

PlanoManager

General Terms and Conditions

The terms and conditions in these General Terms and Conditions apply to the Customer's purchase and use of the PlanoManager Licences.

1. Definitions and Interpretation

1.1 Capitalised terms used in this Agreement shall have the following meanings:

“Agreement”	means: a) The Order Form; b) These General Terms and Conditions; and c) The PlanoManager Documentation.
“Approved Sub-processors”	means persons to which the Supplier is authorised to sub-contract the processing of Personal Data listed at https://traxretail.com/legal/ as updated from time to time.
“Compatibility Requirements”	has the meaning given to that term in Section 5.
“Confidential Information”	means information, in whatever form disclosed, provided by or on behalf of either party (the “Disclosing Party”) to the other party (the “Receiving Party”), or to which the Receiving Party otherwise gains access, in the course of or incidental to the performance of this Agreement and the Services, and that is either marked or identified as confidential or proprietary or should reasonably be understood by the Receiving Party because of the circumstances of disclosure or the nature of the information itself to be proprietary and confidential to the Disclosing Party. Without derogating from the generality of the foregoing, the System shall be deemed as Confidential Information of Supplier.
“Customer Data”	has the meaning given to that term in Section 11.
“Data Controller”	has the meaning given to that term in the Data Protection Legislation.
“Data Processor”	has the meaning given to that term in the Data Protection Legislation.
“Data Protection Legislation”	means all applicable data protection and privacy legislation in force from time to time including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
“Data Subject”	has the meaning given to that term in the Data Protection Legislation.
“Effective Date”	means the date that the Agreement comes into effect as specified in the Order Form.

“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
“Licence”	means an authorisation by the Supplier to download, install, and use a copy of PlanoManager in accordance with these General Terms and Conditions and in particular Section 2 below.
“Login Credentials”	has meaning given to that term in Section 6.
“Maintenance Releases”	means a release of PlanoManager that corrects faults, adds functionality or otherwise amends or upgrades PlanoManager, but which does not constitute a new version.
“Personal Data”	means any information relating to an identified or identifiable natural person (“Data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an 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 that natural person.
“PlanoManager Documentation”	means the document detailing the specification of PlanoManager as well as a user manual.
“Servers”	means the virtual servers on which capacity to store data is provided by Supplier.
“Software”	means PlanoManager Software as further described in PlanoManager Documentation.
“Term”	means the period of time that this Agreement shall remain in effect as stated on the Order Form.
“Territory”	means the country or countries set out in the Order Form.

“User”	means a natural person for whom the Customer purchased a License and who is supplied a user identification and password enabling the use of a License.
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- 1.2 Section, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires:
- (a) words in the singular shall include the plural and in the plural shall include the singular;
 - (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - (c) a reference to one gender shall include a reference to the other genders; and
 - (d) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.
- 1.5 References to sections and Schedules are to the section and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. Software

- 2.1 In consideration of the Fee paid by the Customer to the Supplier, the Supplier shall grant to the Customer a non-exclusive licence in the Territory to:
- (a) load PlanoManager into temporary memory or permanent storage on the relevant computer of a User;
 - (b) use PlanoManager in object code form and for the purpose of processing Customer Data for the normal business purposes of the Customer.
- 2.2 The Customer may make as many backup copies of PlanoManager as may be necessary for its lawful use. The Customer shall record the number and location of all copies of PlanoManager.
- 2.3 Except as expressly stated in this Section 2, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to PlanoManager in whole or in part.
- 2.4 The Customer shall not:
- (a) sub-license, assign or novate the benefit or burden of this Agreement in whole or in part;
 - (b) allow PlanoManager to become the subject of any charge, lien or encumbrance; and
 - (c) deal in any other manner with any or all of its rights and obligations under this Agreement,
- without the prior written consent of the Supplier.
- 2.5 The Customer shall:
- (a) ensure that the number of persons using PlanoManager does not exceed the number of Users specified in the Order Form;

- (b) ensure that PlanoManager is installed on designated equipment only;
 - (c) not use the same License on more than one Customer computer;
 - (d) keep a complete and accurate record of the Customer's copying and disclosure of PlanoManager and its Users,;
 - (e) notify the Supplier as soon as it becomes aware of any unauthorized use of PlanoManager by any person;
 - (f) pay, for broadening the scope of the Licences granted under this Agreement to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the Effective Date.
- 2.6 The Customer shall permit the Supplier to inspect any records kept in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3. Maintenance Releases

- 3.1 The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of PlanoManager. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

4. Data Hosting

- 4.1 Supplier grants the Client a right to use the Servers to the extent necessary to enable the Client to use PlanoManager in accordance with the PlanoManager Documentation.
- 4.2 Supplier will maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards include, but are not limited to, measures for preventing access, use, modification or disclosure of the Data.
- 4.3 The Customer shall take all reasonable steps to prevent third parties from using PlanoManager and the Servers in any way that could constitute a breach of this Agreement, including (but not limited to), such measures as the Customer would take to protect its own proprietary software, hardware, infrastructure and/or data.

5. Access to PlanoManager

- 5.1 The Customer shall be responsible for the compatibility of its local infrastructure, devices and systems with compatibility requirements for PlanoManager set out in the PlanoManager Documentation (“**Compatibility Requirements**”).
- 5.2 The Customer shall review the Compatibility Requirements on a regular basis, in particular on the launch of any Maintenance Releases or other major or minor updates of PlanoManager to ensure that its local infrastructure continues to meet the Compatibility Requirements.
- 5.3 The Supplier does not guarantee that PlanoManager shall function within its normal parameters (as specified in the PlanoManager Documentation) when used on devices, systems or infrastructure that does not meet the Compatibility Requirements.

6. Login Credentials

- 6.1 Supplier shall provide the Customer with a username and generic password (“**Login Credentials**”) for each User, to enable Users to access Client Data hosted on the Servers. The Customer shall ensure that each User only uses the Login Credentials that have been assigned to that User and that a User does not share their Login Credentials with any person other than those personnel authorised by the Customer or the Supplier to provide administrator level IT support.
- 6.2 The Login Credentials enable the Customer to restrict access to PlanoManager to Users of the Customer, to protect the

integrity and availability of PlanoManager and the integrity, availability and confidentiality of the Data transmitted by the Users.

- 6.3 In the event of that Login Credentials are lost, stolen or forgotten, the Customer or Supplier will reset the account(s) concerned.
- 6.4 The Supplier shall be entitled to treat any access to or use of the Servers or PlanoManager via a User's Login Credentials as access and/or use by the User that has been assigned those Login Credentials.
- 6.5 The Customer shall be responsible for any act or omission by any User in connection with PlanoManager. In the event that the Customer becomes aware of any unauthorised access or use of PlanoManager including access and/or use that violates the terms of this Agreement ("Unauthorised Use of PlanoManager"), the Customer shall notify the Supplier promptly and in any event within 48 hours of becoming aware of such Unauthorised Use of PlanoManager.

7. Installation and Implementation

- 7.1 The Supplier shall provide the Customer with a link from which the Customer may download and install copies of within ten (10) days of signature of this Agreement or such other date as may be specified in the Order Form.
- 7.2 Within 24 hours of installation, the Customer shall supply data ("**Test Data**") to the Supplier suitable to enable the Supplier to test whether PlanoManager operates in accordance with the PlanoManager Documentation ("**Acceptance Testing**").
- 7.3 If the Supplier can show the Customer that the Test Data are not suitable for Acceptance Testing, the Customer shall make such amendments to the Test Data as the Supplier may reasonably request and provide the amended versions to the Supplier within seven (7) days of the request.
- 7.4 Within ten (10) days of receipt of suitable Test Data, the Supplier shall carry out Acceptance Testing in the presence of the Customer.
- 7.5 If the initial Acceptance Testing fails, the Supplier shall, within seven (7) days of the Acceptance Testing and at its cost, correct the errors so disclosed and repeat the Acceptance Testing in the presence of the Customer or its Authorised Agent.
- 7.6 If the subsequent Acceptance Testing fails, the Customer may terminate this Agreement by written notice, or require the Supplier to repeat the actions described in Section 7.5 a further two (2) times. If the Customer issues a written notice, the Supplier shall, within thirty (30) days of receipt of that notice, refund all monies paid by the Customer under this Agreement, and on receipt of that refund this Agreement shall terminate.
- 7.7 The Customer shall be deemed to have accepted PlanoManager if:
 - (a) the Acceptance Testing is certified by the Supplier to be successful;
 - (b) the Customer fails to provide the Test Data within either of the time limits set out in Sections 7.2 or 7.3; or
 - (c) the Customer commences operational use of PlanoManager.

8. Technical Support Services

- 8.1 Supplier shall provide a hotline for technical support (the "**Hotline**"), available from Monday through Friday, from 9 a.m. to 6 p.m. GMT +1 ("**Hotline Availability**"). If a Customer request is made outside the days and/or hours of Hotline Availability it will be processed by Supplier on the following business day.
- 8.2 The Customer agrees that the operation and management of PlanoManager requires a process of training and regular support of its Users. The Customer must, in particular:
 - (a) Ensure that its Users have completed the necessary training in the use of PlanoManager; and

(b) Refer to the PlanoManager Documentation and implement any action and / or workaround specified therein for a given issue before making any request to the Hotline.

- 8.3 The Hotline supports inquiries concerning functional or technical difficulties relating to PlanoManager that are not able to be resolved by the IT support service of the Customer. Access to the Hotline is exclusively reserved for the Authorized Customer Contact and the Supplier will not respond to any requests for support made by any person other than the Authorised Customer Contact (unless the person is designated as a replacement for the Authorised Customer Contact in advance by the Customer).
- 8.4 The Customer must document any incident giving rise to a request to the Hotline, including the context for the incidents detected, and must assist Supplier in diagnosing and processing the incidents.
- 8.5 Each Customer request gives rise to a qualification and then the opening of a numbered and time-stamped ticket. On its creation, the ticket is qualified by its nature (incident, application error, intervention request, development request) and its severity (from 1 to 3, with 1 being the most critical).
- 8.6 After the qualification, Supplier will provide to the Customer a solution that the Supplier considers appropriate to address the issue raised by the Customer which may include workaround, a patch, an upgrade and/or a new version.

9. Intellectual Property Rights

- 9.1 The Customer acknowledges that all Intellectual Property Rights in PlanoManager and any Maintenance Releases belong and shall belong to the Supplier, and the Customer shall have no rights in or to PlanoManager other than the right to use it in accordance with the terms of this Agreement.
- 9.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of PlanoManager (or any part thereof) in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim.
- 9.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under Section 9.2 are conditional on the Customer:
 - (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - (d) taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
 - (a) modify PlanoManager so that it ceases to be infringing;
 - (b) replace PlanoManager with non-infringing software; or
 - (c) terminate this Agreement immediately by notice in writing to the Customer and refund any of the Fee paid

by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of PlanoManager to the date of termination) on return of PlanoManager and all copies thereof,

provided that if the Supplier modifies or replaces PlanoManager, the modified or replacement Software must comply with the warranties contained in this Agreement and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

- 9.5 For the avoidance of doubt, Sections 9.2 and 9.4 shall not apply where the Claim in question is attributable to possession or use of PlanoManager (or any part thereof) by the Customer other than in accordance with the terms of this Agreement.

10. Temporary Suspension

- 10.1 Supplier may suspend the Company's or any User's right to access or use any portion or all of the Servers immediately and without prior notice if Supplier determines that the Company or a User's use of the Servers:

- (a) poses a security risk to the Servers or any third party;
- (b) could adversely impact the Supplier's systems, the Servers or the systems or content of any other Supplier customer;
- (c) could subject us, our affiliates, or any third party to liability; or
- (d) could be obscene, defamatory or fraudulent, violate any law or regulation or infringe any third party rights.

11. Rights And Responsibilities

- 11.1 The Customer warrants that it is either the owner of or has the rights to use the images, video files, text and any other content ("**Customer Data**") loaded by its Users in PlanoManager. It declares that it is the owner of the intellectual property rights allowing it to use the Data.
- 11.2 It is the Customer's duty to take any measures it considers necessary to mitigate the consequences of the termination of use of PlanoManager to its business, for whatever reason it may occur.

12. Price and payment conditions

- 12.1 The Customer shall pay the Supplier the Fees in accordance with the invoicing schedule as set out on the Order Form.
- 12.2 All Fees shall be paid in the currency specified on the Order Form and paid within thirty (30) days from the date of the invoice. All Fees paid to Supplier are non-refundable except as specified in this Agreement.
- 12.3 Supplier may charge interest on overdue payment of Fees at a rate equal to the lower of: (i) one and one half percent (1.5%) per month; and (ii) the maximum rate allowed by applicable law (the "Interest"). Such Interest shall be payable as of the due date for such overdue payment of Fees until payment is received by Supplier (whether before or after judgment), accruing on a daily basis and compounding monthly, and shall be without prejudice to any other rights and remedies afforded to Supplier under this Agreement and/or under any applicable law.
- 12.4 Customer shall not be entitled to withhold or delay any payment due to Supplier hereunder, and shall not set-off or deduct therefrom any amounts whatsoever.
- 12.5 Customer's failure to pay the undisputed Fees within thirty (30) days of the due date shall constitute a material breach by Customer of this Agreement entitling Supplier to suspend or terminate this Agreement, without prejudice to any other rights and remedies afforded to Supplier under this Agreement and/or under any applicable law.
- 12.6 All Fees invoiced under this Agreement shall be net and are exclusive of all current and future Taxes and shall be paid in full to Supplier. If the resident state of Customer imposes any Taxes on the Fees, such Taxes shall be paid and borne by Customer.

13. Termination and Consequences of Termination

- 13.1 A party may terminate this Agreement if the other party commits a material breach of any other term of this Agreement which is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days of being notified to do so.
- 13.2 This Agreement may be terminated by either party on written notice:
- (a) if the other party becomes insolvent, ceases to do business as a going concern, makes an assignment, composition or arrangement for the benefit of its creditors, or is deemed or admits in writing its inability to pay debts (as defined in section 123 Insolvency Act 1986, or in any equivalent statute in other applicable jurisdictions), or
 - (b) if proceedings are instituted by or against it for receivership or administration (in each case over the whole or a material part of its business or assets), winding-up or dissolution (other than in the course of a solvent reorganization or restructuring), provided that such proceedings are not dismissed within sixty (60) days from the initiation thereof.
- 13.3 Upon expiration or termination of this Agreement for any reason:
- (a) the rights granted to Customer shall immediately terminate; and
 - (b) Supplier will immediately disable the Customer's access to the Servers.
- 13.4 Termination shall be without prejudice to any rights and obligations accrued prior to the effective date of such termination, including Customer's obligation to pay the Fees.
- 13.5 The provisions of Sections 1, 2.6, 9.1, 11, 13, 15, 16, 17 and 18 shall survive the expiration or termination of this Agreement for any reason..

14. Warranties

General warranties

- 14.1 Each Party hereby represents, warrants and undertakes that:
- (a) it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
 - (b) it shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010;
 - (c) that it shall comply with all laws applicable to its business;
 - (d) it enters into this Agreement on its own behalf and for its own benefit and not for the benefit of any other person.
 - (e) nothing contained in this Agreement, nor the performance thereof, shall place it in breach or default of any other obligation, commitment or agreement, or any law or regulation, by which it is bound or to which it is subject, or requires the consent of any person or entity; and
 - (f) it shall not initiate or participate in any action or conduct tending to injure, bring into disrepute, ridicule, damage or destroy the goodwill of the other party.

Supplier warranties

- 14.2 The Supplier warrants that PlanoManager will conform in all material respects to the Specification for a period of ninety (90) days from the date of this Agreement ("**Warranty Period**"). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in PlanoManager in consequence of which it fails to conform in all material respects to the PlanoManager Documentation, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having

amended PlanoManager or used it outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair PlanoManager;
- (b) replace PlanoManager; or
- (c) terminate this Agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of PlanoManager to the date of termination) on confirmation from the Customer that all copies of PlanoManager (and all copies thereof) have been deleted from the Customer's IT environment,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

- 14.3 The Supplier does not warrant that the use of PlanoManager will be uninterrupted or error-free.
- 14.4 The Customer accepts responsibility for the selection of PlanoManager to achieve its intended results and acknowledges that PlanoManager has not been developed to meet the individual requirements of the Customer.
- 14.5 This Agreement is the entire agreement between the parties relating to its subject matter and all other terms, conditions, representation or warranties which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, merchantability, fitness for purpose or the use of reasonable skill and care.

15. CONFIDENTIALITY

- 15.1 The Receiving Party agrees to hold in strict confidence the Confidential Information of the Disclosing Party, and to refrain from copying, distributing, disseminating or otherwise disclosing such Confidential Information to any person or entity, other than to those of its employees, if and to the extent that such employees have a need to know such Confidential Information for the purpose of Receiving Party's performance of this Agreement, and provided that such employees are bound by written agreement to abide by all the obligations concerning such Confidential Information contained in this Agreement.
- 15.2 The Receiving Party undertakes not to use the Confidential Information of the Disclosing Party for any purposes other than for the purposes of performing this Agreement.
- 15.3 The confidentiality obligations of the Receiving Party regarding the Disclosing Party's Confidential Information shall not apply to Confidential Information which:
 - (a) is or becomes part of the public domain without fault on the part of the Receiving Party;
 - (b) is lawfully obtained from a source other than the Disclosing Party, which source is free of any obligation to keep the same confidential;
 - (c) is previously known to the Receiving Party without an obligation to be kept confidential, as can be substantiated by its written and dated records;
 - (d) was independently developed by the Receiving Party, without use of the Disclosing Party's Confidential Information, as can be substantiated by written and dated records;
 - (e) is expressly released in writing from such obligations by the Disclosing Party; or
 - (f) is required to be disclosed pursuant to law, regulation, judicial or administrative order, or request by a

governmental or other entity authorized by law to make such request, provided however that the Receiving Party so required to disclose shall:

- (i) first notify the Disclosing Party (to the extent not prohibited from doing so) in order to enable it to seek relief from such requirement;
- (ii) render reasonable assistance requested by the Disclosing Party (at the Disclosing Party's expense) in connection therewith; and
- (iii) disclose only that portion of the Confidential Information which is required to be disclosed by law as stated above.

15.4 Each party acknowledges that its breach of this Section 15 may cause the other party extensive and irreparable harm and damage, and agrees that such party shall be entitled to seek injunctive relief to prevent use or disclosure of its Confidential Information not authorized by this Agreement, in addition to any other remedy available to such party under this Agreement or applicable law.

15.5 All copies of Confidential Information, regardless of form, shall, at the discretion of the Disclosing Party, either be destroyed or returned to the Disclosing Party, promptly upon the earlier of: (a) Disclosing Party's written request, or (b) expiration or termination for any reason of this Agreement. The Receiving Party shall confirm such destruction or return in writing to the Disclosing Party.

16. LIABILITY

16.1 IN NO EVENT SHALL SUPPLIER BE LIABLE FOR

- (a) ANY SPECIAL, INDIRECT, CONSEQUENTIAL LOSSES AND/OR PUNITIVE DAMAGES; AND/OR
- (b) LOSS OF PROFIT, REVENUE, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION (IN EACH CASE WHETHER DIRECT OR INDIRECT);

REGARDLESS OF THE BASIS FOR LIABILITY OF ANY SUCH CLAIM (WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, UNDER AN INDEMNITY OR OTHERWISE), EVEN IF INFORMED OF SUCH DAMAGES.

16.2 SUPPLIER'S MAXIMUM CUMULATIVE LIABILITY UNDER THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE) WILL BE LIMITED TO THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO SUPPLIER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO LIABILITY OCCURRED, EXCLUDING AMOUNTS ALREADY PAID BY SUPPLIER FOR ANY OTHER CLAIMS IN THE SAME PERIOD. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 16.2 SHALL ALSO APPLY TO THE BENEFIT OF SUPPLIER'S AND SUPPLIER'S AFFILIATES' DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS.

16.3 NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR:

- (c) FRAUD, FRAUDULENT MISSTATEMENT OR FRAUDULENT MISREPRESENTATION; OR
- (d) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

16.4 SUPPLIER WILL ALSO NOT BE RESPONSIBLE FOR THE ACCESS SPEEDS, OR UNAVAILABILITY OR EXTERNAL SLOWDOWNS WHETHER THEY ARE DUE TO FORCE MAJEURE OR ANY OTHER CAUSE, INCLUDING LOSS OF CONNECTIVITY OF THE NETWORK.

16.5 IN THE CASE OF LOSS OR DAMAGE OF DATA OR FILES OF THE CUSTOMER, AND WHEN THE DESTRUCTION AND/OR DETERIORATION OBSERVED IS ATTRIBUTABLE TO SUPPLIER, THE SUPPLIER'S LIABILITY IS LIMITED TO THE RE-INSTALLATION OF THE LAST BACKUP PERFORMED.

17. Personal Data

- 17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 17.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Supplier is the Data Processor. Schedule 1 sets out the scope, nature and purpose of processing by Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 17.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Supplier for the duration and purposes of this Agreement.
- 17.4 Supplier shall, in relation to any Personal Data processed in connection with the performance by Supplier of its obligations under this Agreement:
- (e) process that Personal Data only on the documented written instructions of the Customer unless Supplier is required by Data Protection Legislation to otherwise process that Personal Data;
 - (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (g) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (h) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (i) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (j) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (k) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
 - (l) maintain complete and accurate records and information to demonstrate its compliance with this Section 17.

- 17.5 The Customer consents to Supplier appointing the Approved Sub-processors to process Personal Data. Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Supplier, Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it.

18. GENERAL PROVISIONS

Governing Law

- 18.1 The validity, performance, construction and effect of this Agreement and any dispute or claim arising out of or in connection therewith or its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

Dispute Resolution.

- 18.2 The parties shall not make any claims for remedies based on an alleged breach of a party's obligations, assert any right to terminate, provide notice of termination, or commence any other dispute resolution process, without first endeavouring to resolve the any dispute controversy or claim through good faith negotiations as set out above.
- 18.3 Any dispute arising out or relating to this Agreement and not resolved by good faith negotiations as specified above, shall be resolved exclusively by the courts of England and Wales.

Entire Agreement

- 18.4 This Agreement is the entire agreement between the parties and supersedes any prior understandings, agreements, statements or representations (whether made innocently or negligently) by or among the parties which relate to the subject matter of this Agreement. Without limiting the foregoing, the parties acknowledge and agree that the terms of this Agreement supersede any conflicting terms in any purchase order or any other document issued by Customer, even if acknowledged in writing or assented to by Supplier before, after or simultaneous with executing this Agreement, unless the parties specifically amend this Agreement in writing.

Amendment

- 18.5 No variation of this Agreement shall be effective unless it is in writing and signed by the authorized representatives of the parties.

Severability

- 18.6 In the event that any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be construed, limited, modified or deleted, to the extent necessary to eliminate any invalidity or unenforceability, and the remaining provisions of this Agreement shall remain in full force and effect.

Waiver

- 18.7 No waiver of any right or remedy under this Agreement shall be effective unless given in writing and signed by the authorized signatories of the waiving party. No waiver of any past or present right or remedy arising from any breach or failure to perform shall be deemed to be a waiver of any future right or remedy arising under this Agreement.

No Partnership

- 18.8 Nothing in this Agreement shall be construed as creating a partnership, joint venture, agency or other similar relationship between Supplier and Customer, nor as granting either party the right, power, or authority (express or implied) to bind or otherwise create any duty or obligation for or on behalf of the other party.

Assignment

- 18.9 Customer may not assign, subcontract, transfer, charge, declare a trust over or deal in any other manner with any of its rights and/or obligations under this Agreement to any third party without the prior written consent of Supplier, and any

purported assignment or transfer without Supplier's prior written consent shall be null and void. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

Force Majeure

18.10 A party hereto shall not be liable for any delay, loss and/or damage resulting from causes beyond the control thereof, including, but not limited to, acts of God, acts of a public enemy, acts of any governmental or quasi-governmental agency or any of their political subdivisions, fire, flood, epidemics, explosion, power or telecommunications irregularities, failures or outages, quarantine restrictions; strikes or other labour unrest, earthquakes, civil commotion or revolutions, war, terrorist attack, freight embargoes, unusually severe weather conditions, or any other cause that was not reasonably foreseeable by such party on the date of execution of this Agreement. Notwithstanding the above, the provision of this Section 18.10 shall not apply to Customer's obligation to pay Supplier the amounts due to it under this Agreement.

No Solicitation

18.11 During the Term and for a period of six (6) months following the expiration or termination thereof for any reason, Customer shall not (a) solicit to hire or otherwise employ any of the executive officers, technical personnel and/or other employees of Supplier and/or customers of Supplier to cease their engagement with Supplier. Solely for purposes of this

Section 18.11, Supplier's independent subcontractors shall be deemed as Supplier's employees.

Remedies

18.12 All remedies, either under this Agreement or by law otherwise affording to any party, shall be cumulative and not alternative.

Notices

18.13 All notices required or permitted under this Agreement shall be in writing, will reference this Agreement and will be deemed delivered upon actual delivery by a courier service to the other party, with written verification of receipt. All communications will be sent to the parties' respective addresses set forth in the heading of this Agreement. Such notice or other communications shall be deemed to have been given on the date confirmed as the actual date of delivery by the courier service.

No Third-Party Beneficiaries

18.14 This Agreement does not create any obligation of a party to any third party, nor shall it be deemed to create any rights or causes of action on behalf of any third party.

Counterparts

18.15 This Agreement may be executed in any number of counterparts, including by means of facsimile or PDF, with the same effect as if all parties had signed the same original document.

Schedule 1 – Personal Data

1. The **scope** of the Processing is: The provision of image recognition services to Customer by Supplier
2. The **nature** of the Processing is: collecting, sorting, saving, transferring, restricting and deleting personal data
3. The **purpose** of the Processing is: The purpose of the processing is to create and manage user login details to ensure that access to Supplier systems is restricted to only authorized individuals.
4. The **duration** of the Processing is: The duration of processing is the duration of this Agreement
5. The **types** of Personal Data which will be subject to Processing are: Name, Email Address and Job Title
6. The **categories** of Data Subject are as follows: Customer employees