

Hornbill Subscription Agreement

AGREEMENT

As a result of you ("Customer") and the Hornbill Group company identified below ("Hornbill") signing or otherwise accepting this agreement in connection with the provision of the Hornbill SaaS Service, these are the terms upon which Hornbill shall supply those services to you.

1. DEFINITIONS

In these terms, unless the context otherwise requires, the following words and expressions mean:

"Billing Commencement Date"	the date the Customer requests the SaaS Service is made available to them as stated on the Order Form or the date the SaaS Service is made available to the Customer by Hornbill whichever is the later
"Billing Period"	the length of time each invoice covers as stated on the Order Form
"Community Forum"	a public forum in which questions can be asked about the configuration and use of the system. Posts on the Community Forum will be monitored by Hornbill employees who will respond when appropriate
"Confidential Information"	any non-public information relating to either Party or its suppliers, agents, distributors, subscribers, employees or customers together with any information clearly identified in writing as confidential. All Customer Data shall be treated as Confidential Information except as otherwise set out in this agreement
"Controller", "Processor", "Processing", "Data Subject", "Personal Data" and "Personal Data Breach"	take the meanings given in GDPR;
"Customer Data"	information, data, editorial content, Intellectual Property in any form relating to the Customer, including without limitation, its employees, customers, business and activities, including such data otherwise governed by applicable Data Protection Legislation, posted or submitted to the SaaS Service by a User or by Hornbill Personnel on behalf of Customer
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by Hornbill under this agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this agreement, including any Personal Data Breach
"Data Protection Legislation"	(i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to Processing of Personal Data and privacy; and (iii) all applicable Law about the Processing of Personal Data and privacy
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
"DPA"	Data Protection Act 2018 and any legislation amending, replacing and/or superseding such act
"EEA"	European Economic Area
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"Good Industry Practice"	means the standard of skill, care and knowledge which could reasonably be expected from an experienced person who is in the business of supplying services which are the same as or similar to the services provided under this agreement
"Group"	means the Customer together with its holding company or companies and any subsidiary or subsidiary undertaking of the Customer or any such holding company, from time to time
"Hornbill Personnel"	means all directors, officers, employees, agents, consultants and contractors of Hornbill and/or of any sub-contractor engaged in the performance of its obligations under this agreement
"Hornbill Intellectual Property"	Intellectual Property owned by Hornbill consisting of original work and materials undertaken by Hornbill either previously or in performing its obligations under these terms
"Information Security Policy"	Hornbill's policies setting out how it manages information security as set out from time to time. The Information Security Policy can be found at https://trust.hornbill.com/security/ . Changes to the Information Security Policy will only be made to improve the level of information security provided to Hornbill's Customers
"Intellectual Property"	any and all copyright and all related rights, neighbouring rights including any rights relating to unauthorised extraction or reutilisation, design rights and any other intellectual property rights whether registered or not
"Knowledge"	the Hornbill wiki and such other Knowledge resources as Hornbill shall from time to time make available to the Customer
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which Hornbill is bound to comply

"Order Form"	any electronic or hard copy document signed or otherwise accepted by the parties incorporating these terms and setting out the commercial terms upon which the SaaS Service is supplied to Customer
"Party"	a Party to this agreement
"Protected Data"	means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of Hornbill's obligations under this agreement
"Protective Measures"	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it
"SaaS Service"	the provision for the Customer by Hornbill or its contractors of the core Hornbill platform and if applicable one or more Hornbill application(s) accessed by the Customer over the internet
"Service Credits"	credits due to Customer as published from time to time here https://wiki.hornbill.com/index.php/Essential_Success_Plan
"Service Levels"	the service levels for the SaaS Service published by Hornbill from time to time here https://wiki.hornbill.com/index.php/Essential_Success_Plan
"Service Parameters"	the system resources and any other parameters or limits of the SaaS Service as contained in any Order Form and as detailed from time to time here https://wiki.hornbill.com/index.php/Hornbill_Service_Parameters
"Sub-processor"	any third party appointed to perform Processing of Personal Data on behalf of Hornbill in relation to this agreement
"Subscription Fee"	the fees and charges as defined in an Order Form or as amended by clauses 10 or 11 of this agreement to be paid by the Customer to Hornbill under these terms for the SaaS Service for any Billing Period
"Subscription Period"	is the length of time the Customer is committing to continue paying for the SaaS Service as set out in the Order Form
"Standard Support"	access to the Community Forum, Knowledge and 24 x 7 x 365 support for critical issues relating to the availability of the SaaS service. Details of the Standard Support service can be found here https://wiki.hornbill.com/index.php/Essential_Success_Plan
"Termination Date"	either the date the Customer tells Hornbill it wants the SaaS Service switched off or the date Hornbill advises the Customer it is switching off the SaaS Service in accordance with this agreement
"Trade Marks"	Hornbill's own corporate, trade and product branding, trademarks, service marks or other similar Intellectual Property rights owned by Hornbill from time to time
"User"	any person who connects to the SaaS Service whether or not they have a paid subscription

2. COMMERCIAL BASIS

- 2.1 Subject to and in accordance with these terms and any applicable Order Form after the Billing Commencement Date Hornbill shall:
- 2.1.1 provide the SaaS Service and the Standard Support in accordance with
 - 2.1.1.1 Good Industry Practice and
 - 2.1.1.2 The Service Parameters and;
 - 2.1.1.3 the Service Levels and;
 - 2.1.1.4 all reasonable instructions of the Customer and;
 - 2.1.1.5 all applicable law and regulations
 - 2.1.2 from time to time update the SaaS Service to a more recent or the most recent version of the Hornbill software; and
 - 2.1.3 no more than once per quarter on request provide Customer with a copy of the most recent Customer Data in an industry standard machine readable format as determined by Hornbill.
- 2.2 The Subscription Fee for the SaaS Service shall be paid by the Customer in accordance with the Service Parameters.
- 2.3 Customer shall be due Service Credits following any failures of the SaaS Service to meet the Service Levels.
- 2.4 The first Subscription Period commences on the Billing Commencement Date.
- 2.5 Hornbill shall raise an invoice in the amount of the Subscription Fee for the first Billing Period on receipt of the first Order Form
- 2.6 Hornbill shall raise subsequent invoices in the amount of the Subscription Fee in respect of future Billing Periods no more than 45 days before the current Billing Period ends until the first Subscription Period ends.
- 2.7 If Customer wishes to continue to use the SaaS Service after the end of any Subscription Period the Customer does not need to take any action. At the end of the Subscription Period a new Subscription Period with the same Billing Frequency and Subscription Fee will be entered on the same terms as the previous Subscription Period.
- 2.8 At any time before the end of a Subscription Period if the Customer would like to change the Subscription Period or Billing Period for the next Subscription Period the Customer must sign a new Order Form stating the revised Subscription Period and Billing Period. For the avoidance of doubt if the Subscription Period or Billing Period are changed the Subscription Fee may also change.

- 2.9 In the event of a change in the Subscription Period or Billing Period under clause 2.8 Hornbill shall raise the invoice for the Subscription Fee as soon as practicable having cancelled any invoices that were raised under Clause 2.7.
- 2.10 Fees for Services are exclusive of Value Added Tax (VAT) or other Government imposed excises or taxes (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by Law.
- 2.11 Invoices are due for payment within 30 days.

3. CUSTOMER KEY RESPONSIBILITIES AND SERVICE USE

- 3.1 Customer shall:
- 3.1.1 when accessing the SaaS Service follow any reasonable technical and operational guidelines of which Customer is notified by Hornbill ; and
 - 3.1.2 provide reasonable support to Hornbill in managing and monitoring of the quality of the SaaS Service and in planning and implementing any agreed enhancements to the SaaS Service; and
 - 3.1.3 shall protect and keep confidential the login credentials that each User uses to access the SaaS Service, to a standard not lower than it generally uses across its business to protect access to its own computer systems; and
 - 3.1.4 shall ensure that any User's usage of the SaaS Service does not result in a breach of the terms of this agreement; and
 - 3.1.5 provide any necessary payment reference number or purchase order number as required by its own internal processes to ensure Hornbill's invoices are paid within the agreed terms. Failure to provide this data will not be grounds for a bona fide dispute in clause 7.7.
- 3.2 The Customer acknowledges and agrees that it is solely responsible for complying with any laws or paying any taxes duties and tariffs applicable in any way to its use of the SaaS Service (other than taxes on the net income of Hornbill).
- 3.3 The Customer unconditionally represents warrants and undertakes that all Customer Data:
- 3.3.1 is owned by the Customer or that the Customer has permission from the rightful owner to use Customer Data in the SaaS Service and that the Customer Data is in no way whatsoever a violation or infringement of any third party Intellectual Property, right of privacy or publicity or any other rights of any person; and
 - 3.3.2 is not obscene, libellous or defamatory or in any other way unlawful; and
 - 3.3.3 is to the best of its knowledge free of viruses and other malware and that it employs virus and malware protection procedures of no lower standard than it uses to protect the integrity of its own computer systems.
- 3.4 The Customer represents and warrants that:
- 3.4.1 it will use the SaaS Service for lawful purposes only and in accordance with all applicable laws, regulations and licences; and
 - 3.4.2 it will not attempt to decompile, reverse engineer or hack the SaaS Service or to defeat or overcome any encryption and/or other technical protection methods implemented by Hornbill; and
 - 3.4.3 it will not use any automatic or manual device or process nor take any steps, including penetration testing, to interfere with or in any manner compromise any security measures or the proper working of the SaaS Service; and
 - 3.4.4 it will not use any other individual's or entity's login or identity or any other unauthorised method to access or use the SaaS Service; and
 - 3.4.5 It will not attempt to exceed any limits imposed by the Service Parameters nor take any steps to interfere with or compromise any methods implemented by Hornbill to monitor and enforce the Service Parameters; and
 - 3.4.6 it will not collect any information or communication about Hornbill or other Hornbill customers by monitoring, interdicting or intercepting any process of the SaaS Service.
- 3.5 The Customer hereby agrees that any user interface form elements, menu's, labels, tooltips or help content that is translated by the Customer may be accessed by Hornbill and combined with other Customer's translation data to produce default product translations which may be made available to all customers. For the avoidance of doubt this does not apply to any other Customer Data entered into the system which remains fully private to the Customer's instance.

4. RIGHTS IN SERVICES AND DATA AND INDEMNITY

- 4.1 The Customer acknowledges and agrees that Hornbill product comprising or within the SaaS Service, consists of original work and materials undertaken by Hornbill either previously or in performing its obligations under these terms. The Customer acknowledges and agrees that the copyright and all other intellectual property rights in such Hornbill Intellectual Property whenever created shall remain the exclusive property of Hornbill and the Customer shall have no rights in respect thereof save as may be granted to it by Hornbill pursuant to these terms or in accordance with any licence or agreement which Hornbill may enter into with the Customer from time to time. The Customer agrees to use the Hornbill Intellectual Property only as provided in these terms and to not use it to develop software for third parties or for any other purpose without the prior written authorisation of Hornbill. The Customer will take all reasonable steps to protect the intellectual property rights of Hornbill in the Hornbill Intellectual Property.
- 4.2 Hornbill acknowledges and agrees that copyright in Customer Data may belong to the Customer or a third party and for the avoidance of doubt asserts no claim pursuant to these terms inconsistent with any such rights.
- 4.3 The Customer shall not:
- 4.3.1 remove or interfere with any Trade Marks, copyright or Trade Mark notices affixed or installed by Hornbill on the SaaS Service or other Hornbill Intellectual Property except where the service allows such supported configurations; and
 - 4.3.2 use the SaaS Service to provide or be part of any commercial external service to sub-tenants. For the avoidance of doubt, the Customer may use the SaaS Service to provide services to any companies within its Group.
- 4.4 The Customer acknowledges and agrees that the SaaS Service may use User activity monitoring and metering software to avoid any unintentional violation of licence or service usage terms and to protect Hornbill against unauthorised, unlicensed or illegal use of the SaaS Service.

- 4.5. Hornbill shall indemnify the Customer against any claims or loss suffered by the Customer as a result of a claim that the SaaS Service (except for any Customer Data) infringes the intellectual property rights of any third party and the Customer shall indemnify Hornbill against any claims or loss suffered by Hornbill as a result of a claim that any Customer Data supplied by the Customer and incorporated into or used with the SaaS Service infringes the intellectual property rights of any third party provided that the Party claiming indemnity shall:-
- 4.5.1 immediately notify the other on becoming aware of any such claim; and
 - 4.5.2 not take any other action in respect of such claim or make any admission or settlement of any such claim without the other's prior consent in writing; and
 - 4.5.3 subject to being indemnified by the other against the reasonable costs and expenses of the Party claiming indemnity take all such actions in relation to such claim as the other shall properly require.
- 4.6. Without prejudice to Clause 4.5, Hornbill shall be entitled to make such modifications to the SaaS Service as shall avoid any infringement of any third party's intellectual property rights for which it is liable to indemnify the Customer under this agreement provided such modifications do not materially adversely affect the functionality of the SaaS Service.

5. LIABILITY AND LIMITATIONS

- 5.1 To the maximum extent permitted by applicable law, neither Party shall be liable to the other for:
- 5.1.1 loss (whether direct, indirect or incidental) of business revenues, business profits, business interruption, loss of business information, or other pecuniary loss; or
 - 5.1.2 any consequential, special or indirect loss or damages whatsoever.
- 5.2 In each case, whether arising out of the performance of its obligations under these terms or any Order Form or otherwise, and even if the other Party has been advised of the possibility of such damages, each Party's maximum liability under this agreement whether for damages for negligence, breach of contract any cause of action in contract, tort or strict liability or otherwise shall be limited to the amount actually paid by Customer in the case of default by Hornbill, or shall be limited to the amount payable by Customer in the case of default by Customer under these terms in the 12 months preceding the event giving rise to such possible damages.
- 5.3 In the event that any court of competent jurisdiction rules any limitation of liability invalid or unenforceable, the total aggregate liability of the defaulting Party shall not exceed the total sum which that Party may recover with respect to its liability for such loss or damage under its corporate or organizational insurance(s).
- 5.4 The exclusions and limitations in this Clause 5 do not apply in respect of (i) death or personal injury caused by the negligence of the other Party or its employees acting in the course of their employment, (ii) fraud or fraudulent misrepresentation, (iii) breach of Data Protection legislation or Intellectual Property Rights or (iv) breach of the provisions of clause 12 (Prevention of Fraud and Corruption) or (v) any other liability which cannot be excluded under applicable law.
- 5.5 Hornbill does not represent or warrant that the SaaS Service will always be available, accessible, uninterrupted, timely, secure, accurate, complete, error-free, or will operate without data loss, nor does Hornbill warrant or guarantee any connection to or transmission from the internet.

6. CONFIDENTIALITY

- 6.1 Any Confidential Information which comes into the possession of the other Party as a result of the operation of this agreement shall be treated as confidential and shall not be disclosed to any person other than employees of such Party requiring such information in pursuance of this agreement, neither shall it be used by the receiving Party other than in pursuance of this agreement without the prior written consent of the Party to whom it relates. Each Party shall ensure that employees involved with this agreement are aware of and comply with the provisions of this clause. This clause shall not apply to any information which is in or comes into the public domain other than by a breach of this agreement.
- 6.2 Customer may from time to time provide suggestions, comments or other feedback ("Suggestions") to Hornbill concerning the SaaS Service. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Except as otherwise provided herein, Hornbill shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise. All Suggestions will be anonymous if shared with third parties unless the Customer gives its prior written approval to be associated with the Suggestions.
- 6.3 Hornbill may access and process Customer Data posted by or on behalf of the Customer or in connection with the SaaS Service as reasonably necessary to operate or maintain the SaaS Service and to comply with obligations of confidentiality Hornbill has to the Customer or other customers.
- 6.4 Hornbill may monitor the Customer's usage to evaluate or improve the performance and implementation of and to promote and market SaaS Service and to measure, amongst other things, interest in and use of SaaS Service and to develop and design new products and services.
- 6.5 Hornbill shall take such technical and organisational measures against the unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer Data as set out from time to time in its Information Security Policy.
- 6.6 Hornbill shall indemnify and keep indemnified the Customer, and vice versa, against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause or any act or omission of any sub-contractor.

7. TERM, TERMINATION AND SUSPENSION

- 7.1 Unless otherwise agreed in writing the SaaS Service shall continue only during such Subscription Periods in respect of which the applicable Subscription Fee shall have been paid in full to Hornbill unless and until terminated under clause 7.2 or 7.3.
- 7.2 Customer may terminate this agreement on or after the expiry of any Subscription Period by providing at least 7 days notice in advance of the expiry of the Subscription Period to Hornbill of its preferred Termination Date such date must be on or after the expiry of the current Subscription Period. On receipt of such notice Hornbill shall acknowledge the notice

with 48 hours. If Customer wishes to Terminate after the end of a Subscription Period Hornbill shall raise an invoice for the pro rata amount of the Subscription Fee to the Termination Date. Any further extensions to the Termination Date that the Customer may request will be agreed to by Hornbill subject to a minimum term of 3 months.

- 7.3 Either Party may terminate these terms by written notice to the other Party if:
- 7.3.1 the other Party commits any breach of any provision of these terms or an Order Form which is capable of remedy (including for the avoidance of doubt any breach referred to in clause 7.3.2) and the Party committing the breach fails to remedy the breach within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - 7.3.2 the other Party commits any breach of any provision of these terms which constitutes a material breach (material breach for this purpose meaning a breach that has caused or, with the passage of time, will cause substantial harm to the interests of the innocent Party or if it involves knowing and unauthorised infringement of the innocent Party's Intellectual Property, or if it involves knowing or grossly negligent unauthorised disclosure or use of the innocent Party's Confidential Information, or if it involves a continuing failure after warning to pay any undisputed fees when due, or if the aggregate effect of non-material breaches by the Party committing the breach satisfies these standards for materiality); or
 - 7.3.3 the other Party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other Party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.
- 7.6 Upon any termination of these terms:
- 7.6.1 Hornbill will before deletion of the Customer Data as provided in 7.6.2 provide the Customer with a copy of the most recent Customer Data in an industry standard machine readable format as determined by Hornbill; and
 - 7.6.2 Hornbill will delete the Customer Data between 30 and 60 days after the Termination Date; and
 - 7.6.3 subject as otherwise provided in these terms and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under these terms except that the following clauses shall survive any termination of these terms: 3.5, 5, 6, 8.3, 8.4, 8.5, 8.7, 9.2 and 9.6.
- 7.7 Customer acknowledges and agrees that if any invoice (not subject to a bona fide dispute) is not paid on the due payment date then Hornbill reserves the right to suspend Customer access to the SaaS Service. Prior to suspension Hornbill will notify Customer of its intent to suspend access and Hornbill will not suspend the service until at least 14 calendar days (30 calendar days in the case of Subscription Fee invoices subsequent to the first Subscription Fee invoice) have elapsed after the first notice of suspension. Hornbill will remove the suspension once Customer has paid all due invoices not subject to a bona fide dispute.

8. GENERAL

- 8.1 Entire agreement - Neither Party has been induced to enter into these terms by a statement or promise which it does not contain. These terms and any applicable Order Form constitutes the entire agreement between Hornbill and the Customer with respect to the supply of SaaS Service and supersedes all previous communications, representations and agreements either written or oral (save for fraudulent misrepresentation) with respect thereto. This shall not exclude any liability which a Party would otherwise have to the other Party in respect of any statement made fraudulently by that Party prior to the date of these terms. The application of any general terms and conditions upon which the Customer trades or which it seeks to impose by inclusion in any purchase order or by way of course of trading or otherwise are excluded and shall be of no effect.
- 8.2 Assignment - The Customer may not assign, transfer or otherwise dispose of any of its rights or obligations under these terms without the prior written consent of Hornbill such consent not to be unreasonably withheld or delayed. Subject to the foregoing, these terms will bind and inure to the benefit of any successors and assigns. Hornbill may use subcontractors in the performance of the SaaS Service but will remain liable to the Customer for all acts and omissions of its subcontractors as if they were its own under this agreement.
- 8.3 Governing law - This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.
- 8.4 Separable - Each provision of these terms shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of these terms and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 8.5 Relationship between the parties - The relationship of Hornbill to the Customer is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, commission agency and or other business relationship between the parties.
- 8.6 Variation - Any variation of these terms or any Order Form must be in writing and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented.
- 8.7 Third party rights - The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 8.8 Dispute resolution - Each Party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning these terms, any Order Form or any documents incorporated by reference therein using internal escalation procedures or external mediation as may be agreed. But this clause shall not prevent either Party from taking such legal proceedings as it shall decide.
- 8.9 Force majeure - Notwithstanding anything else contained in these terms, neither Party shall be liable for any delay in performing its obligations under these terms or any Order Form if such delay is caused by circumstances beyond its reasonable control and any delay caused by any act or omission of the other Party (whether or not such act or omission constitutes a breach of

these terms) or a third party provided however that any delay by a sub-contractor or supplier of the Party so delaying shall not relieve that Party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned.

- 8.10 Warranties - Hornbill warrants, represents and undertakes on an on-going basis that:
- 8.10.1 it has, and shall continue to have, full ability, capacity and authority to enter into and perform its obligations under this Agreement;
 - 8.10.2 it has all authorisations required by Applicable Laws and Regulations to provide the SaaS Services; and
 - 8.10.3 it is not a party to any contracts or arrangements with third parties that would prevent or hinder the performance of its obligations under this Agreement.

9. DATA PROTECTION

- 9.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Hornbill is the Processor. The only Processing that Hornbill is authorised to do is listed in Schedule 1 by the Customer and may not be determined by Hornbill.
- 9.2 Hornbill shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 9.3 Hornbill shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
- (a) unless Hornbill is required to do otherwise by Law, process that Personal Data only in accordance with Schedule 1 as updated from time to time by written agreement of the parties. If it is so required Hornbill shall promptly notify the Customer before processing the Personal Data unless prohibited by Law; and
 - (b) implement and maintain at its cost and expense Protective Measures as set out in Schedule 2, to safeguard the security of the Personal Data in accordance with Data Protection Laws and protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected; and
 - (ii) harm that might result from a Data Loss Event; and
 - (iii) state of technological development.

The Parties acknowledge that the adequacy of the Protective Measures mentioned in this clause 9.3 and Schedule 2 may change over time, and that an effective set of Protective Measures demands frequent evaluation and improvement of Protective Measures. Therefore Hornbill will frequently evaluate and tighten, increase or improve such Protective Measures to ensure compliance with Data Protection Legislation and the Protective Measures set out in Schedule 2 may as a result be changed from time to time by Hornbill where such changes are required by best practice, changing technological requirements, to protect against security weaknesses or other such situations that in the reasonable opinion of Hornbill are required to ensure the Protective Measures remain effective and compliant with Data Protection Legislation. The Customer will be notified in writing when a change is made to the Protective Measures; and
 - (c) ensure that:
 - (i) Hornbill Personnel do not process Personal Data except in accordance with this agreement (and in particular Schedule 1);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Hornbill Personnel who have access to the Personal Data and ensure that they:
 - (A) have received adequate training on and comply with Hornbill's duties under this agreement; and
 - (B) are in relation to Personal Data subject to a legally binding confidentiality undertaking with Hornbill or any Sub-processor; and
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - (d) not transfer Personal Data outside of the EEA or such third countries as the European Commission may from time to time designate unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Hornbill has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Customer; and
 - (ii) the Data Subject has enforceable rights and effective legal remedies; and
 - (iii) Hornbill complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) Hornbill complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
 - (e) at the written direction of the Customer, securely delete and / or securely return Personal Data (and any copies of it) to the Customer promptly on termination of this agreement unless Hornbill is required by Law to retain the Personal Data.
- 9.4 Subject to clause 9.6, Hornbill shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request); or
 - (b) receives a request to rectify, block or erase any Personal Data; or
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation; or
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement; or
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 9.5 Hornbill's obligation to notify under clause 9.4 shall include the provision of further information to the Customer in phases, as details become available.
- 9.6 Taking into account the nature of the Processing, Hornbill shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 9.4 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request; and
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject; and
 - (d) assistance as requested by the Customer following any Data Loss Event; and
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 9.7 Hornbill shall maintain complete accurate and up to date records of all categories of Processing activities carried out on behalf of Customer as required by Data Protection Legislation and information to demonstrate its compliance with this agreement and shall provide reasonable assistance to the Customer with any data protection impact assessments.
- 9.8 Hornbill shall make available to the Customer on request in a timely manner (and in any event within ten working days) copies of the records under clause 9.7 and such other information as the Customer reasonably requires to demonstrate Hornbill's compliance with its obligations under Data Protection Legislation and this Agreement
- 9.9 Hornbill shall allow for audits of its Processing activity by the Customer or the Customer's designated auditor and each party shall be responsible for its own costs.
- 9.10 Before allowing any Sub-processor to begin Processing any Personal Data related to this agreement, Hornbill must:
- (a) notify the Customer in writing of the intended Sub-processor and Processing; and
 - (b) carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Customer Personal Data required by this Agreement; and
 - (c) obtain the written consent of the Customer; and
 - (d) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this agreement such that they apply to the Sub-processor; and
 - (e) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- Hornbill has provided a list of its Sub-processors at the date of signing this agreement in Schedule 3 and by signing this agreement the customer is giving its written consent to those Sub-processors Processing Personal Data in accordance with Schedule 1 subject always to the Protective Measures set out in Schedule 2.
- 9.11 Hornbill shall remain fully liable for all acts or omissions of any Sub-processor.
- 9.12 Hornbill shall indemnify and keep indemnified without limitation the Customer, and vice versa, against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause.
- 9.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Hornbill may on not less than 30 working days' written notice to the Customer amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

10. VARIATIONS IN SERVICE PARAMETERS

- 10.1 Customer may request Hornbill change the Subscription Fee at any time after the Customer Acceptance Date by changing the Service Parameters.
- 10.2 Hornbill shall produce an interim invoice or voucher, if applicable, to cover the period from the date of the change to the end of the last Subscription Period for which an invoice has been raised. This interim invoice or voucher will be produced as soon as practicable after the change has been made.
- 10.3 The price charged for any change in Service Parameters will be as set out in Clause 11.
- 10.4 Future invoices will be based upon the revised Subscription Fees until such time as a further change is made subject always to the provisions of clause 11.

- 10.5 The Subscription Fee may not be reduced below that required for the minimum number of Customer Users required on the service being subscribed to.

11. PRICE

- 11.1 Subject to Clause 11.2, Hornbill may change the published price for the SaaS Service at any time.
- 11.2 The Subscription Fee for any specific item is fixed to the price the Customer first paid for that specific item for as long as this agreement remains in force subject always to 11.3 and 2.8.
- 11.3 If the Customer commits any breach of any provision of these terms or an Order Form which is capable of remedy (including for the avoidance of doubt any breach referred to in clause 7.5.2) and fails to remedy the breach within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied then the next Subscription Fee may be based upon the then active published price and not the price as determined by clause 11.2.
- 11.4 If the Customer wishes to subscribe to a new item that it does not have a current subscription for then the price for that item shall be based upon the published price at the time it subscribes for that item.
- 11.5 The Customer may prior to any renewal invoice being issued advise Hornbill it wishes its entire Subscription Fee to be based on the published price in effect at the time when the next renewal invoice is issued. For the avoidance of doubt this enables to Customer, should it wish, to take advantage of any fall in the published price.

12. PREVENTION OF FRAUD AND CORRUPTION

- 12.1 Hornbill shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the agreement or for showing or refraining from showing favour or disfavour to any person in relation to the agreement.
- 12.2 Hornbill shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff (meaning directors, officers, employees, agents, consultants and contractors of Hornbill and/or of any sub-contractor of Hornbill engaged in the performance of Hornbill's obligations under the agreement) and Hornbill (including its shareholders, members and directors) in connection with the agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 12.3 If Hornbill or its staff (as defined in clause 12.2 above) engages in conduct prohibited by clause 12.1 or commits fraud in relation to the agreement or any other contract with the Customer, the Customer may:
- 12.3.1 terminate the agreement and recover from Hornbill the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the SaaS Service (and Support Service and any other ancillary services) and any additional expenditure incurred by the Customer throughout the remainder of the agreement; or
- 12.3.2 recover in full from Hornbill any other loss sustained by the Customer in consequence of any breach of this clause.

PARTIES

This agreement is between Hornbill Technologies Limited a company incorporated in England and Wales (registered no. 07244938) whose principal place of business is Apollo, Odyssey Business Park, West End Road, Ruislip, HA4 6QD ("Hornbill") and

CUSTOMER CONTACT DETAILS

Full Legal Name "Customer"

Address Line 1

Address Line 2

Town

County

Post Code

Country

Contact Name

Contact Email

SIGNED by the parties

Signed on behalf of Hornbill**Signed on behalf of the Customer**

Signature

Signature

Print name

Print name

Title

Title

Date

Date

Processing, Personal Data and Data Subjects

1. Hornbill shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the Processing	The subject of the Processing shall be for the purpose of delivering a Service Management and Collaboration solution whereby the management of department, team and people data as well as IT and other business-related processes, CI's and Services in order to deliver and control activities, governed by policies, structured by processes and procedures to their customers.
Duration of the Processing	Processing will take place until the Termination Date as defined in the Hornbill Subscription Agreement and Hornbill may process the data after the Termination Date only as required to comply with clause 9.3(e) of this Agreement.
Nature and purposes of the Processing	<p>The SaaS Service is provided to each customer in a sandbox Hornbill calls an "instance". Every instance has its own database and file storage which is fully isolated from every other customer instance.</p> <p>Each customer is given full administrative control of their own instance which enables them to manage the system, its configuration, and all of the data it manages. As a Processor Hornbill does not have cause to view, read, display or otherwise inspect specific data records within a customer's instance. Hornbill manages stored data as simple data blocks and has no direct way of decoding or interpreting the data in the context of its meaning.</p> <p>The SaaS Service provides the capability for Hornbill customers to store data, manage requests/tickets, run business process workflows, process emails, electronic conversations and collaboration. The data may, at the sole discretion of each customer may contain data that is Personal Data and is protected under this Agreement.</p> <p>The Processing of data within a customer's instance is automated and carried out by software programs which ultimately translate user inputted data into database commands storing the resultant data in Hornbill's instances database.</p> <p>Other programs and interfaces which are under the full control of the customer may be used to retrieve, display and manipulate that data.</p> <p>Hornbill's Personnel do not have cause to directly or manually, view, modify, report, store or otherwise Process data held within any customers specific instance.</p> <p>As the Processor, it is sometimes necessary to assist customers with support issues which may involve authorised Hornbill Personnel gaining access to the administrative controls of the instance, where this is required Hornbill will seek permission from the customer to do so on a case by case basis, limiting our access to the system for the specific purpose of solving that support issue.</p> <p>Hornbill maintains a definitive record of authoritative, primary and secondary technical and security contacts against each instance. Requests or instructions for access to data, log files, assistance that involves looking at instance-specific data or accessing the</p>

Protective Measures - Hornbill Data Security Guide

Hornbill Security Policy

Hornbill Technologies Limited (HTL) is the operating company responsible for hosting the SaaS Service and its supporting infrastructure. The Board of Directors and senior management of HTL have defined an Information Security Policy which provides the governance against which HTL is committed to preserving the confidentiality, integrity and availability of all physical and information assets owned, controlled and Processed by the company. HTL is committed to implementing a Secure Operating Model structured and conformant with the internationally recognised standard for an Information Security Management System (ISMS) ISO/IEC 27001:2013.

Information Security

The HTL ISMS is intended to be an enabling mechanism for safeguarding commercially sensitive information and Personal Data Processed within electronic systems and manual filing systems, from accidental, or unlawful destruction, loss, alteration, unauthorised disclosure or access. HTL regularly tests, assesses and evaluates the effectiveness of the ISMS and will from time to time update the ISMS to address new and evolving security threats, technologies and changes to industry standard practices, although no such updates will materially reduce the commitments, protection or overall levels of service provided to the Customer as described herein.

Risk Management

- 3.1. **Risk.** HTL evaluates strategic and operational risks on an ongoing, 'as necessary' basis. Risk assessments are carried out whenever there is a change to any of the Assets as defined at section 7 below (e.g. addition or removal of physical assets), to the scope of the Information Security System, changes to code or to the risk environment.
- 3.2. The impact that might result from each threat-vulnerability is defined in accordance with the risk assessment methodology against the value of the Asset which the threat-vulnerability combination would exploit and this figure is held for each attribute within the Risk assessment matrix.
- 3.3. **Vulnerability Management.** HTL as a matter of process undertakes to assess on a regular basis all software and hardware for vulnerabilities identified using industry recognised sources such as vendor information, CVE\NIST lists and internal testing regimes.
- 3.4. All critical vulnerabilities are either resolved, patched or mitigated by process within the specified timeframe and according to the process as defined in the HTL vulnerability management operating procedure in force at such time.

Management Systems

- 4.1. **Data Protection and Privacy.** HTL is committed to compliance with all national and, where appropriate, international laws relating to the protection of Personal Data and individual privacy (including GDPR); this policy applies to all Personal Data Processed by HTL. Personal Data is classified as Restricted and only accessible on a need-to-use and event-by-event basis; by authorised HTL Personnel who need to deal with it.
- 4.2. **Compliance with Security Policies and Standards.** HTL continuously reviews and audits operations, security arrangements and controls for compliance, evaluating and implementing appropriate actions to ensure conformance with the ISMS.
- 4.3. **Penetration Testing.** In addition to regular internal testing HTL contracts third party security organisations, at least annually, to perform penetration testing to identify vulnerabilities and remediation steps that will help to increase the security of the HTL service.

Mobile Security

- 5.1. **Technical Security Measures.** The HTL ISMS defines rigorous policies in respect to mobile security and requires mobile devices (laptops, mobile computers, PDAs,

mobile phones, USB sticks and other similar memory devices) to have: (i) password protection, (ii) where appropriate/possible and to be encrypted, (iii) the most recent operating system and application security-related patches, fixes and updates installed.

- 5.2. **Operational Measures.** HTL requires that; (i) notebook computers are physically protected against theft and damage while in transit, in storage or in use and that, in cases of loss or theft this is reported immediately. (ii) users are appropriately trained, understand and can carry out their agreed security obligations.

HR Security

- 6.1. **Personnel Security.** HTL undertakes vetting of Hornbill Personnel with access to Personal Data in line with its current published operating procedures and subject to applicable law(s).
- 6.2. **Confidentiality.** Employees, with access to Personal Data, are provided with and sign a contract of employment which includes a confidentiality agreement covering the various responsibilities and actions required of signatories in order to avoid unauthorized information disclosure, the permitted use of the information, the signatories' rights in respect of that information and the required actions on termination of the agreement.

Asset Management

- 7.1. **Asset Inventory.** HTL maintains a single inventory of information assets, each of which has defined ownership and is classified as; (i) hardware (all computing and information processing equipment, including printers, fax machines, photocopiers, etc.), (ii) software, information/database (e.g. software, software media etc.), intangible, service (which includes designated secure areas), (iii) people (those individuals whose skills, knowledge and experience are considered essential), and (iv) other assets. This inventory is the asset inventory that is used in the risk assessment process.
- 7.2. **Asset Ownership.** For each asset, HTL defines the business unit or business role that 'owns' the asset and is therefore responsible for ensuring that the asset is correctly classified and for the day to day maintenance of the identified controls.

Information Classification & Handling

- 8.1. **Information Classification.** HTL classifies information to three (3) levels: restricted, confidential, and public. Information that is classified as restricted must, in addition, identify the individuals or roles to whom the information is restricted. Personal Data subject to Data Protection Legislation is classified as restricted and is subject the policies as documented in the HTL operating procedure for Information Classification and Handling.

Access Control

- 9.1. **Access Management.** Access to the SaaS Service from HTL is by Hornbill Personnel and Sub-processors is secured, managed and protected through stringent authentication, segregation and authorisation processes and mechanisms, overseen by the HTL ISMS manager. A formal registration and deregistration process is adhered to and privileges are allocated on a need-to-use and event-by-event basis. A log is maintained of all privileges authorised and allocated and this is audited regularly to ensure privileges; (i) have been revoked as specified in the original request, (ii) continue to be valid and appropriate for the intended purpose, (iii) have not been obtained without the appropriate authorisation. User access rights are reviewed upon change to maintain effective control over access to data information services.
- 9.2. **Technical and Network Access Controls.** HTL employs a wide range of measures and controls including, but not limited to; (i) Secure log-on, (ii) Network access controls, including VPN's and Firewalls with controlled ports. (iii) Network segregation with defined inter-network connection protocols and routing. (iv) Real time monitoring and logging against HTL instances and infrastructure to detect logins, unusual access and or unexpected data transfers. (v) Logs are reviewed (automatically) for warnings and corrective actions taken to address any concerns

(For example, any port scanner or other bot probing would be blocked from all access).

- 9.3. **Service Access Controls.** The SaaS Service provides extensive and granular user and role-based access controls. The Customer is solely responsible for the management, configuration and confidentiality of such access controls within its HTL instance and must assign to each user secure credentials and user role controlling the individuals level of access to the SaaS Service.

Cryptography Controls and Usage

- 10.1. **Data Encryption.** All data is encrypted in transit, and where possible specific fields are encrypted at rest using industry recognised cryptographic measures, TLS Encryption. All backups are fully encrypted. All data in motion is encrypted either via HTTPS\SSL.
- 10.2. Full at rest encryption (AES-256), of the Customers HTL instance, is available to Customer subscribed to the SaaS Service running on the HTL Platform Enterprise Edition.

Physical and Environment Security

- 11.1. **Data Centre Facilities.** HTL delivers the SaaS Service from data centres within the Customers chosen Hosting Zone (data protection jurisdiction) that have attained SSAE16 and ISO27001 certification.
- 11.2. Physical access restrictions in place will include a combination of any of the following: External and internal CCTV systems, proximity access controls, access card biometric authentication, mantrap, intruder alarms, door tampering alarms, appropriate perimeter deterrents (e.g. fencing, guarded gates), on site guards and secure managed loading dock; and (ii) fire suppression and detections systems in all areas.
- 11.3. **Secure Management and Disposal of Equipment.** Assets. The HTL Chief Technical Officer is responsible for the secure disposal of storage media and the disposal of all information processing equipment. Destruction of storage media and information processing equipment is undertaken to industry standards with the physical destruction of decommissioned or damaged hard disks storing Personal Data undertaken in line with WEEE regulations through HTL's approved contractor.

Operations

- 12.1. **Capacity Management.** Network capacity, utilisation, disk utilisation and load are proactively monitored, with automated alerting, to ensure that the SaaS Service has sufficient capacity of current and anticipated needs.
- 12.2. **Monitoring.** Each HTL instance is monitored from multiple locations globally with checks on over one hundred individual metrics undertaken every five minutes including but not limited to; (i) Performance (Pings, DNS Propagation, Response times from API, CPU Load, RAM Load, Disk IO, network Load etc.), (ii) Hardware (Availability, Temperature, SMART, SNMP etc.), (iii) Capacity (Disk space, CPU, Ram, etc.), (iv) Availability (Ping, DNS Propagation, API Tests, Host controller checks etc.), (v) Security (Automated Log file reviews, Traffic review, Pattern analysis, etc.), (vi) IDS (Intrusion Detection, Suspicious or Malicious Traffic Analysis including, packet \ bandwidth \ source \ traffic monitoring), (vii) Data Leakage (Packet\bandwidth\Source & Destination \ traffic monitoring and Analysis), (viii) Backups (Sync checks, replication checks, off instance checks etc.) and, (xi) Sanity (Checks for Mail Queues, Expected load etc.).

Supplier Relationships and Procurement

- 13.1. HTL carries out risk assessments to identify and implement specific controls before granting access to third parties or customers in line with the published operating procedures in force at such time. Identification of risk related to external party access takes account of the following: (i) level of physical access, (ii) logical access, (iii) legal and regulatory requirements and other contractual obligations relevant to the external parties. HTL defines and agrees with the external party those controls that the external party is required to implement and documents them in a signed contract or agreement.

Incident Reporting\Handling and Management

- 14.1. **Incident Reporting and Handling.** HTL will monitor for, analyse and respond to information security incidents immediately they are seen or experienced and report all such incidents to the Information Security Manager who will be responsible for undertaking an assessment and categorising the reported incident in a timely manner and in accordance with HTLs documented operating procedures.
- 14.2. **Notification of Breach.** HTL shall report to the Customer any; access to, alteration, disclosure of, accidental or unlawful destruction, or loss to Personal Data (a "Breach") in accordance with Clause 9.4 of this Agreement.
- 14.3. **Report.** An initial report shall be made to the Customers authorised contact(s) as maintained by the Customer in respect to the specified HTL instance. As HTL investigates or otherwise becomes aware of further information, and unless restricted by any applicable law, it shall provide all further information pertaining to the nature and impact of the Breach such that the Customer may be able to subsequently notify relevant parties concerned be that; Data Subjects, government agencies and data protection authorities in line with Data Protection Legislation.

Change Reporting\Handling\Planning and Management

- 15.1. **Change Management.** The Chief Technical Officer or Cloud Service Manager in consultation is responsible for authorising changes. Changes are not approved for implementation until fully risk assessed and where required defined fall-back procedures or a roll back strategy must be prepared. Where the change is significant, a testing plan, complete with clear acceptance criteria (including business, technical and load criteria) must be documented prior to commencing the change testing, which may include a dry run of the change.
- 15.2. **Promotion to Production Environment.** All testing is conducted in a test environment which is configured for that specific test requirement. This is separated from operational facilities by logical means. Once proved to be effective the HTL Cloud Service Manager authorises the implementation of the change to the operational environment, ensuring that business processes are not disturbed and that business continuity plans are updated if appropriate.

Business Continuity and Disaster Recovery

- 16.1. **Business Continuity.** HTL are committed to providing customers with access to the SaaS Service and data even in the event of an emergency or disaster. HTL's emergency plan is designed such that in the worst possible case Customers will be without access to instances for the minimum time possible whilst a full restore is carried out to a secondary data centre.
- 16.2. **Backups.** All databases relating to the SaaS Service are replicated in real time to a secondary data centre. All files are replicated every 5 minutes. Replicas are subsequently backed up (individual secure archive encrypted with 1-time key) daily and stored in a tertiary location within the Customers contracted hosting zone. The backups are taken without any interruption of services.

SCHEDULE 3

Sub-processors

Hornbill use the Sub-Processors as listed from time to time on the Hornbill Wiki which can be found here <https://wiki.hornbill.com/index.php/FAQ:Subprocessors>