

Subscriber Agreement

This Agreement (the “Agreement”) governs the use of any and all Adaptive Business Management Systems Limited™ Services by the company or organization named in the Order Form (or another form of registration) completed or submitted by you (as defined below, “Subscriber”). By executing and returning to Adaptive Business Management Systems Limited an Order Form, or by clicking the check-box during the registration process (“I accept the terms”) or otherwise using the Services, you expressly agree on behalf of Subscriber to be bound by and comply with this Agreement. If you are not authorised to enter into this Agreement on behalf of Subscriber or Subscriber does not agree to be bound by any term or condition contained in this Agreement, do not use the Services. This Agreement is effective as between Subscriber and Adaptive Business Management Systems Limited from the earliest date on which you returned to Adaptive Business Management Systems Limited an executed Order Form, clicked the check-box during the registration process or otherwise started to use the Services.

1. Definitions & Interpretations

1.1 "API" means the Adaptive Business Management Systems Limited Application Program Interface and associated documentation.

1.2 “Account Administrator” means the individual(s) appointed by Subscriber to manage the Workspaces and Users on behalf of the Subscriber. All Account Administrators must be employees of Subscriber.

1.3 “Content” means all documents, files, electronic media, calendar dates, discussions, tasks, meetings, telephone and web conference details and whiteboards, visual, written or audible data, information or material that is entered into, uploaded to, posted, transmitted or displayed through the Services by Subscriber or any User, including, without limitation, any hyperlink, graphic, artwork, video, music, text, image, logo, document, spreadsheet, presentation, text message, form entry, web page or other data.

1.4 “Adaptive Business Management Systems Limited End User License Agreement” means the online agreement that governs the use of Services by Users other than employees and agents of Subscriber, it being understood and agreed that the use of Services by Subscriber’s employees and agents shall be governed instead by the terms of this Agreement.

1.5 “Intellectual Property Rights” means all right, title, and interest in and to any copyright, database, design, logo, trademark, service mark, patent, invention, trade secret, domain name, confidential and proprietary information, know-how, technology, business name, trade name, trade dress, technical solutions, associated right to sue (past, present, and future), and any other intellectual property rights whether existing at common law, applied for,

registered or unregistered and all extensions, renewals, continuations, continuations in part, divisionals, reissues, re-examinations, and revivals thereof and existing anywhere in the world.

1.6 “Order Form” means any written or electronic document or registration form for placing orders for the Services and any addenda or amendments thereof, entered into contemporaneously with this Agreement or from time to time thereafter. Each Order Form shall be governed by and deemed to incorporate the terms and conditions contained herein, except as otherwise expressly provided in the Order Form. Each Order Form will describe all of the Services that Adaptive Business Management Systems Limited agrees to make available to Subscriber.

1.7 “Package” means the level of the Services Subscriber has been licensed to use, as provided on the Order Form, which details the features and limits to the features Subscriber is permitted to use.

1.8 “Services” means, collectively, the computer applications, interfaces, software, programs, products, services and websites provided or made available by Adaptive Business Management Systems Limited and its affiliates pursuant to any Order Form, including provision of access to the Website for, among other things, creating and managing Workspaces.

1.9 “Subscriber” means the company, organization, employer or other legal entity named in each Order Form and for whom Adaptive Business Management Systems Limited provide the Services pursuant to this Agreement.

1.10 “User” means an individual who has completed the user registration process and created a user account at the Website. This includes any individual that Adaptive Business Management Systems Limited create a user account for at Subscriber’s direction and any individual invited by Subscriber to become a user.

1.11 “Website” means the website at <http://www.adaptivebms.com>; <https://adaptivebms.com> and any other URLs maintained by Adaptive Business Management Systems Limited for the purpose of making the Services accessible to Users.

1.12 “We/Us/Our/Adaptive Business Management Systems Limited” means the Adaptive Business Management Systems Limited company described in Section 14 ‘Governing Law; Jurisdiction’.

1.13 “Workspace” means an interface within the Website configured for Users authorised by Subscriber to upload, manage and share files and information including Content.

1.14 In this Agreement, unless the context requires otherwise, any phrase introduced by the words “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words, and references to the singular include the plural and in each case vice

versa.

1.15 The headings and subheadings in this Agreement are inserted for convenience only and shall not affect the meaning of this Agreement.

2. Grant of Licence; Proprietary Rights

2.1 Subject to the terms of this Agreement, Adaptive Business Management Systems Limited hereby grants to Subscriber a non-transferable, non-exclusive, non-sublicensable limited term right and licence to access and use, and to authorise and permit Users to access and use, the Services, solely as provided in each Order Form. Except for the rights specifically granted under this Agreement, Subscriber is not given any right, title or interest in or to the Services or Website, and Adaptive Business Management Systems Limited expressly reserve all such rights, title and interests.

2.2 As between the parties, Adaptive Business Management Systems Limited shall hold title to all Intellectual Property Rights in and to the Services and Website. Such Intellectual Property Rights may only be used by Subscriber in the manner stated in this Agreement and Order Form. Under no circumstances shall Subscriber or a third party acquire any Intellectual Property Rights to the Services or Website. Access to the Services and Website is licenced, and not sold, on the terms set out in this Agreement.

2.3 Subscriber agrees that it shall not do or permit or authorise any Users to do any of the following acts:

Modify, translate, amend or otherwise alter the Services or Website;
Attempt to decompile, reverse engineer or otherwise disassemble, or create derivative works of or from any part of the Services or Website;
Redistribute, encumber, sell, rent, lease or otherwise transfer any Services or portion of the Website, including in a timeshare or service bureau relationship; or
Remove, alter, or destroy from the Services or Website any logo, copyright or proprietary notices, legends, symbols, labels, watermarks, signatures or any other like marks affixed to or embedded therein.

2.4 All Content shall remain the Subscriber's sole property or the property of its respective legal owner. Adaptive Business Management Systems Limited shall have no liability for such Content. By uploading third party content, Subscriber represents and warrants that it has obtained all necessary licences, permissions, consents and agreements necessary for the lawful use of such third party content by Adaptive Business Management Systems Limited and by third parties in accordance with this Agreement and in order for Adaptive Business Management Systems Limited to provide the Services. Subscriber acknowledges and agrees Adaptive Business Management Systems Limited does not control the Content posted by Users and does not guarantee the accuracy, integrity or quality of such Content. Subscriber agrees that Subscriber must evaluate, and bear all risks associated with, the use of any third-party Content, including any reliance on the accuracy, completeness, or

usefulness of such Content. Under no circumstances will Adaptive Business Management Systems Limited be liable in any way for any third-party Content, including, but not limited to, any errors or omissions in any third-party content, or any loss or damage of any kind incurred as a result of the use of any third party Content posted, emailed, transmitted or otherwise made available via the Services or Website.

2.5 Subscriber agrees to use the Services within the parameters of the Package Subscriber has purchased. Adaptive Business Management Systems Limited reserves the right to terminate the Services immediately on breach of this clause and Adaptive Business Management Systems Limited are under no obligation to provide a refund in full or in part for the fees paid.

3. Digital Millenium Copyright Act (applicable if domiciled in the United States of America only)

3.1 We will not knowingly publish content in violation of applicable copyright law. If you believe content has been displayed, reproduced, printed or otherwise distributed by us through this website in violation of any third party copyright, please notify us in writing. Send your notice to Adaptive Business Management Systems Limited, attention: Head of Business Operations, and lude the following:

An electronic or physical signature of a person authorized to act for the copyright owner
description of the copyrighted work

description of where the infringing content is located on this website

your office or home address, telephone number and email address

a statement of good faith belief that the use of the work is not permitted by the copyright owner, and

a statement under penalty of perjury that the above is true and you are authorized to act for the owner.

You acknowledge that if you fail to comply with all the requirements of this Section, your DMCA notice may not be valid.

4. Availability of Service

4.1 The Services are normally available over the Internet around the clock. Adaptive Business Management Systems Limited shall be entitled to take measures that affect the aforementioned accessibility when Adaptive Business Management Systems Limited deems such to be necessary for technical, maintenance, operational, or security reasons. Adaptive Business Management Systems Limited guarantee at least 99% total uptime of the Service, as measured over a rolling 3 month (90 day) period by a reputable external monitoring service of our choice from time to time. This excludes any planned maintenance periods as described below. Availability is currently measured as continuous availability of the Adaptive Business Management Systems Limited login page, tested regularly from multiple global locations. Adaptive Business Management Systems Limited will make available the official uptime reports to Subscriber on request. Adaptive Business Management Systems Limited

will endeavour to carry out any such planned maintenance outside of normal UK and US office hours. Backups of the Adaptive Business Management Systems Limited file store are carried out regularly. Full backups of the Adaptive Business Management Systems Limited database are carried out regularly. All backups are held for >3 month period. Any problems experienced by Subscriber in accessing the Service should be reported to Adaptive Business Management Systems Limited online support system at support@adaptivebms.com. A support ticket will be raised automatically by Our system which Subscriber can use to track the progress of the reported problem and resolution against it.

4.2 Adaptive Business Management Systems Limited assumes no responsibility for technical support or problems arising from or relating to third party systems, equipment owned or maintained by Subscriber or any Users, or the administration of email addresses or the email account of any User.

4.3 Adaptive Business Management Systems Limited agree to take commercially reasonable steps to maintain the Services in a secure manner. If a security flaw is detected with respect to which Adaptive Business Management Systems Limited has reason to believe the security or integrity of Content or account information of Subscriber's Users may be affected, Adaptive Business Management Systems Limited shall use reasonable efforts to notify Subscriber promptly of such defect and any related remedial steps Adaptive Business Management Systems Limited propose to take.

4.4 Adaptive Business Management Systems Limited reserve the right at any time and from time to time to reasonably modify or discontinue, temporarily or permanently, the Services or Website (or any part thereof), including but not limited to modifications to the design, operational method, technical specifications, systems, and other functions, however, any changes will not materially limit your ability to share files and documents. Subscriber agrees that Adaptive Business Management Systems Limited shall not be liable to Subscriber or to any third party for any modification, suspension, or discontinuance of the Services or Website (except for refunding to Subscriber any prepaid fees corresponding to the period following any permanent discontinuance of Services other than due to Subscriber's breach).

4.5 Services may be performed by Our affiliates or subcontractors in Our discretion, provided that Adaptive Business Management Systems Limited shall be responsible for compliance with and performance of this Agreement by any such persons and such persons will be under the same confidentiality provisions as set forth in this Agreement.

4.6 The Services or Website may contain links to third-party websites that are not owned or controlled by Adaptive Business Management Systems Limited. These links are provided solely for Users' convenience. Adaptive Business Management Systems Limited has no control over any linked third party sites, are not responsible for the content of such sites, and make no representations or warranties with respect to such sites.

5. Subscriber Obligations

5.1 Subscriber agrees to reasonably:

appoint at least one Account Administrator

provide true, accurate, current and complete information about Users who access the Services on Subscriber's behalf ("Subscriber's Users") as prompted by the registration process, including Users' identity and a correct and legitimate email address (the "Registration Data");

maintain and promptly update the Registration Data to keep it true, accurate, current and complete;

cause Subscriber's Users to maintain the security of their login credential(s); and consent and authorise Adaptive Business Management Systems Limited to verify any Registration Data. If Subscriber or a User provides any information that is untrue, inaccurate, not current or incomplete, or Adaptive Business Management Systems Limited have a reasonable belief that such information is untrue, inaccurate, not current, or incomplete, Adaptive Business Management Systems Limited has the right to suspend or terminate the relevant User accounts and refuse any current or future use of the Services or Website.

5.2 Subscriber acknowledges, consents, and agrees that Adaptive Business Management Systems Limited may access, preserve and disclose Subscriber's account information and Content if and solely to the extent required to do so by law or in good faith belief that such access, preservation, or disclosure is reasonably necessary to:

respond to Subscriber's requests for service;

comply with legal process;

enforce this Agreement;

respond to claims that Subscriber's Content violates the rights of third parties; or

protect the rights, property, or personal safety of Adaptive Business Management Systems Limited, other Users, or the public.

Where Adaptive Business Management Systems Limited is required to access and disclose Subscriber's account information and Content, Adaptive Business Management Systems Limited will use commercially reasonable efforts, to the extent Adaptive Business Management Systems Limited are permitted to do so, to give Subscriber as much notice of this disclosure as possible.

5.3 Subscriber agrees to notify Adaptive Business Management Systems Limited

immediately of any unauthorised use of Subscriber's account, the login credentials of any of Subscriber's Users, or any other breach of security. Subscriber may be held liable for losses incurred by Adaptive Business Management Systems Limited or any User of the Services or Website due to someone else using the Registration Data.

5.4 Subscriber represents that Subscriber is authorised to receive the Services under the laws of the geographical jurisdictions in which Subscriber and Subscriber's Users are located. Subscriber shall be responsible for all activities, communications and transactions of Subscriber and Subscriber's employees and agents conducted through the use of the Services and Website and their compliance with applicable national, federal, state and local

laws.

5.5 Subscriber agrees that Adaptive Business Management Systems Limited may lude Subscriber's company name and/or logo among our clients listed in Our marketing materials, including the Website. Nothing herein shall require Subscriber to endorse the Services.

5.6 Subscriber agrees not to:

Use or launch any automated system, including without limitation, "robots", "spiders" or "offline readers" that accesses the Services or Website in a manner that sends more request messages to Our servers in a given period of time than a single human can reasonably produce in the same period by using a conventional online web browser;

Collect or harvest any personally identifiable information, including names, from the Services or Website;

Use any information provided in the Services or Website for the sending of spam, bulk email messages or bulk instant messages for marketing or other purposes other than internal business use;

Use any part of the Services or Website to upload, post, email, or transmit viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other software, files or programs that may interrupt, damage, destroy or limit the functionality of any computer software or hardware or network equipment;

Use any part of the Services or Website to pretend to be Adaptive Business Management Systems Limited or someone else or otherwise misrepresent the identity or affiliation of a User or attempt to disguise the origin of any Content;

Use the Services, Website or any part thereof to violate or infringe anyone's Intellectual Property Rights;

Interfere with or disrupt the Website, servers, or networks connected to the Website, or disobey any requirements, procedures, policies, or regulations of networks connected to the Website;

Upload, post, email, transmit, or otherwise make available any Content that Adaptive Business Management Systems Limited, in our sole discretion, deem to be unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, inflammatory, hateful, or racially, religiously, ethnically, or otherwise objectionable, or harmful to minors;

Attempt to gain unauthorised access to the Services or Website or any portion or feature of thereof, or any other systems or networks connected to the Website or to any of Our servers; Probe, scan, or test the vulnerability of the Website or any network connected to the Website (except with Adaptive Business Management Systems Limited express prior written consent and cooperation for security testing purposes only), nor breach the security or authentication measures on the Website or any network connected to the Website;

Take any action that imposes an unreasonable load on the Services or Website or on Adaptive Business Management Systems Limited infrastructure or networks or any networks connected to the Website;

Use the Services or Website in order to obtain material which per se or if sent to another party might injure the reputation of a third party, or in any manner which may result in the infringement of any third party's Intellectual Property Rights, or which constitutes

dissemination of business secret, or may incite a third party to commit or participate in a crime, or maybe understood as constituting a threat, or to use the Services in any other manner incompatible with the purpose thereof; or

Provide access to the Services or Website to anyone else other than Users.

5.7 Both parties agree that a breach of this Agreement by either party may cause the other party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, the other party shall have the right to seek specific performance and other injunctive and equitable relief.

6. API Terms

6.1 Subscriber is granted a limited, non-sub-licensable right to access the API, the Services and Data for the purpose of enabling Subscriber and users it authorizes to access the Adaptive Business Management Systems Limited Services via 3rd party software or website. Any use of the API, including use of the API through third-party software or website that accesses the Services, is subject to the terms of this Agreement plus the following specific terms:

6.2 Subscriber agrees that Subscriber is solely responsible for (and that Adaptive Business Management Systems Limited have no responsibility to Subscriber or to any third party for) any services and/or products Subscriber provide or use through any 3rd party software.

6.3 Subscriber expressly understand and agree that Adaptive Business Management Systems Limited shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Adaptive Business Management Systems Limited has been advised of the possibility of such damages), resulting from Subscriber use of the API or third-party products that access data via the API.

6.4 Subscriber will not collect any users' personal information or data in a misleading, illegal, unauthorised or unfair way. Without limiting the generality of the foregoing, Subscriber will never collect, store or record passwords used by users' to log-in to the Services. If users need a separate password to use Subscriber software Subscriber will generate a unique password and securely communicate it to the user. Subscriber agrees that any 3rd party software shall be provided by Subscriber in compliance with all applicable laws and regulations (including without limitation those relating to the protection of privacy and the processing of personal data or traffic data).

6.5 Subscriber will not use the API to create software that sends unsolicited communications (whether commercial or otherwise) to any third party.

6.6 Adaptive Business Management Systems Limited reserve the right at any time to modify or discontinue, temporarily or permanently the API (or any part thereof). Where Adaptive Business Management Systems Limited permanently discontinues the API, Adaptive Business Management Systems Limited will continue to provide appropriate levels of support to ensure the continuance of the API which has just been replaced for a period not less than 6 months to be determined by Adaptive Business Management Systems Limited, in our sole discretion.

6.7 Abuse or excessively frequent requests to the Services via the API may result in the temporary or permanent suspension of Subscriber account's access to the API. Adaptive Business Management Systems Limited, in our sole discretion, will determine abuse or excessive usage of the API.

6.8 Adaptive Business Management Systems Limited retains the right to the Services, including the API. In no way will Subscriber pass off, market or otherwise make representations that the Adaptive Business Management Systems Limited brand, Services or Website is owned or otherwise connected with Subscriber. Subscriber must make it clear that Subscriber is allowing access to the Adaptive Business Management Systems Limited API via an independent 3rd party piece of software and must prominently display the following text: "This product uses the Adaptive Business Management Systems Limited API but is not endorsed, certified or otherwise approved in any way by Adaptive Business Management Systems Limited". Subscriber shall not have any rights to use Adaptive Business Management Systems Limited trademarks or logos, save for a limited right to display the "Powered by Adaptive Business Management Systems Limited" button on the main screen of the software or website that uses the Adaptive Business Management Systems Limited API, as can be seen on the Adaptive Business Management Systems Limited website and Services. This button must be in the form of a URL that links directly back to <https://adaptivebms.com>:

6.9 Adaptive Business Management Systems Limited reserves the right to limit Subscriber access to the API or the number of calls Subscriber software can otherwise make to it, except solely as agreed in a separate written order.

6.10 Adaptive Business Management Systems Limited reserve the right to make information about any software or website that uses the API available to our users on our Website and any other marketing collateral.

7. Confidentiality

7.1 "Confidential Information" means any and all information disclosed by or at the direction of either party to the other in connection with the provision or use of Services under this Agreement, including, without limitation, information relating to the business, operations, technology, properties, employees and customers of the disclosing party. Without limiting the foregoing, as between the parties, all Content shall be treated as Subscriber's Confidential Information. Notwithstanding the foregoing, "Confidential Information" does not lude any information that a receiving party can demonstrate was known to it prior to the information's disclosure in connection with the provision or use of the Services; is or becomes known publicly through no wrongful act of the receiving party; was rightfully received from a third party under no contractual, legal or fiduciary obligation to keep such information confidential; or was independently developed by the receiving party, without the use of any Confidential Information.

7.2 Each receiving party agrees that it shall use Confidential Information of the disclosing party solely in furtherance of the performance of this Agreement and for no other purpose. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances with less than reasonable care. Each party agrees not to disclose the other party's Confidential Information to any person or entity other than: (i) to employees, agents, subcontractors or consultants of the receiving party on an as-needed basis, provided such persons have entered into written confidentiality agreements consistent with this Section 7 or

otherwise are bound under substantially similar confidentiality restrictions; (ii) with respect to Subscriber Confidential Information, as authorised by Subscriber; (iii) to the extent required by court order, legal process, governmental or exchange regulation or applicable law, provided that the party required to disclose the information provides prompt advance written notice thereof (to the extent permitted by law) to the other party; or (iv) otherwise solely as expressly authorised in writing by the disclosing party. Notwithstanding any provision hereof to the contrary, Adaptive Business Management Systems Limited may use and disclose anonymous, aggregated data and statistics regarding use of the Services, provided no individual organization or person can be identified and no Content is disclosed in connection with such data and statistics.

7.3 Each party acknowledges and agrees with the use or disclosure of Confidential Information inconsistent with this Agreement could cause irreparable harm to a disclosing party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any remedies available at law, any non-breaching party shall have the right to obtain immediate injunctive relief, without the necessity of posting a bond, in the event of a breach or threatened breach of this Section 7 by the other party, any of its affiliates or their representatives. This Section 7 shall survive the termination or expiration of this Agreement.

8. Warranties

8.1 Adaptive Business Management Systems Limited warrants, to the best of its knowledge after implementing reasonable measures, that components of the Services and Website made accessible to Subscriber do not contain viruses, worms, code or other third party computer code intentionally designed to disrupt, disable, or harm the operation of Subscriber's computer systems. Adaptive Business Management Systems Limited further warrants, to the best of Our knowledge, that the Services do not infringe any third party trade secret, copyright, issued patent or trademark. OTHER THAN THE FOREGOING, THE SERVICES AND WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. Adaptive Business Management Systems Limited MAKE NO WARRANTY THE SERVICES WILL BE ERROR-FREE OR AVAILABLE AT ALL TIMES, NOR DO Adaptive Business Management Systems Limited WARRANT THE COMPATIBILITY OR OPERATION OF THE SERVICES WITH ALL SUBSCRIBER OR USER SITES, HARDWARE OR SOFTWARE CONFIGURATIONS. EXCEPT AS SET FORTH IN THIS SECTION 8, Adaptive Business Management Systems Limited MAKES AND SUBSCRIBER RECEIVES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING OR RELATING TO THE SUBJECT MATTER HEREOF. Adaptive Business Management Systems Limited DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SUBJECT MATTER HEREOF. SUBSCRIBER HEREBY ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY, CONDITION, GUARANTY OR REPRESENTATION BY Adaptive Business Management Systems Limited OR ITS REPRESENTATIVES OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

The entire and exclusive remedy for breach of this Limited Warranty shall be, at Our option, either:

the return of the relevant license fee paid, or
to repair, upgrade, or otherwise enhance the performance of Adaptive Business Management Systems Limited to address the failure of performance.

9. Indemnification

9.1 Subscriber agrees to indemnify and hold harmless Adaptive Business Management Systems Limited and its subsidiaries, affiliates, directors, officers, agents, and employees from and against any losses, damages, costs or expenses (including reasonable legal fees, expert fees, and other costs of litigation) (collectively, "Losses") arising from or related to any third party claim, demand, or action (an "Action") based upon:

Content Subscriber or Subscriber's Users submit, post, transmit, or otherwise make available through the use of the Services or Website,
Subscriber's violation of this Agreement, or
Subscriber's violation of any rights of another, except, in any case, to the extent such Action is based on Our breach of this Agreement, willful misconduct or negligence

9.2 Adaptive Business Management Systems Limited agree to indemnify and hold harmless Subscriber, its subsidiaries affiliates, directors, officers, agents and employees from and against any Losses arising from or related to any Action based upon infringement by Adaptive Business Management Systems Limited of any third-party trade secret, copyright, issued patent or registered trademark, except to the extent such infringement is attributable to the use or publication of Content (an "Infringement Claim"); or
breach of Our obligations under Section 7 (confidentiality), except, in any case, to the extent such Action is based on Subscriber's breach of this Agreement, willful misconduct or negligence. In the event of an Infringement Claim, Adaptive Business Management Systems Limited may mitigate any Losses indemnified hereunder by any of the following actions:
procure for Subscriber the necessary right to continue using the Services;
replace or modify any infringing portion of the Services with a functionally equivalent non-infringing substitute thereof;
modify the Services so as to be non-infringing; or
if none of the foregoing is commercially reasonable, terminate this Agreement (and in the event of such termination, Subscriber shall be entitled to a refund of any prepaid fees for the unexpired portion of any Order Form).

9.3 Indemnification under subsections 9.1 and 9.2 hereof will be provided only on the conditions that: (i) the indemnifying party is given written notice promptly after the indemnified party receives notice of the subject Action; provided, however, that late notice shall only excuse the indemnifying party from its obligations hereunder if such late notice materially prejudices the indemnifying party; (ii) the indemnifying party has sole control of the defence and all related settlement negotiations, provided any settlement that would impose any monetary or injunctive obligation upon the indemnified party shall be subject to such

party's prior written approval; and (iii) the indemnified party provides cooperation and information in furtherance of such defence, as reasonably required by the indemnifying party. This Section 9 shall survive the termination or expiration of this Agreement.

10. Limitation of Liability

10.1 EXCEPT FOR CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) AND CLAIMS BASED ON WILLFUL MISCONDUCT OR FRAUD, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, LOSS OF DATA OR BUSINESS OR OTHER INTANGIBLE LOSSES (EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

10.2 EXCEPT FOR CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH), CLAIMS BASED ON WILLFUL MISCONDUCT OR FRAUD, AND CLAIMS FOR INDEMNIFICATION UNDER SECTION 9, THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY DIRECT DAMAGES ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE THE AMOUNT OF FEES AND OTHER CHARGES PAID OR PAYABLE BY SUBSCRIBER DURING THE TWELVE MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM.

11. Term & Termination

11.1 This Agreement shall remain in effect while any performance by either party remains to be completed under any Order Form, subject to termination in accordance with subsection 11.2. Except as otherwise expressly provided in any Order Form, upon the termination of this Agreement, all Services shall cease and Subscriber and Subscriber's Users will discontinue use of the Services and Website. All Content is to be removed by Subscriber prior to termination date or end date on any Order Form.

11.2 Either party may terminate this Agreement immediately upon written notice if the other party: (i) becomes the subject of a petition in bankruptcy which is not withdrawn or dismissed within 60 days thereafter; (ii) makes an assignment for the benefit of creditors; or (iii) breaches any material obligation under this Agreement and fails to cure such breach within 30 days after delivery of notice thereof by the non-breaching party. Otherwise, Subscriber's contract shall automatically renew at the end of each fixed-term time period for a further 12 months or on the contract end date as indicated on your Order Form, unless

Subscriber gives Adaptive Business Management Systems Limited notice in writing that Subscriber wishes the contract to expire at the end of the current pre-arranged fixed-term period, not less than 90 days before the end of such fixed-term period.

12. Fees and Payment for Services

12.1 All Fees are payable in advance, either annually in advance or in accordance with any different payment terms as stated in the applicable Order Form. Subscriber shall pay all fees specified in all Order Forms hereunder. Once an Order Form is executed by Subscriber and accepted by Adaptive Business Management Systems Limited the Order and payment obligations thereunder are non-cancellable, and fees paid are non-refundable. Failure to pay Adaptive Business Management Systems Limited the agreed amount within the agreed payment terms may result in the Services being made unavailable to Subscriber or legal action being taken to secure any outstanding fees. Subscriber shall also be liable for any additional costs, including legal costs, incurred by Adaptive Business Management Systems Limited to secure such fees.

12.2 Fees stated on Order Forms exclude any applicable sales and use taxes, value-added tax or other taxes relating to the provision or use of the Services. Subscriber is responsible for the payment of all such taxes and taxes applicable to the territory the Subscriber resides in.

12.3 Orders can be paid by bank transfer, check or credit or debit card. Orders for £1,200GBP or \$1,800USD or less (or such other minimum amounts as Adaptive Business Management Systems Limited may establish from time to time) are payable by a valid debit or credit card only, and Subscriber's debit or credit card details are required to be entered on the Order Form. A 5% handling fee may be added to the Order value for Orders paid for by debit or credit card. If you provide Adaptive Business Management Systems Limited with debit or credit card details, you authorise Adaptive Business Management Systems Limited to charge such debit or credit card for all fees listed in the Order Form as soon as practicable by Adaptive Business Management Systems Limited.

12.4 Unless paid for by debit or credit card, fees are payable 30 days from the invoice date, unless an alternative, agreed terms are stated on the Order Form and Subscriber is responsible for providing Adaptive Business Management Systems Limited with complete and accurate billing and contact information and notifying Adaptive Business Management Systems Limited of any changes to such information.

12.5 If any amount owing by Subscriber under an Order is 30 or more days overdue (or 10 or more days overdue in the case of Orders Subscriber has authorised Adaptive Business Management Systems Limited to charge Subscriber's debit or Credit card), Adaptive Business Management Systems Limited may, without limiting Our other rights and remedies, suspend Subscriber's account and Subscriber's Users' access to the Services until such

amounts owing are paid in full.

13. Miscellaneous

13.1 Modification. Adaptive Business Management Systems Limited reserve the right to amend this Agreement at any time by notifying Subscriber as provided in this Agreement provided that no notice shall be required for non-substantive changes to the Agreement. If Adaptive Business Management Systems Limited substantively amends this Agreement, Adaptive Business Management Systems Limited will post the updated Agreement on the website at least seven (7) days notice before the changes take effect during which period of time you may reject the changes by terminating your account. If Subscriber does not agree to any of these terms or any future Agreement, then the Subscriber is not to use or access (or continue to access) the Services or Website. No failure or delay by either party in exercising any right, power, or remedy hereunder shall operate as a waiver of such right, power, or remedy.

13.2 Remedies. The provisions of this Agreement are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. Subscriber agrees that any breach of this Agreement may cause Adaptive Business Management Systems Limited substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, Adaptive Business Management Systems Limited shall have the right to seek specific performance and other injunctive and equitable relief. In the event that Subscriber use the Services or Website for commercial purposes in breach of this Agreement, Subscriber agrees that Adaptive Business Management Systems Limited shall be entitled to any proceeds that Subscriber has obtained from such activity, without prejudice to other rights or remedies Adaptive Business Management Systems Limited may have against Subscriber.

13.3 Independent Contractors; No Third-Party Beneficiaries. The parties are independent contractors with respect to each other, and neither shall be deemed an employee, agent, partner or legal representative of the other for any purpose or shall have any authority to create any obligation on behalf of the other. No third-party beneficiary rights are granted as a result of or pursuant to this Agreement.

13.4 Force Majeure. Any delay in or failure of performance by either party under this Agreement will not be considered a breach and will be excused to the extent caused by any event beyond the reasonable control of such party including, but not limited to, acts of God, acts of civil or military authorities, strikes or other labour disputes, fires, interruptions in telecommunications or Internet or network provider services, power outages, and governmental restrictions.

13.5 Entire Agreement; Severability. This Agreement supersedes all prior agreements, understandings, representations, warranties, proposals, requests for proposal and negotiations, if any, related to the subject matter hereof. Each provision of this Agreement is severable from each other provision for the purpose of determining the enforceability of any specific provision. This Section 13 shall survive the termination or expiration of this Agreement.

13.6 Assignment. Except as otherwise provided below, neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party. Either party shall have the right to assign this Agreement without the consent of the other party: (a) to any affiliate of such party; or (b) in connection with the merger, reorganization or acquisition of such party or the sale of all or substantially all of its assets related to this Agreement. Any purported assignment of this Agreement in violation of this subsection shall be invalid. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

13.7 Notices. Invoices and other correspondence relating to this Agreement may be delivered by email to the email addresses furnished by Subscriber in each Order Form. Any notice of termination, breach or Actions under this Agreement shall be given by either email or internationally recognised courier service to the addresses set forth in the applicable Order Form or such other address as either party may provide in writing from time to time.

14. Governing Law; Jurisdiction.

14.1 This Agreement shall be governed by and construed in accordance with the Law of England & Wales without giving effect to its conflict of laws principles. The parties agree the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties agree to submit to the jurisdiction of the Courts of England & Wales, for the adjudication of any case or controversy arising under this Agreement, and the parties hereby waive their right to a trial by jury in any such litigation.