

## Master Subscription Agreement

THIS MASTER SUBSCRIPTION AGREEMENT (“**AGREEMENT**”), AND OUR USE POLICIES (E.G. ANTI-SPAM AND USER CONTENT POLICY) GOVERN YOUR PURCHASE AND USE OF OUR SERVICES, APPLICATIONS AND WEBSITES (E.G. CUSTOMER PORTAL). IF YOU ARE PERMITTED TO USE A DEMO SYSTEM TO TEST THE FUNCTIONALITY OF OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN ANY SUCH USE OF A DEMO SYSTEM. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A LAYER QUOTATION THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS (AS STATED), IN WHICH CASE THE TERMS “**YOU**” OR “**YOUR**” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Note: You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. This Agreement was last updated on 15<sup>th</sup> July 2019. It is effective between You and Us as of the date of You accepting this Agreement.

### 1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings ascribed to them below:

- “**API**” means Application Programming Interface; an API is a set of commands, functions, protocols, and objects that programmers can use to create software or interact with an external system;
- “**App Zone**” means the online directory of applications that interoperate with the Services, located at <https://app.thelayer.com> or at any successor websites;
- “**Base Rate**” means the base lending rate from time to time of the Lloyds Banking Group or of such other UK clearing bank as We may nominate from time to time or, in the event that the said base lending rate ceases to exist, such other rate reasonable equivalent to the said base lending rate as We may from time to time by notice specify;
- “**Beta Services**” has the meaning ascribed thereto in Clause 10.6;
- “**Business Day**” means Monday through Friday, excluding public holidays in Scotland;
- “**Business Hours**” means 9am to 5:30pm on a Business Day;
- “**Charges**” means the agreed fees for all Services listed in the Layer Quotation for the Subscription Term and any additional services agreed between the parties in writing, as detailed in the Layer Quotation or as otherwise agreed between the Parties;
- “**Claim Against Us**” has the meaning ascribed thereto in Clause 11.1;
- “**Commencement Date**” means the date on which the Layer Quotation is accepted by you either

by clicking a box indicating your acceptance or by executing a Layer Quotation;

**“Confidential Information”** means all Layer Quotations, as well as Our business and marketing plans, technology and technical information, product plans and designs, and business processes, and all information (whether oral, written or in any other form) of a confidential and/or commercially sensitive nature concerning Us and/or any Related Company of Ours made available or disclosed by or on behalf of a Discloser to a Recipient (whether before or after this Agreement is actually entered into), including without limitation for the purpose of or pursuant to this Agreement, together with any information derived from such information and any analyses, compilations, studies and other material prepared by the Recipient which contain or otherwise reflect or are generated from such information, but shall not include information which:

- is publicly available at the time it is made available to the Recipient or subsequently becomes generally available to the public other than as a result of disclosure or any act or omission by any Recipient contrary to its obligations of confidentiality; or
- was or has become available (as can be demonstrated by its written records) to the Recipient free of any restrictions as to its use or disclosure; or
- the Discloser has agreed in writing not to treat as Confidential Information;

**“control”** (including, with correlative meaning, the terms **“controlled by”** and **“under common control with”**) means the possession, direct or through one or more intermediaries or together with persons acting in concert (as such term is defined for the purposes of The Takeover Code), of the power to direct or cause the direction of the management or policies of any person;

**“Controller, Processor, Data Subject, Personal Data and processing”** shall have the meanings given to them in the Data Protection Legislation;

**“Data Protection Legislation”** means the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); the GDPR; any applicable legislation adopted by the United Kingdom pre or post the United Kingdom ceasing to be a Member State of the European Union (whichever is in force at the time of this Agreement); the Data Protection Act 2018; and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued from time to time by the Information Commissioner’s Office or the European Data Protection Board; and any statutory modification or re-enactment thereof and any applicable codes of conduct;

**“Demo System”** means any system and/or access to the Site provided for evaluation purposes only for a limited time period and/or ongoing and not for production or commercial use;

**“Discloser”** means the relevant party by or on whose behalf Confidential Information is made available or disclosed;

- “GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679);
- “Initial Term”** means the initial contract term as expressly agreed and set out in the Layer Quotation which shall commence on the Service Commencement Date;
- “Layer Quotation”** means the electronic and/or paper form(s) for placing orders hereunder, including any addenda and/or supplements thereto, that are entered into between You and Us from time to time, including addenda and supplements thereto; thus Layer Quotations shall be deemed incorporated herein by reference;
- “Malicious Code”** means viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- “Non-The Layer Applications”** means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that inter operate with the Services, including but not limited to those listed in the AppZone and those identified with or by a similar designation;
- “Prescribed Rate”** means 8% per annum above the Base Rate;
- “Recipient”** means the relevant party receiving Confidential Information;
- “Related Company”** means a company which is a subsidiary or holding company or a subsidiary of such holding company (as the terms **“subsidiary”** and **“holding company”** are defined in Section 1159 of the Companies Act 2006);
- “Services”** means the products and services that are ordered by You and accepted by Us under a Layer Quotation (whether signed or otherwise contractually accepted electronically by way of our quotation or traditional means) and which include the services made available by Us on the Site and/or other web pages designated by Us, including associated offline components, as described in the Training Manuals and/or as otherwise notified in writing by Us. **“Services”** exclude Non-The Layer Applications;
- “Service Commencement Date”** means: 1) in respect of the Initial Term, the User Subscription Start Date for the first User Subscription(s) or, if earlier, the date when You are given full access to the Site for commercial use; or 2) in respect of any Subsequent Terms, the date the renewal and/or auto-renewal takes effect as notified in writing by Us to You.
- “Site”** means the web-based platform that the Services are provided on;
- “Subscription Term”** means the term commencing on the Service Commencement Date and continuing until all User Subscriptions granted in accordance with this Agreement have expired or been terminated (including but not limited to the Initial Term and any Subsequent Terms).
- “Subsequent Terms”** means any terms after the Initial Term where this Agreement has either been renewed or has auto-renewed in accordance with clause 13.2;
- “Training Manuals”** means any knowledge base or articles, manuals and/or training materials provided or made available to You by Us;

- “Usage Statistics”** has the meaning ascribed thereto in Clause 2;
- “Users”** means individuals who are authorised by You to use the Services according to the terms hereunder, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request and cost), including, but not limited to, Your employees, consultants, contractors and agents, and third parties with which You transact business;
- “User Subscription(s)”** means the subscription(s) for use of the Services for each User as detailed in the Layer Quotation and/or as otherwise agreed in writing by the parties from time to time;
- “User Subscription Start Date”** means the start date of each User Subscription being when access to the Site is made available to the relevant User;
- “We,” “Us” or “Our”** means Layer Systems Ltd, a private company limited by shares, incorporated in Scotland on 26 May 2010 with registered company number SC379219 and having its registered office at 16 McPhater Street, Glasgow, G4 0HW, and trading as **“The Layer”**;
- “You” or “Your”** means you (the customer who in entering into this Agreement for Services and/or use the Demo System) and, jointly and severally, any company or other legal entity for which you are accepting this Agreement; and
- “Your Data”** means all electronic data or information submitted by You to the Services (and includes Personal Data).

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 words and expressions defined in the Companies Acts shall bear the same meanings herein;
- 1.2.2 reference to any statute or statutory provision includes a reference to any statute or statutory provision which amends, extends, re-enacts or replaces the same or which has been amended, extended, re-enacted or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision whether before or after the date hereof;
- 1.2.3 reference to Clauses and subdivisions thereof are references to the clauses of this Agreement and subdivisions thereof;
- 1.2.4 a reference to the singular includes a reference to the plural and vice versa and a reference to any gender includes a reference to all other genders;
- 1.2.5 references to persons shall include natural persons, bodies corporate, unincorporated associations, partnerships, joint ventures, trusts or other entities or organisations of any kind and in any jurisdiction, including (without limitation) government entities (or political subdivisions or agencies or instrumentalities thereof);
- 1.2.6 references to any Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept shall

in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish legal term.

- 1.3 The headings in this Agreement are for convenience of reference only and shall not affect its validity or construction.

## 2. DEMO SYSTEM

- 2.1 We may (at Our sole discretion) make one or more Services or part thereof available to You through a Demo System on a free of charge basis for the duration of time notified to You by Us (at Our sole discretion). Use of the Demo System may be subject to further terms and conditions, as notified to You by Us from time to time. NOTE: Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. USE OF THE DEMO SYSTEM IS PROVIDED “**AS-IS**” WITHOUT ANY WARRANTY AND AT YOUR OWN RISK. Please review the Training Manuals when using the Demo System so that You become familiar with all of the features and functions of the Services before You make Your purchase. If You are located in the United Kingdom, then during any period of use of the Demo System, We may disclose anonymous data about Your use of the Demo System and/or the Services (“**Usage Statistics**”) to Our service providers for the purpose of helping Us improve the users’ experience with the Demo System and/or the Services, or as required by law. Any such disclosures of Usage Statistics to our service providers will not include Your identity.
- 2.2 Please note the Demo System does allow the input of data in to the system. However, as this is a demonstration system we do not monitor or seek to protect in any manner any data that is input or uploaded into the Demo System. **PLEASE DO NOT INPUT OR UPLOAD ANY INFORMATION OR DATA ON THE DEMO SYSTEM. ANY DATA YOU ENTER INTO THE DEMO SYSTEM WILL NOT BE HELD AS CONFIDENTIAL AND MAY BE SHARED BY US WITH ANY THIRD PARTY. YOU SHOULD NOT AND HEREBY WARRANT THAT YOU SHALL NOT SUBMIT OR INPUT ANY PERSONAL DATA TO THE DEMO SYSTEM. IF YOU DO UPLOAD AND/OR INPUT DATA ON THE DEMO SYSTEM, YOU HEREBY AUTHORISE US TO USE AND DISCLOSE THIS DATA IN ANY MANNER AND WARRANT THAT YOU HAVE THE RIGHT TO AUTHORISE SUCH USE AND/OR TRANSFER OF DATA.**

## 3. SERVICES

- 3.1 **Provision of Services.** We shall make the Services available to You pursuant to this Agreement and the relevant Layer Quotations during the Subscription Term, which shall include (unless otherwise agreed in writing by the parties) at least the Initial Term and any Subsequent Terms. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments (or otherwise) made by Us regarding future functionality or features.
- 3.2 **User Subscriptions.** Unless otherwise specified in the applicable Layer Quotation, (i) Services are purchased as User Subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User Subscriptions may be requested by You during the applicable subscription term and We will notify You of any additional terms and conditions upon which the additional User Subscriptions shall be offered (including but not limited to the licence fee(s) and any set up fee(s) which will be chargeable). If You elect to add additional User Subscription(s), You shall notify Us of your acceptance of any additional terms provided to You by Us and thereafter, the additional User Subscriptions shall form part of this Agreement, Please note, any additional User Subscriptions added or

requested shall be prorated for the remainder of the Subscription Term in effect at the time the additional User Subscriptions are added, and (iii) the added User Subscriptions shall terminate on the same date as the pre-existing subscriptions. User Subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Services. If a User Subscription is reassigned to another User, You shall be responsible for the transfer of such User Subscription and the transfer of any data (including, if applicable, Personal Data) therein in accordance with all applicable laws and shall be liable for any damage and/or loss that may be caused by such a transfer. In the event that the transfer of a User Subscription by You causes any damage to the Services and/or to Us and/or prevents or restricts your access to the Services We shall not be responsible for such failure and/or restriction and You shall be liable for any losses or damages caused and for the cost of any repairs and/or compensation.

#### **4. USE OF THE SERVICES**

- 4.1 **Our Responsibilities.** We shall: (i) use our reasonable endeavours to provide Our basic support (to be determined at our sole discretion) for the Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least seven (7) hours' notice via the Services and which We shall schedule to the extent practicable during non-Business Hours), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks; (iii) provide the Services only in accordance with applicable laws and government regulations.
- 4.3 **Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (i) use best efforts to prevent unauthorised access to or use of the Services, and notify Us forthwith of any such unauthorised access or use, and (ii) use the Services only in accordance with this Agreement, the Training Manuals and applicable laws and government regulations. You shall not directly or indirectly (including authorising or knowingly fail to refrain another) (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libellous, or otherwise unlawful or delictual material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorised access to the Services or their related systems or networks. You acknowledge and agree that You are responsible for determining which laws may apply to Your use of the Site and the Services and assessing Your obligations under such laws. You shall cooperate with Us, as required and/or requested, in the development and/or integration of the Site with and/or for use in Your business. You acknowledge that You are responsible for any failure to meet any agreed specification and/or milestones that is/are attributable to Your failure to cooperate and/or assist Us in developing and/or integrating the Site with Your business and that Our obligations under this Agreement shall be deemed to be met in terms of delivery of the Services if any failure is attributable to Your act and/or omission.
- 4.4 **Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, and, for Services that enable You to provide public

websites, on the number of page views by visitors to those websites. Any such limitations are specified in the Training Manuals and/or as otherwise specified in writing by Us to You from time to time. The Services provide real-time information to enable You to monitor Your compliance with such limitations. Without limiting this Clause 4.4, if You and/or any User engages in excessive usage of the Site or the Services, We may take such action as we consider necessary to prevent such excessive usage and to restore the availability of the Site and the Services to other Users, including by limiting or suspending the relevant User's access to the Site and the Services, or by cancelling the relevant User's Subscription and/or terminating this Agreement.

- 4.5 If You or any User(s) register for an account to use the Services You hereby warrant that the information provided by You and any User(s) for the purposes of such registration is complete, valid and accurate. You shall ensure that such information is kept up to date. Upon registering for an account each User will receive a password and an account designation. You acknowledge and agree that You are responsible for Your account (including, but not limited, to all Users' accounts) and all activities occurring in connection with the use of these accounts, whether or not You authorise such activities.
- 4.6 We shall have no liability to You under this Agreement if we are prevented from or delayed in performing Our obligations under this Agreement, or from carrying on Our business, by acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of 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 You are notified of such an event and its expected duration.

## 5. NON-THE LAYER PROVIDERS

- 5.1 **Acquisition of Non-The Layer Products and Services.** We or third parties may from time to time make available to You (e.g., through the AppZone or API) third-party products or services, including but not limited to Non-The Layer Applications and implementation, customisation and other consulting services. Any acquisition by You of such Non-The Layer Applications products or services, and any exchange of data between You and any non-The Layer provider, is solely between You and the applicable non-The Layer provider. We do not warrant or support Non-The Layer Applications, products and/or services, whether or not they are designated by Us as “**certified**” or otherwise, except as specified in a Layer Quotation with regard to support only. Subject to Clause 5.3 (Integration with Non-The Layer Services), no purchase of Non-The Layer Applications, products and/or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.
- 5.2 **Non-The Layer Applications and Your Data.** If You install or enable Non-The Layer Applications for use with Services or ask for Us to arrange, facilitate access to or procure third party goods and/or services (including Non-The Layer Applications) on Your behalf You acknowledge that We may allow providers of those Non-The Layer Applications to access Your Data as required for the interoperation of such Non-The Layer Applications with the Services. We shall not be responsible for any disclosure, variation, modification or deletion of Your Data resulting from any such access by Non-The Layer Application

providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Non-The Layer Applications for use with the Services.

- 5.3 **Integration with Non-The Layer Services.** The Services may contain features designed to interoperate with Non-The Layer Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Non-The Layer Applications from their providers. If the provider of any such Non-The Layer Application ceases to make the Non-The Layer Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.
- 5.4 You acknowledge that the Services may enable or assist You to access the content of, correspond with, and/or purchase products and services from, third parties, including Non-The Layer Applications and You do so solely at Your own risk. We make no representation 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, or any transactions completed, and any contract entered into by You, with any such third party, including any contract for goods or services and/or use of any Non-The Layer Applications. Any contract entered into and any transaction completed with any third-party is between You and the relevant third party. We recommend that You refer to the third party's terms and conditions and privacy policy prior to using the relevant third-party website or contracting with the relevant third party. We do not endorse or approve any Non-The Layer Applications or any third-party goods or services or third party websites made available via the Services.
- 5.5 We may provide references, frames or hyperlinks to internet websites maintained by third parties. We have not reviewed such third party websites and we make no claims, representations or warranties regarding such third party websites and/or the contents of the same. We are not responsible for, nor do we endorse, Non-The Layer Applications and/or any products or services provided by such third parties through such third party websites or by any other means.
- 5.6 In the event that We provide or facilitate access to a third party product or service (including any Non-The Layer Applications), You acknowledge and agree that such product and/or service shall be provided to you subject to the terms and conditions of the relevant third party and you warrant that you shall comply with all such third party terms. You also acknowledge that any warranties offered by Us in respect of such third party products and/or services and our liability in this regard shall be limited, if applicable at all, to the extent permitted by applicable law, to any warranties and/or limitations outlined in the relevant third party terms. We shall not, to the extent permitted by applicable law, be liable for any loss or damage caused by the relevant third party unless we have agreed otherwise in writing.

## **6. CHARGES AND PAYMENT FOR SERVICES**

- 6.1 **Charges.** You shall pay all Charges forthwith on demand on the dates specified and/or on completion of the relevant milestone as set out in the Layer Quotation (or as otherwise stated in writing by Us). Except as otherwise specified herein or in a Layer Quotation, (i) Charges are based on services purchased and the number of User Subscriptions for Services and not actual usage (therefore no failure to commence use of the Services or failure to provide the Services which is caused by Your act or omission shall relieve You of your obligations to pay the Charges), (ii) payment obligations are non-cancellable and Charges paid are non-refundable (unless otherwise agreed between the parties in writing),



and (iii) the number of User Subscriptions purchased cannot be decreased during the relevant Subscription Term stated on the Layer Quotation. User subscription fees are based on monthly periods that begin on the User Subscription Start Date and each monthly anniversary thereof; therefore, fees for User Subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term. You shall have no right of set off, counter claim or other right of security and insofar as they may apply by operation of law, you hereby waive same to the full extent provided by law. You acknowledge and agree that the Charges shall become payable, as applicable, on the due dates for payment and/or on completion of the relevant milestone, as determined by the Layer Quotation.

- 6.2 **Invoicing and Payment.** All payments shall be made by direct debit through GoCardless. You authorise Us to charge the Charges for the Initial Term and any Subsequent Term(s) as set forth in Clause 13.2 (Term of User Subscriptions). Such Charges shall be made in advance or in accordance with any different billing frequency stated in the applicable Layer Quotation. We will invoice You in advance and otherwise in accordance with the relevant Layer Quotation in respect of the Charges. Unless otherwise stated in the Layer Quotation, invoiced Charges are due 30 days from the invoice date. You are responsible for notifying Us of any changes to your direct debit.
- 6.3 **Overdue Charges.** If any Charges are not received from You by the due date, then at Our discretion, (a) such Charges may accrue late interest at the Prescribed Rate from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Layer Quotations on payment terms shorter than those specified in Clause 6.2 (Invoicing and Payment).
- 6.4 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our Services is 30 or more days overdue (or 10 or more days overdue in the case of amounts payable by direct debit), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our Services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, in accordance with Clause 14.1 (Manner of Giving Notice), before suspending Services to You.
- 6.5 **Payment Disputes.** We shall not exercise Our rights under Clause 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) if You are disputing the applicable Charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 6.6 **Taxes.** Unless otherwise stated, the Charges do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added tax, assessable by any local, national, or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## 7. PROPRIETARY RIGHTS

- 7.1 **Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest, past, present and future including all

subsisting and related intellectual property rights and any derivatives, improvements, modifications, enhancements and developments of the same, in and to the Services including but not limited to the Site and all information and screens appearing on this Site, including documents, services, site design, text, graphics, logos, images and icons, as well as the arrangement thereof, any information, data, strategies, proposals, etc. contained in and/or on the API. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or licensee. We reserve all rights in the Site and the Services that are not expressly granted. We use 'The Layer' as Our trademark. Other trademarks, names, and logos on the Site are the property of their respective owners. Nothing in this Agreement shall be deemed to assign or transfer to You and/or any User any rights including, without limitation, any rights of use to any such intellectual property. You further acknowledge and agree that any content made available to You and/or any User through the Services and/or on the Site may be subject to the intellectual property rights of third parties. No rights are granted to You hereunder other than as expressly set forth herein.

- 7.2 **Restrictions.** You shall not, directly or indirectly (including authorising or knowingly fail to refrain another), (i) permit any third party to access the Services except as permitted herein or in a Layer Quotation, (ii) create derivative works based on the Services except as authorised herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a product or service using or based on our intellectual property rights, or (b) copy any features, functions or graphics of the Services; (vi) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Site and/or Services or any information, proposals, strategies, coding, etc. contained on and/or in the API or created by Us for You except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties.
- 7.3 **Your Applications and Code.** Subject to clause 7.1 above, if You, a third party acting on Your behalf, or a User creates applications or program code to be used in relation to the Services, You authorise and licence Us (on an irrevocable, perpetual, worldwide, royalty-free basis) to host, copy, transmit, display and adapt such applications and program code, as necessary for Us to provide the Services in accordance with this Agreement.
- 7.4 **Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein. You agree to indemnify and hold Us harmless in relation to any matter arising in connection with Your Data including use of Your Data by Us as permitted under this Agreement and/or any claim that the use of Your Data infringes third party intellectual property rights. For the avoidance of doubt, you are solely responsible for taking copies of Your Data and the frequency thereof. The features of the Services which allow You to retrieve and extract Your Data are accessible at all times throughout the Term of this Agreement and until forty-five (45) days after termination, provided You have, at that time, paid all Charges outstanding at the time of (and resulting from) termination. You can download a file of Your Data in comma separated value (.csv) format or format as otherwise agreed with Us along with attachments in their native format from the settings zone. Upon forty-five (45) days following termination of this Agreement, We shall destroy all of Your Data unless applicable law imposed upon Us prevents Us from

destroying all or part of Your Data. In that case, We warrant that We will guarantee the ongoing confidentiality of Your Data retained and will not actively process Your Data transferred anymore other than for the purpose to enable Us to comply with such applicable law.

- 7.5 **Data identification/security.** We reserve the right to use or remove, without notification, static IP/HTTPS features. You agree to indemnify and hold Us harmless in relation to any matter arising in connection with same and Your/User use of Our Site, website/s and/or Services.
- 7.6 **Suggestions.** We shall have a royalty-free, worldwide, irrevocable, transferable, sub-licensable, perpetual license to use and incorporate into the Site and/or Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services. We shall exclusively own all intellectual property rights in our expression of any such incorporated suggestion/s and you hereby assign all intellectual property rights contained therein to Us and waive any rights, past, present and future, that you may have in relation to the same, including but not limited to all moral rights in the relevant content.
- 7.7 **New Services and/or Functionalities:** You warrant to Us that Our use of any concept or idea You ask Us to create or support does not infringe any third party intellectual property rights, is not confidential and does not infringe upon any trade secret or similar right. You acknowledge that We may adapt and use any intellectual property rights that are developed as a result of working with You with other customers and third parties and enable them to use such intellectual property rights in Our Site and/or services more generally.

## 8. DATA PROTECTION

- 8.1 Any Personal Data processed by Us on behalf of You when performing our obligations under this Agreement shall be governed by this Clause 8. You acknowledge that where We process any Personal Data on Your behalf in the course of performing Our obligations under this Agreement, You shall be the Data Controller and We shall be a Data Processor.
- 8.2 You shall ensure that:
- 8.2.1 the disclosure of Personal Data to Us is limited to what is necessary for Us to carry out and perform Our obligations under this Agreement;
- 8.2.2 You shall be responsible for the completeness, accuracy, quality and legality of the Personal Data and of the means by which You acquired the Personal Data (and any data input or uploaded to the Site and/or provided to Us in relation to the Services); and
- 8.2.3 You are lawfully entitled to transfer the Personal Data to Us so that the We may lawfully use, process and transfer the same in accordance with this Agreement on Your behalf. You shall ensure that all Data Subjects have been informed of such use, processing and transfer as required by the Data Protection Legislation.
- 8.3 We shall process the Personal Data only to the extent, and in such a manner, as is necessary for the Services and to prevent or address service or technical problems, or at Your request in connection with customer support matters and in accordance with Your documented instructions in accordance with this Clause 8 and the Layer Quotation and

shall not process the Personal Data for any other purpose or without documented instructions (unless otherwise required to do so by applicable law). This Clause 8 sets out the terms on which You instruct Us to process the Personal Data.

- 8.4 We do not currently transfer or store Personal Data out with the European Economic Area nor do Our sub-contractors (sub-processors). Should We change Our data transfer or storage arrangements, or if Our sub-contractors do so, we shall ensure that adequate safeguards are in place in accordance with the Data Protection Legislation and We will notify You of any such change.
- 8.5 We shall treat the Personal Data as confidential information and shall require persons authorised to process the Personal Data have committed to materially similar obligations of confidentiality. Notwithstanding any provision to the contrary, You irrevocably grant us free use of Your Data as we deem fit for statistical and related purposes on the condition that we use best efforts to ensure such data is anonymised.
- 8.6 As You have full access to Your Data, you can access the record of processing We carry out on Your behalf at any time by accessing the audit trail which is available through the Services. You acknowledge and agree that you do not require Our permission or assistance to this effect.
- 8.7 We shall make available to You all reasonable information necessary to demonstrate compliance with the obligations in this Clause 8 and allow for and contribute to audits, including inspections, conducted by You or another auditor mandated by You provided that we are provided with fourteen (14) Business Days' prior written notice.
- 8.8 You agree and acknowledge that we have wholly fulfilled our obligation to provide reasonable assistance to You for the fulfilment of Your obligation to respond to requests for exercising Data Subject's rights by the nature of the Services, which include, but are not limited to:
  - 8.8.1 the audit trail functionality;
  - 8.8.2 ability to delete records;
  - 8.8.3 data export functionality;
- 8.9 We will provide You with reasonable assistance and cooperation (taking into account the nature of the processing and the information available to Us) in relation to any data protection impact assessment that You are required to carry out, under the terms of the Data Protection legislation for the purposes of this Agreement.
- 8.10 We have implemented appropriate technical and organisational measures to ensure, a level of security as required by the Data Protection Legislation, against the unauthorised or unlawful processing of, or access to, Personal Data and against the accidental or unlawful loss, alteration or destruction of, or damage to, Personal Data. In particular, the following measures are in place in relation to the Services:
  - 8.10.1 You can protect Your Data, using Our encrypted fields;

- 8.10.2 The Services provides key permissions to restrict access to data to only those users who need to access it.;
- 8.10.3 2FA & AES-256 bit encryption – the Services has multiple levels of security to protect data from external threats;
- 8.10.4 ability to restrict the IP addresses that can access Your Services;
- 8.10.5 password changes every 45 days, and there is the enforced use of complex passwords, password auditing and proactive login monitoring.
- 8.11 Where We process Personal Data as a Data Processor, We shall comply with the Data Protection Legislation as it applies to Us as a Data Processor. We shall not be responsible for errors in Personal Data or the deletion, correction or loss of any Personal Data to the extent not caused by Us and to the extent that We have complied with Your written instructions.
- 8.12 We shall inform You without undue delay after becoming aware of a personal data breach. We will provide reasonable assistance to You (by taking into account the nature of the processing and the information available to Us) in relation to Your notification requirements under the Data Protection Legislation in relation to a personal data breach.
- 8.13
- 8.14 You acknowledge and expressly agree that We may transfer Personal Data to third party sub-processors for the purposes of this Agreement. We will inform you in advance about all sub-processors that will process Your Personal Data in connection with this Agreement. You may object in writing to the appointment of an additional sub-processor within five (5) calendar days after receipt of Our notice. In the event that You object on reasonable grounds relating to the protection of the Personal Data, then the parties shall discuss commercially reasonable alternative solutions in good faith. If no resolution can be reached, We shall, at Our sole discretion, either not appoint the sub-processor, or permit You to suspend or terminate the affected Service in accordance with Clause 13.3. We shall use reasonable endeavours to enter into a written agreement with sub-processors on terms which are the same as or similar to those set out in this Clause 8 (however, due to the nature and size of the sub-processors you acknowledge that this may not always be possible); and We will remain fully liable to You under this Clause 8 if the sub-processor fails to fulfil its obligations.
- 8.15 The obligations contained in this Clause 8 do not apply to any data input or downloaded on to the Demo System.
- 8.16 If, during the term of this Agreement, the United Kingdom ceases to be a Member State of the European Union, the Parties both hereby undertake to discuss and agree in good faith what procedures and processes require to be put into place to ensure that the Personal Data is processed and shared in accordance with the standards and laws to which the Parties are each subjected to.

## **9. CONFIDENTIALITY**

- 9.1 **Protection of Confidential Information.** The Recipient shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but

in no event less than reasonable care) (i) not to use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorised by the Discloser in writing, to limit access to Confidential Information of the Discloser to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Recipient containing protections no less stringent than those herein. Neither party shall disclose the terms of any Layer Quotation to any third party other than its legal counsel and accountants without the other party's prior written consent.

- 9.2 **Compelled Disclosure.** The Recipient may disclose Confidential Information of the Discloser if it is compelled by law to do so, provided the Recipient gives the Discloser prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Discloser's cost, if the Discloser wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Discloser's Confidential Information as part of a civil proceeding to which the Discloser is a party, and the Discloser is not contesting the disclosure, the Discloser will reimburse the Recipient for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 9.3 You acknowledge that any ideas, information or intellectual property rights developed by Us (including such information, ideas and/or intellectual property rights which are contained, are available on or can be accessed in the API) constitute Our Confidential Information and shall not be used, disclosed or shared in any manner unless authorised by this Agreement, the Layer Quotation or in writing by us. If We suspect or have reason to suspect these provisions have been breached and/or if the API and/or the Site is being accessed in a manner that is detrimental to Us and/or the Site, We shall be entitled to restricted access to the Site and/or Services and we shall not be responsible for any loss or damage resulting from such restrictions (to the extent permitted by applicable law).

## 10. WARRANTIES AND DISCLAIMERS

- 10.1 We shall use Our reasonable endeavours, subject to Clause 11 below, to provide the Services:
- (i) substantially in accordance with the Layer Quotation and/or any specification agreed in writing between You and Us in all material respects; and
  - (ii) with reasonable skill and care.
- 10.2 If the Services do not conform with the foregoing undertaking, We will, at Our own expense, use all reasonable commercial endeavours to correct any such non-conformance or provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the undertaking set out in Clause 10.1 above. The undertaking at Clause 10.1 above shall not apply to the extent any non-conformance and/or non compliance is caused by use of the Services contrary to Our instructions; modification or alteration of the Services by any party other than Us or Our duly authorised contractors or agents; or Your failure to perform any obligation under this Agreement and/or to supply information and/or access to Us that is necessary for us to be able to provide the Services.
- 10.3 Notwithstanding the foregoing and subject to Clause 11 below, We:

- 10.3.1 do not warrant that Your use of the Services will be uninterrupted or error-free; or that the Services will meet Your individual requirements; and
  - 10.3.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over third party communications networks and facilities, including the internet, and You acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such third party communications facilities;
  - 10.3.3 are not responsible for any failure in the Site and/or Services caused by or attributable to any failure of Non-The Layer Applications.
- 10.4 **Your Warranties.** You warrant that:
- 10.4.1 You have validly entered into this Agreement and have the legal power to do so;
  - 10.4.2 Your entering into this Agreement does not breach the terms of another contract; and
  - 10.4.3 You will not upload any data, program or system which has the potential to cause any damage to the Site and/or Services;
  - 10.4.4 You will maintain adequate security in relation to the use of the Services and ensure no one is able to access the Site or Services other than permitted Users;
  - 10.4.5 You will ensure the number of Users of the Services does not exceed the permitted number of User Subscriptions;
  - 10.4.6 You will not upload to the Site and/or Services Malicious Code or malicious content;
  - 10.4.7 You will not breach of any third party intellectual property rights;
  - 10.4.8 You will comply with all applicable laws (including but not limited to the Data Protection Legislation); and
  - 10.4.9 You will comply with Our Anti Spam and User Content Policy.
- 10.5 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 10.6 **Beta Services.** From time to time We may invite You to try, at no charge, Our products or services and/or features of our products or the Services that are not generally available to Our customers ("**Beta Services**"). You may accept or decline any such trial in Your sole discretion. Any Beta Services will be clearly designated as beta, pilot, limited release, developer preview, nonproduction or by a description of similar import. Beta Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. BETA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Beta Services at any time at Our sole discretion and may never make them generally available.

## 11. INDEMNIFICATION

11.1 **Indemnification.** You shall defend Us against any claim, demand, or legal proceeding made or brought against Us by a third party alleging that Your Data and/or Your use of the Services in breach of this Agreement infringes or misappropriates the intellectual property rights of a third party or violates applicable law (including but not limited to the Data Protection Legislation) and/or any breach of the warranties contained in Clause 10.4 above (a "**Claim Against Us**"), and shall indemnify Us for any damages, legal fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defence and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

## 12. LIMITATION OF LIABILITY

12.1 **Limitation of Liability.** SUBJECT TO CLAUSE 12.3 BELOW, OUR LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR DELICT OR OTHERWISE) SHALL NOT EXCEED THE LESSER OF £500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR DELICT OR OTHERWISE) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER.

### 12.2 Exclusions

12.2.1 **Exclusion of Consequential and Related Damages.** SUBJECT TO CLAUSE 12.3 BELOW, IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, LOSS OF BUSINESS, LOSS OR CORRUPTION OF DATA, PURE ECONOMIC LOSS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND/OR ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, WHETHER IN CONTRACT, DELICT OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND INCLUDING ANY SUCH INDIRECT, INCIDENTAL, CONSEQUENTIAL LOSS OR DAMAGE CAUSED BY THE USE OR PERFORMANCE OF, THE DELAY IN PROVIDING, THE FAILURE TO PROVIDE, AND/OR THE INABILITY TO USE THE SITE AND/OR THE SERVICES; AND/OR ANY INFORMATION, SOFTWARE, PRODUCTS OR SERVICES CONTAINED IN OR AVAILABLE THROUGH THE SITE OR THE SERVICES, INCLUDING INFORMATION, SOFTWARE, PRODUCTS AND SERVICES MADE AVAILABLE BY OTHER USERS OF THE SITE OR THE SERVICES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.2.2 WE (AND OUR DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS AND AGENTS) SHALL NOT BE LIABLE FOR ANY ACT AND/OR OMISSION BY YOU (OR ANY PARTY ACTING ON YOUR BEHALF) AND/OR ANY USER AND/OR ANY PARTY WHO GAINS ACCESS TO THE SITE AND/OR SERVICES DUE TO



YOUR FAULT AND/OR YOUR ACTS AND/OR OMISSIONS) WHICH RESULTS IN:

12.2.2.1 UNAUTHORISED ACCESS TO AND/OR ALTERATION OF ANY TRANSMISSIONS OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR NOT RECEIVED, OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SITE AND/OR THE SERVICES OR IN RELIANCE UPON ANY THIRD PARTY INFORMATION OBTAINED THROUGH THE USE OF THE SITE AND/OR THE SERVICES;

12.2.2.2 ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY OTHER PARTY OR ANY INFRINGEMENT OF A THIRD PARTY'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS; OR

12.2.2.3 ANY CONTENT SENT USING, OR INCLUDED IN, THE SITE AND/OR THE SERVICES BY ANY THIRD PARTY.

12.3 NOTHING IN THIS AGREEMENT EXCLUDES OR RESTRICTS OUR LIABILITY FOR:

12.3.1 DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE;

12.3.2 FRAUD OR FRAUDULENT MISREPRESENTATION; AND

12.3.3 ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR RESTRICTED AT APPLICABLE LAW.

12.4 Except as expressly and specifically provided in this agreement:

12.4.1 You assume sole responsibility for results or data obtained from the use of the Site and/or Services, for conclusions drawn from such use and shall be responsible for evaluating the accuracy, reliability, completeness and usefulness of any information obtained through the use of the Site and/or Services. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Us by You in connection with the Services, and/or any actions taken by Us at Your direction;

12.4.2 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 agreement; and

12.4.3 the Services are provided to You on an "as is" basis.

### **13. TERM AND TERMINATION**

13.1 **Term of Agreement.** This Agreement commences on the Commencement Date and continues until the end of the Subscription Term. The parties agree that the Services shall be provided from the Service Commencement Date and that the obligations of the Layer relating to the provision of the Services shall not commence until the Service Commencement Date. The Layer shall use all reasonable endeavours to meet any agreed milestones and/or dates specified in the Layer Quotation and/or otherwise agreed in writing by the Parties in relation to the commencement and/or provision of the Services. If You are granted a right to use a Demo System and do not purchase a subscription before the end

of that period, this Agreement will terminate at the end of the period agreed for use of the Demo System as outlined in Clause 2.1 above.

- 13.2 **Term of User Subscriptions.** User Subscriptions purchased by You commence on the applicable User Subscription Start Date and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Layer Quotation and unless prohibited by law, all User Subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term or two years (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any such Subsequent Term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 120 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Layer Quotation as promotional or one-time.**
- 13.3 **Termination.** Either party may terminate this Agreement: (i) upon 30 days written notice to the other party if the other party commits a material breach of this Agreement and/or the Anti-Spam and User Content Policy attached and if such breach remains uncured at the expiration of such period; (ii) upon 30 days written notice to the other party if the other party repeatedly breaches any of the terms of this Agreement and/or the Anti-Spam and User Content Policy 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 Agreement; or (iii) upon written notice to the other party if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 13.4 **Refund or Payment upon Termination.** Upon any termination for cause by You, other than during the Initial Term, subject to 90 days advance notification, We shall refund You any prepaid Charges covering the remainder of the Subscription Term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid Charges covering the remainder of the Subscription Term (including the Initial Term). In no event shall any termination relieve You of the obligation to pay any Charges payable to Us for the period prior to the effective date of termination.
- 13.5 **Surviving Provisions.** Clauses 6 (Charges and Payment for Services), 7 (Proprietary Rights), 8 (Data Protection), 9 (Confidentiality), 10.4 (Your Warranties); 10.5 (Disclaimer), 11 (Indemnification), 12 (Limitation of Liability), 13.4 (Refund or Payment upon Termination), 14 (Notices, Governing Law and Jurisdiction) and 15 (General Provisions) shall survive any termination or expiration of this Agreement.

## 14. NOTICES, GOVERNING LAW AND JURISDICTION

- 14.1 **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to

the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

- 14.2 **Agreement to Governing Law and Jurisdiction.** Each party agrees that Scots law shall be the applicable and exclusive governing law without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the Scottish courts.

## 15. GENERAL PROVISIONS

- 15.1 **Export Compliance.** The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any UK government denied-party list. You shall not permit Users to access or use Services in a U.K.-embargoed country or in violation of any U.K. export law or regulation.
- 15.2 **Anti-Corruption.** You acknowledge that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use best efforts to notify us forthwith. In addition, you hereby agree to comply with the Anti-Bribery and Corruption policy of The Layer, as provided to you by The Layer, for the duration of this Agreement. Failure to do so will constitute a material breach of this Agreement.
- 15.3 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 15.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 15.5 **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- 15.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 15.7 **Costs.** You shall pay on demand all of Our legal fees and other costs and expenses incurred by Us to collect any fees or Charges due Us under this Agreement following Your breach of this Agreement.
- 15.8 **Assignment.** You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of Your rights or obligations under this Agreement. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under this Agreement. Notwithstanding the foregoing, You may assign this Agreement in its entirety (including all Layer Quotations), without Our consent, in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of Your assets. We shall be entitled to immediately terminate this Agreement upon written notice in the event of such assignment. In the event of such a termination, We shall refund to You any prepaid Charges covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 15.9 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Layer Quotations, set out the entire agreement and understanding between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Layer Quotation, the terms of such exhibit, addendum or Layer Quotation shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Layer Quotations) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Clause 15.9 shall not exclude liability for fraudulent misrepresentation.
- 15.10 **Authority.** You hereby warrant that if You are a corporation or other legal entity, You are validly formed and existing under the laws of Your jurisdiction and have duly authorised Your agent to enter into this Agreement.

## **ANTI-SPAM POLICY AND USER CONTENT**

**IT IS YOUR RESPONSIBILITY TO ENSURE ALL USERS COMPLY WITH THIS POLICY AND THE TERMS OF THIS AGREEMENT. ANY BREACH OF THIS POLICY AND/OR THE TERMS OF THE AGREEMENT SHALL BE DEEMED TO BE A BREACH BY YOU.**

### **Email and Prohibited Content**

Your use of Our Site and Services is subject to this policy. If You are found to be in violation of Our policies at any time (including any breach of this policy or non-adherence to any applicable laws mentioned herein), as determined by Us at our sole discretion, We may warn You, or suspend or terminate Your account and/or any individual User Subscription(s) and/or report You to the ICO, TPS and/or international equivalent. Please note that we may change this policy at any time. It is Your responsibility to keep up-to-date with and comply with this policy.

### **Email Requirements**

We have a zero-tolerance spam policy. This means that all email recipients must have opted in to, or otherwise validly consented to, receiving communications from You, the sender. This Agreement and any individual User Subscription(s) and subscriber accounts may be terminated for sending unsolicited email messages.

Email messages sent using or in connection with the Site and/or the Services being offered by Us must contain an "unsubscribe" link that allows subscribers to remove themselves from Your email messages. You acknowledge and agree that You will not hide, disable, or remove or attempt to hide, disable, or remove the opt-out link from the email invitation. You will actively manage and process unsubscribe requests received by You directly as soon as possible and no later than within ten days of submission, and update Your email lists and address books to reflect the unsubscribe requests (or earlier if required by applicable law and/or good practice).

You are responsible for ensuring that the email messages You send in connection with Your marketing services do not generate a number of spam complaints or bounce rates in excess of industry, ICO or TPS (or international equivalent) standards. If We determine that your level of

spam complaints or bounce rate is higher than industry standards, We, at Our sole discretion, have the right to suspend or terminate Your use of Our Site and Services. If you receive low response rates, high abuse rates or high bounce rates, We may request additional information regarding Your mailing lists to investigate and attempt to resolve the problem, or in some cases We may suspend or remove email privileges on Your account.

### **Email Restrictions**

- Emails You send via Our Site or Services must have a valid reply-to email address owned or managed by You.
- You can only use Our Site or Services to send emails to lists of people that gave you permission to email them. If you don't have proof that each recipient on your list opted in for your emails, don't import them into Our Site or Services.
- We prohibit the use of harvested mailing lists. We will terminate accounts (including individual User Subscriptions) violating this prohibition.
- We prohibit the use of third-party, purchased, or rented mailing lists unless you are able to provide proof that individuals on the list have opted-in and provided their express consent to receiving emails of the type you will be sending them.
- You must not send unsolicited mail to newsgroups, message boards, distribution lists, or email addresses.
- You must not utilise Our Site or Services to send any commercial electronic mail messages to any recipient who has opted out, unsubscribed, or otherwise objected to receiving such messages from you or another party on whose behalf you may be commissioned. If you intend on sending commercial emails, you should familiarise yourself with all applicable legislation, which outlines requirements under law for sending out such emails, and any other applicable anti-spam laws.
- You must not use Our Site or Services to send emails with deceptive subject lines or false or misleading header information.
- You must not breach any regulation as set down by the ICO or TPS in the UK or their international equivalent.

### **Reporting Spam**

If you suspect that Our Site or Services have been used by someone to send spam, please contact us immediately at [help@layersystems.com](mailto:help@layersystems.com) and we will investigate the matter.

### **User Content**

You acknowledge and agree that:

- all marketing questions, information, data, text, software, music, sound, photographs, images, video, marketing responses, messages or other materials communicated, submitted or transmitted by You through the Site and/or the Services (collectively, "**User Content**"), whether publicly posted or privately transmitted, is Your sole responsibility;
- You are responsible for all User Content that You (or someone or Your behalf and/or at Your request and/or with Your authority) and/or any User uploads, posts, emails,

distributes, communicates, transmits, or otherwise makes available using the Site and/or Services, whether or not authorised by You;

- by communicating or transmitting any User Content using the Site or the Services, You grant to Us a non-exclusive, royalty-free and worldwide license to use such User Content for the purpose of operating the Site and supplying the Services, and You warrant to Us that You have the right to grant a license to Us for such purposes.

You further acknowledge and agree that We do not control the User Content originating from respondents to Your marketing or other Users of the Site and/or the Services, and we do not guarantee the accuracy, integrity or quality of such User Content. Notwithstanding the foregoing, We may, but are not obligated to, review all User Content and block, modify, terminate access to, or remove any such User Content that We, at Our sole discretion, consider to be non-compliant with any of the requirements of this policy and/or the Agreement and/or any applicable legislation and/or regulation.

We reserve the right to purge User Content from Our databases at any time and from time to time without notice. You acknowledge and agree that (unless otherwise noted in the Layer Quotation) You are solely responsible for backing up any User Content uploaded to the Site and/or Services by any User or received by You through the use of the Site and/or Services. We shall not be liable for any purging, deletion or failure to retain any such User Content.

In the event of Your or any User's non-compliance with any provision of this policy and/or the Agreement, The Layer may suspend or disable Your and/or any individual User's account (including any User Subscriptions) and/or access to use the Site and/or the Services, as well as recover from You any losses, damages, costs or expenses incurred by Us resulting from and/or arising out of such non-compliance.

### **User Conduct**

In connection with Your and any User's use of the Site and/or the Services, and without limiting any of Your other obligations under this Agreement or applicable law, You:

- i. shall comply with: (i) the Agreement, including this Anti-Spam and User Content policy and all other policies as published on the Site and/or provided to You by Us from time to time, (ii) all local and international laws applicable to You and any User, including data protection in the sector of electronic communications and all other laws related to unsolicited commercial email messages, defamation, privacy, obscenity, intellectual property, data protection, and child protective email address registries, (iii) all other rules or regulations applicable to You and/or any User of the Site, including, among other things, securities regulations, and (iv) all privacy policies or similar policies or procedures to which You may be bound that are related to Your use of the Site and/or Services;
- ii. shall not upload, post, email, distribute, communicate, transmit or otherwise make available any User Content: (i) that is unlawful, harmful, threatening, abusive, harassing, delictual, defamatory, libellous, vulgar, obscene, offensive, indecent, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, (ii) that infringes any patent, trademark, trade secret, copyright, or other intellectual property right of any party, (iii) that You and/or any User does not have the right to make available by reason of any law or contractual or fiduciary relationship (including inside information, and proprietary or confidential information obtained or disclosed in connection with an employment relationship or pursuant to a confidentiality agreement), or (iv) that comprises or includes

any "junk mail", "spam", "chain letters", "pyramid schemes", or any similar form of solicitation;

- iii. shall not use the Site and/or the Services to send marketing, surveys, polls, or other materials to individuals under the contractual age in his or her place of residence ("**minors**") unless You are permitted to do so under all applicable laws, or to harm minors in any way, and shall not send surveys, polls, or other materials to minors that would subject Us to any local or international law, rule or regulation governing children's privacy, rights of personality or otherwise related to protecting minors;
- iv. shall not impersonate any other person or entity, including Us, or one of Our officials, forum leader, guide or host, or falsely state or otherwise misrepresent Your affiliation with any other person or entity;
- v. shall, if You use the Services to send a marketing item, not mislead the recipients of that item that You may have the ability to associate individual responses to that item with the individual e-mail addresses to which that survey was sent by stating that You have no such ability (unless You have requested Us to disable such feature).
- vi. shall not interfere with or disrupt the Site or the Services or servers or networks connected to the Site or the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Site or the Services;
- vii. shall not engage in excessive usage of the Site or the Services, as determined by Us in Our sole discretion, including usage that adversely affects the speed, responsiveness, or functionality of the Site, or disrupts the availability of the Site and the Services for other users;
- viii. shall not attempt to damage, deny service to, hack, crack, reverse engineer, or otherwise interfere with the Site and/or the Services in any manner (except to the extent the foregoing prohibition is not permitted by applicable law);
- ix. shall not upload, post, email, distribute, communicate, transmit, or otherwise make available any viruses or similar malicious software that may damage the operation of a computer, the Site and/or the Services; and
- x. shall not upload survey links to message boards or newsgroups that are not relevant to the subject matter of the survey, or that prohibit such uploading without Our prior written consent.
- xi. acknowledge and agree that We may cooperate with any governmental authority in connection with any investigation into Your or any User's use of the Site or the Services, including use in contravention of applicable laws, and may, in accordance with applicable laws, disclose any User Content, and any other information pertaining to You and/or any User or You and/or any User's use of the Site or the Services, to such governmental authority in connection with any such investigation.