

SPRINGBOARD APPLICATIONS LIMITED

TERMS OF SERVICE

1. **ATTENTION: THE FOLLOWING TERMS AND CONDITIONS ARE LEGALLY BINDING ON YOU “THE CUSTOMER” WHEN YOU USE SOFTWARE OR SERVICES PROVIDED BY SPRINGBOARD APPLICATIONS LTD (HEREINAFTER “WE”, “US”). YOU MUST CAREFULLY READ AND AGREE TO THE FOLLOWING TERMS OF SERVICE BEFORE ANY USE OF SOFTWARE AND/OR SERVICES (HEREINAFTER “SERVICES”).**

2. **Terms of Service:** The Customer acknowledges and agrees to the following Terms of Service, which shall govern the Customer’s access and use of the Services (“the Agreement”). Capitalised terms not otherwise defined shall have the meaning given to them in Section 9 (Definitions) below. In addition, the Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Services and/or any new services(s) subsequently purchased by the Customer will be subject to this Agreement.
 - 2.1 **The Customer must have Internet Access:** DSL, cable or another high speed Internet connection is required for proper transmission of the Services. The Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Services, including but not limited to “browser” software that supports protocol used by us, including secure Socket Layer (SSL) protocol or other protocols accepted by us, and to follow logon procedures for services that support such protocols. We are not responsible for notifying the Customer of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by us. We assume no responsibility for the reliability or performance of any connections as described in this Section.
 - 2.2 **Accuracy of The Customer’s Contact Information:** The Customer shall provide accurate, current and complete information on the Customer’s legal business (if applicable) and personal name, address, e-mail address, and phone number, and maintain and promptly update this information if it should change.
 - 2.3 **Users: Passwords, Access and Notifications:** The Customer shall authorize access to and assign unique passwords and user names to the number of Users authorized by us. User Logins are designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed. The Customer will be responsible for the confidentiality and use of the User’s passwords and user names. The Customer will

also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, The Customer Data, and all other data of any kind contained within e-mails or otherwise entered electronically through the Services or under the Customer's account. We will act as though any Electronic Communications it receives under the Customer's passwords, user name, and/or account number will have been sent by the Customer. The Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall promptly notify us of any unauthorized access or use of the Services and any loss or theft or unauthorized use of any User's password or name and/or Services account numbers.

2.4 The Customer's Lawful Conduct: The Services allow the Customer to send Electronic Communications directly to us and to third parties. The Customer shall comply with all applicable laws, treaties, regulations and conventions in connection with its use of the Services, including without limitation those related to privacy, electronic communications and anti-spam legislation. The Customer is responsible for ensuring that its use of the Services to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall store credit card and social security data only in the designated fields for such data. The Customer shall comply with the export laws and regulations of England & Wales in using the Services and obtain any permits, licences and authorisations required for such compliance. Without limiting the foregoing, (i) the Customer represents that it is not named on any government list of persons or entities prohibited from receiving exports, (ii) the Customer shall not permit Users to access or use the Services in violation of any United Kingdom export embargo, prohibition or restriction, and (iii) the Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United Kingdom and the country in which its Users are located. The Customer will not send any Electronic Communication from the Services that are unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Services may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. The Customer agrees not to access the Services by any means other than through the interfaces that are provided by us. The Customer shall not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. The Customer will not in any way express or imply that any opinions contained in the Customer's Electronic Communications are endorsed by us. The Customer shall ensure that all access and use of the Services by Users are in accordance with the terms and conditions of this Agreement, including but not limited to those Users that are contractors and agents, and the Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by the Customer and the Customer waives all of those defenses that the Customer may have as to why the Customer should not be liable for the Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

2.5. Transmission of Data: The Customer understands that notwithstanding the application of

the Data Protection Act 1998 the technical processing and transmission of the Customer's Electronic Communications is fundamentally necessary to use of the Services. The Customer expressly consents to our interception and storage of Electronic Communications and/or the Customer Data, and the Customer acknowledges and understands that the Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by us. The Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. We are not responsible for any Electronic Communications and/or the Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by us, including, but not limited to, the Internet and the Customer's local network.

- 2.6. Our Support:** Where we provide assistance in the Customer's use of the Services, the Customer acknowledges that we have extensive experience helping Customers improve utilisation and realisation of benefits of the Services, and that not following our advice and/or not engaging us in the provision of professional services may substantially limit the Customer's ability to successfully utilize the Services or to enjoy the power and potential of the Services.
- 2.7. Security:** We shall maintain reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Customer Data.
- 2.8 Confidentiality:** For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, the Customer Data, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the Parties regarding the Services and any information that is clearly identified in writing at the time of disclosure as confidential. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; or (5) aggregate statistical data regarding our products and services that does not contain any personally identifiable or the Customer-specific information.

Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by The Customer; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information, including but not limited to inputting credit card data and social security numbers only in the fields designated for such data in the Service) and to make Confidential Information available to authorised persons only on a "need to know" basis. Either party may disclose Confidential Information on a need

to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

- 2.9. Ownership of the Customer Data:** As between us and the Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by the Customer. The Customer acknowledges and agrees that in connection with the Services, we as part of our Services offer to make backup copies of the Customer Data in the Customer's account and store and maintain such data for a period of time consistent with our standard business processes, which period shall not be less than one year.
- 2.10. Our Intellectual Property Rights:** The Customer agrees that all rights, title and interest in and to all intellectual property rights in the Services are owned exclusively by us. Except as provided in this Agreement, the licence granted to the Customer does not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. In addition, we shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual licence to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by the Customer, including users, relating to the operation of the Services. Any rights not expressly granted herein are reserved by us. Our service marks, logos and product and service names are our marks ("Our Marks"). The Customer agrees not to display or use Our Marks in any manner without our express prior written permission.
- 2.11. Dispute Resolution:** Each party agrees that before it or any employee, agent or representative of the party issues a claim at court or in any other public forum, it shall provide thirty (30) days prior written notice to the other and that, within such thirty (30) day period (or longer, if extended by mutual desire of the parties), authorised representatives of the parties shall meet (or confer by telephone) at least once in a good faith attempt to resolve the perceived dispute. If the matter is not resolved by negotiation, the parties will resolve any dispute or difference by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Deputy President of the Chartered Institute of Arbitrators.

3. Warranties

- 3.1. Warranty of Functionality:** We do not warrant that the Services will achieve in all material respects the functionality described in any documentation and/or communications applicable to the Services purchased by Customer.

- 3.2. No Virus Warranty.** We warrant that the Services will be free of viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code"), except for any Malicious Code contained in the Customer-uploaded attachments or otherwise originating from the Customer.
- 4. Disclaimer of Warranties:** Except as stated in section 3 above, we do not represent that customer's use of the Services will be secure, timely, uninterrupted or error-free or that the Service will meet the Customer's requirements or that all errors in the Services and/or documentation will be corrected or that the overall system that makes the Services available (including but not limited to the internet, other transmission networks, and the Customer's local network and equipment) will be free of viruses or other harmful components. The warranties stated in section 3 above are the sole and exclusive warranties offered by us. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose or non-infringement of third party rights. Except as stated in section 3.2 above, the Services are provided to the Customer on an "as is" and "as available" basis, and are for commercial use only. The Customer assumes all responsibility for determining whether the service or the information generated thereby is accurate or sufficient for customer's purposes.
- 5. Limitations on Liability:** The Customer agrees that the consideration which we are charging hereunder does not include consideration for assumption by us of the risk of Customer's incidental or consequential damages. In no event shall either party be liable to anyone for lost profits or revenue or for incidental, consequential, punitive, cover, special, reliance or exemplary damages, or indirect damages of any type or kind however caused, whether from breach of warranty, breach or repudiation of contract, negligence, or any other legal cause of action from or in connection with this agreement (and whether or not the party has been advised of the possibility of such damages to the maximum extent permitted by law) or otherwise shall in no event exceed the direct damage limitations as set forth in section 5.

Except with regard to amounts due under this Agreement, and a party's breach of section 2.8 (confidential information), the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any licence, use or other employment of the Services, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, or otherwise, shall in no case exceed the equivalent of 12 months in subscription fees applicable at the time of the event, and in the event of a breach of section 2.8 (confidential information) of this Terms of Service, such maximum liability of either party shall be an amount equal to three (3) times the equivalent of 12 months of subscription fees applicable at the time of the event. The essential purpose of this provision is to limit the potential

liability of the parties arising from this agreement. The parties acknowledge that the limitations set forth in this section are integral to the amount of fees charged in connection with making the Services available to the Customer and that, were we to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

The limitations of liability set forth in this section shall not apply to either party's indemnity obligations except as set forth in section 6 below.

6. Indemnification.

6.1. Infringement: We shall, at our own expense and subject to the limitations set forth in this Section 6, defend the Customer from and against any and all allegations, threats, claims, actions, and proceedings brought by third parties (collectively "Claims") alleging that the Services, as used in accordance with this Agreement, infringes third party copyrights, trade secrets or trademarks and shall hold the Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable legal fees) (collectively, "Losses") to the extent based upon such a Claim.

Excluded from the above indemnification obligations are Claims to the extent arising from (a) use of the Services in violation of this Agreement or applicable law, (b) use of the Services after we notify the Customer to discontinue use because of an infringement claim, or (c) modifications to the Services or use of the Services in combination with any software, application or service made or provided other than by us.

If a Claim of infringement is brought or threatened, we shall, at our sole option and expense, use commercially reasonable efforts either (a) to procure a licence that will protect the Customer against such Claim without cost to the Customer; (b) to modify or replace all or portions of the Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted to the Customer under this Section 6.1 state our entire liability, and the Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

6.2. Disclosure of The Customer Data: We shall, at our own expense and subject to the limitations set forth in this Section 6, defend the Customer from and against any Claims that arise out of or result directly from our gross negligence or willful misconduct in preventing unauthorized access to confidential customer Data, as determined by a court of competent jurisdiction in connection with a Claim alleging a breach of confidentiality, and shall hold the Customer harmless from and against liability for any Losses to the extent based upon such a Claims.

When we are at fault but such fault does not rise to the level of gross negligence or willful misconduct, we shall, at our own expense and subject to the limitations set forth in this Section 6 and on the amount of liability set forth in Section 5 applicable in the event of a breach of Section 2.8, defend the Customer from and against any Claims, and shall hold the Customer harmless from and against liability for any Losses to the extent based upon Claims, arising out of or relating to our breach of Section 2.8 (Confidential Information) of this Terms of Service.

Provided that we comply with this section 6.2, the Customer shall be entitled as its sole and exclusive remedy to terminate the Agreement and receive a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term.

6.3 The Customer's Indemnity: The Customer shall, at its own expense and subject to the limitations set forth in this section 6, defend us from and against any and all Claims (i) alleging that the the customer Data or any trademarks or service marks other than Our Marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of the Customer's breach of Section 2.4 (The Customer's Lawful Conduct) or 2.8 (Confidential Information) above and shall hold us harmless from and against liability for any Losses to the extent based upon such a Claims.

6.4. Indemnification Procedures and Survival: In the event of a potential indemnity obligation under this Section 6, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, co-operate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this section 6 are expressly conditioned upon the indemnified party's compliance with this section 6.4 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this section 6 but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this section 6 shall survive termination of this Agreement for one year.

7. Suspension/Termination:

7.1. Suspension for Delinquent Account: We reserve the right to suspend the Customer's and any of the Customer Affiliates' access to and/or use of the Services for any accounts (i) for which any payment is due but unpaid but only after we have provided the Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice ("Delinquent

Account Status"), or (ii) for which the Customer has not paid for the renewal term and has not notified us of its desire to renew the Services by the End Date of the then current term. The suspension is for the entire account and the Customer understands that such suspension would therefore include Affiliate sub-accounts. The Customer agrees that we shall not be liable to the Customer or to any of the Customer's Affiliate or other third party for any suspension of the Services pursuant to this Section 7.1.

7.2. Suspension for Ongoing Harm: The Customer agrees that we may with reasonably contemporaneous written or telephonic notice to the Customer suspend access to the Services if we reasonably conclude that the Customer's Services are being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of the Customer's Services are causing immediate, material and ongoing harm to us or others. In the extraordinary event that we suspend the Customer's access to the Services, we will use commercially reasonable efforts to limit the suspension to the offending portion of the Services and resolve the issues causing the suspension of Services. The Customer further agrees that we shall not be liable to the Customer nor to any third party for any suspension of the Services under such circumstances as described in this Section 7.2.

7.3. Termination for Cause, Expiration: Either party may immediately terminate this Agreement in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party.

Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the Managing Director of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, the Customer shall have no rights to continue use of the Services. If this Agreement is terminated by the Customer for any reason other than a termination expressly permitted by this Agreement, the Customer agrees that we shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of a breach on our part, we shall refund the pro rata portion of any subscription fees paid by the Customer to us under this Agreement for the terminated portion of the Term.

7.4. Handling of The Customer Data In The Event Of Termination: The Customer agrees that following termination of the Customer's account and/or use of the Services, we may immediately deactivate the Customer's account and that following a reasonable period of not less than 90 days shall be entitled to delete the Customer's account from our "production" site. During this 90 day period and upon the Customer's request, we will grant the Customer limited access to the Services for several days for the sole purpose of permitting the Customer to retrieve the Customer Data, provided that the Customer has paid in full all good faith undisputed amounts owed to us. The Customer further agrees that we shall not be liable to the Customer nor to any third party for any termination of the Customer access to the Services or deletion of the Customer Data, provided that we are in

compliance with the terms of this Section 7.4.

8. Modification; Discontinuation of The Services.

8.1 To the Services: We may make modifications to the Services or particular components of the Services from time to time and will use commercially reasonable efforts to notify the Customer of any material modifications. We reserve the right to discontinue offering the Services at the conclusion of the Customer's current Term. We shall not be liable to the Customer nor to any third party for any modification of the Services as described in this Section 8.1.

8.2 To Applicable Terms. If we make a material change to any applicable Terms, then we will notify the Customer by either sending an email to the notification email address or posting a notice accessible in the Customer's account. If the change has a material adverse impact on the Customer and the Customer does not agree to the change, the Customer must notify us within 30 (thirty) days after receiving notice of the change. If the Customer notifies us as required, then the Customer will remain governed by the Terms in effect immediately prior to the change until the end of the then current term for the affected Services. If the affected Services are renewed, it will be renewed under our then current Terms.

9. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of the Customer.

"The Customer Data" means all electronic data or information submitted to the Services by the Customer or its Affiliates.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Services.

"Quotation" means our proposal, estimate, renewal notification or order form in the name of and executed by the Customer or its Affiliate and accepted by us which specifies the Services and implementation services to be provided by us subject to the terms of this Agreement.

"Services" means, our online business application which is the Standard Subscription Service (the "Our Services") that is purchased by the Customer from us from time to time.

"Users" means individuals who are authorized by the Customer to use the Services, for whom subscriptions to the Services has been purchased, and who have been supplied user identifications and passwords by

the Customer (or by us at the Customer's request). Users may include but are not limited to the Customer's and the Customer's Affiliates' employees, consultants, contractors and agents.