cubelus.

SaaS Terms and Conditions

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SaaS Terms and Conditions

PARTIES

1) **CUBELUS LIMITED** incorporated and registered in England and Wales with company registration number 10485659 whose registered office is at 320 Firecrest Court, Centre Park, Warrington, WA1 1RG, UK ("**Cubelus**"); and

2) Any person with authorised access to software and services owned and operated by Cubelus Ltd ("**Customer**").

   Each a "**Party**" and together the "**Parties**".

Background

A. Cubelus has developed certain software applications, including the Software (defined below), which it makes available to customers on a subscription basis via the Internet. Cubelus also provides the Services (as defined below) in connection with the Software.

B. Cubelus has agreed to provide the Services and a license of the Software to the Customer upon and subject to the terms of this Agreement.

AGREED TERMS

1. Agreement

1.1. This Agreement is a legally binding agreement between the Customer and Cubelus for the Customer's use of and access to the Software as a service offering (the "**Services**"). By accessing the Software or using the Services, the Customer represents that it has read, understood, and agrees to be bound by the terms of this Agreement.

1.2. Cubelus shall have the right to make changes to this Agreement at any time by giving the Customer notice in writing to the e-mail address that the Customer registered with Cubelus ("**Change Notice**"). The Customer shall have a right to terminate this Agreement within 14 days of the date of the Change Notice if it is dissatisfied with the amendments to the Agreement proposed in the Change Notice. By continuing to use the Services after 14-days from the date of the Change Notice, the Customer is deemed to have accepted the new agreement, as amended. The Change Notice shall be deemed to be delivered at the time of sending the Change Notice by e-mail. Any changes will be effective from the effective date of the change and will not affect any dispute arising prior to the effective date of the change. By indicating its acceptance to this Agreement, the Customer is also agreeing that this Agreement replaces and supersedes any previously existing Cubelus agreement relating to the Services.

2. Definitions

2.1. "**Agreement**" means these SaaS terms and conditions, and includes the Order Form and prices.

2.2. "**Business Day**" means any day which is not a Saturday, Sunday or public holiday in England, where the banks in England are open for business.

2.3. "**Cubelus Site**" means the website designated by Cubelus from time-to-time where the Customer and Users can access the Services.

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2.4. "**Cubelus Software**" means the proprietary software owned by Cubelus that is licensed to the Customer in connection with the Services, subject to the terms of this Agreement.

2.5. "**Customer Data**" means information, data, and other content, in any form or medium, that is accessed, submitted, processed, stored, or disclosed by the Customer, on its behalf, or by a User through use of the Services.

2.6. "**Devices**" means the devices through which the Customer is permitted by this Agreement to access and use the Software as part of the Services;

2.7. "**Documentation**" means all Software user documentation, printed materials, and "online" or electronic documentation and any copies thereof, in whole or in part, provided to You by Cubelus from time to time.

2.8. "**Intellectual Property**" patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

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

2.10. "**Onboarding**" means the process of provisioning Your platform instances, registering and granting access to your authorised Users and testing successful deployment.

2.11. "**Order Form**" means the order form completed by the Customer and accepted by Cubelus in connection with the Services.

2.12. "**Renewal Period**" has meaning given to it in clause 12.1 of this Agreement.

2.13. "**Software**" means collectively the Cubelus Software and Third-Party Software.

2.14. "**Subscription Term**" means the subscription term stated in the Order Form together with an Renewal Periods.

2.15. "**Third-Party Software**" means the copyrighted, patented, or otherwise legally protected software of third parties (including open-source code components) incorporated as part of the Services.

2.16. "**User**" means the individual employed and authorised by the Customer to access and use the Services in compliance with this Agreement.

3. License Grant

3.1. _**License**_. Subject to the Customer's compliance with the terms of this Agreement, Cubelus hereby grants the Customer a limited, personal, worldwide, non-exclusive, non-transferable, non-sub-licensable, revocable right and license to access and use the Software (and to permit Users to access and use the Software) during the Subscription Term. The licence and other rights granted under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3.2. _**Restrictions.**_ The Customer shall not, and shall ensure that Users shall not:

3.2.2. attempt to copy, reproduce, modify duplicate, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and or Documentation (as applicable) whether in whole or in part, in any form or media or by any means;

3.2.3. attempt to enhance, improve, alter, create derivative works from, reverse engineer, disassemble, deconstruct, translate, decrypt, de-compile, reverse compile, or convert into human-perceivable form, the Software or any part thereof;

3.2.4. distribute, lend, assign, license, sublicense, lease, rent, transfer, sell, or otherwise provide access to the Software, in whole or in part, to any third party;

3.2.5. attempt to remove, deface, cover, or otherwise obscure any proprietary rights notice or

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identification on the Software;

3.2.6. attempt to copy in full or in part any of the Documentation, unless specifically authorised in writing to do so by Cubelus Ltd;

3.2.7. use the Software in violation of any applicable laws or in any unlawful manner;

3.2.8. knowingly interfere with the operation of the Software on any of Cubelus' servers, host, or network, including, without limitation, by means of intentionally submitting a virus, overloading, flooding, spamming, or crashing;

3.2.9. attempt to defeat, disable, or circumvent any protection mechanism related to the Software;

3.2.10. use the Software or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any person;

3.2.11. access or use the Software to: (a) build a competitive product or service, (b) build a product or service using similar ideas, features, functions, or graphics of the Software or Services;

3.2.12. copy any ideas, features, functions, or graphics of the Software or Services, or determine whether the Software or Services are within the scope of any patent or other Intellectual Property;

3.2.13. authorise, permit, or otherwise acquiesce to a third party engaging in or attempting to engage in any of the activities in clauses 2.2.1 - 2.2.11 above;

3.2.14. attempt to access or use the Software or Services when doing so would exceed the number of agreed Devices or Users; or

3.2.15. attempt to access or use the Software, Services or Documentation contrary to the terms of this Agreement and/ or Order Form.

4. Access, and Use

4.1. Cubelus will, subject to the terms of this Agreement and payment by the Customer of all applicable fees, make the Services available to the Customer for the Subscription Term. The Customer acknowledges and agrees that Cubelus ***may*** use global resources (personnel, affiliates, and infrastructure around the world) and third-party suppliers to, provide, support and/or host the Services. The Customer agrees to access and use the Services only in accordance with this Agreement, the Documentation, and applicable laws and government regulations. The Customer is responsible and liable for all access to and use of the Services by itself and the Users, whether such access or use is permitted by or in violation of this Agreement.

4.2. Customer is responsible for procuring, installing, operating, supporting, and maintaining Customer systems, including, without limitation, computer hardware and software, and browsers necessary for Customer and Users to access and use the Services.

4.3. Customer is solely responsible for implementing safeguards to protect the security of its systems and Customer Data when accessing and using the Services.

4.4. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data and other transmitted data processed and/or stored as part of the Services. Customer shall have sole responsibility for the purposes for which and the manner in which Customer Data is processed, and retained.

4.5. Cubelus does not guarantee regular data backups of any Customer Data as part of the Services.

4.6. Customer shall not knowingly offer goods or services related to, or otherwise upload, store, use, access, disclose, or transfer content that:

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

4.6.3. facilitates illegal activity;

4.6.4. depicts sexually explicit images;

4.6.5. promotes unlawful violence;

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4.6.6. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or other protected characteristic under applicable laws;

4.6.7. exploits, abuses, or relates to the exploitation or abuse of children, including but not limited to images or depictions of child abuse or sexual abuse, or content that presents children in a sexual manner when using the Services; or

4.6.8. is otherwise illegal or caused damage to any person or property

4.7. Without limiting the generality of any clause in this Agreement, the Customer shall, and shall procure that all Users shall, comply with all applicable laws in relation to the Customer's and Users' activities under this Agreement.

4.8. Cubelus reserves the right, but do not assume the obligation, to investigate any violation of this Agreement or misuse of the Services, and Cubelus identifies any violation of this Agreement or misuse of the Services, based on such investigations, Cubelus may remove, disable access to, or modify any content or resource that violates this Agreement or any other agreement Cubelus has with the Customer for use of the Services. Cubelus may and may be obligated to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Cubelus' reporting may include disclosing appropriate Customer information and/or Customer Data. Cubelus also may and may be obligated to cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing Customer, User, network, and/or systems information related to alleged violations of this Agreement or the violation of any law or regulation.

4.9. ***Users and Devices.*** The Customer is responsible and liable for ensuring that all authorised Users comply with this Agreement and that the Services are accessed via agreed Devices, accordingly, the Customer undertakes as follows:

4.9.2. To ensure that the maximum number of Users that access and use the Services, does not at any time exceed the number of Users permitted by Cubelus.

4.9.3. Not to allow a User subscription to be used by more than one User unless it has been reassigned in its entirety to another User, in which case the prior User shall no longer have any right to access or use the Services or Documentation.

4.9.4. Each User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than every than every three months and that each User shall keep their password confidential.

4.9.5. To ensure that the maximum number of Devices through which the Services can be accessed, does not at any time exceed the number of Devices permitted by Cubelus.

4.9.6. Tol use commercially reasonable efforts to prevent unauthorised access to or use of the Services and Documentation, including proper usage of passwords, tokens, and access procedures with respect to logging into the Services.

4.9.7. To notify Cubelus promptly of any such unauthorised access or use.

4.9.8. That You shall be fully liable for the acts and omissions of all Users with respect to their use of and/or access to the Services.

4.10. The Customer may, from time to time during any Subscription Term, purchase an additional User subscriptions and or Devices in excess of the number of Users and or Devices agreed with Cubelus, and Cubelus shall grant such additional Devices and/ or access to the Services and the Documentation to such additional Users in accordance with the provisions of this Agreement.

4.11. If the Customer wishes to purchase additional User subscriptions and/or Devices, the Customer shall notify Cubelus in writing. Cubelus shall evaluate such request and respond to the Customer with approval or rejection of the request. Upon approval of the request, Cubelus shall confirm when the additional User subscriptions and or Devices shall be activated. The additional fees payable by the Customer as a result of an increase to the number of Users or Devices, shall be invoiced to the Customer in accordance with this Agreement.

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4.12. ***Consulting Services.*** The Customer may utilise the Services for its provision of services to a third party for commercial gain, subject to its compliance with all other terms of this Agreement, provided that the Customer shall:

6.3.1. be solely responsible for its own services, including any use or operation of the Software (both separately or in combination with any other software) to provide such services;

6.3.2. not use the Software to provide unattributable Internet access to third parties (including discussing functional and/or technical aspects of the Software), unless the Customer has first obtained Cubelus' express, written permission, such permission may be subject to parameters imposed by Cubelus;

6.3.3. not engage in deceptive, misleading, illegal, or unethical practices that might reasonably be considered detrimental to Cubelus or any of Cubelus' products or services;

6.3.4. not make any representations, warranties, or guarantees about Cubelus or the Software and the operation of Software, unless expressly authorised to do so in writing by Cubelus;

6.3.5. comply with all applicable international, national, federal, state, provincial, and local laws and regulations in performing the Customer's services; and where the Customer wishes to publicise, market, or otherwise promote the use of the Software in its services, the Customer must do so in a manner consistent with Cubelus' marketing and trade mark requirements, obtainable upon request from Cubelus, and must submit all such proposed marketing activities to Cubelus for approval prior to undertaking such activities.

5. Representations, and Warranties

5.1. The Customer represents and warrants that it shall and its User shall:

7.1.1. comply with all applicable terms and conditions relating to the use of the Cubelus Site;

7.1.2. obtain all rights, permissions, and consents necessary to input, collect, use, store, and transfer Customer Data as part of its use of the Services, including, without limitation, within and outside of the country in which it is located and into the hosted environment;

7.1.3. observe and comply with all applicable laws and regulations of any country having jurisdiction over the Software or any part thereof, including, without limitation, those relating to privacy;

7.1.4. not circumvent storage space limits, or breach or otherwise circumvent any security or authentication measures associated with the Services;

7.1.5. not access, tamper with, or use non-public areas or parts of the Services, or shared areas of the Services it has not been granted access to;

7.1.6. not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device unless it otherwise has permission to do so as part of the provision of its services; and

7.1.7. not use the Services to make network connections to any users, hosts, or networks unless it has permission to communicate with them.

5.2. ***Notice of Violations.*** If the Customer becomes aware of any violation of this clause 5, it will immediately notify Cubelus and provide assistance, as requested, to stop or remedy the violation.

6. Customer Data and Data Protection

6.1. ***Customer Data.*** The Customer owns all rights, title, and interest, including all Intellectual Property, in and to the Customer Data. The Customer hereby grants to Cubelus a non-exclusive, royalty-free, worldwide, sublicensable licence to reproduce, distribute, and otherwise use, host, and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Cubelus to fulfil its obligations under this Agreement.

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6.2. ***Third Party Suppliers.*** Cubelus shall endeavour to provide industry-standard, secure data transmission channels for use by the Customer to upload, enter, or transmit Customer to the Software. However, despite such efforts, the Customer acknowledges and understands that Customer data may be accessed by unauthorised persons when communicated across the Internet, network communications facilities, telephone, or other electronic means. Cubelus is not responsible for any of the Customer data that may be accessed by any third-party and/or delayed, lost, altered, intercepted, or stored during transmission across public networks. The Customer agrees to comply with all applicable laws and regulations, including, without limitation, those relating to import, export, and privacy when accessing and using any third-party site. The Customer agrees that Cubelus is not responsible for any interference with the Customer's use of or access to the Services or security breaches arising from or attributable to the Internet and/or a third- party provider, and the Customer hereby waives all claims against Cubelus in connection therewith. The Customer acknowledges that Cubelus utilises a third-party provider to host and provide access to the Services and, as such, the Customer's use and access to the Services shall be subject to the third- party provider's terms of service (including availability, data disclosure, service levels, termination rights, and acceptable use requirements). The Software is hosted by Amazon Web Services ("AWS") on its servers located in United Kingdom. Cubelus may appoint a new hosting provider, relocate the Software (or parts thereof), and/or relocate the Customer Data to any location, or otherwise modify the hosting environment, at its discretion at any time (subject to any applicable terms in the Data Processing Addendum, as defined below). Customer agrees to comply with any policies and terms of AWS or the then-applicable hosting provider that are applicable to Customer. The Customer acknowledges that Cubelus and/or the hosting provider may, but is not obligated to, without prior notice, audit the Customer's use of the Services to verify compliance with this Agreement, applicable laws, and/or the hosting provider's policies. Customer acknowledges that the hosting provider and/or Cubelus may cooperate with legal authorities in investigating claims of illegal activity involving the Services and/or Customer Data.

6.3. When and to the extent that the EU General Data Protection Regulation and/or the Data Protection Act 2018 (UK) applies to the Customer's use of the Services, Cubelus' Data Processing Addendum ("**Data Processing Addendum**") shall apply and supplement the terms of this Agreement. In the event of a conflict between this Agreement and the terms of the Data Processing Addendum, the terms of the Data Processing Addendum shall prevail.

7. Intellectual Property Rights

7.1. ***Ownership.*** The Customer acknowledges and agrees that Cubelus owns all rights, title and interest in and to the Intellectual Property in the Services and the Documentation.

7.2. ***License Only.*** The Customer does not acquire any Intellectual Property or other proprietary rights under this Agreement, including without limitation, any right, title, or interest in and to patents, copyrights, trade marks, industrial designs, confidential information, or trade secrets (whether registered or unregistered) or other Intellectual Property relating to the Software or any part thereof. The Customer's only rights to the Software and any part thereof shall be those rights expressly licensed to it by Cubelus under this Agreement. Any rights not expressly granted under this Agreement are reserved.

7.3. ***Feedback.*** Customer hereby agrees that: (a) Cubelus owns all feedback, comments, suggestions for improvement, ideas, concepts, and changes that Customer provides to Cubelus or identifies in the course of its use of the Services, and all associated Intellectual Property rights (collectively the "**Feedback**"); and (b) the Customer hereby assigns to Cubelus all of rights, title, and interest in the Feedback. Customer agrees to cooperate fully with Cubelus with respect to signing further documents and doing such other acts as are reasonably requested by Cubelus to confirm that

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Cubelus owns the Feedback and to enable Cubelus to register and/or protect any associated Cubelus Intellectual Property and/or confidential information.

7.4. ***Notification of Violations.*** If the Customer becomes aware of any violation of this clause 7, the Customer will immediately notify Cubelus and provide it with assistance, as requested, to stop or remedy the violation.

8. Confidentiality

8.1. **"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 whether before or after the Parties enter into this Agreement, including but not limited to:

8.1.2. the existence and terms of this Agreement or any agreement entered into in connection with this Agreement;

8.1.3. any information that would be regarded as confidential by a reasonable businessperson relating to:

- the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing Party; and
- the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (including the Software, Services and Documentation).

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

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

8.3.2. 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);

8.3.3. was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;

8.3.4. 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; or

8.3.5. the Parties agree in writing is not confidential or may be disclosed.

8.4. Each party shall keep the other Party's Confidential Information secret and confidential and shall not:

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

8.4.3. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 8.

8.5. 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:

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

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

8.6. The Customer acknowledges and agrees that the Services, Software and Documentation has been developed at considerable time and expense by Cubelus, and contains Confidential Information, including Intellectual Property belonging to Cubelus. Notwithstanding the generality of this clause, the Customer undertakes not to disclose the Services, Software or Documentation to any third parties without the express, written consent of Cubelus.

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8.7. A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8.7, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

8.8. 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.

8.9. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

8.10. Within 30 days of termination or expiry of this Agreement, each Party shall:

8.10.2. 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

8.10.3. 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).

8.11. Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.

8.12. The above provisions of this clause 8 shall continue to apply after termination or expiry of this Agreement.

9. Warranties

9.1. The Services, Software, Cubelus Site, hosting, and hosted environment are provided to the Customer on an "as-is" basis without any warranties. Cubelus specifically disclaims any and all representations, warranties, and conditions relating thereto, whether express or implied, including but not limited to any express or implied representations, warranties, or conditions of merchantability, merchantable quality, uninterrupted access, service-level commitments, results, fitness for a particular purpose, durability, non-infringement, or any other warranty or condition arising by statute, custom, or usage of trade. Cubelus does not warrant that the operation of the Services or Software will be uninterrupted or error-free. The Customer assumes sole responsibility for the results obtained from and use of the Services and Documentation and for the conclusions drawn from such use. Cubelus makes no representations or warranties whatsoever, and shall have no liability whatsoever, with respect to loss caused or occasioned by third-party software and/or hosting.

10. Liability

10.1. Subject to clause 10.2 (liability that cannot be excluded by law) In no event will Cubelus be liable to the Customer for any damages related to the Customer's purchase, access or use of the Services, including, but not limited to, direct, indirect, special, incidental, punitive, or consequential damages, or damages based on lost profits, however caused, and, whether in contract, tort, or under any theory of liability, whether or not the Customer has been advised of the possibility of such damages. Cubelus disclaims all liability and indemnification obligations for any harm or damages caused by any third-party suppliers, including, without limitation, hosting providers.

10.2. Nothing in this Agreement excludes the liability of Cublus:

10.2.2. for death or personal injury caused by Cubelus' negligence; or

10.2.3. for fraud or fraudulent misrepresentation.

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10.3.   Subject to 11.1 and 11.2, Cubelus total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total fees paid by the Customer for the Subscription Term during which the claim arose.

10.4.   Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Cubelus' Intellectual Property, including Cubelus' Intellectual Property in the Services, Software or Documentation.

11. Indemnification

11.1.   ***Customer Indemnity to Cubelus Ltd***. Customer shall, at its sole expense, defend and indemnify Cubelus with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation legal fees, arising from or relating to: (a) a claim of infringement of any third-party Intellectual Property right arising from Customer's combination or use of the Software with equipment, software, interfaces, or other materials that are not supplied or specifically authorised by Cubelus; (b) any claim alleging that any Customer Data infringes or misappropriates such third party's Intellectual Property rights; (c) Customer's use of the Services, Customer Data, and/or hosting environment; or (d) a breach of any of the Customer's obligations, representations, warranties, or covenants under this Agreement.

11.2.   ***Cubelus' Indemnity to Customer***. Cubelus, at its sole expense, will defend and indemnify the Customer in respect of any damages awarded by a court or through settlement related to Customer's use of the Cubelus Software that infringes any valid patents or copyrights in the United Kingdom of any third party (a "**Claim**"), provided that Customer: gives 30 days' notice from having become aware of the Claim to Cubelus; (ii) grant sole control of the defence and settlement of the Claim to Cubelus; and (iii) provide reasonable cooperation to Cubelus and, at Cubelus' request and expense, assistance in the defence or settlement of the Claim. In the event of a Claim, Cubelus may, at its option and expense: (a) obtain for the Customer the right to continue to use the Software; (b) substitute a substantially equivalent, non-infringing product; (c) modify the Software to make it non-infringing; or if (a), (b) or (c) are not commercially feasible in Cubelus' sole opinion, then terminate this Agreement.

11.3.   If the Agreement is terminated under clause 11.2, the Customer must immediately stop using the Services, and Cubelus will refund the Customer an appropriate prorated amount based on Customer's usage of the Services during the applicable Subscription Term. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa) any use of the Software in combination with any equipment, software, data, or any other materials not authorised by Cubelus where the infringement would not have occurred but for such combination; (bb) any modification to the Software where the infringement would not have occurred but for such modification; (cc) use of the Software by Customer in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use; (dd) the continued use of the Software after Cubelus has provided substantially equivalent non-infringing Software; (ee) the use of Third- Party Software; or (ff) a Claim Customer were aware of prior to Customer's purchase of the Software. Notwithstanding any terms to the contrary in this Agreement, the provisions of this clause and clause 10 of this Agreement state the entire liability and obligations of Cubelus and the Customer agrees that this is the exclusive remedy available to it with respect to any actual or alleged misappropriation, violation, and/or infringement of any proprietary and/or Intellectual Property rights arising out of or in connection with this Agreement. Except as expressly set forth in this clause, Cubelus expressly disclaims any obligation to indemnify or defend Customer and/or any other party from any claim, demand, action, or threatened action.

12. Term, Termination, and Suspension

12.1.   ***Term***. This Agreement shall commence on the start date stated in the Order Form and

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continue for the Subscription Term, unless terminated in accordance with its terms. Thereafter, this Agreement shall automatically renew for successive periods as defined in Schedule 1 (each a "**Renewal Period**") unless terminated in accordance with its terms (with cause) or if either Party notifies the other of termination (without cause), in writing, at least 60 days before the end of the Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of then current Renewal Period.

12.2. *Termination*. Customer's use of the Services (or part thereof) may be immediately terminated at Cubelus' option, upon notice due to: (a) breach of the terms of this Agreement or misuse of the Services, Software or Documentation by Customer or any User; or (b) any law, regulation, requirement, or ruling issued in any form whatsoever by any judicial or other governmental body that prohibits Cubelus from continuing to provide access to the Services; or (c) any third-party supplier no longer providing any required access, including without limitation, to the hosted environment for the Services; (d) non-payment by the Customer of any fees due;

12.3. *Suspension*. Cubelus may terminate this Agreement with immediate effect or temporarily suspend Customer's or any User's access to all or any portion of the Services (a "**Service Suspension**") if Cubelus reasonably determines that: (i) there is a threat to or attack on any of Cubelus Intellectual Property ("**Cubelus IP**"); (ii) Customer's or any User's use of the Cubelus IP disrupts or poses a security risk to the Cubelus IP or to any other customer or vendor of Cubelus; (iii) Customer, or any User, use the Software or any Cubelus IP for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or have become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (v) Cubelus' provision of the Software to Customer or any User is prohibited by applicable law or regulation; or (vi) any vendor or service provider of Cubelus has suspended or terminated Cubelus' access to or use of any third-party services or products required to enable Customer to access the Services. Subject to Cubelus' discretion, Cubelus shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured or otherwise descried to terminate the Agreement.

12.4. *No Liability for Termination or Suspension*. Cubelus will have no liability for any damage, liabilities, losses (including any loss of data, Customer Data or profits), or any other consequences that Customer or any User may incur as a result of a Service Suspension and/or termination of this Agreement or the Services.

12.5. *Cease Use*. Upon expiration or termination of this Agreement, Customer will immediately cease all use of the Services, and any payments that are then due to Cubelus shall become immediately payable in full.

12.6. *Data Deletion*. Customer acknowledges that upon expiration of any Subscription Term, Customer Data will be deleted from the Services. Upon request by Customer within thirty (30) days of expiry of a Subscription Term, Cubelus will make available for download by Customer, Customer Data to the extent Cubelus has access to such Customer Data. Notwithstanding anything to the contrary in this clause, Cubelus shall be entitled to: (i) retain one (1) copy of Customer Data as required to comply with any applicable law; (ii) retain and process certain de-identified data relating to Customer use of the Services for benchmarking, and/or product development purposes; and (iii) maintain certain Customer Services registration information for its accounting purposes.

12.7. *Trading status*. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement without liability to the other if:

12.7.2. an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or

12.7.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of

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competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986 as amended from time to time); or

12.7.4. a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or

12.7.5. the other Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

12.7.6. the other Party ceases, or threatens to cease, to trade; or

12.7.7. there is a change of control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988 (as amended from time to time); or

12.7.8. the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13. Audit

13.1. Cubelus shall have a general right to audit Customer's use of the Services to verify compliance with this Agreement. Any such audit shall be conducted at Cubelus' expense at the Customer's premises and or by remote computer access upon thirty (30) days' written notice to Customer and during regular business hours and shall not unreasonably interfere with Customer's normal operations. If an audit establishes that Customer are in material breach of its obligations hereunder, Customer shall reimburse Cubelus for the cost of the audit and promptly pay to Cubelus any outstanding fees, including any additional fees attributed to an audit revealing additional Users and or Devices.

14. General Provisions

14.1. ***Compliance with laws***. In using the Services, Customer will observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including international, national, federal, provincial, state, municipal and local governing bodies, of any country having jurisdiction over the Software or any part thereof.

14.2. ***Entire Agreement***. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Customer's additional or different terms and conditions, whether on Customer's purchase order or otherwise, shall not apply and are expressly excluded. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

14.3. ***Force Majeure***. Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly, but nothing in this clause shall be construed as excusing or suspending the Customer from any of its payment obligations owed to Cubelus. However, if the period of delay or non-performance continues for more than two months, then the Party not affected may terminate this Agreement by giving 30 days' written notice to the affected Party.

14.4. ***Waiver***. No waiver by either Party of a breach or omission by the other Party under this Agreement shall be binding on the waiving Party unless it is expressly made in writing and signed by the waiving Party. Any waiver by a Party of a particular breach or omission by the other Party shall not affect or impair the rights of the waiving Party in respect of any subsequent breach or omission of the same or different kind.

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14.5. ***Injunctive Relief***. Customer agrees that Cubelus has the right to institute legal or equitable proceedings, including proceedings seeking injunctive relief without the requirement to post a bail or demonstrate damages.

14.6. ***Notices***. Any notices, reports, or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier, or facsimile, delivered in electronic form. Any notices that Cubelus is required to provide Customer or other third parties under the Documentation or applicable law will be provided as determined by Cubelus in its sole discretion based on the circumstances and designated contact information available to Cubelus for such notices. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) 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 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume. 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.

14.7. ***Assignment***. Cubelus may assign this Agreement without prior notice to Customer. Customer shall not assign or transfer (including by operation of law) this Agreement without the prior written consent of Cubelus. This Agreement shall be binding upon the Parties hereto and their respective lawful successors and permitted assigns.

14.8. ***Survival***. Any provision of this Agreement which expressly states that it is to continue in effect after termination or expiration of this Agreement, or which by its nature would survive the termination or expiration of this Agreement, shall do so.

14.9. ***Electronic Execution***. Customer hereby agrees to the use of electronic communication in order to enter into contracts, place orders, and create other records and to the electronic delivery of notices, policies, and records of transactions initiated or completed through the Services. Furthermore, Customer hereby waives any rights or requirements under any laws or regulations in any jurisdiction which require an original (non- electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

14.10. ***Invalidity***. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in full force and effect.

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

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

14.13. ***Standard Support***. Cubelus will, as part of the Services provide the Customer with Cubelus' standard customer support services during Normal Business Hours in accordance with the Cubelus Support Services Policy in effect at the time that the Services are provided. Cubelus may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Cubelus then current rates.

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15. Fees and Payment

15.1.   The Customer shall pay the fees to Cubelus for the Services as stated in Schedule 1 and any fees payable for any enhanced support services Cubelus may provide as agreed under the Support Services Policy.

15.2.   Invoices will be issued in Great British Pound (GBP). All payments made to Cubelus under this Agreement shall be in GBP. The fees payable under this Agreement, are exclusive of value added tax, which shall be added to the invoices at the appropriate rate. All invoices issued by Cubelus to the Customer, must be paid by the Customer within 30 days of the invoice date.

15.3.   If Cubelus has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Cubelus:

15.3.2.   Cubelus may, without liability to the Customer, disable the Customer's and Users' passwords, account and access to all or part of the Services and Cubelus shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

15.3.3.   interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% above the then current base 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.

15.4.   Cubelus shall be entitled to increase the fees payable under this Agreement. Such increase shall take effect at the start of the next Renewal Period by giving at least 30 days' prior notice to the Customer. If the Customer does not agree to a fee increase under this clause, it may terminate the Agreement, and such right of termination must be exercised before the date on which the fee increase takes effect.

16. Unless otherwise specified in writing, the Customer's Onboarding will commence on the next Business Day after all fees payable for the Services have been received.

17. Onboarding

17.1.   Onboarding will only commence once all the required Customer Information as agreed during the initial scoping meeting between the Customer and Cubelus ("**Scoping Meeting**") is received by Cubelus.

17.2.   Cubelus does not commit to completing onboarding prior to any deadline. An estimated timetable for the Customer's onboarding will be discussed during the initial Scoping Meeting but time shall not be of the essence.

18. Contact

18.1.   If the Customer has any questions, complaints, claims, or other legal concerns relating to Cubelus or its business, please contact Cubelus Ltd at: 320 Firecrest Court Centre Park, Warrington, WA1 1RG UK. Email: legal@cubelus.com.

19. Governing Law and Jurisdiction

19.1.   This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England & Wales.

19.2.   The Parties irrevocably agree that the courts of England & Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).