

## Standard Terms and Conditions for Optimyse Limited

- **1. SERVICES.**
  - 1.1. **Services.** Client may contract to retain Optimyse to provide Client with the services set out in the applicable Client Agreement and any associated Statement(s) of Work.
  - 1.2. **Client Agreement.** The Client Agreement shall describe the business relationship between Optimyse and Client, shall reference these Terms and Conditions and shall list any additional terms and conditions applicable to the Agreement. Client will contract for specific Services by executing one or more written Statements of Work. A Statement of Work shall identify the Services that Client requests Optimyse to provide, the duration of the Services, the fees payable by Client for the Services, and the payment structure. To be effective, each Statement of Work must reference the Client Agreement, and be agreed to in writing by an authorized representative of Optimyse and Client, and once so agreed upon, will be incorporated therein by reference.
  - 1.3. **Relationship of the Parties.** Unless otherwise agreed, Optimyse is performing the Services as an independent contractor, not as an employee, agent, joint venturer or partner of Client. Optimyse acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Client makes available to its employees. Accordingly, for a period of twelve (12) months following the completion of Services, Client agrees not to directly or indirectly solicit for employment any Optimyse employees or contractors.
- **2. PAYMENT.**
  - 2.1. **Fees and Expenses.** In consideration for the Services, Client will pay Optimyse fees in accordance with the terms set forth in the applicable Statement of Work. In addition, Client will reimburse Optimyse for all reasonable and customary travel, lodging and other related expenses incurred by Optimyse or its personnel in connection with the performance of Services in accordance with the terms set forth in the Client Agreement and Statement of Work.
  - 2.2. **Taxes.** All fees and expenses charged by Optimyse are net of sales, use, value added or other applicable taxes, tariffs or duties, payment of which will be the sole responsibility of Client (excluding any taxes based on Optimyse's net income). Client will promptly reimburse Optimyse for any such amounts that Optimyse pays on Client's behalf.
  - 2.3. **Late payment.** Optimyse reserves the right to charge interest on late payments. If applicable, interest will accrue at the Bank of England base rate plus 8%, calculated on a daily basis on the sum outstanding.
- **3. OWNERSHIP.**
  - Material and associated intellectual property rights developed by a party prior to or outside of the scope of a Statement of Work ("Pre-Existing Material") shall be, as between the parties, owned by the developing party. Optimyse shall own all rights, title and interest in all scripts, methodologies, processes, and documentation, and all intellectual property rights therein, developed during the provision of the Services (collectively, the "Optimyse-Owned Work Product"). Optimyse hereby grants to Client a non-exclusive, worldwide, right to use, reproduce and create derivative works of any Pre-Existing Material owned by Optimyse and incorporated into deliverables of the Services, and the Optimyse-Owned Work Product, for Client's internal business purposes only.
- **4. CONFIDENTIAL INFORMATION.**
  - 4.1. **Definition.** "Confidential Information" means: (a) for Optimyse, Pre-Existing Material and Optimyse-owned Work Product; for Client, Client Work Product; and for both parties, Jointly Owned Material, (b) each party's software products, in byte code or binary form, source code form or otherwise, and any authorization keys and passwords delivered in order to operate such products; (c) product documentation, product road maps and development plans, and product pricing information, whether or not any such information is marked or otherwise identified as confidential or proprietary; (d) details of Optimyse or Client's clients including, but not limited to, contact information, business plans and other client-confidential information; (e) any information of a party that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure; and (f) the Client specific terms and pricing set forth in any Statement of Work or Client Agreement.
  - 4.2. **Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential Information ("Receiving Party"); (b) is rightfully known by the Receiving Party

prior to receiving such information from the other party (“Disclosing Party”) and without restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure.

- 4.3. **Use and Disclosure Restrictions.** Receiving Party will not use the Disclosing Party’s Confidential Information except as necessary to exercise the rights granted and perform the obligations under this Agreement, and will not disclose such Confidential Information to any person or entity except to those of its employees and contractors that need to know such Confidential Information for the purpose of performing the obligations set out in this Agreement, provided that each such employee or contractor has signed a written agreement that includes binding use and disclosure restrictions that protect the Confidential Information at least to the same extent as those set forth herein. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party.
- 4.4. **Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party may be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.
- **5. WARRANTY.**
  - 5.1. **Services Warranty.** Optimyse warrants that it will use reasonable endeavours to perform the Services in a professional and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of ninety (90) days from the completion of the applicable Services (the “Warranty Period”). If during the Warranty Period, Optimyse receives written notice from Client of non-conformity with the performance of the Services set forth in this Section 5.1, Optimyse will, as Client’s sole and exclusive remedy and Optimyse’s entire liability for any breach of the foregoing warranty, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or refund to Client the fees paid for the non-conforming portion of the Services.
  - 5.2 **Warranty Disclaimer.** Except as expressly set forth in these Terms and Conditions, Optimyse and its suppliers disclaim all other warranties, conditions and representations, whether express, implied or statutory.
- **6. EXPIRATION AND TERMINATION.**
  - 6.1. **Termination.** Each party will have the right to terminate the Client Agreement or any Statement of Work if the other party breaches any material term of the Client Agreement or Statement of Work, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receipt of written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of the Client Agreement under this section terminates all Statements of Work entered into hereunder.
  - 6.2. **Effect of Termination.** Upon the expiration or termination of this Agreement or of any Statement of Work: (i) each party will promptly return to the other party all Confidential Information of the other party in its possession or control; and (ii) Client will, within thirty (30) days after receipt of Optimyse’s invoice, pay all accrued and unpaid fees and expenses.
  - 6.3. **Survival.** The rights and obligations of the parties contained in Sections 2, 3, 4, 5.2, 6.2, 6.3, 7 and 8 will survive the expiration or termination of the Client Agreement or any Statement of Work.
- **7. INDEMNIFICATION.**
  - 7.1. **Services Indemnification.** Optimyse will defend or settle any action brought against Client by paying all costs, damages and reasonable legal fees that are finally awarded against Client to the extent those amounts are based upon a third party claim that the Services performed on a Client site, as specified by Optimyse to Client under the Client Agreement and used in accordance with the Statement of Work, directly results in (a) bodily injury, including death, (b) the breach of Confidential Information or (c) tangible property damage, caused by Optimyse’s proven gross negligence in performing such Services. However, Optimyse’s obligations under this section are subject to the following conditions: (i) Client must promptly notify Optimyse in writing of the action; (ii) Client grants Optimyse sole control of the defence and settlement of the action; and (iii) Client must provide Optimyse, at Optimyse’s

expense, with all assistance, information and authority reasonably requested for the defence and settlement of the action. Optimyse will not be responsible for any compromise made or expense incurred without its consent. .

- 7.2. **Sole Remedy.** Except as set forth above, Optimyse and its suppliers disclaim all implied obligations with respect to services indemnification.

- **8. LIMITATION OF LIABILITY**

- 8.1. **Exclusion of Damages.** In no event will either party, or its suppliers, be liable to the other or to any third party for any special, incidental, punitive, indirect or consequential damages (including loss of use, data, business or profits, revenue, goodwill, anticipated savings) or for costs of procuring substitute services, arising out of or in connection with the Client Agreement or the Services or any Work Product provided thereunder, whether based upon contract, warranty, tort (including negligence), failure of a remedy to accomplish its purpose, strict liability or otherwise, and even if advised of the possibility of such damages.
- 8.2. **Limitation of Liability.** In no event will Optimyse or its suppliers' aggregate liability under this agreement exceed the amounts actually paid to Optimyse by Client under the Statement of Work giving rise to the liability.

- **9. GENERAL PROVISIONS.**

- 9.1. **Assignment.** Client shall not assign this Agreement, in whole or in part, by operation of law or otherwise. Any attempt to assign this Agreement without such consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 9.2. **Governing Law and Jurisdiction.** This agreement shall be governed and interpreted in all respects in accordance with English law.
- 9.3. **Non-exclusive Remedy.** Except as expressly set forth in the Client Agreement, the exercise by either party of any of its remedies under the Client Agreement will be without prejudice to its other remedies under the Client Agreement or otherwise.
- 9.4. **Notices.** All notices required or permitted under this Agreement will be in writing (which shall include email) and will be sent to the address set forth in the Client Agreement or to such other address as Client or Optimyse may identify to the other party in writing.
- 9.5. **Disputes.** In the event of a dispute arising in the performance of this agreement either party may give the other 7 days notice to resolve the dispute or difference through an Alternative Dispute Resolution (ADR) procedure as recommended by the Centre for Alternative Dispute Resolution. If the matter has not been resolved by an ADR procedure within 28 days of such notice having been received or if the party will not participate in an ADR procedure then either party may give the other 14 days notice to refer the matter to Arbitration. Such matter shall then be referred to a single arbitrator agreed between the parties with 14 days of such notice or in default of agreement as may be nominated by the president for the time being of the Chartered Institute of Arbitrators.
- 9.6. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under the Client Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labour disputes, strikes, lockouts, shortages of or inability to obtain labour, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action.
- 9.7. **Entire Agreement; Modification; Interpretation.** The Client Agreement, referencing these Terms and Conditions, including all accepted Statement of Works referencing the Client Agreement constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Client agrees that additional or different terms on Client's purchase order shall not apply. Failure to enforce any provision of the Client Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of the Client Agreement will be effective only if in writing and signed by Client and an authorized representative of Optimyse. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will be including without limitation of the generality of any description, definition, term or phrase preceding that word.

END OF TERMS

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Optimyse Limited (Optimyse) is a company registered in England & Wales with company no. 03101083, whose registered address is Yew Tree House, 4 Finborough Road, Stowmarket, Suffolk IP14 1PW, UK. VAT Registration No: UK181 2564 13.