



**IMMORTALIS**  
SOLUTIONS LIMITED

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The Customer's attention is particularly drawn to the provisions of clause 8.

## 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**You/Your/Customer:** the person or firm who purchases a System and/or Services from Immortalis.

**Immortalis/ we/us/our:** Immortalis Solutions Limited (company number 12631148) with registered office G01 (Building A) Melton Court, Gibson Lane, Melton, East Yorkshire HU14 3HH

**Acceptable Use Policy:** our acceptable use policy relating to our internet platform, these terms being set out in Annex A.

**Account:** an account enabling a person to access and use the Hosted Services, including both administrator accounts (if applicable) and user accounts.

**Admin Fee:** the fee for the initial setup of the System addressing the reasonable personalisation and bespoke requirements of the Customer.

**Authorised Users:** the Customer and those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the System, each such party also being a Data Subject.

**Basic Training:** the provision of an overview and demonstration on the use of the System at a time agreed between the Customer and Immortalis following the Contract being made.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are normally open for business.

**Business Purpose:** the receiving and processing of data from Authorised Users via the System for use within the Customer's business.

**Charges:** the charges payable by you for the supply of the System and Services.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.4.

**Contract:** the contract made between Immortalis and you for the supply of the System and Services in accordance with these Conditions.

**Customer Data:** all data, works and materials uploaded to or stored on the System by the Customer; transmitted by the System at the instigation of the Customer; supplied by the Customer to Immortalis for uploading to, transmission by or storage on the System; or generated by the System as a result of the use of the Hosted Services by the Customer.

**Data Protection Legislation:** all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

**Data Subject:** an individual who is the subject of Personal Data.

**Force Majeure:** any event as described in clause 11.

**Hosted Services:** the web application within the System, which will be made available by Immortalis to the Customer as a service via the internet in accordance with these Conditions and the Contract.

**Intellectual Property Rights or IPR:** patents, rights to copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs,

database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, now or at any future time subsisting in any part of the world.

**Order:** the Customer's order for supply of a System and/or Services as set out in the purchase order form [or other document].

**Personal Data:** has the meaning given to it in the Data Protection Legislation.

**Price List:** the prices supplied to the Customer in the initial quotation, including without limitation the fee for each separate module of the System, and rates per User per Account supplied.

**Safe Password:** a password that is changed no less frequently than 3 monthly and which is kept confidential.

**Services:** the Hosted Services and the Support Services for number of Users set out in the Contract.

**Support Services:** support in relation to the use of, and the identification and resolution of errors in, the System, together with Basic Training.

**Supported Web Browser:** the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that Immortalis agrees in writing shall be supported

**System:** the Immortalis web based application providing a pricing and project management system available to the Customer as a service via the internet.

1.2 **Construction.** In these Conditions: a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a party includes its, successors or permitted assigns; a reference to **writing** or **written** excludes faxes. Unless otherwise stated, any reference to Charges shall mean by reference to the Price List.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by you to purchase the System and/or Services from us in accordance with these Conditions and shall be deemed to be accepted either when we issue written acceptance of the Order or when provision of any part of the System and/or Services commences, whichever is earlier (the **Contract**).

2.2 The Contract constitutes the entire agreement between the parties. Samples, drawings, descriptive matter or advertising issued by us do not have any contractual force.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Quotations given by Immortalis shall not constitute an offer and are valid for 20 Business Days.

## 3. TERM

3.1 The Contract commences as set out at 2.1 and shall continue for the minimum period of one calendar year (**Initial Term**) and shall thereafter renew on a month to month basis unless otherwise terminated in accordance with these Conditions.

3.2 No cancellation of the Contract may be made during the first year of the Term.

## 4. SUPPLY OF SERVICES

4.1 Immortalis shall provide the Support Services to the Customer with reasonable skill and care during the Term provided that it may suspend such Support Services if any amount due to be paid by the Customer under the Contract is overdue.

4.2 Immortalis may upon notification to you make any changes to the Services so as to comply with any applicable law or safety requirement.

- 4.3 Subject to the terms set out in these Conditions and subject particularly to clause 4.4 below, Immortalis grants to the Customer and its Authorised Users a non-exclusive licence, non-transferable right to use the Hosted Services by means of a Supported Web Browser during the Term.
- 4.4 The licence granted is subject to the following limitations:
- (a) the Hosted Services may only be used by Authorised Users using a valid Account and Safe Password;
  - (b) the maximum number of Authorised Users shall not exceed the number set out in the Contract;
  - (c) no User Account shall be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the System;
  - (d) no sub -licences may be granted;
  - (e) the System shall not be used for the benefit of third parties; and
  - (f) no content from the System may be duplicated, copied or republished in any way.
- 4.5 Upon a written request from you to us additional User Accounts may be added, from which date payment of additional Charges shall fall due.
- 4.6 The Customer shall use reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 4.7 Immortalis shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance that has been notified to you directly or on the website; and
  - (b) unscheduled maintenance, provided that we have used reasonable endeavours to give you at least [6] hours' notice in advance.
- 4.8 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any issue arising as a result of a breach by the Customer of these Conditions; or
  - (e) scheduled or unscheduled maintenance carried out in accordance with these Conditions.
- 4.9 The Customer must comply with our Acceptable Use Policy and must ensure that all Authorised Users also comply.
- 4.10 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity; or

- (c) in a way that causes, or may cause, damage to the System or any part thereof or impairment of the availability or accessibility of the Hosted Services.

4.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the System, either during or after the Term and shall not access all or any part of the Services for the purpose of building a product or service that competes with the Services.

4.12 Immortalis may suspend the provision of the Hosted Services if any amount due to be paid by the Customer under the Contract and these Conditions is overdue or in the event of any breach of these Conditions that Immortalis considers material [, provided Immortalis has given the Customer at least 7 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services.

4.13 Immortalis shall not be liable for any losses caused to the Customer resulting from any act or omission of the Customer.

## 5. CHARGES AND PAYMENT

5.1 Payment of the Admin Fee shall be due with Order.

5.2 Payment of the Charges shall be payable monthly by direct debit to Immortalis Bank account and Immortalis shall supply an invoice for the same either monthly or as otherwise specified in the Contract.

5.3 Immortalis shall not be required to commence any Services until the Admin Fee and the first month's Charges have been paid in cleared funds.

5.4 Additional Charges shall be due for any services not contemplated in the Contract.

5.5 **Late Payment:** Any failure to make any payment when it is due shall incur interest on the overdue amount at the rate of 4% per cent per annum above the base rate from time to time of HSBC Bank. Interest accrues on a daily basis from due date until actual payment of the overdue amount, whether before or after judgment - compounded monthly and payable together with the overdue amount. **An administration fee** of £125 plus VAT will also be due in the event of any late payment. **In the event of recovery action required**, all legal costs/expenses are rechargeable to you and are payable as a debt due on demand.

## 6. INTELLECTUAL PROPERTY RIGHTS /CONFIDENTIALITY

6.1 All IPR in or arising out of or in connection with the System and the Services is the absolute property of and owned by Immortalis.

6.2 You agree to keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you. This clause 6 shall survive termination of the Contract.

## 7. DATA PROTECTION AND CUSTOMER DATA

7.1 The Customer hereby grants to Immortalis a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of its obligations and the exercise of its rights under the Contract for the Business Purpose, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance by Immortalis of its obligations and the exercise of its rights under the Contract.

7.2 The Customer warrants to the Immortalis that the use of the Customer Data by the Immortalis in accordance with this Agreement will not:

- (a) breach the provisions of any law, statute or regulation;



- (b) infringe the Intellectual Property Rights or other legal rights of any person; or
- (c) give rise to any cause of action against Immortalis,

in each case in any jurisdiction and under any applicable law.

- 7.3 Immortalis shall use reasonable endeavours to create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable it to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 7.4 Within the period of 1 Business Day following receipt of a written request from the Customer to do so, Immortalis shall use all reasonable endeavours to restore the Customer Data previously backed up by it on to the System. The Customer acknowledges that this process will overwrite the previously held Customer Data stored on the System.
- 7.5 You warrant to us that you are legally entitled to disclose Personal Data to us under or in connection with the Contract, and that the processing of that Personal Data by us for that purpose will not breach any applicable data protection or data privacy laws .
- 7.6 To the extent that we process Personal Data disclosed by you, we warrant that:
- (a) we will act only on instructions from you in that regard;
  - (b) we have appropriate security measures (both technical and organisational) in place against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and
  - (c) we will not transfer or permit the transfer of that Personal Data outside the EEA without your prior written consent.
- 7.7 In the event of any loss or damage to Customer Data, the sole and exclusive remedy shall be the obligation upon us to use reasonable commercial endeavours to restore the same from the latest back-up of such Customer Data maintained by us. We shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 7.8 Wherever we process any personal data on your behalf when performing our obligations under the Contract, it is agreed, and the intention hereby recorded that the Customer shall be the data controller and Immortalis shall be a data processor and in any such case:
- (a) the Customer shall ensure that relevant personal data transferred to Immortalis may be lawfully used, processed and transferred by it in accordance with these Conditions and the Contract;
  - (b) the Customer shall ensure that relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and
  - (c) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **8. LIMITATION OF LIABILITY: PLEASE TAKE CAREFUL NOTE OF THIS CLAUSE**

8.1 Our liability is limited as follows:

- (a) we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Conditions or the Contract; and

- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount payable by you in the first year of the Contract or £5,000 whichever is the lesser.

8.2 Nothing in these Conditions shall limit or exclude the liability of Immortalis for death or personal injury

8.3 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

9.1 Without limiting our other rights or remedies, we may terminate the Contract by giving you three months' written notice.

9.2 You may terminate the Contract after the end of the Initial Term upon giving us three months' notice in writing, to expire not earlier than three months following the Initial Term.

9.3 Without limiting our rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if

- (a) you are subject to any form of insolvency procedure including without limitation, liquidation, administration, receivership, or for individuals -bankruptcy;
- (b) you threaten to or actually suspend payment of your debts or are unable to pay them as they fall due;
- (c) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
- (d) any event occurs or proceeding is taken with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the Events mentioned in this clause 9.3(a) to **Error! Reference source not found.** (inclusive); or
- (e) you suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your business.

9.4 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.

9.5 Without limiting our other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between you and the us if you becomes subject to any of the events listed in clause 9.3(a) to (e), or if we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

## 10. CONSEQUENCES OF TERMINATION

10.1 On termination of the Contract for any reason you shall immediately pay to Immortalis all outstanding amounts and any interest.

10.2 The Charges for the balance of the first year of the Term shall remain due and payable by reference to the number of User Accounts in service at the point of termination. An invoice shall be supplied for this amount.

10.3 The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected and clauses which expressly or by implication survive termination shall continue in full force and effect.

## 11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond our reasonable control including but not limited to (including failures of the internet or any public telecommunications network,

hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars, act of God, accident, breakdown of plant or machinery, or default of suppliers or subcontractors.

- 11.2 We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents us from providing any of the Services for more than 12 weeks, we shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

## 12. GENERAL

- 12.1 *Assignment and other dealings:* **Immortalis** may assign, transfer, mortgage or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate any or all of its obligations as it sees fit.
- 12.2 **You** shall not, without our prior written consent, assign or transfer or deal in any other manner with any of your rights or obligations under the Contract.
- 12.3 *Notices:* Any communication given in connection with the Contract shall be in writing, addressed to a party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address notified in writing and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service. A communication is received: if delivered personally, when left at the address referred to in this clause 12.3; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. **This clause shall not apply** to service of proceedings/ other documents in any legal action.
- 12.4 *OTHER: Severance:* If any provision/ part-provision of the Contract is/becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. *Waiver:* A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. *No partnership or agency:* Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other. *Third parties:* A person who is not a party to the Contract shall not have any rights to enforce its terms. *Variation:* Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing.
- 12.5 *Governing law & Jurisdiction:* This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## Annex A – ACCEPTABLE USE POLICY

This Acceptable Use Policy sets out the terms between you and us under which you may upload content to [www.immortalis.co.uk] (**our site**), link to our site, or interact with our site in any other way. This acceptable use policy applies to all users of, and visitors to, our site.

Your use of our site means that you accept, and agree to abide by, all the policies in this acceptable use policy, which supplement our Terms and Conditions of business (**Conditions**). If you do not agree to these terms, you must not use our site.



[www.immortalis.co.uk] is a site operated by Immortalis Solutions Limited (**we** or **us**). We are registered in England and Wales under company number 12631148 and we have our registered office at G01 (Building A) Melton Court, Gibson Lane, Melton, East Yorkshire HU14 3HH.

## **PROHIBITED USES**

You may use our site only for lawful purposes. You may not use our site:

- In any way that breaches any applicable local, national or international law or regulation.
- In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- For the purpose of harming or attempting to harm minors in any way.
- To send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards (see below).
- To transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).
- To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

You also agree:

- Not to reproduce, duplicate, copy or re-sell any part of our site in contravention of the provisions of our Conditions.
- Not to access without authority, interfere with, damage or disrupt:
  - any part of our site;
  - any equipment or network on which our site is stored;
  - any software used in the provision of our site; or
  - any equipment or network or software owned or used by any third party.

## **INTERACTIVE SERVICES**

We may from time to time provide interactive services on our site, including, without limitation:

- Live Chats
- Blogs
- Bulletin boards.

**(interactive services).**

Where we do provide any interactive service, we will provide clear information to you about the kind of service offered, if it is moderated and what form of moderation is used (including whether it is human or technical).

We will do our best to assess any possible risks for users from third parties when they use any interactive service provided on our site, and we will decide in each case whether it is appropriate to use moderation of the relevant service (including what kind of moderation to use) in the light of those risks. However, we are under no obligation to oversee, monitor or moderate any interactive service we provide on our site, and we expressly exclude our liability for any loss or damage arising from the use of any interactive service by a user in contravention of our content standards, whether the service is moderated or not.

Where we do moderate an interactive service, we will normally provide you with a means of contacting the moderator, should a concern or difficulty arise.

**CONTENT STANDARDS**

These content standards apply to any and all material which you contribute to our site (**contributions**), and to any interactive services associated with it.

The Content Standards must be complied with in spirit as well as to the letter. The standards apply to each part of any Contribution as well as to its whole.

We will determine, in its discretion, whether a Contribution breaches the Content Standards.

Contributions must:

- Be accurate (where they state facts).
- Be genuinely held (where they state opinions).
- Comply with applicable law in the UK and in any country from which they are posted.

Contributions must not:

- Contain any material which is defamatory of any person.
- Contain any material which is obscene, offensive, hateful or inflammatory.
- Promote sexually explicit material.
- Promote violence.
- Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- Infringe any copyright, database right or trade mark of any other person.

- Be likely to deceive any person.
- Be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- Promote any illegal activity.
- Be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- Be likely to harass, upset, embarrass, alarm or annoy any other person.
- Be used to impersonate any person, or to misrepresent your identity or affiliation with any person.
- Give the impression that they emanate from us, if this is not the case.
- Advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.
- Contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- Contain any advertising or promote any services or web links to other sites.

#### **SUSPENSION AND TERMINATION**

We will determine, in our discretion, whether there has been a breach of this acceptable use policy through your use of our site. When a breach of this policy has occurred, we may take such action as we deem appropriate.

Failure to comply with this acceptable use policy constitutes a material breach of the terms of use upon which you are permitted to use our site, and may result in our taking all or any of the following actions:

- Immediate, temporary or permanent withdrawal of your right to use our site.
- Immediate, temporary or permanent removal of any posting or material uploaded by you to our site.
- Issue of a warning to you.
- Legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.
- Further legal action against you.
- Disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

We exclude liability for actions taken in response to breaches of this acceptable use policy. The responses described in this policy are not limited, and we may take any other action we reasonably deem appropriate.

### **CHANGES TO THE ACCEPTABLE USE POLICY**

We may revise this acceptable use policy at any time by amending this page. You are expected to check this page from time to time to take notice of any changes we make, as they are legally binding on you. Some of the provisions contained in this acceptable use policy may also be superseded by provisions or notices published elsewhere on our site.

### **GOVERNING LAW AND JURISDICTION**

If you are a consumer, please note that the terms of this policy, its subject matter and its formation are governed by English law. You and we both agree that the courts of England and Wales will have exclusive jurisdiction except that if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are resident of Scotland, you may also bring proceedings in Scotland.

If you are a business, the terms of this policy, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.

### **Acceptance**

**I confirm that I have read, understood and agree to the above terms and conditions, I also confirm that I am authorised to sign such a document on behalf of the company.**

**Name**

**Role**

**Signature**

**For and on behalf of**

**Date**