

**Blue Door Software - Seren - Software as a Service (SaaS) Subscription Agreement (version 1.0 – last updated 16<sup>th</sup> November 2022**

**Agreed terms**

**1. These Terms; Interpretation**

1.1 These are the terms and conditions (**Terms**) on which the Supplier (as defined below) supplies Services (as defined below) to the Client (as defined below). By accessing or otherwise using the Services by any means and via whatever device, the Client agree to abide by the terms and conditions of these Terms.

1.2 The Client is advised to read these Terms carefully before using the Services.

1.3 The Supplier may need to change these Terms to reflect changes in law or best practice or to deal with additional features which it introduces. The Supplier will give the Client at least fifteen (15) days' notice of any change by sending the Client an e-mail with details of the change(s) or notifying the Client of any change(s) when it next logs into the Services. If the Client does not accept the notified changes it will not be permitted to log in and continue to use the Services.

1.4 The following additional terms also apply to the Client's use of the Services:

(a) Privacy Policy <https://serenonline.org/privacy-policy> which sets out information about how the Supplier uses the Client's personal information.

(b) Cookie Policy <https://serenonline.org/cookie-policy> which sets out information about the Supplier's use of cookies in the e-Commerce Portal and in the Services.

1.5 The Services may only be used in the United Kingdom.

1.6 If the Supplier has to contact the Client, it will do so by writing to the Client at the email address it provided to the Supplier via the e-Commerce Portal.

1.7 The definitions and rules of interpretation in this Clause 1.7 apply in these Terms.

**Authorised Users:** those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Documentation, as further described in Clause 2.2.

**Bolt-on:** an additional functionality that can be added to the Services such as additional profiles, SMS credits, bespoke forms, or additional storage fees that can be purchased via the e-Commerce Portal.

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

**Change of Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be interpreted accordingly.

**Client:** means the legal entity that has purchased the Services via the e-Commerce Portal.

**Client Data:** the data inputted by the Client, Authorised Users, or the Supplier on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 11.1.

**Documentation:** any documentation made available to the Client by the Supplier from time to time which sets out the user instructions for the Services.

**e-Commerce Portal:** means <https://serenonline.org/> where the Supplier sells subscription services to access the Services and where certain commercial terms will be agreed between the Supplier and the Client that will be subject to these Terms.

**Effective Date:** the date that the Client purchases a subscription to the Services via the e-Commerce Portal.

**Initial Subscription Term:** the initial term of these Terms as set out in these Terms or at the Subscription Purchase Date.

**Mandatory Policies:** the Supplier's business policies listed in Schedule 2, as amended by notification to the Client from time to time.

**Normal Business Hours:** 10.00 am to 4.00 pm local UK time, each Business Day.

**Renewal Period:** the period described in Clause 14.1.

**Services:** the subscription services provided by the Supplier to the Client under these Terms via <https://app.serenonline.org/> or via a unique URL hosted on the [serenonline.org/caseworkerconnectonline.org](https://serenonline.org/caseworkerconnectonline.org) domain or any other website notified to the Client by the Supplier from time to time.

**Supplier:** means Blue Door Software Limited, a company registered in England and Wales with company number 05790036 and registered address Sension House, Denton Drive, Northwich, Cheshire, England, CW9 7LU.

**Software:** the online software applications provided by the Supplier as part of the Services.

**Subscription Fees:** the subscription fees payable by the Client to the Supplier for the User Subscriptions, as set out in writing in the e-Commerce Portal at the Subscription Purchase Date.

**Subscription Purchase Date:** the date that the Client purchases a subscription to the Services via the e-Commerce Portal.

**Subscription Term:** has the meaning given in Clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services as made available as set out in Clause 4.3 or as may be notified to the Client from time to time.

**User Subscriptions:** the user subscriptions purchased by the Client pursuant to Clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Terms.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.8 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.9 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.10 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.11 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.12 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.13 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.
- 1.14 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- 1.15 A reference to **writing** or **written** includes emails.
- 1.16 References to Clauses and schedules are to the Clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

## **2. User subscriptions**

2.1 Subject to the Client purchasing the User Subscriptions in accordance with Clause 3.1 and Clause 9.1, the restrictions set out in this Clause 2 and the other terms and conditions of these Terms, the Supplier hereby grants to the Client a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Client's internal business operations.

2.2 In relation to the Authorised Users, the Client undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time and that only Authorised Users categorised as 'Administrators' will allocate Authorised Users, purchase Bolt-ons or upgrade or downgrade the Services;
- (b) it will not allow or suffer any User Subscription to 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 Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential;
- (d) if the Supplier becomes aware that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (e) if the Supplier becomes aware that the Client has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices as set out in writing in the e-Commerce Portal at the Subscription Purchase Date within 5 (five) Business Days of the date of the relevant audit.

2.3 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this Clause 2.3.

2.4 The Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2; or
- (f) introduce or permit the introduction of any Virus or Vulnerability into the Supplier's network and information systems.

2.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this Clause 2 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client.

**3. Additional user subscriptions; Upgrades or downgrades of the Services; Bolt-ons**

3.1 The Client may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number as set out in writing in the e-Commerce Portal at the Subscription Purchase Date and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Terms.

3.2 The Client shall pay to the Supplier the relevant fees for such additional User Subscriptions as set out in writing in the e-Commerce Portal at the Subscription Purchase Date and, if such additional User Subscriptions are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

3.3 The Services are offered in four (4) editions, namely:

- (a) Essentials – the Initial Subscription Term shall be twelve (12) months and the Renewal Term shall be twelve (12) months (unless otherwise as set out in writing in the e-Commerce Portal at the Subscription Purchase Date).
- (b) Standard – the Initial Subscription Term shall be twelve (12) months and the Renewal Term shall be twelve (12) months (unless otherwise as set out in writing in the e-Commerce Portal at the Subscription Purchase Date).
- (c) Solo – the Initial Subscription Term shall be twelve (12) months and the Renewal Term shall be twelve (12) months (unless otherwise as set out in writing in the e-Commerce Portal at the Subscription Purchase Date).
- (d) Premium – the Initial Subscription Term shall be twenty-four (24) months and the Renewal Term shall be twenty-four (24) months (unless otherwise as set out in writing in the e-Commerce Portal at the Subscription Purchase Date).

3.4 The permitted Services upgrades and downgrades are:

- (a) The 'Essentials' editions may be upgraded at any time to the 'Standard' or 'Premium' editions, if so the Initial Subscription Term will be re-set to a new twelve (12) months period and the Renewal Term shall be twelve (12) months (unless otherwise as set out at the time of the upgrade).
- (b) The 'Standard' and 'Solo' editions may be upgraded at any time to the 'Premium' edition, if so the Initial Subscription Term will be re-set to a new twenty-four (24) months period and the Renewal Term shall be twenty-four (24) months (unless otherwise as set out at the time of the upgrade).
- (c) The 'Standard' and 'Premium' editions cannot be downgraded at any time.

3.5 Any purchased Bolt-on will be activated within the Services no later than seventy-two (72) hours after purchase but will require that the Client's logs out and then back into the Services before such Bolt-on, once activated, can be utilised.

#### **4. Services**

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Client on and subject to the terms of these Terms.

- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available twenty-four (24) hours a day, seven (7) days a week, except for:
- (a) planned maintenance carried out during the maintenance window of Friday 11.00 pm to Monday 7.00 am UK time provided that the Supplier has used reasonable endeavours to give the Client at least fourteen (14) days' notice in advance; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Client at least six (6) Normal Business Hours' notice in advance.
- 4.3 The Supplier will, as part of the Services and at no additional cost, provide the Client with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time when the Services are provided:
- (a) The Client may contact the Supplier in writing to [support@serenonline.org](mailto:support@serenonline.org).
  - (b) The Supplier will use all reasonable commercial endeavours that:
    - (i) all support tickets received within Normal Business Hours will be acknowledged by e-mail within seven (7) hours of receipt; and
    - (ii) tickets received outside of Normal Business Hours will be acknowledged automatically by e-mail with a ticket number and responded to within seven (7) hours of Normal Business Hours.
  - (c) If the Services are not functioning this will be a priority (**P1 Ticket**) and P1 Tickets will be given priority over non-P1 tickets, and whilst the Supplier will aim to resolve all tickets as soon as quickly as is commercially practicable for each respective ticket, the intention is that a P1 Ticket will be resolved within twenty-four (24) hours and all other tickets resolved within seventy-two (72) hours, however the Supplier does not guarantee these timetables and does not guarantee that all tickets can or will be resolved.

The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Client may purchase enhanced support services separately at the Supplier's then current rates.

- 4.4 The Client acknowledges that the upload limit whilst using the Services is 7MB per file.

## 5. Data protection

- 5.1 The following definitions apply in this Clause 5.

**Applicable Data Protection Laws:** means (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

**Applicable Laws:** means (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom and (b) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

**Client Personal Data:** any personal data which the Supplier processes in connection with these Terms, in the capacity of a processor on behalf of the Client.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**Purpose:** the purposes for which the Client Personal Data is processed, as set out in Clause 5.8(a).

**Supplier Personal Data:** any personal data which the Supplier processes in connection with these Terms, in the capacity of a controller.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

For the purposes of this Clause 5 and Schedule 1, the terms **controller, processor, data subject, personal data, special category personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 The parties have determined that, for the purposes of Applicable Data Protection Laws, the roles of the parties are as set out in paragraph 1 of Schedule 1.
- 5.4 Should the determination in Clause 5.3 change, then each party shall work together in good faith to make any changes which are necessary to this Clause 5 or the related schedules.
- 5.5 The Client consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of any personal data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://serenonline.org/privacy-policy/> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and these Terms, the Privacy Policy will take precedence.
- 5.6 Without prejudice to the generality of Clause 5.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to the Supplier by the Supplier for the duration and purposes of these Terms.
- 5.7 In relation to the Client Personal Data, Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.



5.8 Without prejudice to the generality of Clause 5.2 the Supplier shall, in relation to Client Personal Data:

- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process the Client Personal Data for the purposes set out in Schedule 1, unless the Supplier is required by Applicable Laws to otherwise process that Client Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Client Processor Data, the Supplier shall notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Client on important grounds of public interest. The Supplier shall promptly inform the Client if, in the opinion of the Supplier, the instructions of the Client infringe Applicable Data Protection Legislation;
- (b) implement the technical and organisational measures set out in paragraph 3 of Schedule 1 to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality and are appropriately trained in handling Personal Data in accordance with Applicable Laws;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. The Supplier shall promptly inform the Client of any data subject access request or complained received, which relate to processing undertaken by the Supplier under these Terms;
- (e) notify the Client without undue delay but in any event within twenty-four (24) hours of becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of these Terms unless the Supplier is required by Applicable Law to continue to process that Client Personal Data. In such circumstances the Supplier shall notify the Client of the purposes of such processing and what Applicable Laws the Supplier is relying on. Any such processing shall be carried out in accordance with the requirements set out in this Clause 5. For the purposes of this Clause 5.8(f), Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and

- (g) maintain records to demonstrate its compliance with this Clause 5.

5.9 The Client hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Client Personal Data, provided that the Supplier:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this Clause 5;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
  - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Client shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Client Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

5.10 Either party may, at any time on not less than thirty (30) days' notice, revise Clause 5.8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to these Terms).

## **6. Third party providers**

The Client acknowledges that the Services may enable or assist it to access the website content of third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve

any third-party website nor the content of any of the third-party website made available via the Services.

## **7. Supplier's obligations**

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in Clause 7.1.

7.3 The Supplier:

(a) does not warrant that:

(i) the Client's use of the Services will be uninterrupted or error-free; or

(ii) that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; or

(iii) the Software or the Services will be free from Vulnerabilities or Viruses .

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 These Terms shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.

7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

7.6 The Supplier shall follow its archiving procedures for Client Data as set out in its back-up policy (**Back-Up Policy**) as may be notified to the Client from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Client Data

from the latest back-up of such Client Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up for which it shall remain fully liable.

## **8. Client's obligations**

### **8.1 The Client shall:**

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to these Terms; and
  - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Client Data, security access information and configuration services;
- (b) without affecting its other obligations under these Terms, comply with all applicable laws and regulations with respect to its activities under these Terms;
- (c) carry out all other Client responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Terms and shall be responsible for any Authorised User's breach of these Terms;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in these Terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

**8.2** The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

## 9. Charges and payment

9.1 In consideration for the provision of the Services, the Client shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and as set out in writing in the e-Commerce Portal at the Subscription Purchase Date.

9.2 If required, the Client shall on the Effective Date provide to the Supplier, or to the Supplier's chosen payment portal, valid, up-to-date and complete credit card details acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Client provides:

(a) its credit card details to the Supplier, the Client hereby authorises the Supplier to bill such credit card:

(i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term or as otherwise set out in writing in the e-Commerce Portal at the Subscription Purchase Date; and

(ii) subject to Clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period or as otherwise set out in writing in the e-Commerce Portal at the Subscription Purchase Date;

(b) If required as set out in writing in the e-Commerce Portal at the Subscription Purchase Date the Supplier shall invoice the Client:

(i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term or as otherwise set out in writing in the e-Commerce Portal at the Subscription Purchase Date; and

(ii) subject to Clause 14.1, at least thirty (30) days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period or as otherwise set out in writing in the e-Commerce Portal at the Subscription Purchase Date,

and the Client shall pay each invoice within fourteen (14) days after the date of such invoice.

9.3 If the Client reasonably and in good faith disputes its obligation to pay part of any Subscription Fees under these Terms, then notwithstanding anything to the contrary in these Terms:

(a) the Client must notify the Supplier in writing of the amount of the Subscription Fees which it disputes being obligated to pay (**Disputed Amount**) and the reasons why it considers it is not obligated to pay the Disputed Amount;

(b) the Client's failure to pay the Disputed Amount will be deemed not to be a breach of these Terms;

(c) the Client must pay the undisputed amount of any Subscription Fees to the Supplier in accordance with these Terms; and

- (d) the parties must as soon as reasonably practicable discuss and use their respective reasonable endeavours to agree how much of the Disputed Amount is payable to the Supplier.
- 9.4 Subject to Clause 9.3, if the Supplier has not received payment within fourteen (14) days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - (a) the Supplier may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5 All amounts and fees stated or referred to in these Terms:
  - (a) shall be payable in pounds sterling;
  - (b) are, subject to Clause 14.2, non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.6 The Supplier's fair use policy for disk storage space usage whilst using the Services is 2 GB in total. Additional storage will be chargeable as set out in writing in the e-Commerce Portal at the Subscription Purchase Date.
- 9.7 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Clause 3.3 at the start of each Renewal Period upon seven (7) days' prior notice to the Client.

## **10. Proprietary rights**

- 10.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these Terms do not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms.

## 11. Confidentiality

**11.1 Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of these Terms including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (b) any information developed by the parties in the course of carrying out these Terms and the parties agree that:
  - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
  - (ii) Client Data shall constitute Client Confidential Information.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

**11.2** The provisions of this Clause 11 shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause 11);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed.

**11.3** Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with these Terms (**Permitted Purpose**); or

- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 11.
- 11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
  - (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause 11.
- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms are granted to the other party, or to be implied from these Terms.
- 11.8 On termination or expiry of these Terms, each party shall:
  - (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - (c) certify in writing to the other party that it has complied with the requirements of this Clause 11.8, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 11.8(c) shall continue to apply to any such documents and materials retained by a recipient party, subject to Clause 14 (Termination).



- 11.9 No party shall make, or permit any person to make, any public announcement concerning these Terms without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.10 Except as expressly stated in these Terms, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 11.11 The above provisions of this clause 11 shall continue to apply after termination or expiry of these Terms.

## **12. Indemnity**

- 12.1 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Documentation, provided that:
- (a) the Client is given prompt notice of any such claim;
  - (b) the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - (c) the Client is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Services or Documentation in accordance with these Terms infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
  - (b) the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms on two (2) Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
  - (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by the Supplier; or
  - (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing and Clause 13.3(b) states the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and Sub-Contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **13. Limitation of liability**

13.1 Except as expressly and specifically provided in these Terms:

- (a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and
- (c) the Services and the Documentation are provided to the Client on an "as is" basis.

13.2 Nothing in these Terms excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3 Subject to Clause 13.1 and Clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at Clause 12.2), tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Subscription Fees paid for the User Subscriptions during the three (3) months immediately preceding the date on which the claim arose.

13.4 Nothing in these Terms excludes the liability of the Client for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

#### **14. Term and termination**

14.1 These Terms shall, unless otherwise terminated as provided in this Clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these Terms shall be automatically renewed for the successive periods set out in Clause 3.4 (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Subscription Term or any Renewal Period, in which case these Terms shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of these Terms;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 The Supplier reserves the right in its sole discretion to at any time immediately reject the Client and terminate these Terms if the business or activities of the Client are in conflict with the business or activities of any existing client of the Supplier. If so, the Supplier shall refund the Client any Subscription Fees it has paid for any remaining unused period of the Initial Subscription Term or any Renewal Period, as the case may be.

14.3 Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of these Terms and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections

123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 14.3(c) to Clause 14.3(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Terms is in jeopardy; or
- (n) there is a change of control of the other party.

14.4 On termination of these Terms for any reason:

- (a) all licences granted under these Terms shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;

- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Client Data in its possession unless the Supplier receives, no later than seven (7) days after the effective date of the termination of these Terms, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within thirty (30) days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**15. Force majeure**

Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for thirty (30) days, the party not affected may terminate these Terms by giving thirty (30) days' written notice to the affected party.

**16. Conflict**

If there is an inconsistency between any of the provisions in the main body of these Terms and the Schedules, the provisions in the main body of these Terms shall prevail.

**17. Variation**

No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. Waiver**

18.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **19. Rights and remedies**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

## **20. Severance**

20.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.

20.2 If any provision or part-provision of these Terms is deemed deleted under Clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21. Entire agreement**

21.1 These Terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

21.4 Nothing in this Clause 21 shall limit or exclude any liability for fraud.

## **22. Assignment**

22.1 The Client shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

## **23. No partnership or agency**

Nothing in these Terms is intended to or shall operate to create a partnership between the parties or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not

limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**24. Third party rights**

These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**25. Governing law**

These Terms 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 interpreted in accordance with the law of England and Wales.

**26. Jurisdiction**

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 these Terms or its subject matter or formation (including non-contractual disputes or claims).

## **Schedule 1      Mandatory Policies**

The Supplier's Mandatory Policies are:

- *Modern Slavery and Human Trafficking Policy* - <https://serenonline.org/privacy-policy/#my-tabs|3>
- *Corporate and Social Responsibility Policy* - <https://serenonline.org/privacy-policy/#my-tabs|2>
- *Data and Privacy Policy* - <https://serenonline.org/privacy-policy/#my-tabs|0>
- *Ethics and Anti-Bribery Policy* - <https://serenonline.org/privacy-policy/#my-tabs|4>
- *Cookie Policy* - <https://serenonline.org/privacy-policy/#my-tabs|1>



## **Schedule 2 Data Processing Schedule**

### **1. Parties' roles**

The Client is the controller and the processor of personal data of 3rd parties collected pursuant to the Services.

The Supplier is the processor in its capacity of providing the Services.

### **2. Particulars of processing**

#### **2.1 Scope**

Personal data is collected by the Supplier and is processed so that the Supplier may provide the Services.

#### **2.2 Nature**

- Storage of personal data
- Collating, structuring, adapting and anonymising personal data
- Transfer of personal data to affiliated companies and third party service providers
- Erasing or destroying personal data

#### **2.3 Purpose of processing**

The provision of the Services.

#### **2.4 Duration of the processing**

The term of these Terms and for six (6) years after its termination except that all personal data of 3<sup>rd</sup> parties collected pursuant to the Services will be deleted within forty-five (45) days after the end of the term of these Terms.

#### **2.5 Types of personal data**

Client:

- name and contact information, including email address and telephone number and company details and job title;
- information to check and verify identity such as date of birth;
- gender;
- location data;
- information about how they use the Supplier's Services, website, IT, communication and other systems;
- responses to surveys; and

- such other data that the Supplier collects as part of the Services.

personal data of 3rd parties collected as part of the Services:

- name and contact information, including email address and telephone number and company details and job title;
- information to check and verify identity such as date of birth;
- gender;
- location data;
- all other personal data that the Client collects as part of the Services which may include special category personal data which is personal data revealing such aspects as racial or ethnic origin, political opinions, religious or philosophical beliefs, health-related data and data concerning a person's sex life or sexual orientation.

**2.6 Categories of data subject**

- The Supplier's clients and their employees.
- 3<sup>rd</sup> parties whose personal data is collected and processed by the Client whilst using the Services.

**3. Technical and organisational measures**

In accordance with Applicable Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Client's personal data to be carried out under or in connection with these Terms, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Client's personal data transmitted, stored or otherwise processed, the Supplier shall implement appropriate technical and organisational security measures appropriate to the risk.