

1 Definitions

Agreement a contract for the supply of the Software as a Service as detailed in the Order exclusively incorporating these terms and conditions (and any other terms and conditions expressly stated on the Order);

Effective Date has the meaning given in clause 11.1;

Error a substantial failure to meet the functional and/or technical specifications in respect of the Software. An Error shall only be deemed to exist if Licensee is able to demonstrate the Error to Licensor and if it can be reproduced. Licensee is obliged to notify Licensor immediately of any Errors. The specification has been provided to the Licensee.

Licensee the licensee specified on the Order;

Licensor Columbus Global UK Ltd;

Order the sales order confirmation form specifying *inter alia* the Software, Units of Measure and the charges payable;

Service making available the Software in the environment of Licensor's Microsoft tenant;

Software the software owned by the Licensor as specified in the Order; and

Unit of Measure the way by which Service is measured, for example full user, enterprise and functional user, legal entity, module, invoice, message or published connection. The applicable Unit of Measure for the License is specified in the Order;

2 Scope of the Service

2.1 Licensor hereby grants to Licensee a non-assignable, non-transferable and non-exclusive right to use the Service for Licensee's own internal business purposes and without the right to sublicense. Licensee may allow its users to use the Service for this purpose. It is the sole responsibility of Licensee to ensure that its users do not violate these terms and conditions.

2.2 Licensee is granted the right to use the Service only for the amount of Units of Measure as specified in the Order. It shall be the sole responsibility of Licensee to ensure that the amount of Units of Measure is not superseded. Licensee indemnifies Licensor for any breach of this Agreement by its users. Where Licensee fails to fulfil this obligation, it shall be deemed a breach of this Agreement, and such breach shall entitle Licensor to terminate this Agreement and pursue all remedies available to it.

2.3 All rights are granted under the condition that Licensee has fully paid all charges related to this Agreement.

2.4 If and in so far as Licensor provides Licensee with software of any third party the terms and conditions of business of such third party shall apply with respect thereto and supersede the provisions hereof.

3 Enhancement

This Agreement excludes the right to obtain support and maintenance (which if required would be subject to a separate agreement).

4 Payment terms

4.1 All charges payable related to the Service shall be paid in advance before availability of the Service and are exclusive of VAT and other levies imposed by any government.

4.2 Licensee shall not be entitled to set off or to suspend any payments.

4.3 Invoices shall be due and payable within 14 days from the invoice date. Any invoiced amount not received within fourteen days after the invoice date shall be subject to collection costs of 5% of the invoiced amount and an interest charge at the statutory interest rate. Licensee shall pay Licensor's costs and expenses (including legal fees) to enforce and preserve Licensor's rights under this provision.

4.4 Prices may be amended from time to time in which event prior written notice will be provided to Licensee. If Licensee does not accept an adjustment, Licensee shall be entitled to terminate its subscription to the Service within 30-days of receipt of the written notification of the price adjustment.

4.5 If Licensee has a payable debt to Licensor for a period of 8-days after the due date, and the Licensee has been given written notice hereof, Licensor has the right to suspend performance of all obligations under this Agreement without this constituting a breach of the Agreement, until the debt has been paid.

5 Confidentiality

5.1 By virtue of this Agreement, the parties may disclose to each other information that is confidential. Confidential information shall be limited to the terms and pricing under this Agreement, the Service and all information clearly identified as confidential at the time of disclosure.

5.2 Confidential information shall not include information that: a) is or becomes a part of the public domain through no act or omission of the other party; b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; d) is independently developed by the other party.

5.3 Each party agrees not to disclose the other party's confidential information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. Each party shall disclose confidential information only to those employees, agents or subcontractors who are required to protect it against Columbus Software License Terms and Conditions Nov 2018

unauthorised disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's confidential information in any legal proceeding or to a governmental entity as required by law.

6 Privacy

6.1 Licensee agrees that Licensor shall process all personal data necessary to execute this Agreement. Parties agree that Licensor is the data processor and Licensee is the data controller.

6.2 Licensor will process this personal data in accordance with the privacy and cookie statement of Licensor as published at: <https://www.columbusglobal.com/en-gb/privacy-policy/>

7 Intellectual property rights

7.1 Licensor retains all ownership and intellectual property rights related to the Software and the Service and anything developed or delivered by or on behalf of Licensor under this Agreement. Any disregard of the Licensor or its intellectual property rights shall be deemed to be a material breach of this Agreement.

7.2 Licensee shall not cause or permit others to: a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Software or Service (including code, data structures, or similar materials produced by programs); b) access or use the Service to build or support, directly or indirectly, products or services competitive to Licensor; c) license, sell, transfer, assign, distribute, outsource, commercially exploit, or make available the Service to any third party except as permitted by this Agreement.

7.3 Licensor reserves the right to use Licensee's name or trademark, trade name or logo in external communications, presentations and marketing materials, and on its website and to describe the solution provided to Licensee in these external communications.

7.4 If a third party objects to Licensee's use of the Service based on the claim that the use of the Service infringes such third party's intellectual property rights, Licensor will defend Licensor against the claim and indemnify Licensor from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement if Licensee does the following: a) notifies Licensor in writing, not later than 30 days after Licensee receives notice of the claim; b) gives Licensor sole control of the defence and any settlement negotiations; c) gives Licensor the information, authority and assistance reasonably required to defend against or settle the claim.

7.6 In the event of an infringement claim, Licensor shall be entitled to either: a) obtain the continued right for Licensee to use the Service; b) bring the infringement to an end by modifying the Service or replacing the Service with other software which, essentially, possesses the same functions as the affected Service, or c) terminate this Agreement upon serving written notice and pay to Licensee an amount equal to the charges actually paid for the license to the Service by Licensee.

7.7 The limited warranty stated in clause 7.6 is void if the infringement claim has resulted from accident, abuse or misapplication. Any modification of the Service by anyone other than Licensor voids the foregoing warranty on any portion of the Service modified or affected by such modification.

7.8 This clause 7 provides Licensee's exclusive remedy for any infringement claims or damages.

8 Audit rights

8.1 On Licensor's request, and at Licensor's expense, Licensor may conduct an audit of Licensee's use of the Software. Any such audit shall be conducted during regular business hours at Licensee's facilities or online and shall not unreasonably interfere with Licensee's business activities. If an audit reveals that Licensee has underpaid in relation to the actual use of the Service, in addition to other remedies, Licensee shall be invoiced for such underpaid charges.

8.2 Licensor has the right to embed compliance capabilities in the Service which verifies the compliance of this Agreement related to usage of the license.

9 Limited Warranty

9.1 The license to the Service is granted "as-is" with no other warranties, representations, obligations of remedy or rights other than those described in this clause 9 whether implied or express, statutory, oral or written, including but not limited to any implied warranties of merchantability, against infringement, quiet enjoyment, accuracy of data, system integration, or fitness for a particular purpose.

9.2 The Service is a standard product, and it shall be the responsibility of Licensee to ensure that the functions in the Service fulfil Licensee's requirements.

9.3 Where Licensee within a period of six-months starting from the Effective Date provides written documentation demonstrating that there is an Error in the Service which can be reproduced, Licensor shall either 1) deliver free of charge, a new version of the Service without the Error, 2) correct the Error free of charge or 3) return the charges actually paid for the license to the Service by Licensee or 4) provide a statement of procedures or manners of application whereby the Error will have no significant effect on Licensee's use of the Service.

9.4 This warranty is void if failure of the Service has resulted from accident, abuse or misapplication by Licensee. Any modification of the Service by anyone other than Licensor voids the foregoing warranty on any portion of the Service modified or affected by such modification.

9.5 Licensee shall be responsible for the use and application of the Service and related software and equipment in its organisation, as well as for sufficient back-ups, security measures and adequate system management.

9.6 This clause 9 provides Licensee's exclusive remedy for any loss or damages as a consequence of Errors.

10 Limitation of Liability

10.1 Nothing in this Agreement shall limit or exclude either party's liability for: death; personal injury; fraud; fraudulent misrepresentation; nor for any liability which may not be lawfully limited or excluded.

10.2 The limitations and exclusions of liability in the Agreement apply whether the claims or liability arise: by way of indemnity; under contract (including in relation to any deliberate repudiatory and fundamental breaches), breach of statutory duty, misrepresentation (excluding fraudulent misrepresentation), tort (including negligence) or otherwise.

10.3 Licensor shall not be liable for consequential, special, incidental or indirect losses or the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits loss of revenue; loss of business or contracts; loss of anticipated savings, profits or goodwill; loss of or loss of use of software or data; loss of damage to reputation; wasted management or other staff time (or any losses arising from a claim by a third party for any of the aforementioned types of losses).

10.4 Subject to clause 10.1, Licensor's maximum aggregate liability arising out of or related to this Agreement shall not exceed the total amount actually paid for the Service during the six-months immediately preceding the event giving rise to such liability.

10.5 Licensor shall have no liability for any adjustments or other modifications in the Service or any service and support of the Service performed by licensee itself or provided by third parties or partners of Licensor. Further, Licensor shall have no liability for any defects which are a consequence of external factors, including other programs, the Microsoft *Azure* platform, or a consequence of the integration of or interaction between the Service and Licensee's own hardware and software environments.

10.6 The Licensee will formally notify the Licensor in writing of any breaches of this Agreement in respect of which it may wish to pursue its legal remedies within thirty (30) days of the date of which it became aware of the breach failing which the Licensee is not entitled to bring such a claim.

10.7 At and after 12-months following the earlier of the elapsing of the 30-day period referred to in clause 10.6 in respect of the relevant breach, or termination of this Agreement, the Licensee may not bring any claims against the Licensor which relate to the respective breach which arose during the term of this Agreement.

10.8 The Licensee acknowledges that the charges have been calculated on the basis that the Licensor will exclude and limit its liability as set out in this Agreement and that the limitations and exclusions of liability contained in this Agreement are reasonable in view of the nature and extent of the obligations accepted by each party herein.

11 Term and termination

11.1 This Agreement becomes effective from acceptance of an Order by the Licensee (the **Effective Date**).

11.2 The initial term for this Agreement will be the term as determined by the parties in the Order. Thereafter this Agreement shall automatically renew upon the first anniversary of the Effective Date (and subsequent anniversaries thereafter) unless it is terminated by either party serving upon the other not less than 90-days prior written notice, in which event the Agreement will terminate upon the next anniversary date, *e.g.* if the Effective Date is 1/1/18 and either party wishes to terminate prior to the next anniversary of the Effective Date (*i.e.* 1/1/19) notice of termination must be received not later than 3/10/18 (being 90-days prior to 1/1/19 – a notice served *e.g.* on 4/10/18 would be out-of-time).

11.3 In the event of Licensee's material breach of this Agreement, Licensor has the right to terminate this Agreement immediately after a written notice of default and not remedied within 30-days after this notice and shall have all remedies available at law. Termination under this clause does not oblige the Licensor to refund any paid charges.

11.4 Either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days.

11.5 In case of termination, Licensee shall immediately cease using the Service.

12 Miscellaneous

12.1 No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

12.2 Licensee must not transfer or assign its rights or obligations arising under this Agreement to any third party.

12.3 All notices or communications under this Agreement shall be sent by registered mail to the other party at its registered office address. Notices shall be deemed received upon actual receipt.

12.4 This Agreement set forth the entire understanding between the parties and supersedes all oral or written agreements or understandings between the parties as to the subject-matter of this Agreement

12.5 If any provision of this Agreement is held to be unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable. If an unenforceable provision is modified in accordance with this clause, the rest of the Agreement is to remain in effect as written.

12.6 Licensee must comply with all import regulations to the Service and with any License destination restrictions issued by governments. Licensee must at its own expense obtain and arrange for the maintenance of any government approval and comply with all applicable laws and regulations necessary for Licensee's performance of the Agreement. Licensee will defend and indemnify Licensor from and against all damages incurred by Licensor as a result of any violation of import regulations by Licensee or any of its agents.

12.7 Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other events outside the reasonable control of the obligated party. This clause does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Licensee's obligation to pay for the Service.

12.8 Time of delivery or availability is not of the essence.

12.9 No third party shall have the right to enforce any term of this Agreement.

13 Applicable law and jurisdiction

This Agreement is governed by the laws of England and Wales without giving effect to its conflicts-of-law principles. Any disputes arising out of this Agreement shall be submitted to the exclusive jurisdiction of the English Courts.

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