

RED I.T. SOLUTIONS SOFTWARE TERMS AND CONDITIONS (“T&Cs”)

Published and effective on 17 May 2024.

These T&Cs set out the agreement (the “**Agreement**”) between us, Red I.T. Solutions Limited (registered number 03865203) (the “**Supplier**”) and you (the “**Customer**”) in relation to: (i) the installation and use of the Supplier’s software products including, without limitation, mobile and desktop applications (the “**Software**”); and (ii) any customer support that the Supplier provides in connection with the Software (the “**Related Services**”).

Certain of the Software applications have been developed for use on the Claris FileMaker platform and are hosted on third-party servers rented by the Supplier (the “**FM Applications**”). Other Software applications are not externally-hosted and can be downloaded directly from the Supplier’s website and used locally (the “**Local Applications**”).

These T&Cs may be updated from time to time. The most current version will always be published on the Supplier’s website so the Customer must check and read them carefully when enrolling in a Software Trial (defined in clause 1.2 below) or purchasing User Subscriptions (defined in clause 2.1 below), either for the first time or as part of a renewal. Whenever the Supplier updates these T&Cs, it will tell the Customer by emailing them and/or by clearly stating that they have been updated (with the relevant version date) at the top of this page. Unless otherwise noted, the amended T&Cs will be effective immediately on publication and the Customer’s continued use of the Supplier’s Software and/or receiving of Related Services confirm the Customer’s acceptance of the changes. If the Customer does not agree to the amended T&Cs, it must stop using the Software and/or receiving Related Services and inform the Supplier.

1. Basis of agreement

- 1.1 The Supplier’s quotations are non-binding.
- 1.2 When a Customer is considering whether or not to purchase User Subscriptions, the Supplier may (but is not obliged to) provide free or trial subscriptions and/or other demonstrations and testing of the Software (a “**Software Trial**”), in its sole discretion. In such circumstances, the Supplier shall provide the Customer with (i) details of the Software Trial; and (ii) a copy of, link to, or website address of, these T&Cs, which shall be stated to govern the Software Trial. By continuing with the Software Trial, the Customer accepts that these T&Cs apply.
- 1.3 At any time prior to, or during, a Software Trial, the Supplier may, in its sole discretion, terminate such Software Trial without prior notice and without any liability to the Customer, to the extent permitted under applicable law, for any reason.
- 1.4 If the Customer wants to enrol in a paid User Subscription (whether after a Software Trial or otherwise), then upon the Customer making such a request, the Supplier shall issue an Order Confirmation & Invoice (defined in clause 2.1 below) to the Customer, which shall constitute an offer to provide such User Subscriptions to the Customer subject to, and in accordance with, these T&Cs. The Agreement is concluded by the Customer paying the Supplier in accordance with the terms of the Order Confirmation & Invoice issued to it.
- 1.5 The Agreement is based on, and incorporates, these T&Cs to the exclusion of any other terms that the Customer purports to apply or incorporate or which are implied by trade, custom, practice or course of dealing.
- 1.6 In the event of any inconsistency or conflict between any of the provisions of these T&Cs and the Order Confirmation & Invoice, the provisions of the Order Confirmation & Invoice shall prevail.

2. Interpretation

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

Additional Services and **Additional Services Fees** has the meaning given in clause 11.4.

Authorised Devices means computers, mobile phones, tablets and other devices on which the Customer is authorised by the Supplier to install and use certain of the Software (typically, the Local Software).

Authorised Users means employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software.

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.1 (which, for the avoidance of doubt, excludes Customer Data).

Customer Data means any text, information, communication, images or material that the Customer, Authorised Users, or the Supplier on the Customer's behalf, upload or import into, embed for use by, or create using, the Software and Related Services.

Initial Subscription Term means the 1-year period starting on the Start Date.

Insolvent means, in relation to a party, that (i) it passes a resolution for its winding-up or a winding up order is made against it by a court or it has an administrator or an administrative receiver or a receiver or provisional liquidator appointed over its assets, income or any part thereof, or it is subject to a notice of intention to appoint an administrator or it enters into an arrangement with its creditors or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (ii) it has any distraint, execution or other process levied or enforced on any of its property; or (iii) it ceases to trade or appears in the reasonable opinion of the other party likely or is threatening to cease to trade; or (iv) the equivalent of any of the above occurs to in another jurisdiction to which that party is subject.

Maintenance Release means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order Confirmation & Invoice means the invoice prepared by the Supplier setting out: (i) details of the User Subscriptions (including any Additional Services) that the Customer has requested to purchase (or, additional User Subscriptions or extended User Subscriptions, as may be the case); (ii) the Subscription Fees to be paid by the Customer in respect of such User Subscriptions; and (iii) confirmation that such User Subscriptions will be provided by the Supplier subject to, and in accordance with, these T&Cs.

Renewal Period means any successive periods after the Initial Subscription Term that the parties agree to extend the User Subscriptions for.

Representatives means employees, officers, agents, sub-contractors or advisers.

Service Issues has the meaning given in clause 6.3.

Start Date means the date on which the User Subscriptions shall start, as specified on the relevant Order Confirmation & Invoice and subject to the Customer complying with the relevant payment terms.

Subscription Fees means the subscription fees and Additional Services Fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the relevant Order Confirmation & Invoice.

Subscription Term means the Initial Subscription Term together with any subsequent Renewal Periods.

User Subscriptions: The user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Software and Related Services. The user subscriptions are based on either: (i) the number of Authorised Devices; or (ii) the number of Authorised Users, as specified on the relevant Order Confirmation & Invoice.

Virus: 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.

Vulnerability: 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 **Vulnerabilities** shall be interpreted accordingly.

- 2.2 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.
- 2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.4 Unless the context otherwise requires: (i) words in the singular shall include the plural and in the plural shall include the singular; and (ii) a reference to one gender shall include a reference to the other genders.
- 2.5 A reference to a statute or statutory provision: (i) is a reference to it as it is in force as at the date of the Agreement; and (ii) shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 2.6 A reference to **writing** or **written** excludes fax but not email.

3. User subscriptions

- 3.1 Subject to the terms and conditions of the Agreement, 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 install, access and use the Software (as appropriate), and to receive Related Services, during the Subscription Term solely for the Customer's internal business operations.
- 3.2 For FM Applications, the Supplier shall assist the Customer with installing the Claris FileMaker platform onto its relevant systems in order to use the FM Applications forming part of the User Subscriptions. The Supplier shall procure required licences of the Claris FileMaker platform for the Customer to be able to use the FM Applications and the Customer shall comply with any applicable licensing terms as they relate to its use of the platform. The Supplier shall also notify the Customer if a new version of the Claris FileMaker platform becomes available and needs to be downloaded by the Customer to use the Software.
- 3.3 In relation to the Authorised Users and Authorised Devices, the Customer undertakes that:
 - (a) to the extent the User Subscriptions are based on Authorised Devices, it shall: (i) not install and/or use the Software on any other computer, mobile phone, tablet or other device(s) ("**Device**"); and (ii) notify the Supplier if it wants to transfer any User Subscriptions from one Authorised Device to another Device, in which case an administration fee at the then-current rate shall be payable to the Supplier;
 - (b) to the extent the User Subscriptions are based on Authorised Users:
 - (i) maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request;
 - (ii) the maximum number of Authorised Users that it authorises to access and use the Software shall not exceed the number of User Subscriptions it has purchased;
 - (iii) it will not allow 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 Software;
 - (iv) each Authorised User shall keep a secure password for their use of the Software, that such password shall be regularly changed and that each Authorised User shall keep their password confidential;
 - (c) it shall:

- (i) permit the Supplier or the Supplier's designated auditor, no more than once every twelve (12) months, and upon at least seven (7) days' prior notice to the Customer, to inspect (including manual inspection, electronic methods or both) the Supplier's records, systems and facilities; and
 - (ii) provide the Supplier with all records and information requested by the Supplier within thirty (30) days of such request,

in each case to enable the Supplier to verify that the installation and use of the Software and Related Services comply with the Agreement, and if the Customer is found not to be so complying, the Customer will immediately purchase any necessary licences, subscriptions and applicable back maintenance and support or take any other applicable action in order to remedy any such non-compliance.
- 3.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software and Related 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, religious 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 User Subscriptions if the Customer breaches this clause.
- 3.5 The Customer shall not:
 - (a) except as may be allowed by any applicable law which cannot be excluded by agreement between the parties and except to the extent expressly permitted:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, 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
 - (b) access all or any part of the Software or Related Services in order to build a product or service which competes with the Software or Related Services; or
 - (c) use the Software or Related Services to provide services to third parties; or
 - (d) subject to clause 18.3, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software or Related Services available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Software or Related Services, other than as provided under this clause 3; or
 - (f) introduce or permit the introduction of, any Virus or Vulnerability into the Software or the Supplier's network and information systems.
- 3.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and Related Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.7 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. Start and term of user subscriptions**
- 4.1 The User Subscriptions shall start on the Start Date and, unless otherwise terminated in accordance with clause 16, shall continue for the Initial Subscription Term and the duration of any Renewal Period.
- 4.2 The User Subscriptions shall not automatically renew at the end of the Initial Subscription Term or any Renewal Period.

- 4.3 Prior to the end of the Initial Subscription Term or any Renewal Period, the parties shall agree whether or not the User Subscriptions are to be extended. If so, (i) the Supplier shall issue a supplemental Order Confirmation & Invoice setting out details of the User Subscriptions to be extended; (ii) if the Customer wants to proceed with extending such User Subscriptions on the terms set out in the Supplier's supplemental Order Confirmation & Invoice, it shall ensure that payment for such extensions are received by the Supplier on or before the end of Initial Subscription Term or then-current Renewal Period, or in accordance with such other payment terms that may be agreed in writing between the parties.

5. Additional user subscriptions

- 5.1 Subject to clause 5.2 and 5.3, the Customer may, during the Subscription Term, purchase additional User Subscriptions and the Supplier shall grant access to the Software and Related Services to such additional Authorised Users.
- 5.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall, in its sole discretion, evaluate such request for additional User Subscriptions and, where the Supplier approves the request, the Supplier shall: (i) issue the Customer with a supplemental Order Confirmation & Invoice setting out details of the additional User Subscriptions and related Subscription Fees; and (ii) promptly activate the additional User Subscriptions once it has received payment for them in accordance with the terms of the supplemental Order Confirmation & Invoice.
- 5.3 If such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), fees for them 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).

6. Software and Related Services

- 6.1 The Customer acknowledges that, prior to purchasing User Subscriptions, it has had an opportunity to familiarise itself with the Software, whether through a Software Trial or otherwise. The Customer agrees that its decision to use, access and/or license the Software and Related Services is not contingent on the delivery of any future functionality or features or dependant on any oral or written comments made by the Supplier regarding current or future functionality or features.
- 6.2 The Customer acknowledges and agrees that the Software and Related Services are provided on an "AS-IS" basis, not least because much of the functionality provided by the Software is heavily dependent upon the third-party software which it integrates with. Any statements as to the specification or functionality of the Software contained in any documentation provided to the Customer by the Supplier: (i) are for guidance only; and (ii) shall not be read and construed as any warranty or representation by the Supplier, and the Supplier shall not be liable if the Software does not function in accordance with such statements.
- 6.3 If the Customer experiences issues with the Software and Related Services or they are otherwise defective ("**Service Issues**"), the Customer must promptly notify the Supplier using the "Submit Support Request" form on the Supplier's website or by emailing support@red-it.co.uk. The Supplier will, at its expense, use reasonably commercial endeavours to correct any such Service Issues promptly, however, the Customer acknowledges that this will often involve liaising with third parties (for example, Sage) and, in such cases, resolution of the Service Issues and applicable timescales are beyond the Supplier's control. The Supplier cannot warrant or guarantee that all Service Issues can be corrected and its endeavours pursuant to this clause constitute the Customer's sole and exclusive remedy in connection with Service Issues.
- 6.4 In relation to Local Applications, the Supplier will notify and provide the Customer with all Maintenance Releases generally made available to its customers, together with any particular instructions to be followed when downloading such Maintenance Releases. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receiving such notification and in accordance with the instructions provided.

- 6.5 The Supplier shall not be liable to the extent any Service Issues are caused by use of the Software contrary to the Supplier's instructions, or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 6.6 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Software and Related Services will be uninterrupted, secure or error-free; or
 - (ii) that the Software and Related Services will meet the Customer's requirements;
 - (iii) the Software and Related Services will be free from Vulnerabilities or Viruses; or
 - (iv) the Software or Related Services will comply with any particular 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 Software and Related Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.7 The Agreement 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 the Agreement.
- 6.8 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 6.9 In relation to FM Applications where Customer Data is stored on third-party servers, the Supplier shall follow its standard archiving procedures, which may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to such Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with such standard archiving procedures. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party. Details of the Supplier's standard archiving procedures are available upon request.
- 6.10 To the extent the User Subscriptions include FM Applications, the Supplier shall use commercially reasonable endeavours to make the Software and Related Services available during Normal Business Hours, except for when maintenance needs to be performed, in which case the Supplier shall use reasonable endeavours to give the Customer advance notice. The Supplier shall not be liable for any outages or other availability-related issues, to the extent they are related to: (i) acts or omissions of any third-party hosting the Software on their servers on behalf of the Supplier; or (ii) the Claris FileMaker platform.
- 6.11 The Supplier may modify, update or discontinue the Software and Related Services (including any portions or features) at any time, without liability to the Customer or anyone else.

7. Data protection

- 7.1 The Supplier may process personal data (that is included within the Customer Data made available to it by the Customer) on behalf of the Customer and will do so in accordance with Schedule 1 of these T&Cs.
- 7.2 The Customer hereby acknowledges and agrees that it is the 'data controller' and the Supplier is the 'data processor'.
- 7.3 The Customer hereby confirms the accuracy of the subject matter, duration, nature and purpose of the processing and the Personal Data categories and Data Subject types as described in Annex A of Schedule 1 (or shall otherwise immediately confirm, in writing, any required changes).
- 7.4 The Customer shall ensure that all necessary consents have been obtained and all required notices are in place and that it has a suitable legal basis on which to enable the Supplier to process personal data.

8. Third party providers – including Claris FileMaker

- 8.1 The Customer acknowledges that the User Subscriptions 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 (including, in relation to FM Applications included in the User Subscriptions, use of the Claris FileMaker platform) 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.
- 8.2 Where the User Subscriptions include FM Applications or where Customer Data is shared or accessed in accordance with clause 9.1, the Customer hereby acknowledges and agrees that the relevant third party processors are approved sub-processors for the purposes of processing personal data.

9. Customer Data

- 9.1 The Customer may share Customer Data with the Supplier, or the Supplier may otherwise have access to Customer Data, in connection with the use of the Software and Related Services. This includes, without limitation: (i) when assisting the Customer to install and configure certain Software; (ii) when Customer Data is shared with the Supplier in connection with any Service Issues; (iii) in the case of the FM Applications, where the Software is hosted on third-party servers rented by the Supplier; and (iv) where certain Software (for example, Do hyperlink) requires the Supplier to store Customer Data on its rented servers on behalf of the Customer.
- 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. Customer's obligations

- 10.1 The Customer shall:
 - (a) provide the Supplier with:
 - (i) all necessary co-operation; and
 - (ii) all necessary access to such information;as may be required by the Supplier in order to provide the Software and Related Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under, or in connection with, the Agreement;
 - (c) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) ensure that the Authorised Users use the Software and Related Services in accordance with the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
 - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier and its Representatives to perform their obligations under the Agreement, including, without limitation, to provide the Software and Related Services;
 - (f) ensure that its network and systems comply with the 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 the Agreement, solely responsible for procuring, maintaining and securing its network

connections and telecommunications links from its systems to the Supplier's (or relevant third party'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.

11. Subscription fees and payment

- 11.1 Upon receiving the Order Confirmation & Invoice (and any supplemental Order Confirmation & Invoice in respect of additional User Subscriptions and/or extensions to User Subscriptions), the Customer shall promptly pay the Subscription Fees to the Supplier according to the payment instructions provided with such Order Confirmation & Invoice.
- 11.2 Unless otherwise agreed in writing by the parties, the User Subscriptions for the Initial Subscription Term and any Renewal Period will only start once the Supplier has received the relevant Subscription Fees in full and in cleared funds.
- 11.3 All amounts and fees stated to in the Agreement: (i) shall be payable in pounds sterling; (ii) are non-refundable; and (iii) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 11.4 The Subscription Fees include the Related Services to the extent that they relate to the Supplier's standard levels of support. The Supplier shall inform the Customer if any request for services ("**Additional Services**") falls outside of these standard levels of support and of the fees payable for such Additional Services (the "**Additional Services Fees**"). The Customer can then choose whether to proceed with the Additional Services or not. Examples of Additional Services for which Additional Services Fees would be payable include, without limitation, (i) non-standard and more complex installation, set-up and configuration work; (ii) work involved in transferring licences granted under the Agreement (for example, from an Authorised Device to another Device); (iii) ad hoc consultancy work connected with reconfiguring, reinstalling and upgrading; (iv) consultancy work related to the Customer's business operations and processes; and (v) ad hoc training.

12. Proprietary rights

- 12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and Related Services. Unless otherwise stated, the Agreement 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 Software and Related Services.
- 12.2 The Supplier confirms that it has all the rights in relation to the Software and Related Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 12.3 If a third party brings a claim against the Customer for infringement of its intellectual property rights directly attributable to its use of the Software and Related Services, the Supplier may, in its sole discretion, procure the right for the Customer to continue using the Software and Related Services, replace or modify the Software and Related Services so that they become non-infringing or, if such remedies are not reasonably available, immediately terminate the Agreement on notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer. The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's Representatives') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12.4 In no event shall the Supplier or its Representatives be liable to the Customer to the extent that any alleged infringement is based on:
 - (a) a modification of the Software or Related Services by anyone other than the Supplier; or
 - (b) the Customer's use of the Software or Related Services in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Software or Related Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Customer's breach of the Agreement.

13. Confidentiality

- 13.1 Each of the parties undertakes that it shall not at any time disclose to any person any confidential information concerning (i) the business, affairs, customers, clients or suppliers of the other party or any of its affiliates and (ii) the operations, processes, product information, recipes and formulae, know-how, designs, trade secrets of the other party or any of its affiliates, except as permitted by clause 13.2 (“**Confidential Information**”).
- 13.2 Each party may disclose Confidential Information: (i) to its Representatives who need to know such information for the purposes of (or in connection with) such party carrying out its obligations under the Agreement, in which case such party shall ensure that its Representatives to whom it discloses Confidential Information comply with this clause 13; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Clause 13.1 shall not apply to any Confidential Information that is or becomes generally available to the public (other than as a result of a breach of this clause).
- 13.4 No party makes any express or implied warranty or representation concerning its Confidential Information.

14. Indemnity

- 14.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including, without limitation, court costs and reasonable legal fees) arising out of or in connection with: (i) the Customer's use of the Software and Related Services; (ii) the Customer's use of the Claris FileMaker platform; and (iii) the processing of personal data on the Customer's behalf, in each case 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.

15. Limitation of liability

- 15.1 Except as expressly provided in the Agreement:
 - (a) the Customer assumes sole responsibility for the results and outcomes obtained from the use of the Software and Related Services;
 - (b) the Customer is solely responsible for any damage to its systems or loss of data (including, without limitation, Customer Data) resulting from its use of, and access to, the Software and Related Services;
 - (c) the Supplier shall have no liability for any damage caused by errors or omissions in or loss of any Customer Data, information, instructions or scripts provided to the Supplier by the Customer in connection with the Software and Related Services, or any actions taken by the Supplier at the Customer's direction; and
 - (d) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement.
- 15.2 Nothing in the Agreement excludes the liability of the Supplier: (i) for death or personal injury caused by the Supplier's negligence; or (ii) for fraud or fraudulent misrepresentation.
- 15.3 Subject to clause 15.1 and 15.2:
 - (a) the Supplier shall have no liability for any:
 - (i) loss of profits,
 - (ii) loss of business,
 - (iii) wasted expenditure,
 - (iv) depletion of goodwill and/or similar losses,
 - (v) loss or corruption of data or information, or

- (vi) any special, indirect or consequential loss, costs, damages, charges or expenses; and
 - (b) the Supplier's total aggregate liability to the Customer, in respect of each Contract Year, shall not exceed the Liability Cap.
 - (c) In clause (b):
 - (i) the Liability Cap is the total Subscription Fees paid in the Contract Year in which the liability arises;
 - (ii) A Contract Year means a 12-month period commencing on the Start Date or any anniversary of it.
- 15.4 References to liability in this clause 15 include every kind of liability arising under or in connection with the Agreement but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.5 Nothing in the Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights or breach of its personal data obligations as a data controller.

16. Termination

- 16.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement 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; or
 - (b) the other party is Insolvent.
- 16.2 Without affecting any other right or remedy available to it, the Supplier may at any time immediately suspend the Customer's right to use and access the Software and Related Services if, in the Supplier's sole discretion, the Customer breaches any provision of the Agreement (or acts in a manner that clearly shows it does not intend to, or is unable to, comply with the Agreement).
- 16.3 On expiry or termination of the Agreement for any reason:
- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Software and Related Services;
 - (b) each party shall return or delete and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
 - (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and
 - (d) the Customer shall permit the Supplier or the Supplier's designated auditor, upon at least seven (7) days' prior notice, to inspect (including manual inspection, electronic methods or both) the Supplier's records, systems and facilities to verify that the Customer has complied with the terms of this clause 16.3 as it relates to it, including that all copies of the Software installed on the Customer's Devices have been deleted;
 - (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.

17. Force majeure

Neither party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations (other than the Customer's payment obligations to the Supplier) 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. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Agreement by giving 30 days' written notice to the affected party.

18. General

- 18.1 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.2 The Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither party has entered into the Agreement in reliance upon, and it will have no remedy in respect of, any representation, misrepresentation or statement (whether made by the other party or any other person) which is not expressly set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this clause shall limit or exclude any liability for fraud.
- 18.3 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- 18.4 The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 18.5 Any notice given to a party under or in connection with the Agreement 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). 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; or
 - (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.

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.

19. Governing law and jurisdiction

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

SCHEDULE 1 - DATA PROTECTION CLAUSES

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Agreement.

Definitions:

Authorised Persons: the persons or categories of persons that the Customer authorises to give the supplier instructions regarding personal data processing.

Business Purposes: the services to be provided by the Supplier to the Customer as described in main body of the T&Cs and any other purpose specifically identified in ANNEX A.

Commissioner: the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).

Controller, Processor, Data Subject, Personal Data, Personal Data Breach and Processing: have the meanings given to them in the Data Protection Legislation.

Controller: has the meaning given to it in section 6, DPA 2018.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

Data Subject: the identified or identifiable living individual to whom the Personal Data relates.

Personal Data: means any information relating to an identified or identifiable living individual that is processed by the Supplier on behalf of the Customer as a result of, or in connection with, the provision of the services under the main T&Cs; an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

Processing, processes, processed, process: any activity that involves the use of the Personal Data. It includes, but is not limited to, any operation or set of operations which is performed on the Personal Data or on sets of the Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring the Personal Data to third-parties.

Personal Data Breach: a breach of security leading to the accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to, the Personal Data.

Records: has the meaning given to it in Clause 12

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

This Schedule 1 is subject to the T&Cs and is incorporated into them by this reference. Interpretations and defined terms set forth in the T&Cs apply to the interpretation of this Schedule 1.

2. Personal data types and processing purposes

- 2.1 The Customer and the Supplier agree and acknowledge that for the purpose of the Data Protection Legislation:
- (a) the Customer is the Controller and the Supplier is the Processor.
 - (b) the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the Data Protection Legislation, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Supplier.
 - (c) Annex A describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and Data Subject types in respect of which the Supplier may process the Personal Data to fulfil the Business Purposes.

3. Supplier's obligations

- 3.1 The Supplier will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions from Authorised Persons. The Supplier will not process the Personal Data for any other purpose or in a way that does not comply with the T&Cs or the Data Protection Legislation. The Supplier must promptly notify the Customer in if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation.
- 3.2 The Supplier will comply with any written instructions from the Customer requiring the Supplier to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Supplier will not disclose the Personal Data to third-parties (other than sub-processors) unless the Customer or the T&Cs specifically authorises the disclosure, or as required by law, court or regulator (including the Information Commissioner). If a law, court or regulator (including the Information Commissioner) requires the Supplier to process or disclose the Personal Data to a third-party, the Supplier will first try to inform the Customer of such legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits the giving of such notice.
- 3.4 The Supplier will reasonably assist the Customer (at the Customer's cost) with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of the Supplier's processing and the information available to the Supplier, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the Information Commissioner under the Data Protection Legislation.
- 3.5 The Supplier will notify the Customer as soon as possible upon it becoming aware of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Supplier's performance of the T&Cs.

4. Supplier's employees

- 4.1 The Supplier will ensure that all of its employees:
- (a) are informed of the confidential nature of the Personal Data and as part of their employment contracts are bound by written confidentiality obligations and use restrictions in respect of the Personal Data;
 - (b) have received some training on the Data Protection Legislation and how it relates to their handling of the Personal Data and how it applies to their particular duties; and
 - (c) are aware both of the Supplier's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.

5. Security

- 5.1 The Supplier will implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or

distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.

- 5.2 The Supplier will implement reasonable measures to ensure a level of security appropriate to the risk involved, including as appropriate:
- (a) the pseudonymisation and encryption of personal data, where possible and practicable;
 - (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; and
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

6. Personal data breach

- 6.1 The Supplier will without undue delay notify the Customer in writing if it becomes aware of (each as caused or enabled by the Supplier):
- (a) the loss, unintended destruction or damage, corruption, or unusability of part or all of the Personal Data (and will aim to restore such Personal Data as soon as possible).
 - (b) any accidental, unauthorised or unlawful processing of the Personal Data; or
 - (c) any Personal Data Breach.
- 6.2 Where the Supplier becomes aware of (a), (b) and/or (c) above, it will, without undue delay, also provide the Customer with the following written information:
- (a) description of the nature of (a), (b) and/or (c), including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
 - (b) the likely consequences; and
 - (c) a description of the reasonable measures taken or proposed to be taken to address (a), (b) and/or (c), including reasonable measures to mitigate its possible adverse effects.
- 6.3 As soon as possible following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Supplier will reasonably co-operate with the Customer (at the Customer's expense) in the Customer's handling of the matter.
- 6.4 The Supplier will not inform any third-party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's consent, except when required to do so by law.
- 6.5 The Supplier agrees that the Customer has the sole right to determine:
- (a) whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
 - (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

7 Cross-border transfers of personal data

- 7.1 The Supplier (and any sub-processor) will not transfer or otherwise process the Personal Data outside the UK or the EU without obtaining the Customer's prior written consent.

8 Sub-processors

- 8.1 The Supplier may use authorised third parties or subcontractors to process the Personal Data.
- 8.2 If the Suppliers uses new and unknown sub-processors it will be provided with an opportunity to object to the appointment of each subcontractor within 30 days after the Supplier supplies the Customer with full details regarding such sub-processor;
- 8.3 The Supplier will enter into a written contracts with the sub-processors that contain terms substantially the same as those set out in this Schedule 1 in relation to the processing and protection of Personal Data.
- 8.4 The Supplier will use reasonable endeavours to maintain control over all of the Personal Data it entrusts to the sub-processor (and that the sub-processor's contract terminates automatically on termination of the T&Cs (including this Schedule 1) for any reason.

8.5 The approved sub-processors are listed in Annex A (which may be updated from time-to-time). For the avoidance of doubt, if the Customer makes the FM Applications available to its Representatives (excluding employees) themselves, then the Customer hereby acknowledges and agrees that the Supplier is not processing personal data in those instances and therefore those Representatives (excluding employees) do not need to be listed as approved sub-processors for the purpose of this Schedule and Annex A.

9 Complaints, data subject requests and third-party rights

9.1 The Supplier will take such measures as may be reasonable and appropriate, in order to provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:

- (a) the rights of Data Subjects under the Data Protection Legislation, including, but not limited to, subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
- (b) information or assessment notices served on the Customer by the Information Commissioner under the Data Protection Legislation.

9.2 The Supplier will notify the Customer as soon as possible if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

9.3 The Supplier will notify the Customer within 14 days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.

9.4 The Supplier will reasonably co-operate in responding to any complaint, notice, communication or Data Subject request (at the Customer's expense).

9.5 The Supplier must not disclose the Personal Data to any Data Subject or to a third-party other than in accordance with the Customer's written instructions, or as required by domestic law.

10 Data return and destruction

10.1 At the Customer's specific request, the Supplier will give the Customer a copy of or access to all or part of the Personal Data in its possession or control at the time of the request.

10.2 On termination of the main Terms & Conditions for any reason or expiry of its term, the Supplier will securely delete or destroy all or any of the Personal Data related to the Business Purposes in its possession or control (except for one copy that it may retain and use for the necessary time period and only for the Business Purposes or legal and compliance purposes).

10.3 If any law, regulation, or government or regulatory body requires the Supplier to retain any documents, materials or Personal Data that the Supplier would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for such retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

11 Records

11.1 The Supplier will use reasonable endeavours to keep detailed and up-to-date records regarding any processing of the Personal Data to enable the Customer to verify the Supplier's compliance with its obligations hereunder and the Data Protection Legislation.

11.2 The Customer has the right to review the information listed in the Annexes to this Schedule at least once a year to confirm its current accuracy and update it when required to reflect current practices.

12 Audit

12.1 In the event that the Customer has a successful claim against it in relation to or has evidence of the imminent likelihood of a Data Protection breach, the Supplier will permit the Customer to audit the Supplier's compliance with its obligations under this Schedule which is anticipated to be no more than once during the Term.

12.2 The audit will be remote and will primarily involve the Supplier providing the Customer with relevant documentation regarding its compliance with its Data Protection obligations in this Schedule 1. In the Supplier's sole discretion it may choose to provide the Customer with access to its systems in lieu of

providing physical documentation provided the Customer complies with its obligations regarding confidentiality and intellectual property in the T&Cs.

- 12.3 If a Personal Data Breach occurs or is occurring, or the Supplier becomes aware of a breach of any of its obligations under this Agreement or any of the Data Protection Legislation, the Supplier may conduct its own audit to determine the cause.

ANNEX A Personal Data processing purposes and details

Subject matter of processing: The Customer's clients
Duration of Processing: The Term
Nature of Processing: In order to provide the Customer with the services
Business Purposes: The provision of the services
Personal Data Categories: Clients contact data and financial data
Data Subject Types: The Customer's clients

Authorised Persons:

Approved Sub-processors:

- Third party providers, especially the FM Applications providers, and contractors engaged to provide the services.