

# **STANDARD TERMS AND CONDITIONS AND SOFTWARE LICENSE AGREEMENT**

JointAction Group Pty Ltd  
ABN 31 135 112 748

Trading as Joint Action Solutions

Authorised USA Reseller – Longitude6 Pty Ltd

## STANDARD TERMS AND CONDITIONS AND SOFTWARE LICENSE AGREEMENT

Effective Date: [01/07/2021]

Version: Rev 0

**IMPORTANT: PLEASE READ THIS STANDARD TERMS AND CONDITIONS AND SOFTWARE LICENSE AGREEMENT (THE “STANDARD TERMS AND CONDITIONS”) CAREFULLY. YOU WILL HAVE ACCEPTED THE STANDARD TERMS AND CONDITIONS IF YOU: 1) SIGN THE PRODUCT SELECTION AND QUOTATION AGREEMENT (“PRODUCT AGREEMENT”) PROVIDED TO YOU BY JAS; 2) ISSUE A PURCHASE ORDER OR SIMILAR PURCHASE REQUEST IN RELATION TO THE PRODUCT AGREEMENT PROVIDED TO YOU BY JAS; 3) USE THE SOFTWARE LICENSED BY JAS INCLUDING WITHOUT LIMITATION ANY SOFTWARE ASSOCIATED WITH THESE STANDARD TERMS AND CONDITIONS OR ACCEPT THE SOFTWARE ASSOCIATED WITH THESE STANDARD TERMS AND CONDITIONS OR ACCEPT THE PRODUCTS SET FORTH IN THESE STANDARD TERMS AND CONDITIONS OR IN THE PRODUCT AGREEMENT PROVIDED BY JAS; OR 4) CLICK AN “I ACCEPT” OR SIMILAR BUTTON ASSOCIATED WITH THESE STANDARD TERMS AND CONDITIONS.**

These Standard Terms and Conditions form a legal agreement between you, the “**Customer**,” and JointAction Group Pty Ltd trading as Joint Action Solutions (“**JAS**”) regarding the provision of the “**System**” (including any “**Equipment**” and “**Consumables**”), “**Licensed Software**” and “**Services**” (collectively herein, the “**Products**”) by JAS and to any other products or services subsequently supplied by JAS to Customer, unless the parties otherwise expressly agree in writing. Except as expressly defined in these Standard Terms and Conditions, all capitalized terms shall have the meaning accorded to them in the Product Agreement. In this Agreement, “you” and “your” refer collectively to you, the Customer and any business or public entity you represent and your employees and agents; “we,” “us,” and “our” refer collectively to JAS; and references to “parties” refer to Customer and JAS.

JAS IS WILLING TO PROVIDE THE PRODUCTS TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THESE STANDARD TERMS AND CONDITIONS. BY ACCEPTING THESE STANDARD TERMS AND CONDITIONS, YOU ARE BINDING YOURSELF TO THESE STANDARD TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THESE STANDARD TERMS AND CONDITIONS, THEN JAS IS UNWILLING TO PROVIDE YOU WITH THE JAS PRODUCTS AND YOU MUST NOT INSTALL, ACTIVATE, OR USE THE JAS PRODUCTS.

THE AUTHORIZED AGENT ENTERING INTO THESE STANDARD TERMS AND CONDITIONS ON YOUR BEHALF HEREBY REPRESENTS AND WARRANTS TO JAS THAT HE OR SHE IS AUTHORIZED TO ENTER INTO THESE STANDARD TERMS AND CONDITIONS ON YOUR BEHALF AND BIND YOU TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

JAS may make changes to these Standard Terms and Conditions at its sole discretion. Changes will be communicated to you by us posting the new version of these Standard Terms and Conditions on our website at <https://jointaction.solutions/contracts> or directly to you pursuant to the contact information you provide to JAS and your acceptance of and/or continued use of any JAS Products after such notification of changes will constitute your acceptance of such changes. You may also be asked to re-acknowledge and re-accept these Standard Terms and Conditions following any material changes.

### **1. SCOPE; PRICING.**

During the Term of these Standard Terms and Conditions, the Customer shall purchase the Products and lease the software as set forth in the Product Agreement agreed to by Customer, the terms of which are subject to and incorporated in these Standard Terms and Conditions. We may increase the Fees, provided that Fees (excluding Fees for Consumables) cannot be increased more than once in any twelve (12) calendar month period. JAS shall give you written notice of any such increase ninety (90) days before the proposed effective date of such increase. If such increase is not acceptable, you may, within thirty (30) days of receiving such notice, terminate these Standard Terms and Conditions upon ninety (90) days written notice to JAS.

### **2. PAYMENT TO JAS; TAXES.**

Payment is due to JAS net thirty (30) days from the date of invoice. All amounts are payable in \$A dollars. Any undisputed amounts which are not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law. In addition, in the event that you fail to make any undisputed payment to JAS when due, JAS shall provide notice to you of the arrears at which time you shall have fifteen (15) days to make such payment and, should you continue to fail to make such undisputed payment, JAS shall have no obligation to continue performance under any agreement with you. Without limiting JAS's rights to any amounts you owe, if JAS receives a lesser amount than the full amount due, such amount shall constitute payment toward your account applied first to any accrued but unpaid late payment interest, then to the earliest amount due JAS. All undisputed amounts owed are due immediately on termination, notwithstanding anything herein to the contrary. An amount will be considered to be "undisputed" if you do not give notice to JAS that it is in dispute, along with your good faith reasons for thinking that it is not due, within fifteen (15) days from the date of invoice. In the event you dispute an amount, the parties shall promptly attempt to resolve the dispute within thirty (30) days of the date that the amount was noticed as disputed. If the dispute is not fully resolved within such period, JAS may pursue whatever remedies it may have for non-payment, without limitation. Any sales, use or manufacturer's tax that may be imposed upon the sale or use of Products (including, without limitation, any goods and services tax and value added tax), or any property tax levied after readiness to ship, or any excise tax, license or similar fee required in connection with any transaction, shall be in addition to the prices quoted in the Product Agreement and shall be paid by you. This Section 2 shall not be construed to limit JAS's rights under applicable law or these Standard Terms and Conditions.

### **3. ACCESS; TITLE.**

You will make available to JAS all information necessary for JAS to perform its obligations under these Standard Terms and Conditions and JAS will have reasonable and necessary access to your locations in the ordinary course of business (including, without limitation, for the purpose of installing or uninstalling the Licensed Software). On or around the Delivery Date, JAS shall make every reasonable effort to deliver the System to your designated location but shall not be liable for any failure to meet such date(s). Unless otherwise agreed to in writing, delivery and your acceptance of Product, shall be complete

upon transfer of possession of the Product to you, at which point risk of loss to the Product shall pass to you; provided, however, that JAS shall retain title to the Licensed Software. JAS agrees to sell the equipment and lease the software to you for the Term as of the Delivery Date, subject to these Standard Terms and Conditions. For the avoidance of doubt this is a purchase agreement and an operating lease agreement. JAS will reasonably assist you (either in-person or remotely, at JAS's sole discretion) to install and customize the Licensed Software, and you shall ensure suitable personnel and resources are reasonably available to support the installation. You shall not sell, assign, sub-let, lend, pledge, mortgage, charge, lien or grant any other security interest or otherwise part with the personal possession or control of the Equipment and not make any addition or alteration to, or repair of, Equipment. You shall immediately notify JAS if the Equipment is confiscated, seized, or taken and you shall at your sole expense use your best efforts to procure an immediate release of the Equipment and shall indemnify JAS on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation. You shall give immediate written notice to JAS in the event of any loss or damage to the Equipment. You shall promptly return the Equipment to JAS upon the termination of these Standard Terms and Conditions.

#### **4. LICENSED SOFTWARE CONDITIONS.**

Subject to the conditions herein, JAS licenses the Licensed Software to you on a non-exclusive, worldwide basis for the number of users and in the manner as described in the Product Agreement to use the Licensed Software as it is associated with the System for the purpose and in the manner for which the Licensed Software was designed and produced. If these Standard Terms and Conditions terminate, this license automatically terminates. You may only use the Licensed Software in accordance with these Standard Terms and Conditions and the normal operating procedures as notified by JAS from time to time. You shall not use the Licensed Software for any unlawful purpose. You must not copy, alter, modify, publish, sell, assign, sub-license, reproduce, reverse engineer, disassemble, decompile, create derivative works based on or otherwise exploit the Licensed Software, directly or indirectly, in whole or in part, or allow, encourage or permit any other person to do so, except as otherwise authorized by these Standard Terms and Conditions or by JAS. Any Licensed Software supplied in connection with these Standard Terms and Conditions is not a sale of the Licensed Software to you. You must ensure that: (i) the Licensed Software and associated documentation (including the User Manual) is protected at all times from misuse, damage, destruction or any form of unauthorized use or disclosure; (ii) the PC supplied by JAS on which the Licensed Software is installed (or any computer supplied by you on which the Licensed Software is installed) is connected to a valid and reliable Internet connection; and (iii) any user using the Licensed Software complies with these Standard Terms and Conditions. Any act or omission of a user will be taken for the purposes of these Standard Terms and Conditions as an act or omission by you.

#### **5. INTELLECTUAL PROPERTY RIGHTS.**

As between JAS and you, all Intellectual Property Rights in or developed by JAS or you or by any other person permitted or authorized to do so by you or JAS in relation to the System or the Licensed Software (including all updates, enhancements, improvements, developments, modifications and derivative works thereto or thereof) will be owned by JAS and vest in JAS immediately upon creation. Notwithstanding any other provision of these Standard Terms and Conditions, any of JAS's Intellectual Property Rights in any of the Equipment or other goods or services of any nature provided to you or to which you otherwise are granted access under these Standard Terms and Conditions shall be licensed in accordance with these Standard Terms and Conditions and shall in no event be owned by you or otherwise vested in you. You assign the ownership of all Intellectual Property Rights described above to JAS and must at JAS's request: (a) assign; and (b) ensure that

any person authorized or permitted to update, enhance, improve, develop or modify the Licensed Software or any other material in which JAS has vested Intellectual Property Rights on your behalf, assigns to JAS all Intellectual Property Rights described above. You agree to: (i) promptly notify JAS if you become aware of any infringement or threatened infringement of JAS's Intellectual Property Rights in the System or Licensed Software; and (ii) provide such assistance as JAS reasonably requests in its sole right to initiate, defend or compromise any claim or proceeding arising from an infringement or threatened infringement of its Intellectual Property Rights in the System or Licensed Software. As used herein, "**Intellectual Property Rights**" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright and related rights, trade marks, designs, patents, circuit layouts, business and domain names, inventions, goodwill and the right to sue for passing off, rights to inventions, database rights, rights to use, and protect the confidentiality of, our Confidential Information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection and any other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or will subsist now or in the future in any part of the world.

## **6. EQUIPMENT CONDITIONS.**

You shall use Equipment or Consumables only in connection with the System acquired from JAS, or as otherwise approved in writing by JAS. You are solely responsible for the collection, secure protection, and back-up of Data using the Equipment. The Equipment may be used solely in accordance with JAS's Intended Use Statement. You must maintain the Equipment in a suitable environment. The Equipment must be used in a proper manner by trained competent staff in accordance with any operating and safety instructions and, accounting for normal wear and tear, the Equipment must be capable of being operated fully and efficiently for its intended purpose. You shall reasonably ensure that the Equipment is safe and without risk to health when it is being used, cleaned or maintained. Except as explicitly permitted by these Standard Terms and Conditions, you shall not make any alteration to the Equipment nor remove any component(s), labels or other markings from the Equipment without JAS's prior written consent. You shall not use the Equipment for any unlawful purpose. You must not do or permit to be done anything which could invalidate the insurance coverage you are required to maintain hereunder.

## **7. SYSTEM TRAINING, SUPPORT AND MAINTENANCE; EQUIPMENT DAMAGE AND REPAIR.**

Purchased JAS equipment has a one year limited warranty. During the Term, JAS will provide training and support on the System to your designated representative as specified in the Product Agreement. Except as otherwise explicitly provided in the Product Agreement, you are otherwise responsible for the use, supervision, management and control of the System. JAS shall not be responsible for any loss of or damage to the Equipment while in your possession. You must immediately notify JAS if any of the Equipment is damaged, stolen or lost or if you believe repairs may be required. JAS reserves the right to refuse to replace any Equipment showing signs of wilful damage, neglect, or unauthorized repair, and, in such circumstances, you will be liable for the cost of replacement of the damaged Equipment. You shall not attempt to repair or disassemble any of the Equipment without JAS's prior written approval. Equipment presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods. You understand and agree that repair

of Equipment may result in the loss of Data retained in the Equipment and JAS disclaims responsibility for any such loss.

## **8. DATA USE & PROTECTIONS.**

It may become necessary for the Customer to disclose to JAS confidential non-public personal information relating to the Users customers, clients, associates, employees and/or players (or similar) (the “**Users**”), including non-medical information such as age, gender, and the like (“**Data**”) which may constitute. Accordingly, Customer (or its affiliated practitioner, see Product Agreement) and JAS shall enter into a Business Associate Agreement governing the use of such information, as necessary, the terms of which shall be made subject to and incorporated in these Standard Terms and Conditions.

The JAS Customer Privacy Notice (Rev 1) notice describes how we process personal information about you during and after your working relationship with us, in accordance with the General Data Protection Regulation ((EU) 2016/679) (the “GDPR”).

Notwithstanding anything herein to the contrary, Customer acknowledges and agrees that JAS technology synchronizes to a secure JAS server all Data collected through the Equipment. Customer acknowledges and agrees that, to the extent consistent with applicable law, JAS may access and use the Data for business purposes including, without limitation, display of comparative assessment results and future development and improvement of its products and services; provided: (i) the disclosure is solely for the purpose of explaining and promoting the benefits of the System to potential clients; (ii) only aggregate data (i.e., no individually identifiable information) is disclosed ; and (iii) that JAS shall adhere to applicable laws in connection with its collection, storage and use of Data. Customer acknowledges and agrees that JAS may transfer, store and use Data outside Australia unless a specific agreement has been agreed to with you, and warrants that it shall obtain such consent as JAS may reasonably request from each of the Users prior to such transfer, storage or use. JAS will take steps reasonably necessary to ensure that Data is treated securely; however, Customer acknowledges and agrees that the transmission of information via the internet is not completely secure, and although JAS strives to protect Data, JAS cannot guarantee the security of data transmitted via the internet. Except as otherwise explicitly provided herein, JAS shall have no obligation to provide any Data to Customer either during the Term or following termination of these Standard Terms and Conditions.

## **9. MISCELLANEOUS**

### 9.1 Compliance with Laws.

Each party shall comply with all applicable laws, rules and regulations in connection with the sale and use of the Products and payment therefor (as applicable) and these Standard Terms and Conditions.

### 9.2 Force Majeure.

Neither party shall be liable for any loss or damage, delay in delivery or any other failure to perform due to causes beyond such party’s reasonable control, including, without limitation, acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil disturbance, fire or other casualty, strike or labour dispute or unavailability of labour, raw materials, power or supplies.

### 9.3 Confidential and Proprietary Information.

Neither party may at any time (before, during and after the Term), without the prior written consent of the other party, disclose any Confidential Information to any person unless compelled by law to do so or where such disclosure is to such party's users, employees, officers, agents and contractors. Each party must take all commercially reasonable steps to ensure that its users, employees, officers, agents and contractors do not make public or disclose the Confidential Information or use the Confidential Information in any manner inconsistent with these Standard Terms and Conditions. Notwithstanding any other provision of this Section, each party may disclose the terms of these Standard Terms and Conditions to enforce the terms of these Standard Terms and Conditions or, except for Confidential Information of a technical nature, to its professional advisors. For purposes of these Standard Terms and Conditions, "**Confidential Information**" shall mean: (a) the confidential and proprietary information of JAS, which relates to the subject matter of these Standard Terms and Conditions and includes, without limitation, information relating to: (i) the design, specification, use, content and Intellectual Property Rights comprising the Equipment and Licensed Software; (ii) the personnel, policies or business strategies of JAS; and (iii) the terms (including payment terms) upon which the System is being supplied and installed pursuant to these Standard Terms and Conditions; and (b) the confidential and proprietary information of Customer, which relates to the subject matter of these Standard Terms and Conditions and includes, without limitation, information relating to Data of Users; provided, however, that any aggregate, non-individually identifiable data held by JAS shall not be regarded as Customer Confidential Information.

#### 9.4 Third Party Rights.

No one other than a party to these Standard Terms and Conditions, their successors and permitted assignees, shall have any right to enforce any of its terms.

#### 9.5 Publicity.

Except as required by law, to communicate with JAS's investors or professional advisors, or upon Customer's advance written approval, JAS shall not be entitled to use Customer's name, tradename(s), trademark(s), and/or logos in promotional or marketing materials and advertisements, or on any listing of its customers, including without limitation in press releases or other public statements regarding the relationship between the parties. JAS agrees not to make statements that negatively impact or reflect upon the Customer or, except as explicitly permitted herein, reveal any proprietary information of the Customer.

#### 9.6 Independent Contractors.

Nothing in these Standard Terms and Conditions shall create or otherwise imply that there is any relationship of employment, agency, franchise, joint venture, partnership or other similar legal relationship between the parties. No party has the authority to bind or act on behalf of the other party.

#### 9.7 Enforceability.

Notwithstanding anything in these Standard Terms and Conditions to the contrary, in the event that a court of competent jurisdiction should determine that any term or provision of these Standard Terms and Conditions is void or otherwise unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining terms and provisions of these Standard Terms and Conditions, and such court shall amend such void or otherwise unenforceable term or provision to the minimum extent necessary to make it valid and enforceable.



### 9.8 Notices.

All notices and other communications required or permitted to be given under these Standard Terms and Conditions shall be in writing and deemed to have been duly given, made, and received only when (i) delivered personally, by messenger, or by recognized courier service such as Australia Post Star Track Express; (ii) sent by electronic e-mail with proof of confirmation; or (iii) four days following the day when deposited in the Mail by registered or certified mail, postage prepaid, return receipt requested, addressed to a party at the address specified in the Product Agreement or such other address as the party may have specified for itself.

### 9.9 Governing Law.

These Standard Terms and Conditions shall be governed by the laws of the State of Victoria, Australia without giving effect to its conflict of laws provisions. All actions, suits or proceedings arising out of or based upon these Standard Terms and Conditions or the subject matter of these Standard Terms and Conditions shall be brought and maintained exclusively in the federal or state courts located in the State of Victoria, and you consent to the sole and exclusive jurisdiction of such courts for any such action, suit or proceeding.

### 9.10 Entire Agreement; Waiver.

These Standard Terms and Conditions, including the Product Agreement and documents explicitly incorporated by reference into these Standard Terms and Conditions, contain the entire understanding of the parties, and supersedes all prior negotiations, agreements, or understandings, whether oral or in writing. These Standard Terms and Conditions may only be modified in writing or as otherwise set forth in these Standard Terms and Conditions. No failure and no delay in exercising, on the part of any party, any right under these Standard Terms and Conditions will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

### 9.11 Insurance.

You shall maintain general liability insurance (and, if applicable to your activities under these Standard Terms and Conditions, professional liability/errors and omissions insurance) that provides coverage for your acts or omissions in connection with these Standard Terms and Conditions during the Term (including, without limitation, your use of the System and Licensed Software) in such amounts and with such coverages as are usual and customary for the business you conduct. You must, on reasonable demand by JAS, produce sufficient evidence that such insurance is current.

### 9.12 Termination.

- 9.12.1. Subject to Section 9.12.2, these Standard Terms and Conditions shall terminate at the end of the Initial Term but may continue for successive annual Subsequent Terms as provided in the Product Agreement.
- 9.12.2. Either party (as applicable) may terminate these Standard Terms and Conditions immediately by notice in writing: (a) if the other party is insolvent or is threatened to be insolvent; (b) if the other party is in breach of these Standard Terms and Conditions which breach is irremediable or if such party fails to remedy that breach within a period of ten (10) business days after being notified in writing to do so; (c) if you fail to pay any undisputed amount due under these Standard Terms and Conditions on the due date for payment and remain in default more than thirty (30) calendar days after being notified in writing to do so; or, any disputed amount that

remains in dispute after conclusion of the dispute resolution period noted in Section 2 above, or, (d) the other party repeatedly breaches any of the terms of these Standard Terms and Conditions in such a manner as to reasonably justify the opinion that such conduct is inconsistent with such party having the intention or ability to give effect to the terms of these Standard Terms and Conditions.

#### 9.13 Consequences of Termination.

- 9.13.1. In the event of termination of these Standard Terms and Conditions: (a) JAS's consent to your use of the Licensed Software immediately and automatically terminates without notice and JAS may, at your expense, uninstall the Licensed Software from any Customer computer systems and hardware on which it is installed and, for this purpose, with reasonable prior notice, may enter any premises at which the Equipment is located or Licensed Software is installed; (b) the license granted hereunder with reference to the Licensed Software immediately and automatically terminates; (c) each party shall be regarded as discharged from any further obligations under these Standard Terms and Conditions; (d) each party may at its sole option order the other party to delete or destroy any Confidential Information in its possession; (e) subject to Section 9.13.2, all Fees paid hereunder shall be retained and non-refundable to you, notwithstanding that a full 12-month period within the applicable Term may not have elapsed (such provision being agreed by the parties to be a fair and equitable remedy to JAS, and not a penalty, with respect to compensation to JAS); (f) without prejudice to any other of JAS's rights or remedies, you shall pay to JAS on demand: (i) all Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Section 2 and (ii) any costs and expenses incurred by JAS in uninstalling the Licensed Software, and/or in collecting any sums due under these Standard Terms and Conditions (including any storage, insurance, repair, transport, legal and remarketing costs).
- 9.13.2. Termination of these Standard Terms and Conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

#### 9.14 Assignment.

These Standard Terms and Conditions are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these Standard Terms and Conditions. You may not assign the whole or any part of these Standard Terms and Conditions without JAS's prior written consent, which consent may be withheld in its absolute discretion.

#### 9.15 Survival.

Sections 2, 4, 5, 6, 7, 8, 9.3, 9.5, 9.7, 9.8, 9.9, 9.13, 9.15, and 9.16 shall survive termination of these Standard Terms and Conditions together with any other provision that is expressly or impliedly intended to survive termination.

#### 9.16 Limitation of Warranty and Liability; Indemnity.

- 9.16.1. These Standard Terms and Conditions set forth the fullest extent of JAS's obligations and liabilities with respect to the Licensed Software and the System and the collection, storage and use of Data. Subject to Section 9.16.8, JAS shall be under no liability to you with respect to any loss or damage (including consequential loss or damage) which may be suffered or



incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to these Standard Terms and Conditions, including any damage suffered by a third party as a result of you or a third party using the System or the Licensed Software in a way other than in accordance with the normal operating procedures as notified by JAS from time to time.

- **9.16.2. YOU ACKNOWLEDGE THAT TO THE FULLEST EXTENT PERMITTED BY LAW, AND SUBJECT TO ANY STATUTORY RIGHTS THAT MAY BE ATTRIBUTABLE TO YOU, JAS MAKES NO CONDITIONS, REPRESENTATIONS, WARRANTIES, GUARANTEES OR OTHER TERMS, EXPRESS OR IMPLIED, INCLUDING AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND WHATSOEVER, THAT ARE BINDING ON JAS EXCEPT AS SPECIFICALLY STATED IN THESE STANDARD TERMS AND CONDITIONS. ANY CONDITION, GUARANTEE, WARRANTY OR OTHER TERM CONCERNING THE EQUIPMENT (INCLUDING FOR THE AVOIDANCE OF DOUBT THE SYSTEM) OR THE LICENSED SOFTWARE WHICH MIGHT OTHERWISE BE IMPLIED INTO OR INCORPORATED WITHIN THESE STANDARD TERMS AND CONDITIONS, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, IS EXPRESSLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.**
- 9.16.3. You shall at all times indemnify and hold harmless JAS and its officers, employees and agents (“**JAS Indemnified**”) from and against any loss (including reasonable legal costs and expenses), claims, damages or liability incurred or suffered by any of the JAS Indemnified arising from any proceedings against JAS Indemnified where such loss or liability arose out of or in connection with your use of the Products (including, without limitation, the System or the Licensed Software), breach of these Standard Terms and Conditions or any wilful, unlawful or negligent act or omission by you. JAS shall at all times indemnify and hold harmless Customer and its officers, directors, employees, and agents (“**Customer Indemnified**”) from and against any loss (including reasonable legal costs and expenses), claims, damages, or liability, incurred, or suffered by the Customer Indemnified arising from any proceedings against the Customer Indemnified where such loss or liability arose out of or in connection with (a) JAS’s (breach of these Standard Terms and Conditions; (b) the System or Licensed Software infringes or misappropriates another party’s copyright on trade secret rights; (c) JAS has used Data or PHI of Users in violation of these Standard Terms and Conditions; or (d) any wilful, unlawful, or negligent act or omission by JAS.
- 9.16.4. To the extent permitted by law, the liability of JAS for a breach of any guarantee or warranty implied by law shall be limited, at the option of JAS, to one or more of the following:
  - (a) If the breach relates to goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of such goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and

- (b) If the breach relates to any services rendered:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 9.16.5. Without prejudice to Section 9.16.6, JAS’s maximum aggregate liability for breach of these Standard Terms and Conditions (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort or otherwise, shall in no circumstances exceed the amount equivalent to 75% of the Fees that have been paid during the then current Term.
- 9.16.6. Nothing in these Standard Terms and Conditions shall exclude or in any way limit:
  - (a) either party’s liability for death or personal injury caused by its own negligence; or
  - (b) either party’s liability for fraud or fraudulent misrepresentation.
- **9.16.7. JAS SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, LOSS OF STORED, TRANSMITTED OR RECORDED DATA, OR FOR ANY INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE STANDARD TERMS AND CONDITIONS OR THE USE OF THE SYSTEM OR THE LICENSED SOFTWARE. THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THESE STANDARD TERMS AND CONDITIONS AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.**
- 9.16.8. No limitation of liability contained in this Section 9 will apply to the extent that it is prohibited by law.

**Revision History:**

DRAFT DATE	REV No.	DRAFTED BY	APPROVED BY	REVIEW DATE
27 Jan 2021	Draft A	G. Gosling		1 July 2021
10 Oct 2021	Rev 0	G. Gosling	R McCord	1 Oct 2022

NOTES:

- a) Need to reference the General Data Protection Regulation ((EU) 2016/679) (the “GDPR”) and USA LA standards for data removal/protection of user information in the Customer Privacy Statement (Rev 1 2020)
- b) Need to clarify data backup and notices of any data breaches policy references.