



SUBSCRIBER AGREEMENT TERMS AND CONDITIONS

Crimson Tide Services Limited (company number 05741005) whose registered office address is at Tavern Cellars 39-41 The Pantiles Tunbridge Wells Kent TN2 5TE ("Crimson Tide") agrees to supply access to and use of its Mobile Professional Services (as defined below) on these terms and conditions of contract ("Terms").

By signing the Subscriber Agreement (as defined below), the signing party (the "Customer") unconditionally accepts these Terms and agrees to be bound by the provisions of these Terms which shall govern the relationship between Crimson Tide and the Customer (the "Agreement").

1. DEFINITIONS

In these Terms the following words and expressions shall have the following meanings:

"Customer's Import Data" means the Customer's information database held in Microsoft Excel, Microsoft Access, CSV or other format as indicated on the Subscriber Agreement;

"Contract Term" means the minimum duration of this contract, as specified in the Subscriber Agreement;

"Customer's Maintained Database" means the Customer's information database held online on the Site and containing pre-configured data relating to the Customer's business;

"Database Services" means the services described in Clause 2;

"Effective Date" means the date that Crimson Tide advises the Customer in writing of the log-in user and Password details;

"Equipment" means the equipment specified on the Subscriber Agreement and detailed in Schedule 1 thereto together with any replacement or upgraded equipment supplied at any time during the Subscription Period;

"Fees" means the aggregate Total Monthly Fee plus the Total Other Charges (each as set out in the Subscriber Agreement) applying throughout the Contract Term plus any VAT and interest thereon;

"Licence" means a non-exclusive, non-transferable licence to use the Software;

"Mobile Professional Services" means mobile data solutions provided by Crimson Tide comprising the Database Services, remote e-mail and other services set out in the Subscriber Agreement;

"Parties" means Crimson Tide (its successors and assigns) and the Customer;

"Password" means the password or other security device provided by Crimson Tide to the Customer enabling it to access the Site and use the Mobile Professional Services;

"Secure Network" means a private network (whether a standalone network or a virtual network within the internet) which is accessible with the Password;

"Site" means such web site(s) as may be advised by Crimson Tide from time to time providing a Secure Network upon which the Customer's Maintained Database is held;

"Software" means the computer software that enables access to the Customer's Maintained Database or any of the Mobile Professional Services by use of the Equipment;

"Software Licence" means the licence terms of the supplier (other than Crimson Tide) of any or all of the Software noted in the Subscriber Agreement relating to that Software;

"Subscriber" means any person stated in Schedule 1 of the Subscriber Agreement or as notified from time to time in accordance with Clause 2.9;

"Subscriber Agreement" means the subscriber agreement, signed and dated for and on behalf of the Customer, accepting these Terms, creating the agreement between the Parties on these Terms;

"Subscription Fee" means the monthly subscriber fee (being part of the Total Monthly Fee) set out in the Subscriber Agreement for the provision of the Mobile Professional Services;

"Subscription Period" means the period commencing on the Effective Date and ending on the termination of this Agreement in accordance with Clause 7.

2 DATABASE SERVICES

- 2.1 The Customer shall make the Customer's Import Data (if any) available to Crimson Tide no less than 5 working days prior to the Effective Date and promptly following the Effective Date Crimson Tide will transfer the information comprised in the Customer's Import Data (if required) to the Customer's Maintained Database. The Customer undertakes to provide Crimson Tide with all reasonable assistance to facilitate such transfer and, if the information provided to Crimson Tide is inaccurate, incomplete or not in the correct format in relation to such transfer, to pay Crimson Tide's additional costs in so doing.
- 2.2 Crimson Tide will on the Effective Date provide the Customer with log-in user details and the Password. The maintenance of the integrity of the log-in user details and the Password is the responsibility of the Customer.
- 2.3 During the Subscription Period, Crimson Tide shall use all reasonable endeavours to make the Customer's Maintained Database available to the Customer over the internet via the Site and to ensure that with proper use of the Equipment the Customer can (i) view, (ii) add to, and (iii) amend the Customer's Maintained Database.
- 2.4 During the Subscription Period, Crimson Tide shall use its reasonable endeavours to make the Customer's Maintained Database available to the Customer at all times, save for when routine maintenance or repair is required and to restore access to the Customer's Maintained Database as soon as reasonably practicable in the event of an interruption or suspension of such access.
- 2.5 The Customer shall pay Crimson Tide a deposit (equal to twice the Total Monthly Fee) prior to commencement of the provision of the Mobile Professional Services. This deposit shall be (i) on account of the final two months' worth of Total Monthly Fees payable under these Terms and (ii) non-refundable unless and to the extent that Clause 5.5 applies. If the Customer has not paid the Fees in full, its right of access to the Customer's Maintained Database and to any other of the Mobile Professional Services may be suspended without further warning until the Fees are paid in full.
- 2.6 Crimson Tide reserves the right at any time to withdraw the provision of any of the Mobile Professional Services and shall notify the Customer of any such proposed withdrawal. In the event of such a withdrawal for any reason other than a breach of this Agreement by the Customer, Crimson Tide shall make a pro rata refund of the Subscription Fee paid based on the remaining unexpired portion of the Subscription Period.
- 2.7 If the integrity of any data held by Crimson Tide on any of its servers is adversely affected by the Customer's Maintained Database, Crimson Tide reserves the right to access, amend, remove or delete any or all data stored on its servers without the prior consent of the Customer. Crimson Tide will inform the Customer prior to taking any such action.
- 2.8 At the end of the Subscription Period, Crimson Tide shall, at the Customer's request and free of charge, transfer all information then held on the Customer's Maintained Database to the Customer or to a third party provided (i) the Customer is not in breach of any of these Terms and (ii) the data is transferred in Microsoft Access, Microsoft Excel or CSV format. The Customer shall pay all Crimson Tide's reasonable costs incurred in transferring any data in an alternative format.
- 2.9 The Customer shall notify Crimson Tide of any change in (i) the numbers of Subscribers and (ii) the identity of any Subscriber and (where relevant) Crimson Tide shall revise the Fees accordingly. Any such changes are only permitted with Crimson Tide's prior written approval.

3 EQUIPMENT AND LICENCE

- 3.1 Prior to the Effective Date and subject to payment of the deposit (as defined in Clause 2.5), Crimson Tide will supply the Equipment to the Customer who shall accept (i) delivery thereof and (ii) that the Equipment has been delivered in satisfactory condition by signing a receipt to that effect.
- 3.2 The Equipment belongs to Crimson Tide and the Customer will not hold itself out as the owner of the Equipment or tamper with any marks of identification, origin or ownership on the Equipment.

- 3.3 At the end of the Subscription Period, the Customer will return all Equipment to Crimson Tide in a good and serviceable condition. The Customer shall pay for any repairs necessary to put the Equipment in good and serviceable condition at the end of the Subscription Period. If the Equipment is not returned or is beyond economic repair at the end of the Subscription Period, the Customer shall pay Crimson Tide a sum equal to three times the Subscription Fee.
- 3.4 The Customer will be responsible for all costs arising out of (a) neglect or misuse of the Equipment, (b) modifications made to the Equipment without the prior written approval of Crimson Tide, (c) use of any equipment, software or peripherals in conjunction with the Equipment which are not supplied or approved by Crimson Tide, (d) use of the Equipment in conditions outside of the manufacturer's recommendations and/or normal use, (e) maintenance of the Equipment by anyone other than Crimson Tide and/or (f) loss, theft or destruction of the Equipment.
- 3.5 Crimson Tide offers no warranty that any Equipment is new when supplied to the Customer.
- 3.6 If the Equipment is faulty for any reason not identified in Clause 3.4, Crimson Tide will replace the same within 72 hours of the fault being reported and immediately confirmed in writing to Crimson Tide. Unless otherwise agreed in writing, delivery of a replacement piece of Equipment will be conditional on the simultaneous return of the faulty piece of Equipment. If the returned piece of Equipment is not faulty, the Customer will pay an administration charge of £150.
- 3.7 The Customer shall satisfy itself that the Equipment is in good working order on or soon after delivery and, if there is a fault (not being a fault referred to in Clause 3.4) in any such Equipment, the Customer shall notify Crimson Tide of the same immediately upon becoming so aware and in any event within 10 days of delivery.
- 3.8 Crimson Tide grants to the Customer and to each Subscriber the Licence for the Subscription Period only and the Customer agrees (i) at all times to abide by the terms of the Further Licence and to procure that each Subscriber does the same and (ii) to fully indemnify Crimson Tide in respect of any breaches thereof.
- 3.9 The Customer shall not (and shall procure that each Subscriber does not) transfer or sell the Licence to any other person or corporate entity (or permit the same to re-use the Licence in any way) other than to another employee (not being a Subscriber) of the Customer, provided Crimson Tide has been advised of and has agreed the same in writing.
- 3.10 The Customer shall not (and shall procure that each Subscriber does not) copy, adapt, replace, update, decompile or otherwise modify or tamper with the Software in any way or use it for any purpose other than as strictly contemplated by these Terms.
- 3.11 Crimson Tide may at its sole discretion replace the Equipment provided with updated versions of the same in consideration of the Customer agreeing to an increase in the Subscription Fee or an extension to the Contract Term.

4 SUPPORT

- 4.1 Technical support will be provided to the Customer if the support option is selected on the Subscriber Agreement. If technical support is declined, telephone support will be available on weekdays between 9.00am and 5.30pm and is charged at premium rates as shown on Crimson Tide's website (as varied from time to time).
- 4.2 Crimson Tide will deal with all faults reported to it on a case-by-case basis and as it deems necessary in the particular circumstances.

5 LIMITATION OF LIABILITY

- 5.1 Nothing in these Terms shall exclude or limit Crimson Tide's liability for (i) death or personal injury arising out of its negligence or (ii) in respect of fraud.
- 5.2 Crimson Tide shall not be liable to the Customer in tort, contract or otherwise for any economic loss, loss of business opportunity, loss of revenue, anticipated profits or business, and/or the cost of procuring substitute services.
- 5.3 Crimson Tide shall not be liable to the Customer in excess of the Fees paid to it during the Subscription Period.

- 5.4 Crimson Tide shall not be liable to the Customer for any loss arising to the Customer out of the unauthorised use of any Password, the temporary unavailability of telephony connection and/or the Site whilst unavailable for routine or other maintenance or for any other reason beyond the reasonable control of Crimson Tide.
- 5.5 If the Customer is unable to access the Customer's Maintained Database as described in Clause 2 or the Mobile Professional Services for any reason other than as referred to in Clause 5.4, Crimson Tide will accept liability for the same which shall be limited to using its reasonable efforts to remedy any fault, or at its sole option, to cancelling, crediting or refunding all or part only of the Subscription Fees due from the Customer in respect of any period in any Subscription Period for which access to the Database is unavailable (provided such cancellation, credit or refund is in excess of the Subscription Fee). This obligation to remedy discrepancies or cancel, credit or refund a proportionate part of the Fee payable by the Customer shall constitute the full extent of Crimson Tide's liability in respect of any loss or damage sustained by the Customer.
- 5.6 Crimson Tide specifically excludes all other warranties, conditions or other terms (whether express or implied or statutory) to the fullest extent permitted by law including any warranty of merchantability or fitness for a particular purpose in relation to the supply of the Mobile Professional Services.
- 5.7 The Customer's attention has been brought to (i) the existence and extent of this Clause 5 and (ii) the fact that, for an increased fee, Crimson Tide may be willing to vary the terms of this Clause 5.
- 5.8 If the Customer is a consumer, then the Customer's statutory rights shall not be adversely affected, notwithstanding any other provision in these Terms.
- 6 FEE
- 6.1. Crimson Tide shall supply the Mobile Professional Services to the Customer subject to these Terms in consideration of the payment of the Fees.
- 6.2. On or before the Effective Date the Customer shall pay (i) the deposit referred to in Clause 2.5 (ii) the Total Monthly Fee for the first month of the Subscription Period and (iii) the Total Other Charges. Thereafter, the Total Monthly Fee shall be paid monthly in advance by standing order or direct debit unless otherwise agreed by Crimson Tide.
- 6.3 Interest will accrue on all Fees not paid within thirty days at a rate of 4 per cent above the base rate from time to time of NatWest Bank plc (before or after judgement).
- 7 TERMINATION
- 7.1 Either party may terminate this Agreement on not less than 90 days' notice expiring at any time after expiry of the Contract Term.
- 7.2 If the Customer terminates this Agreement in breach of Clause 7.1 or if Crimson Tide terminates this Agreement pursuant to Clause 7.3 then, in either case, the balance of the Fees payable in respect of the period commencing from the date of such termination to the date of expiry of the Contract Term shall become immediately due and payable.
- 7.3 This Agreement may also be terminated by Crimson Tide without notice if:-
- 7.3.1 The Customer defaults in making payment of any Fees and fails to remedy such default within ten (10) working days of Crimson Tide's notification to the Customer; or
- 7.3.2 The Customer commits a material or persistent breach of any term of this Agreement and fails to remedy the breach (if capable of remedy) within fourteen (14) days of notification in writing by Crimson Tide; or
- 7.3.3 The Customer is unable to pay its debts as they fall due or becomes subject to administration, company voluntary arrangement, receivership, liquidation or similar process.

8 GENERAL

- 8.1 The benefit or the burden of this Agreement may not be assigned by the Customer without the prior written consent of Crimson Tide. Crimson Tide may assign its rights and subcontract its obligations under this Agreement without the consent of or notice to the Customer.
- 8.2 Any variation to this Agreement shall only be valid and binding if it is recorded in writing and signed by a director of Crimson Tide.
- 8.3 Crimson Tide shall not be liable to the Customer in any way for failure or delay in performing its obligations under this Agreement if the failure or delay is due to a cause outside the reasonable control of Crimson Tide. Time shall not be of the essence in relation to the provision of the Mobile Professional Services under this Agreement.
- 8.4 The failure by Crimson Tide to exercise or delay in exercising any right or remedy provided by this Agreement or by law on any one occasion does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and shall not affect either party's right to enforce another right or remedy or the same right or remedy on another occasion.
- 8.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 8.6 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 8.7 This Agreement shall be governed by and construed according to the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.