



1. APPLICATION OF TERMS AND DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation shall apply in this Contract:

“Acceptance”	means a written acceptance of the Order, which is issued by IMU;
“Affiliate”	in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party’s holding company;
“Authorised Users”	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;
“Back-Up Policy”	IMU’s policy for archiving Customer Data as made available at https://imeasureu.com/backup-policy/ or such other website address as may be notified to the Customer from time to time;
“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 concerning the business, affairs, clients or supplies of a party or which is otherwise proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.7 or clause 14.8;
“Contract”	has the meaning given in clause 2;
“Customer”	the Customer named in the Order;
“Customer Data”	the data about Data Subjects uploaded by the Customer or its Authorised Users for the purpose of using the Services or facilitating the Customer’s use of the Services;
“Data Subject”	a person whose data is uploaded by the Customer or its Authorised Users into the Software;
“De-identified Data”	any Customer Data (wholly or in part) manipulated to such a degree that it: (a) cannot be identified as originating or deriving directly from the Customer Data and cannot be reverse-engineered such that it can be so identified; and (b) is not capable of use substantially as a substitute for the Customer Data;

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“Documentation”	the document made available to the Customer by IMU online via https://imeasureu.com/imu-downloads/ or such other web address notified by IMU to the Customer from time to time which sets out a description of the Services and the user instructions for the Services;
“Effective Date”	means the date of Acceptance;
“IMU”	IMEASUREU LIMITED a company incorporated in New Zealand with company number 4457278 whose registered office address is 5-7 Water Street, Grafton 1023, Auckland, New Zealand;
“Initial Subscription Term”	has the meaning given in the Order;
“Intellectual Property Rights”	means all patents, copy rights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
“Manipulate”	to combine or aggregate the Customer Data (wholly or in part) with other data or information or to adapt the Customer Data (wholly or in part);
“Manipulated Data”	any Customer Data that has been Manipulated and Manipulated Data includes De-identified Data;
“Normal Business Hours”	9.00 am to 5.00 pm local UK time, each Business Day;
“Open-Source Software”	open-source software as defined by the Open Service Initiative (https://opensource.org/) or the Free Software Foundation (https://www.fsf.org/);
“Order”	means a request made by the Customer to IMU for the supply of Services;
“Privacy and Security Policy”	IMU’s policy relating to the privacy and security of the Customer Data available at https://imeasureu.com/privacy-policy/ and https://imeasureu.com/cookies-policy/ or such other website address as may notified to the Customer from time to time;
“Quotation”	means a non-binding written price estimate (as revised or varied by IMU from time to time in accordance with these Terms) issued by IMU to the Customer in relation to the supply of Services;
“Renewal Period”	the period described in clause 17.1;
“Services”	the subscription services provided by IMU to the Customer under this Contract via https://imeasureu.com/login or any other website notified to the Customer by IMU from time to time, as more particularly described in the Documentation;

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“Software”	the desktop software and online software applications provided by IMU as part of or to facilitate access to the Services;
“Subscription Fees”	the subscription fees payable by the Customer to IMU for the User Subscriptions, as set out in the Order;
“Subscription Term”	has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
“Support Services Policy”	IMU's policy for providing support in relation to the Services as made available at https://imeasureu.com/Support-Services-Policy/ or such other website address as may be notified to the Customer from time to time;
“Third-Party Licences”	any licences relating to any Third Party Software, including the general public licence (if applicable);
“Third-Party Software”	any Open-Source Software and any proprietary third-party software relating to the Software;
“User Subscriptions”	the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Terms; and
“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.

- 1.2 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assignees.
- 1.3 A reference to a **“company”** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a **“holding company”** and **“subsidiary”** means a holding company or a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a

member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Contract.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.
- 1.9 A reference to “**writing**” or “**written**” includes fax and e-mail.
- 1.10 Any obligation in a Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 References to time are to UK time.
- 1.12 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, descriptions, definition, phrase or term preceding those terms.

2. APPLICATION OF TERMS

- 2.1 These Terms shall apply to any contract made between IMU and the Customer for the supply of Services. No variation or addition to these Terms shall be binding upon IMU unless IMU has expressly agreed to such variation in writing.
- 2.2 A Contract made between IMU and a Customer shall consist of these Terms and the Acceptance. If there is any inconsistency between those documents, then the Acceptance shall take precedence. No terms or conditions proposed by the Customer shall apply unless IMU has expressly agreed to those terms in writing. In particular, no terms and conditions endorsed upon,

delivered with or contained in the Order, tender document or materials provided by the Customer shall form part of the Contract, unless expressly agreed in writing and signed by a duly authorized person on behalf of each of the Customer and IMU.

3. QUOTATIONS AND ORDERS

- 3.1 Any Quotation given by IMU shall be in writing or shall subsequently be confirmed in writing and shall be provided with a copy of these Terms.
- 3.2 When an Order is placed by a Customer in response to a Quotation, that Order shall constitute an offer made by the Customer to IMU and be subject to these Terms. Such an offer shall be treated as the Customer’s acceptance of these Terms. The Order may be accepted or rejected by IMU.
- 3.3 When an inquiry is submitted by a Customer otherwise than in response to a Quotation, for example in the form of a request for responses to a proposal, IMU shall provide to the Customer a Quotation and a copy of these Terms. The Customer may then place an Order in response to that Quotation and that Order shall constitute an offer made by the Customer to IMU. Such an Offer shall be treated as the Customer’s acceptance of these Terms. The Order may be accepted or rejected by IMU.
- 3.4 In both cases 3.2 and 3.3 above, an Order shall be accepted by IMU only if an Acceptance is issued by IMU in relation to that Order or the relevant Services are provided. In no case shall issuing a Quotation constitute an Acceptance.
- 3.5 An Order shall (in the absence of any contrary stipulation by IMU) be deemed to incorporate the price stated in the most recent Quotation (as subsequently revised or varied).

4. USER SUBSCRIPTIONS

- 4.1 Subject to the Customer making such payments as required pursuant to the Order and clause 11 of these Terms, the restrictions set out in this clause 4 and the other terms and conditions of this Contract, IMU grants to the Customer a non-exclusive, non-transferrable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer’s internal business operations.
- 4.2 The Customer undertakes to keep a secure password for the Authorised Users’ use of the Services and Documentation and shall procure that each Authorised User shall keep the password confidential.

- 4.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 4.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.3.2 facilitates illegal activity;
 - 4.3.3 depicts sexually explicit images;
 - 4.3.4 promotes unlawful violence;
 - 4.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.3.6 is otherwise illegal or causes damage or injury to any person or property;
- 4.4 and IMU reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer’s access to any material that breaches the provisions of this clause.
- 4.5 The Customer shall not:
- 4.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:
- 4.6 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- 4.7 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 4.7.1 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 4.7.2 use the Services and/or Documentation to provide services to third parties; or
 - 4.7.3 subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 4.7.4 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 4; and

- 4.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify IMU.
- 4.9 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5. ADDITIONAL USER SUBSCRIPTIONS

- 5.1 Subject to clause 5.2 and clause 5.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and IMU shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Contract.
- 5.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify IMU in writing. IMU shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where IMU approves the request, IMU shall activate the additional User Subscriptions within 2 Business Days of its approval of the Customer’s request.
- 5.3 If IMU approves the Customer’s request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of IMU’s invoice, pay to IMU the relevant fees for such additional User Subscriptions as set out in the Order and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by IMU for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

6. SERVICES

- 6.1 IMU shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Contract.
- 6.2 IMU shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 6.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am; and

6.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that IMU has used reasonable endeavours to give the Customer at least 2 Normal Business Hours’ notice in advance.

6.3 IMU will, as part of the Services and in consideration of the support fees set out in the Order provide the Customer with IMU’s standard customer support services during Normal Business Hours in accordance with IMU’s Support Services Policy in effect at the time that the Services are provided. IMU may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at IMU’s then current rates.

7. CUSTOMER DATA

7.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

7.2 IMU shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, as such document may be amended by IMU in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer’s sole and exclusive remedy shall be for IMU to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by IMU in accordance with the archiving procedure described in its Back-Up Policy. IMU shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by IMU to perform services related to Customer Data maintenance and back-up).

7.3 IMU shall, in providing the Services, comply with its Privacy and Security Policy, as such document may be amended from time to time by IMU in its sole discretion.

7.4 If IMU processes any personal data on the Customer’s behalf when performing its obligations under this Contract, the parties record their intention that the Customer shall be the data controller and IMU shall be a data processor and in any such case:

7.4.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the United Kingdom or the country where the Customer and the Authorised Users are located in order to carry out the Services and IMU’s other obligations under this Contract;

- 7.4.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to IMU so that IMU may lawfully use, process and transfer the personal data in accordance with this Contract on the Customer’s behalf;
- 7.4.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 7.4.4 IMU shall process the personal data only in accordance with the terms of this Contract and any lawful instructions reasonably given by the Customer from time to time; and
- 7.4.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. LICENCE OF CUSTOMER DATA

- 8.1 In further consideration of IMU making the Services available to the Customer, the Customer grants to IMU a non-exclusive irrevocable perpetual licence to:
 - 8.1.1 access, view and Manipulate Customer Data for the purpose of creating Manipulated Data and De-identified Data;
 - 8.1.2 store the Customer Data on its own computer systems; and
 - 8.1.3 distribute the Customer Data to employees, officers, and consultants of IMU and its Affiliates.
- 8.2 IMU shall own all Intellectual Property Rights in any Manipulated Data and De-identified Data and shall be free to use the Manipulated Data and De-identified Data for any purposes provided it shall not disclose to any third party any Manipulated Data which is not De-identified Data. The Customer shall and shall use all reasonable endeavours to procure that any necessary third party shall, at IMU’s cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this clause 8.

9. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. IMU 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 IMU. IMU 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. IMU does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

10. IMU'S OBLIGATIONS

- 10.1 IMU undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 10.2 The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to IMU's instructions, or modification or alteration of the Services by any party other than IMU or IMU's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.2. Notwithstanding the foregoing, IMU:
- 10.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 10.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3 IMU warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 10.4 This Contract shall not prevent IMU from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.

11. CUSTOMER’S OBLIGATIONS

11.1 The Customer shall:

11.1.1 provide IMU with:

- (a) all necessary co-operation in relation to this Contract; and
- (a) all necessary access to such information as may be required by IMU;
- (a) in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

11.1.2 comply with all applicable laws and regulations with respect to its activities under this Contract;

11.1.3 carry out all other Customer responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer’s provision of such assistance as agreed by the parties, IMU may adjust any agreed timetable or delivery schedule as reasonably necessary;

11.1.4 ensure that the Authorised Users (and anyone else it permits or allows to) use the Services and the Documentation in accordance with the terms and conditions of this Contract and shall be responsible for any Authorised User’s breach of this Contract;

11.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for IMU, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;

11.1.6 comply with any notice issued by IMU regarding the Customer’s use of the Services which is necessary or appropriate to ensure compliance with the terms of any Third-Party Licences;

11.1.7 ensure that its network and systems comply with the relevant specifications provided by IMU from time to time; and

11.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to IMU’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.

12. CHARGES AND PAYMENT

- 12.1 The Customer shall pay the Subscription Fees to IMU for the User Subscriptions calculated by reference to the number of Data Subjects in accordance with this clause 12 and the Order [and the support fees in accordance with clause 6.3 and the Order].
- 12.2 The Customer shall on the Effective Date provide to IMU approved purchase order information acceptable to IMU and any other relevant valid, up-to-date and complete contact and billing details, including the number of User Subscriptions and Data Subjects.
- 12.3 Subject to clause 12.5, the Customer may, at least 30 days prior to each anniversary of the Effective Date, notify IMU of any changes in the number of User Subscriptions and Data Subjects for the following Renewal Period and the Subscription Fees shall be adjusted accordingly.
- 12.4 If the Customer provides its approved purchase order information to IMU, IMU shall invoice the Customer:
- 12.4.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term;
 - 12.4.2 subject to clause 17.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period; and
 - 12.4.3 at any time for any Subscription Fees payable pursuant to clause 12.5,
 - 12.4.4 and the Customer shall pay each invoice within 30 days after the date of such invoice by way of electronic bank transfer.
- 12.5 If the Customer uses the Services for Data Subjects in excess of the number requested pursuant to clause 12.2 or clause 12.3 and such number would incur different Subscription Fees pursuant to the Order, IMU shall invoice the Customer for the difference between the Subscription Fees already paid and Subscription Fees payable for that number of Data Subjects, pro-rated from the date upon which such Data Subjects were added for the remainder of the Initial Subscription Term or Current Renewal Period (as applicable). The Customer shall pay each invoice within 30 days after the date of such invoice. The Customer is not entitled to a refund of Subscription Fees if the number of Data Subjects is reduced during the Initial Subscription Term or a Renewal Period (as applicable).
- 12.6 If IMU has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of IMU:

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12.6.1 IMU may, without liability to the Customer, disable the Customer’s password, account and access to all or part of the Services and IMU shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

12.7 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank (NatWest) from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

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

12.8.1 shall be payable in euros;

12.8.2 are, subject to clause 16.6.2, non-cancellable and non-refundable;

12.8.3 are exclusive of value added tax, which shall be added to IMU’s invoice(s) at the appropriate rate.

12.9 IMU shall be entitled to increase the Subscription Fees and the support fees payable pursuant to clause 6.3 at the start of each Renewal Period upon 120 days’ prior notice to the Customer and the Order shall be deemed to have been amended accordingly.

13. PROPRIETARY RIGHTS IN THE SERVICES AND DOCUMENTATION

13.1 The Customer acknowledges and agrees that IMU and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights or licences in respect of the Services or the Documentation.

13.2 IMU confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.

14. CONFIDENTIALITY AND ANNOUNCEMENTS

14.1 References in this clause 14 to IMU’s Confidential Information shall be deemed to include IMU’s Affiliates’ Confidential Information.

14.2 Each party may be given access to Confidential Information from the other party in order to per-

form its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:

- 14.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 14.2.2 was in the other party's lawful possession before the disclosure;
 - 14.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 14.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.3 Subject to clause 14.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.
- 14.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 14.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.6 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.7 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute IMU's Confidential Information.
- 14.8 IMU acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.9 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority

(including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

14.10 The above provisions of this clause 14 shall survive termination of this Contract, however arising.

15. INDEMNITY

15.1 The Customer shall defend, indemnify and hold harmless IMU against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer’s use of the Services and/or Documentation, provided that:

15.1.1 the Customer is given prompt notice of any such claim;

15.1.2 IMU provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer’s expense; and

15.1.3 the Customer is given sole authority to defend or settle the claim.

15.2 IMU shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

15.2.1 IMU is given prompt notice of any such claim;

15.2.2 the Customer provides reasonable co-operation to IMU in the defence and settlement of such claim, at IMU’s expense; and

15.2.3 IMU is given sole authority to defend or settle the claim.

15.3 In the defence or settlement of any claim, IMU may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on 2 Business Days’ notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

15.4 In no event shall IMU, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

15.4.1 a modification of the Services or Documentation by anyone other than IMU; or

- 15.4.2 the Customer’s use of the Services or Documentation in a manner contrary to the instructions given to the Customer by IMU; or
- 15.4.3 the Customer’s use of the Services or Documentation after notice of the alleged or actual infringement from IMU or any appropriate authority.
- 15.5 Notwithstanding any other provision in this Contract, clause 15.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the use of any Open-Source Software incorporated into the Software or through the breach of any Third-Party Licence relating to any Open-Source Software so incorporated.
- 15.6 The foregoing and clause 16.6.2 state the Customer’s sole and exclusive rights and remedies, and IMU’s (including IMU’s employees’, agents’ and sub-contractors’) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16. LIMITATION OF LIABILITY

- 16.1 Except as expressly and specifically provided in this Contract:
 - 16.1.1 the Customer assumes sole responsibility for the selection of the Services and for the results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. IMU shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to IMU by the Customer in connection with the Services, or any actions taken by IMU at the Customer’s direction;
 - 16.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract;
 - 16.1.3 the Services and the Documentation are provided to the Customer on an “as is” basis.
- 16.2 IMU does not warrant that the use of the Services will be uninterrupted or error-free or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer’s requirements.
- 16.3 The Customer acknowledges that:
 - 16.3.1 IMU is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be

subject to limitations, delays and other problems inherent in the use of such communications facilities; and

16.3.2 electronic databases are subject to errors, tampering and break-ins. While IMU agrees to take reasonable security precautions to avoid such occurrences, it does not guarantee or warrant that such events will not take place.

16.4 Any Open-Source Software provided by IMU may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided “as is” and expressly subject to the disclaimer in clause 16.1.2.

16.5 Nothing in this Contract shall limit or exclude a party’s liability for:

16.5.1 death or personal injury caused by that party’s negligence or the negligence of one of its employees, agents or subcontractors; or

16.5.2 fraud or fraudulent misrepresentation.

16.6 Subject to clause 16.1 and clause 16.5:

16.6.1 IMU shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, for:

(a) any losses or damage which may be suffered by the Customer, whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:

(i) loss of profits or revenue;

(ii) loss of customers or contracts;

(iii) loss of business or business opportunity;

(iv) depletion of goodwill and/or similar losses;

(v) loss or corruption of data or information;

(vi) pure economic loss; or

(a) any special, indirect or consequential loss, costs, damages, charges or expenses which may be suffered by the Customer however arising under this Contract; and

16.6.2 IMU’s total aggregate liability in contract (including in respect of any indemnity including the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance

or contemplated performance of this Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

- 16.7 All dates supplied by IMU to the Customer shall be treated as approximate only. IMU shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 16.8 All references to IMU in this clause 16 shall, for the purposes of this clause and clause 27 only, be treated as including all employees, subcontractors and suppliers of IMU and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 27.
- 16.9 This clause 16 shall survive termination of this Contract.

17. TERM AND TERMINATION

- 17.1 This Contract shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”), unless:
 - 17.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 17.1.2 otherwise terminated in accordance with the provisions of this Contract;
 - 17.1.3 and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the “**Subscription Term**”.
- 17.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
 - 17.2.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 17.2.2 the other party commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach with-

- in a period of 14 days after being notified in writing to do so;
- 17.2.3 the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 17.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 17.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 17.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 17.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 17.2.10 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 17.2.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party’s assets and such attachment or process is not discharged within 14 days;
- 17.2.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdic-

tion to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2.4 to clause 17.2.11 (inclusive); or

- 17.2.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

18. CONSEQUENCES OF TERMINATION

18.1 On termination of this Contract for any reason:

- 18.1.1 the Customer shall immediately pay to IMU any sums due to IMU under this Contract but, for the avoidance of doubt, IMU shall not be under any obligation to repay or refund any sums paid in advance;
- 18.1.2 all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 18.1.3 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 18.1.4 IMU may destroy or otherwise dispose of any of the Customer Data in its possession unless IMU receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. IMU shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by IMU in returning or disposing of Customer Data;
- 18.1.5 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 this Contract which existed at or before the date of termination shall not be affected or prejudiced; and
- 18.1.6 the following clauses shall continue in force:
- (a) clause 1 (Definitions and Interpretation);
 - (a) clause 14 (Confidentiality);
 - (a) clause 16 (Limitations on Liability);

- (a) clause 18 (Consequences of Termination; and
 - (a) clause 29 (Governing Law and Jurisdiction),
- and any other provision expressed to survive termination.

19. FORCE MAJEURE

IMU shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of IMU or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

20. VARIATION

- 20.1 Subject to the terms of the Order and except as provided in clause 12.8, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

- 21.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 21.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.3 A party that waives a right or remedy provided under this Contract or by law in relation to one

party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

22. RIGHTS AND REMEDIES

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

23. SEVERANCE

23.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

23.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

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

24.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether written or oral and whether made innocently or negligently) that is not set out in this Contract.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

24.4 Nothing in this clause shall limit or exclude any liability for fraud.

25. ASSIGNMENT AND OTHER DEALINGS

- 25.1 The Customer shall not, without the prior written consent of IMU, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 25.2 IMU may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

26. NO PARTNERSHIP OR AGENCY

- 26.1 Nothing in a Contract is intended to or shall operate to create or establish a partnership or joint venture between the parties, or authorise either party to act as the agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise make or enter into any commitments or bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27. THIRD PARTY RIGHTS

- 27.1 IMU and the entities referred to in clause 16.8 may enforce the terms of clause 16 subject to and in accordance with this clause 27, these Terms and the Contracts (Rights of Third Parties) Act 1999.
- 27.2 It is agreed that it is intended to confer a benefit on IMU and its Affiliates by making the exclusions and limitations of liability available to them in accordance with these Terms, provided that the rights of such Affiliates under these Terms shall only be enforceable by IMU on their behalf. IMU will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 27.3 Except as provided in this clause 27, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 27.4 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under

this Contract is not subject to the consent of any person that is not a party to this Contract.

28. NOTICES

- 28.1 Any notice to be given under or in connection with this Contract shall be in writing in English and shall be:
- 28.1.1 delivered by hand or sent by pre-paid first-class post or other next day delivery service or by pre-paid airmail to the other party at its registered office (if a company) or its principal place of business (in any other case), or such other address as may have been notified by that party for such purposes; or
 - 28.1.2 sent by fax or email to the fax number or email address given by each party to the other for such purpose; and
 - 28.1.3 marked for the attention of:
 - (a) In the case of IMU: the IMU representative set out in the Order; and
 - (a) in the case of the Customer: the Customer representative set out in the Order,
 - 28.1.4 each as named in the Order or such other person as may have been notified by that party for such purposes and each party warrants to the other that the persons named above have authority to bind that party and enter into contracts and arrangements in relation to the Services on its behalf.
- 28.2 Any notice shall be deemed to have been duly received:
- 28.2.1 if delivered by hand, when delivered (or if delivery is not in business hours, at 9:00am on the first Business Day following delivery);
 - 28.2.2 if correctly addressed and sent by pre-paid first-class post or other next day delivery service and having proof of postage, at 9:00am on the second Business Day after posting;
 - 28.2.3 if correctly addressed and sent by airmail and having proof of postage, 9:00am on the fifth Business Day after posting; or
 - 28.2.4 if sent by fax or email, at the time of transmission as shown by the timed printout obtained by the sender (or if transmission is not during business hours, at 9:00am on the First Business Day following transmission).
- 28.3 This clause shall 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.

29. GOVERNING LAW AND JURISDICTION

- 29.1 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 29.2 Each party irrevocably agrees, for the benefit of IMU that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation. Nothing in this clause shall limit the right of IMU to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.