

This service Agreement (Agreement) is a legal agreement between you (you) and JAMWORKS PLATFORM LIMITED incorporated in England and Wales with company number 12578785 whose registered office is at Suite 2, Victoria House, South Street, Farnham, Surrey, United Kingdom, GU9 7QU (Jamworks) for our software application and platform, Jamworks, which we make available to you via the internet (the Services).

IT WILL BE UNDERSTOOD THAT YOU HAVE ACCEPTED THE TERMS OF THIS AGREEMENT BY CLICKING ACCEPT, ACCESSING, OR, USING THE SERVICES IN ANY WAY.

BACKGROUND

- (A) Jamworks has developed certain software applications and platforms which it makes available to subscribers via the internet.
- (B) The Institution wishes to use Jamworks' service in its business operations.
- (C) Jamworks has agreed to provide and the Institution has agreed to take and pay for Jamworks' service subject to the terms and conditions of this agreement.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those students, employees, agents and independent contractors of the Institution who are authorised by the Institution to use the Services and the Documentation, as further described in clause 2.2(d).

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

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

Documentation: the document made available to the Institution by Jamworks by email to the Institution from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Institution or an Authorised User (but not Jamworks) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Initial Subscription Term: the initial term of this agreement as set out in the order form.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 14.1.

Services: the subscription services provided by Jamworks to the Institution under this agreement via email or any other website notified to the Institution by Jamworks from time to time, as more particularly described in the Documentation.

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

Subscription Fees: the subscription fees payable by the Institution to Jamworks for the User Subscriptions, as set out in the Order Form.

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

User Subscriptions: the user subscriptions purchased by the Institution pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any device or thing (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 construed accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. User subscriptions

- 2.1 Subject to the Institution purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Jamworks hereby grants to the Institution a non-exclusive, non-transferable right, 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 Institution's internal business operations.
- 2.2 In relation to the Authorised Users, the Institution 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;
 - (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, that such password shall be changed no less frequently than 12 months and that each Authorised User shall keep their password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Jamworks within 5 Business Days of Jamworks' written request at any time or times;
 - (e) it shall permit Jamworks or Jamworks' designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Institution's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at Jamworks' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Institution's normal conduct of business;
 - (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Jamworks' other rights, the Institution shall

promptly disable such passwords and Jamworks shall not issue any new passwords to any such individual; and

- (g) if any of the audits referred to in clause 2.2(e) reveal that the Institution has underpaid Subscription Fees to Jamworks, then without prejudice to Jamworks' other rights, the Institution shall pay to Jamworks an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 10 Business Days of the date of the relevant audit.

2.3 The Institution 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 Jamworks reserves the right, without liability or prejudice to its other rights to the Institution, to disable the Institution's access to any material that breaches the provisions of this clause.

2.4 The Institution 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 this agreement:
 - (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) subject to clause 22.1, 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 Jamworks' network and information systems.
- 2.5 The Institution 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 Jamworks.
- 2.6 The rights provided under this clause 2 are granted to the Institution only and shall not be considered granted to any subsidiary or holding company of the Institution.

3. Additional user subscriptions

- 3.1 Subject to clause 3.2 and clause 3.3, the Institution may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the order form and Jamworks shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Institution wishes to purchase additional User Subscriptions, the Institution shall notify Jamworks in writing. Jamworks shall evaluate such request for additional User Subscriptions and respond to the Institution with

approval or rejection of the request. Where Jamworks approves the request, Jamworks shall activate the additional User Subscriptions within 1 day of its approval of the Institution's request.

- 3.3 If Jamworks approves the Institution's request to purchase additional User Subscriptions, the Institution shall, within 30 days of the date of Jamworks' invoice, pay to Jamworks the relevant fees for such additional User Subscriptions as set out in the order form and, if such additional User Subscriptions are purchased by the Institution 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 Jamworks for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

- 4.1 Jamworks shall, during the Subscription Term, provide the Services and make available the Documentation to the Institution on and subject to the terms of this agreement.
- 4.2 Jamworks shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Jamworks has used reasonable endeavours to give the Institution at least 6 Normal Business Hours' notice in advance.
- 4.3 Jamworks will, as part of the Services and at no additional cost to the Institution provide the Institution with Jamworks' standard Institution support services during Normal Business Hours in accordance with Jamworks' Support Services Policy in effect at the time that the Services are provided. Jamworks may amend the Support Services Policy in its sole and absolute discretion from time to time. The Institution may purchase enhanced support services separately at Jamworks' then current rates.

5. Data protection

- 5.1 In this agreement, the following definitions apply:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

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

EU Law: the law of the European Union or any member state of the European Union.

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

- 5.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Institution is the Controller and Jamworks is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by Jamworks, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 5.4 Without prejudice to the generality of clause 5.1, the Institution will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Jamworks and/or lawful collection of the Personal Data by Jamworks on behalf of the Institution for the duration and purposes of this agreement.

5.5 Without prejudice to the generality of clause 5.1, Jamworks shall, in relation to any Personal Data processed in connection with the performance by Jamworks of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Institution unless Jamworks is required by Domestic Law to otherwise process that Personal Data. Where Jamworks is relying on Domestic Law as the basis for processing Personal Data, Jamworks shall promptly notify the Institution of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Jamworks from so notifying the Institution;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Institution, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Institution has been obtained and the following conditions are fulfilled:
 - (i) the Institution or Jamworks has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Jamworks complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) Jamworks complies with reasonable instructions notified to it in advance by the Institution with respect to the processing of the Personal Data;
- (e) assist the Institution, at the Institution's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Institution without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Institution, delete or return Personal Data and copies thereof to the Institution on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Institution or the Institution's designated auditor and immediately inform the Institution if, in the opinion of Jamworks, an instruction infringes the Data Protection Legislation.

5.6 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6. Third party providers

The Institution acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Jamworks 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 Institution, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Institution and the relevant third party, and not Jamworks. Jamworks recommends that the Institution refers to the third

party's website terms and conditions and privacy policy prior to using the relevant third-party website. Jamworks 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 Jamworks 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 Jamworks' instructions, or modification or alteration of the Services by any party other than Jamworks or Jamworks' 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 Institution with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Institution's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 Jamworks:

(a) does not warrant that:

- (i) the Institution's use of the Services will be uninterrupted or error-free;
- (ii) that the Services, Documentation and/or the information obtained by the Institution through the Services will meet the Institution's requirements;
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

(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 Institution 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 This agreement shall not prevent Jamworks 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 this agreement.
- 7.5 Jamworks warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. Institution's obligations

8.1 The Institution shall:

(a) provide Jamworks with:

- (i) all necessary co-operation in relation to this agreement; and
- (ii) all necessary access to such information as may be required by Jamworks;

in order to provide the Services, including but not limited to Institution Data, security access information and configuration services;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Institution responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Institution's provision of such assistance as agreed by the parties, Jamworks 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 this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Jamworks, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Jamworks from time to time; and

- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Jamworks' data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Institution's network connections or telecommunications links or caused by the internet.

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

9. Charges and payment

9.1 The Institution shall pay the Subscription Fees to Jamworks for the User Subscriptions in accordance with this clause 9.

9.2 The Institution shall on the Effective Date provide to Jamworks valid, up-to-date and complete credit card details or approved purchase order information acceptable to Jamworks and any other relevant valid, up-to-date and complete contact and billing details and, if the Institution provides:

- (a) its credit card details to Jamworks, the Institution hereby authorises Jamworks to bill such credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; 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;
- (b) its approved purchase order information to Jamworks, Jamworks shall invoice the Institution:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Institution shall pay each invoice within 30 days after the date of such invoice.

- 9.3 If Jamworks has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Jamworks:
- (a) Jamworks may, without liability to the Institution, disable the Institution's password, account and access to all or part of the Services and Jamworks 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 4% over the then current base lending rate of Jamworks' bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable as stated on the order form;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to Jamworks' invoice(s) at the appropriate rate.
- 9.5 Jamworks shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause **Error! Reference source not found.** at the start of each Renewal Period upon 90 days' prior notice to the Institution and the Renewal Order Form shall be deemed to have been amended accordingly.

10. Proprietary rights

- 10.1 The Institution acknowledges and agrees that Jamworks and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Institution any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 Jamworks 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 this agreement.

11. Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 The Institution acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Jamworks' Confidential Information.

- 11.6 Jamworks acknowledges that the Institution Data is the Confidential Information of the Institution.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement 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.
- 11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. Indemnity

- 12.1 The Institution shall defend, indemnify and hold harmless Jamworks 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 Institution's use of the Services and/or Documentation, provided that:
- (a) the Institution is given prompt notice of any such claim;
 - (b) Jamworks provides reasonable co-operation to the Institution in the defence and settlement of such claim, at the Institution's expense; and
 - (c) the Institution is given sole authority to defend or settle the claim.
- 12.2 Jamworks shall defend the Institution, its officers, directors and employees against any claim that the Institution's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Institution for any amounts awarded against the Institution in judgment or settlement of such claims, provided that:
- (a) Jamworks is given prompt notice of any such claim;
 - (b) the Institution does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Jamworks in the defence and settlement of such claim, at Jamworks' expense; and
 - (c) Jamworks is given sole authority to defend or settle the claim.

- 12.3 In the defence or settlement of any claim, Jamworks may procure the right for the Institution 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 this agreement on 2 Business Days' notice to the Institution without any additional liability or obligation to pay liquidated damages or other additional costs to the Institution.
- 12.4 In no event shall Jamworks, its employees, agents and sub-contractors be liable to the Institution to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Jamworks; or
 - (b) the Institution's use of the Services or Documentation in a manner contrary to the instructions given to the Institution by Jamworks; or
 - (c) the Institution's use of the Services or Documentation after notice of the alleged or actual infringement from Jamworks or any appropriate authority.
- 12.5 The foregoing and clause 13.3(b) state the Institution's sole and exclusive rights and remedies, and Jamworks' (including Jamworks' 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 this agreement:
- (a) the Institution assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Institution, and for conclusions drawn from such use. Jamworks shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Jamworks by the Institution in connection with the Services, or any actions taken by Jamworks at the Institution'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 this agreement; and
 - (c) the Services and the Documentation are provided to the Institution on an "as is" basis.

- 13.2 Nothing in this agreement excludes the liability of Jamworks:
- (a) for death or personal injury caused by Jamworks' negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
- (a) Jamworks 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 this agreement; and
 - (b) Jamworks' 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 this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 13.4 Nothing in this agreement excludes the liability of the Institution for any breach, infringement or misappropriation of Jamworks' Intellectual Property Rights".

14. Term and termination

- 14.1 This agreement 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, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this agreement;

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

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 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;
- (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 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 14.2(c) to clause 14.2(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; or
- (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 this agreement is in jeopardy.

14.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Institution 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) Jamworks may destroy or otherwise dispose of any of the Institution Data in its possession unless Jamworks receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Institution of the then most recent back-up of the Institution Data. Jamworks shall use reasonable commercial endeavours to deliver the back-up to the Institution within 30 days of its receipt of such a written request, provided that the Institution 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 Institution shall pay all reasonable expenses incurred by Jamworks in returning or disposing of Institution 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

Jamworks shall have no liability to the Institution under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Jamworks or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Institution is notified of such an event and its expected duration.

16. Conflict

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

17. Variation

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

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement 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 this agreement 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 this agreement.
- 20.2 If any provision or part-provision of this agreement 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 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this agreement 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 this agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Institution shall not, without the prior written consent of Jamworks, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22.2 Jamworks 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 this agreement.

23. No partnership or agency

Nothing in this agreement 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

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

25. Counterparts

25.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

25.2 Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.

25.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

26. Notices

26.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).