

**HI-IMPACT CONSULTANCY LTD SAAS TERMS AND CONDITIONS**  
for the provision of services via The HOST

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 14 (LIMITATION OF LIABILITY)**

**1. INTERPRETATION**

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

<b>Authorised Users:</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Platform Information.
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England when UK clearing banks in the city of London are open for general business.
<b>Change of Control:</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be interpreted accordingly.
<b>Commencement Date:</b>	has the meaning given in clause 2.2.
<b>Confidential Information:</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.1.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 17.
<b>Contract</b>	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
<b>Customer:</b>	the person or firm who purchases Services from the Supplier
<b>Customer Data:</b>	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf (only when onboarding) for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>Day:</b>	unless otherwise defined, refers to calendar day and not Business Day.

<b>Documentation:</b>	the document made available to the Customer by the Supplier online via <a href="https://the-host.uk/explore-the-host/">https://the-host.uk/explore-the-host/</a> and <a href="https://the-host.uk/features/">https://the-host.uk/features/</a> or such other web address notified or any other document provided by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
<b>Heightened Cybersecurity Requirements:</b>	any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
<b>Initial Subscription Term:</b>	the initial term of this Contract which shall be 24 months.
<b>Platform Information</b>	any materials, content including, but not limited to, videos, documents and information contained in the Software or otherwise made available by the Supplier as part of the Services.
<b>Normal Business Hours:</b>	8.30 am to 5.00 pm local UK time, each Business Day.
<b>Order Form</b>	the Supplier's onboarding document provided by the Supplier in writing from time to time.
<b>Package</b>	means the package purchased by the Customer which permits a certain number of Authorised Users to access and use the Services and the Platform Information.
<b>Renewal Period:</b>	the period described in clause 15.1.
<b>Services:</b>	the subscription services for "The HOST platform" provided by the Supplier to the Customer under the Contract via <a href="http://www.the-host.uk">www.the-host.uk</a> or any other website or mobile application notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
<b>Software:</b>	the online software application namely "The HOST" platform provided by the Supplier as part of the Services.
<b>Subscription Fees:</b>	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out on the Supplier's website from time to time at <a href="https://the-host.uk/the-host-pricing/">https://the-host.uk/the-host-pricing/</a> (or such other web address as may be used by the Supplier from time to time.)

	or as otherwise agreed by the Supplier in writing.
<b>Subscription Term:</b>	has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
<b>Supplier</b>	<b>HI-IMPACT CONSULTANCY LTD</b> , incorporated and registered in England and Wales with company number 06704406 whose registered office is at Innovation House Power Road, Bromborough, Wirral, United Kingdom, CH62 3QT.
<b>Supplier Personal Data:</b>	any personal data which the Supplier processes in connection with this Contract, in the capacity of a controller.
<b>Supplier Subscription Price List</b>	means the subscription prices for each Package listed on the Supplier's website from time to time at <a href="https://the-host.uk/the-host-pricing/">https://the-host.uk/the-host-pricing/</a> (or such other web address as may be used by the Supplier from time to time.)
<b>User Subscriptions:</b>	the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Platform Information in accordance with this Contract.
<b>Virus:</b>	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.
<b>Vulnerability:</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term <b>Vulnerabilities</b> shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
- 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 this Contract.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule to this Contract.

## **2. BASIS OF CONTRACT**

- 2.1 Provision of the Order Form and invoice for the Subscription Fees from the Supplier to the Customer constitutes an offer to the Customer to purchase the User Subscriptions in accordance with these Conditions.
- 2.2 The purchase of the User Subscriptions shall only be deemed to be accepted when the Customer provides a completed Order Form and payment of the invoice to the Supplier, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Customer shall receive login details for the Software within 14 days of the Supplier receiving payment and approving onboarding documentation.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

## **3. USER SUBSCRIPTIONS**

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 2, clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of this Contract, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and Platform Information during the Subscription Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
  - (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Platform Information shall not exceed the number of User Subscriptions it has purchased from time to time in accordance with the particular Package purchased by the Customer;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Platform Information;
  - (c) each Authorised User shall comply with the password requirements provided for within the Software and keep their password secure and confidential for their use of the Services and accessing Platform Information;
  - (d) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User to confirm compliance with the Customer's Package. Each such audit may be conducted no more than once per year, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - (e) if any of the audits referred to in clause 3.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the

Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual and charge for any underpayment in accordance with the current Supplier Subscription Price List within 14 days of the date of relevant audit;

- (f) it will advise the Supplier within 14 days of the removal or reassigning of Authorised User's access to the Services should they no longer be a staff member of the Customer.

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

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religion and belief, sexual orientation, disability; or
- (f) 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 any material that breaches the provisions of this clause.

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, display, transmit, or distribute all or any portion of the Software, in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (iii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, remove any branding or trade marks or trade names, republish, display, transmit, or distribute all or any portion of the Platform Information and/or the Documentation in any form or media by any means save for the Customer may download and modify for use in the Customer's own internal business.
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) use the Services, Platform Information and/or Documentation to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Platform Information and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, Platform Information and/or Documentation, other than as provided under this clause 3; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

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

- 3.6 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

#### 4. ADDITIONAL USER SUBSCRIPTIONS

- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the relevant Package purchased by the Customer and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this Contract.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 14 days of its approval of the Customer's request.
- 4.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions. If such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

#### 5. SERVICES

- 5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Software and Platform Information to the Customer on and subject to these Conditions.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for any scheduled and/ or unscheduled maintenance in which the Supplier will use reasonable endeavours to provide advance notice when possible.
- 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. The Customer can access these customer support services within the Software.

#### 6. DATA PROTECTION

- 6.1 In this clause, the following terms shall have the following meanings:
- (a) “**controller**”, “**processor**”, “**data subject**”, “**personal data**” and “**processing**” (and “**process**”) shall have the meanings given in the GDPR; and
  - (b) “**Applicable Data Protection Law**” shall mean: (a) the General Data Protection Regulation ((EU) 2016/679) (GDPR) as implemented into UK law from time to time; (b) any UK laws, regulations and secondary legislation implementing or amending the GDPR including without limitation the UK GDPR and the Data Protection Act 2018; and (c) any other applicable law relating to personal data to which Controller or Processor is subject.
- 6.2 Customer (the **Controller**) appoints Supplier as a processor (the **Processor**) to process the personal data that is the subject of this Contract (the “**Data**”). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law. Without prejudice to the generality of this clause 6.2 the Controller will ensure that it has all necessary consents and notices in place to enable lawful transfer of the personal data to the Processor for the duration and purposes of this Contract so that the Processor may lawfully use, process and transfer the personal data in accordance with these Conditions on the Controller's behalf.
- 6.3 The Processor shall process the Data as a processor as may be required to perform its obligations under the Contract and in accordance with the documented instructions of the Controller (the “**Permitted Purpose**”), except where required by any United Kingdom law to do otherwise.

- 6.4 The Processor shall not transfer the Data outside of the European Economic Area (which for the avoidance of doubt is deemed to include the United Kingdom) unless (i) it has the Controller's documented instructions to do so; (ii) it takes such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law; or (iii) it is required to do so by any applicable United Kingdom law.
- 6.5 The Processor shall ensure that any person that it authorises to process the Data (including Processor's staff, agents and subcontractors) (an "**Authorised Person**") shall be subject to a duty of confidentiality (whether a contractual duty or a statutory duty or otherwise).
- 6.6 Taking into account (at its reasonable discretion) the risks, costs and other factors required by Article 32 GDPR the Processor shall implement such reasonable technical and organisational measures as it reasonably believes are required to protect the Data from (i) accidental or unlawful destruction, (ii) accidental loss, alteration, unauthorised disclosure or access, and (iii) any other breach of security (each of (i), (ii) and (iii), a "**Security Incident**"). Such measures may include as it reasonably determines:
- (a) the pseudonymisation and encryption of personal data;
  - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
  - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 6.7 The Controller consents to the Processor engaging third party sub-contractors to process the Data provided that: (i) Processor provides at least 7 days' prior notice of the addition or removal of any sub-contractor; (ii) Processor imposes data protection terms on any sub-contractor it appoints that protect the Data to the same standard provided for by this clause; and (iii) Processor remains liable for any breach of this clause that is caused by an error or omission of its sub-contractor. If Controller refuses to consent to Processor's appointment of a third-party sub-contractor on reasonable grounds relating to the protection of the Data, then either the Processor will not appoint the sub-contractor or the Processor may elect to suspend or terminate this Contract without penalty. The Controller agrees and consents to the following sub-processor CPL Learning Limited (with the company number 06976340) an Access UK Ltd company (with the company number 02343760).
- 6.8 The Processor will provide the Controller with such reasonable assistance at Controller's written request and at the Controller's expense as the Controller may reasonably require to allow it to comply with Article 32 GDPR.
- 6.9 The Processor shall provide reasonable assistance (including by appropriate technical and organisational measures) to the Controller (at the Controller's expense) to enable the Controller to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data.
- 6.10 If the Processor believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Controller and provide the Controller with reasonable assistance (at the Controller's expense) to allow the Controller to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.
- 6.11 Upon becoming aware of a Security Incident, the Processor shall inform the Controller without undue delay and shall provide such cooperation as the Controller may reasonably require (and at the Controller's expense) including to allow the Controller to fulfil its data breach reporting or communication obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. The Processor shall further take such measures and actions as are (in its reasonable discretion) necessary to remedy or mitigate

the effects of a Security Incident and shall keep the Controller up-to-date about material developments in connection with the Security Incident.

- 6.12 Upon termination or expiry of this Contract, the Processor shall (on the Controller's written instructions) destroy or return to the Controller all Data (including all copies of the Data) in its actual possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that the Processor is required by any UK law to retain some or all of the Data.
- 6.13 The Processor shall permit the Controller (or its nominated auditor) to audit the Processor's compliance with this clause. The Controller must give the Processor not less than 35 days' prior written notice of its intention to conduct such an audit, must conduct the audit during normal business hours, shall ensure that all personnel undertaking the audit agree to the Processor's confidentiality undertakings and must take all reasonable measures to prevent disruption or harm to the Processor's operations. The Controller will not exercise its audit rights more than once in any twelve (12) calendar month period and will be responsible for all reasonable costs incurred by the Processor in connection with the audit.
- 6.14 The Processor will inform the Controller if it believes any instruction from the Controller relating to the Data breaches Applicable Data Protection Law.
- 6.15 The further information required under Article 28 (3) GDPR is set out in the Table below:-

<b>Duration of Processing</b>	For the term of the Contract (subject to the terms of the Conditions)
<b>Nature and Purpose of the Processing</b>	To allow the Supplier to carry out and provide the Services under the Contract
<b>Categories/types of Personal Data being processed</b>	Details (including names and contact details) relating to the staff of the Customer and of other persons as required in connection with the performance of the Services
<b>Categories of Data Subjects</b>	Staff of the Customer and such other persons as are required in connection with the performance of the Services

## 7. THIRD PARTY PROVIDERS

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



## **8. SUPPLIER'S OBLIGATIONS**

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 Although the Supplier shall use reasonable commercial endeavours to ensure that the Platform Information is accurate and up to date, the Customer agrees, acknowledges and accepts that it is provided for informational purposes and the Supplier gives no representations, warranties, assurances or guarantees of any kind (express or implied):
- (a) that the Platform Information will be fit for the purpose for which it is used by the Customer;
  - (b) as to the completeness, accuracy, reliability of the Platform Information;
  - (c) that it is at all times up to date and error free.
- 8.3 The undertaking at clause 8.1 is subject to clause 8.2 and shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.4 The Supplier:
- (a) does not warrant that:
    - (i) the Customer's use of the Services will be uninterrupted or error-free; or
    - (ii) that the Services, Documentation and/or the Platform Information obtained by the Customer through the Services will meet the Customer's requirements; or
    - (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
    - (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 This Contract 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 this Contract.
- 8.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 8.7 The Supplier shall follow reasonable archiving procedures for Customer Data.

## **9. CUSTOMER'S OBLIGATIONS**

- 9.1 The Customer shall:
- (a) provide the Supplier with:
    - (i) all necessary co-operation in relation to the Contract; and
    - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  - (b) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

- (c) carry out all other Customer responsibilities set out in the Contract 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;
- (d) ensure that the Authorised Users use the Services and Platform Information in accordance with the terms and conditions of this Contract and shall be responsible for any Authorised User's breach of the Contract;
- (e) obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;
- (f) ensure that its network and systems and hardware comply with any relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Contract, solely responsible for procuring, maintaining and securing 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 Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

## **10. CHARGES AND PAYMENT**

1.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 10.

1.2 The Customer shall when requested by the Supplier and no later than the Commencement Date provide:

its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

- (i) on the Commencement Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (ii) subject to clause 15.1, at least 30 days prior to every two, four, six, eight year anniversary and every 2 year anniversary thereafter from the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

1.3 If the Supplier has not received payment within 60 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) 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;
- (b) the Customer shall reimburse the Supplier for all losses costs, expenses and fees (including legal fees, court costs and debt collection fees) suffered

incurred or agreed to be paid by the Supplier in recovering the payment from the Customer; and

- (c) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bank of England from time to time but at 4% a year for any period when that base rate is below 0%, commencing on the due date and continuing until fully paid, whether before or after judgment.

1.4 All amounts and fees stated or referred to in this Contract:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

1.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer..

## 11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, the Platform Information and the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Platform Information or the Documentation.
- 11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with the Contract.

## 12. CONFIDENTIALITY

- 12.1 **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 date of the Contract in connection with the Services, including but not limited to:
  - (a) any information that would be regarded as confidential by a reasonable business person relating to:
    - (i) the business, assets, discounts, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
    - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
  - (b) any information developed by the parties in the course of carrying out this Contract and the parties agree that:
    - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
    - (ii) Customer Data shall constitute Customer Confidential Information;

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

- 12.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) 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);
  - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (c) 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
  - (d) the parties agree in writing is not confidential or may be disclosed.
- 12.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Contract (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 12.
- 12.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 12.5 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 12.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.6 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.
- 12.7 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 these Conditions are granted to the other party, or to be implied from this Conditions.
- 12.8 On termination or expiry of this agreement, each party shall:
- (a) 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;
  - (b) 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); and
  - (c) certify in writing to the other party on request that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's

Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 15 (Termination).

- 12.9 No party shall make, or permit any person to make, any public announcement concerning this Contract 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.
- 12.10 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 12.11 The above provisions of this clause 12 shall continue to apply for a period of 2 years from termination or expiry of this Contract.

### **13. INDEMNITY**

- 13.1 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 Services, Platform Information and/or Documentation, provided that:
  - (a) the Customer is given prompt notice of any such claim;
  - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.

### **14. LIMITATION OF LIABILITY**

#### **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 14.1 Except as expressly and specifically provided in these Conditions:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services, Platform Information and 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;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract; and
  - (c) the Services, Platform Information and the Documentation are provided to the Customer on an "as is" basis.
- 14.2 Nothing in this Contract excludes the liability of the Supplier:
  - (a) for death or personal injury caused by the Supplier's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:
  - (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and
  - (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to

the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 14.4 Nothing in this Contract excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

## 15. TERM AND TERMINATION

- 15.1 This Contract shall, unless otherwise terminated as provided in this clause 15, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods of 24 months (each a **Renewal Period**), unless:

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

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

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

- (a) the other party commits a material breach of any other term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 15.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being reminded to make payment.

- 15.4 Without affecting any other right or remedy available to it, the Supplier may suspend the Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 15.2(c) or clause 15.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in Clause 15.2(b).

- 15.5 On termination of this Contract for any reason:

- (a) all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services, Platform Information and/or the Documentation;

- (b) each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- (c) the Customer may continue to use any Platform Information which has been downloaded from the Software for internal business use only and subject to any restrictions in this agreement which are deemed to continue.
- (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 14 days after the effective date of the termination of this Contract, 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
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

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

## **16. FORCE MAJEURE**

16.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## **17. VARIATION**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **18. WAIVER**

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

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

## **19. RIGHTS AND REMEDIES**

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

## **20. SEVERANCE**

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

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

## **21. ENTIRE AGREEMENT**

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



- 21.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

## **22. ASSIGNMENT**

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

## **23. NO PARTNERSHIP OR AGENCY**

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

## **24. THIRD PARTY RIGHTS**

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

## **25. NOTICES**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), or sent by email to the address specified [Host@hi-impact.co.uk](mailto:Host@hi-impact.co.uk)
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second day after posting; or
  - (iii) 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. In this clause 25(b)(iii), business hours means 8.30am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt, provided that a notification of non-delivery is not received by the sender nor the message recalled by the sender. If notification of delayed delivery is received by the sender (an "out of office") then delivery shall be deemed to have occurred on the date and at the time stated in the notification.
- (c) This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## **26. GOVERNING LAW**

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

## **27. JURISDICTION**

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