between the Customer and the Supplier in writing and shall be subject to (i) the parties entering into a further agreement upon reasonably commercial terms for such extended warranty; and (ii) the charges for the extended warranty, as more particularly described and detailed in the further agreement, to be entered into between the parties.
- 13. CONFIDENTIALITY**
- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:
- 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 13.1.2 was in the other party's lawful possession before the disclosure;
- 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence;
- 13.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body; or
- 13.1.6 any Aggregated Data which has been suitably Anonymised.
- 13.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not use the other's Confidential Information for any purpose other than the implementation of these Terms.

- 13.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, the Customer shall not make the Supplier's Confidential Information available to any third party. For the avoidance of doubt, the Supplier shall be entitled to disclose the Customer's Confidential Information to its employees, sub-contractors and representatives, (which representatives shall include any third party providers of services to the Supplier including, but not limited to, cloud computing providers) in the course of supplying the Services.
- 13.4 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 or agents in violation of the terms of these Terms.
- 13.5 Each party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party acting upon the instruction of and on behalf of that party.
- 13.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 13.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.8 This condition 13 shall survive termination of these Terms, however arising.
- 13.9 No party shall make, or permit any person to make, any public announcement concerning these Terms without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14. INDEMNITY**
- 14.1 The Customer 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 the Customer's use of the Equipment, the Software and/or the Services , provided that:
- 14.1.1 the Customer is given prompt notice of any such claim;
- 14.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 14.1.3 the Customer is given sole authority to defend or settle the claim.
- 14.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Equipment and/or the Services and/or the Software, replace or modify the Equipment and/or the Services and/or the Software so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms immediately upon serving written notice to that effect upon the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 14.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 14.3.1 a modification of the Equipment or Services or Software or Documentation by anyone other than the Supplier; or
  - 14.3.2 the Customer's use of the Equipment or Services or Software or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 14.3.3 the Customer's use of the Equipment or Services or Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 14.4 The foregoing and condition 15.5.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 15. LIMITATION OF LIABILITY**
- 15.1 This condition 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 15.1.1 arising under or in connection with these Terms and the Licence Agreement;
  - 15.1.2 in respect of any use made by the Customer of the Equipment and the Documentation and the Services or any part of them; and
  - 15.1.3 in respect of any representation, statement or delictious act or omission (including negligence) arising under or in connection with these Terms and the Licence Agreement.
- 15.2 Except as expressly and specifically provided in these Terms and the Licence Agreement:
- 15.2.1 the Customer assumes sole responsibility for results and/or reports obtained from the use of the Software the Services and/or the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 15.2.2 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 these Terms; and
  - 15.2.3 the Services are provided to the Customer on an "as is" basis.
- 15.3 Nothing in these Terms excludes the liability of the Supplier:
- 15.3.1 for death or personal injury caused by the Supplier's negligence; or
  - 15.3.2 for fraud or fraudulent misrepresentation.

- 15.4 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 15.5 Subject to condition 15.2 and condition 15.3:
- 15.5.1 the Supplier shall not be liable whether in delict (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any storage of data, 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 these Terms; and
- 15.5.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at condition 14.2), delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Customer Order shall be limited to the total Subscription Fees paid by the Customer during the 6 months immediately preceding the date on which the claim arose.
- 16. TERM AND TERMINATION**
- 16.1 These Terms shall, unless otherwise terminated as provided in this condition 16, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these Terms shall be automatically renewed for successive periods of 12 months or as otherwise stipulated in the Customer Agreement or otherwise mutually agreed by both parties in writing (each a **Renewal Period**), unless:
- 16.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case these Terms shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 16.1.2 otherwise terminated in accordance with the provisions of these Terms;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.
- 16.2 Without affecting any other right or remedy available to it, the Supplier may terminate these Terms with immediate effect by giving written notice to the Customer if:
- 13.2.1 the Customer fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; and
- 13.2.2 the Customer breaches any Third Party Terms or the Supplier breaches any Third Party Terms and such breach by the Supplier is attributable to, either in whole or in part, directly or indirectly, an act or omission of the Customer, an Authorised User or the Customer's employees, agents, representatives or other third parties who are acting on the instruction of the Customer.
- 16.3 Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:

- 16.3.1 the other party commits a material breach of any other term of these Terms 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;
  - 16.3.2 the other party repeatedly breaches any of the terms of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Terms;
  - 16.3.3 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 ;
  - 16.3.4 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;
  - 16.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 16.3.6 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;
  - 16.3.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 16.3.8 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;
  - 16.3.9 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;
  - 16.3.10 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 condition 16.3.3 to condition 16.3.9 (inclusive);
  - 16.3.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 16.3.12 any warranty given by the Supplier in condition 8.4 of these Terms is found to be untrue or misleading.
- 16.4 The Supplier may terminate these Terms at any time without cause upon providing the Customer with at least thirty days' prior written notice to that effect.

- 16.5 On termination of these Terms for any reason:
- 16.5.1 all licences granted under these Terms or otherwise entered into by the Parties in relation to the Software shall immediately terminate;
  - 16.5.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 16.5.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of these Terms, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
  - 16.5.4 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.

## 17. FORCE MAJEURE

The Supplier shall have no liability to the Customer under these Terms if it is prevented from or delayed in performing its obligations under these 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 the 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, provided that the Customer is notified of such an event and its expected duration.

## 18. CONFLICT

If there is an inconsistency between any of the provisions in the main body of these Terms and the Schedules, the provisions in the main body of these Terms shall prevail.

## 19. VARIATION

Except as set out in these Terms, no variation of the Customer Order, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier. For the avoidance of doubt, the Supplier reserves the right to amend these Terms from time to time and such amended Terms shall be binding upon the Customer provided that the amended Terms are notified to the Customer in writing.

## 20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms 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.

## 21. RIGHTS AND REMEDIES

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

## 22. SEVERANCE

22.1 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 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.

## 23. ENTIRE AGREEMENT

23.1 These Terms constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover and may not be varied except in writing by the Supplier. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. In the case of a conflict among the terms of the Customer Order and the documents referred to in the Customer Order and these Terms, these Terms shall prevail.

23.2 Each Purchase Order and/or Customer Agreement, which is entered into shall be subject to these Terms (as these Terms may be amended from time to time in accordance with condition 19 hereof) to the exclusion of all other terms and conditions that the Customer may seek to introduce or reply upon.

## 24. ASSIGNATION

24.1 The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Customer Order or these Terms.

24.2 The 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 Customer Order or these Terms.

## 25. NO PARTNERSHIP OR AGENCY

Nothing in the Customer Order or these Terms 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).



## 26. THIRD PARTY RIGHTS

A person who is not a party to the Customer Order or these Terms shall not have any rights to enforce its terms or these Terms.

## 27. NOTICES

27.1 Any notice required to be given under the Customer Order or these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Customer Order, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Customer Order.

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## 28. GOVERNING LAW

The Customer Order and these Terms 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 Scotland.

## 29. JURISDICTION

Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Customer Order or these Terms or its subject matter or formation (including non-contractual disputes or claims).