

## Summary of Terms and Conditions

By signing up to shepd you agree to our Terms and Conditions (the "Agreement") in full. The terms and conditions are summarised below for your convenience, however the full terms and conditions should always be read and understood in full in addition to this summary.

- As part of this service you will receive a shepd box in the post, which we will provide instructions for you to install.
- The shepd box, once installed, will gather data that flows on your network for the purposes of detecting and mitigating cyber security threats.
- The data captured includes network communications and metadata of network connections. We do NOT capture the content of your traffic with the web. We do not ever read, analyse or capture the content of any web sites you visit, encrypted or unencrypted, or any content that you enter.
- The shepd box submits captured data to the dashboard where you are able to view it in summarised form and where we provide you with alerts on activity that shepd has detected as malicious or suspicious.
- While we endeavour to make shepd compatible with as many systems, devices and software as possible, we cannot provide any warranties that shepd is compatible with any particular product or version. However we conduct our main browser testing on Google Chrome and thus you should always be able to access your shepd box and the Dashboard using Chrome.
- We anonymise and aggregate data together and present it to all our customers. The data we present will never have any information that identifies you or your network specifically.
- You will receive a customer ID when you register, and you can use it (along with the password that you entered when you signed up) to log into the Dashboard.
- You should not give your customer ID or your password to anyone else. We consider all actions performed under your account to have been performed by you, unless we've previously been made aware in writing that your account has been breached.
- Our data and service is based in Europe, and we will not transmit or store your data outside of the European Economic Area (EEA).
- If any payment due is late we reserve the right to suspend your account and your shepd box until payment is made.
- Where it is reasonably practical to do so we shall give at least 30 days notice to any changes to these Terms and Conditions.

This summary is not a replacement for the Terms and Conditions. You should ensure that you understand and agree to the Terms and Conditions (the "Agreement", below) in full before signing up to our service.

# Agreement

Please read this Agreement carefully, as it sets out the basis upon which we provide shepd for use.

By signing up to use our service, you agree to be bound by the provisions of this Agreement. If you do not agree to be bound by the provisions of this Agreement, you must not sign up to use shepd.

## Parties

1. Shepd Limited, a company incorporated in England and Wales (registration number 10608018) having its registered office at 6 York Court, Wilder Street, Bristol, United Kingdom, BS2 8QH (the "**Provider**"); and
2. You (the "**Customer**").

## Agreement

### 1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Hosted Services;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

- (a) the amounts specified in Schedule 1; and
- (b) such amounts as may be agreed in writing by the parties from time to time;

"**Customer Confidential Information**" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the information entered during the creation of an Account;

"**Customer Data**" means

- (b) Customer Network Activity captured by the Shepd Box and automatically transmitted to the Hosted Services where that Customer Network Activity does not contain Customer Confidential Information;
- (b) all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"**Customer Indemnity Event**" has the meaning given to it in Clause 17.3.

**"Customer Network"** means the local area network (LAN) at the Customer's home or place of business where shepd is used to detect and mitigate cyber attacks;

**"Customer Network Activity"**

- (a) **includes** metadata, configuration and routing information communicated during the normal operation of the Customer Network which may be used to detect and mitigate cyber attacks, including but not restricted to Domain Name System (DNS) communications, Secure Sockets Layer (SSL)/Transport Layer Security (TLS) certificate information, Dynamic Host Configuration Protocol (DHCP) communications, Internet Protocol (IP) information, Transmission Control Protocol (TCP) information, User Datagram Protocol (UDP) information, Media Access Control (MAC) information;
- (b) **includes** the content of encrypted communications and unencrypted communications sent and received by the Shepd Box as part of provision of Services by the Provider;
- (c) **includes** any information sent or received on the Customer Network in order to set up network connections and before data exchange begins;
- (d) **excludes** the content of encrypted communications not sent or received by the Shepd Box (such as those protected by SSL/TLS or Secure Shell (SSH))

**"Documentation"** means the documentation produced by the Provider and made available through links on the Platform;

**"Effective Date"** means the date the Customer fills out and completes creation of an Account;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected including (without limitation) acts of God, war, fire, flood, strike or labour dispute, civil commotion, sabotage, statute order or any regulation of any government, public or local authority, failures of the internet or any public telecommunications network, cyber security incidents, denial of service attacks, virus' or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, , terrorist attacks;

**"Hosted Services"** means the Dashboard (<https://dashboard.shepd.net/>) which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Maintenance Services"** means the general maintenance of the Platform, and the application of Updates and Upgrades;

**"Permitted Purpose"** means

- (a) monitoring of Customer Network Activity in order to detect and mitigate cyber attacks, the presence or infection of malware or viruses;
- (b) interference in Customer Network Activity in order to prevent cyber attacks, the presence or infection of malware or viruses;
- (c) monitoring of Customer Network Activity in order to detect malicious activity by users of the Network;

- (d) analysis of data gathered through (a), (b) and (c);
- (e) sharing of data gathered from (a), (b), (c) or (d) where information is either redacted or anonymised such that no particular Customer can be uniquely identified;
- (f) send non-marketing communications relating to the service to the Customer, where the Customer has given consent;
  
- (g) send marketing communications relating to the service to the Customer, where the Customer has given consent;

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Services to the Customer including:

- (a) the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;
- (b) the Shepd Box, the system and server software used within the Shepd Box and the hardware on which that system and server software is installed;
- (c) the shepd website (<https://www.shepd.net>);

"**Provider Indemnity Event**" has the meaning given to it in Clause 17.1.

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"**Shepd Box**" means the software and hardware provided to the Customer to install on the Customer Network on commencement of the Services (including, for the avoidance of doubt; power supply, network cable, electronic items and storage media);

"**Source Code**" means the Platform code in human-readable form or any part of the Platform code in human-readable form, including code compiled to create any part of the Platform or decompiled from the Platform or de-obfuscated from the Platform or decrypted from the Platform;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Google Chrome, or any other web browser that the Provider agrees in writing shall be supported;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"**Trial**" means the offering of Services made to particular Customers specified by the Provider subject to amendments set out in Clause 8, which may include the use of all or a portion of the Platform;

"**Update**" means a hotfix, patch or minor version update to any Platform software; and

"**Upgrade**" means a major version upgrade of any Platform software.

## 2. Credit

- 2.1 This document was created using a template from SEQ Legal (<http://www.seqlegal.com>).

### **3. Term**

- 3.1 This Agreement shall come into force upon the Effective Date.
- 3.2 This Agreement shall continue in force until either the Provider or Customer choose to terminate the Agreement, subject to termination in accordance with Clause 19.

### **4. Platform**

- 4.1 The Provider shall ensure that the Platform will automatically generate an Account for the Customer and provide to the Customer login details for that Account.
- 4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser and in accordance with the Documentation, during the Term.
- 4.3 The Provider hereby grants to the Customer from the date of supply of the Shepd Box to the Customer until the end of the Term a licence to use only that Shepd Box in accordance with the Documentation subject to the limitations and prohibitions set out and referred to in this Clause 4.
- 4.4 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the limitation that the Platform may only be used by the Customer;
- 4.5 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Platform;
  - (b) the Customer must not permit any unauthorised person to access or use the Platform;
  - (c) the Customer must not use the Platform to provide services to third parties without explicit permission given in writing from the Provider;
  - (d) the Customer must not sell, resell, rent, lease, loan, supply, publish, republish, distribute or redistribute any part of the Platform;
  - (e) the Customer must not make any alteration to any part of the Platform, except as permitted by the Documentation;
  - (f) the Customer must not decompile, reverse engineer, decrypt, or de-obfuscate, or attempt to decompile, reverse engineer, decrypt, or de-obfuscate any part of the Platform;
  - (g) the Customer must not open up, disassemble or otherwise modify the Shepd Box hardware without the express written permission of the Provider.
- 4.6 Nothing in this Agreement shall give to the Customer or any other person any right to access or use the Source Code or constitute any licence of the Source Code, either prior to, during, or after the Term. Where General Public Licenses are used the terms applicable to these elements are maintained.
- 4.7 The Customer shall be responsible for the security of the Shepd Box supplied to the User under this Agreement and shall use reasonable endeavours, including reasonable security measures, to ensure that no unauthorised person may gain access to the Platform using their Account.
- 4.8 The Provider shall use reasonable endeavours to maintain the availability of the Platform to the Customer, but does not guarantee 100% availability.
- 4.9 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;

- (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of this Agreement; or
  - (e) scheduled maintenance carried out in accordance with this Agreement.
- 4.10 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform.
- 4.11 The Customer must not use the Platform:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.12 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either prior to, during, or after the Term. Where General Public Licenses are used the terms applicable to these elements are maintained.
- 4.13 The Provider may suspend the provision of the Platform if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **5. Maintenance Services**

- 5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 5.2 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Platform or are likely to have a material negative impact upon the Platform, without prejudice to the Provider's other notice obligations under this main body of this Agreement.
- 5.3 The Provider shall provide the Maintenance Services with reasonable skill and care.
- 5.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.
- 5.5 The Customer accepts that Updates or Upgrades applied to the Shepd Box may require a restart of the Shepd Box, and may cause temporary downtime while the Update or Upgrade is installed or configured.

## **6. Support Services**

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall make available to the Customer help pages, made available through the Dashboard, in accordance with the provisions of this main body of this Agreement.
- 6.3 The Provider shall provide the Support Services with reasonable skill and care.
- 6.4 The Customer may use the help pages for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the help pages for any other purpose.
- 6.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the help pages.
- 6.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **7. Customer Data**

- 7.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement.
- 7.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## **8. Trial Customers**

- 8.1 Where the Customer has entered into a Trial, the following Clauses shall not apply: 4.8, 5.1, 5.2, 6.2, 6.5, 14.2(b).
- 8.2 The Provider may vary the Charges to Customers entered into a Trial from those Charges set out in Schedule 1, and where this occurs the Provider shall inform the Customer in writing.
- 8.3 The Provider may invite Customers to take part in a Trial, and reserves the right to restrict the set of Customers invited to a Trial entirely at its own discretion. The Provider will have the final say in all decisions and disputes relating to any Trial.
- 8.4 The Provider reserves the right to amend the length of the period of the Trial at any time and without notice.
- 8.5 The Customer acknowledges that, by agreeing to enter a Trial, the Platform available under Trial is not production-ready and therefore may exhibit defects, abnormal behaviour or other issues that affect quality of the Services provided.

## **9. No assignment of Intellectual Property Rights**

- 9.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## **10. Charges**

- 10.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 10.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 10.2.
- 10.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.
- 10.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement.

## **11. Payments**

- 11.1 The Provider shall issue invoices for the Charges to the Customer.
- 11.2 The Customer must pay the Charges to the Provider within the period specified in Schedule 1.
- 11.3 The Customer must pay the Charges by debit card, credit card, direct debit or bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).

11.4 The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 11.4 constitute a substantial remedy within the meaning of that Act.

## **12. Provider's confidentiality obligations**

12.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in this Agreement;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

12.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

12.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

12.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

12.5 The provisions of this Clause 12 shall continue in force indefinitely following the termination of this Agreement.

## **13. Data protection**

13.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).

13.2 To the extent that the Provider processes Personal Data disclosed by the Customer, the Provider warrants that:



- (a) it will act only on instructions from the Customer in relation to the processing of that Personal Data;
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and
- (c) it will not transfer or permit the transfer of that Personal Data outside the EEA without the prior written consent of the Customer.

## **14. Warranties**

14.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- (d) all parts of the Shepd Box provided to the Customer, to the best of the knowledge of the Provider, are fully compliant with all relevant and applicable laws and regulations when used in accordance with this Agreement.

14.2 The Provider warrants to the Customer that:

- (a) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (b) the Platform will incorporate security features reflecting the requirements of good industry practice.

14.3 The Provider warrants to the Customer that the Platform, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

14.4 The Provider warrants to the Customer that the Platform, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

14.5 If the Provider reasonably determines, or any third party alleges, that the use of the Platform by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Platform in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Platform in accordance with this Agreement.

14.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

14.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **15. Acknowledgements and warranty limitations**

- 15.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Platform will be wholly free from defects, errors and bugs.
- 15.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Platform will be entirely secure.
- 15.3 The Customer acknowledges that the global cyber security landscape is constantly changing, and that new threats emerge frequently; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Platform will be able to protect the Customer from every threat, known or unknown.
- 15.4 The Customer acknowledges that the Provider does not warrant or represent that the Platform will be compatible with any particular software or systems, except for the "Supported Web Browser".
- 15.5 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Platform; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Platform or the use of the Platform by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **16. Limitations and exclusions of liability**

16.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this Agreement, except to the extent permitted by law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this Agreement:

- (a) are subject to Clause 16.1 and 23.6; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

16.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

16.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

16.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

16.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.

16.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

16.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software.

16.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

16.10 The liability of the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 3 month period preceding the commencement of the event or events.

16.11 The aggregate liability of the Provider to the Customer under this Agreement shall not exceed the total amount paid and payable by the Customer to the Provider in the 3 month period preceding the commencement of the event or events under this Agreement.

## **17. Indemnities**

17.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of this Agreement (a "**Provider Indemnity Event**").

17.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 17.1 shall not apply unless the Customer complies with the requirements of this Clause 17.2.

17.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of this Agreement (a "**Customer Indemnity Event**").

17.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

without prejudice to the Customer's obligations under Clause 17.3.

17.5 The indemnity protection set out in this Clause 17 shall be subject to the limitations and exclusions of liability set out in this Agreement.

## **18. Force Majeure Event**

- 18.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement, that obligation will be suspended for the duration of the Force Majeure Event.
- 18.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
  - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 18.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **19. Termination**

- 19.1 Either party may terminate this Agreement by giving to the other party not less than 30 days' written notice of termination.
- 19.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits any breach of this Agreement.
- 19.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
  - (d) if that other party is an individual:
    - (i) that other party dies;
    - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
    - (iii) that other party is the subject of a bankruptcy petition or order.
- 19.4 On termination of this Agreement by the Customer, the Provider will not issue refunds for any amounts already paid by the Customer.
- 19.5 On termination of this Agreement by the Provider where the Customer is in breach of this Agreement, the Provider will not issue refunds for any amounts already paid by the Customer.

## **20. Effects of termination**

- 20.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect

(in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.6, 4.12, 11.2, 11.4, 12, 16, 17, 20, 23 and 24.

20.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

20.3 Within 30 days following the termination of this Agreement for any reason:

(a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement;

without prejudice to the parties' other legal rights.

20.4 For the avoidance of doubt, all rights to use the Platform in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Customer must immediately cease to use the Platform upon the termination of this Agreement.

## **21. Notices**

21.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods:

(a) using information displayed on the Platform; or

(b) sent by email;

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

21.3 The Customer's contact details for notices under this Clause 20 are those entered by the Customer during creation of an Account, including any amendments made by the Customer thereafter through the Platform.

## **22. Subcontracting**

22.1 The Provider may subcontract any of its obligations under this Agreement.

22.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

22.3 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **23. General**

23.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

23.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

23.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

23.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

- 23.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 23.6 Nothing in this Agreement shall exclude or limit any liability of a party for fraud or fraudulent misrepresentation, or any other liability of a party that may not be excluded or limited under applicable law.
- 23.7 Subject to Clause 16.1 and 23.6, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 23.8 This Agreement shall be governed by and construed in accordance with English law.
- 23.9 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **24. Interpretation**

- 24.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 24.2 The Clause headings do not affect the interpretation of this Agreement.
- 24.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **Schedule 1 (Financial provisions)**

Charges due on commencement of the Agreement:

- 1 75 GBP (due immediately), for supply and delivery of the Shepd Box; and
- 2 Either
  - (a) 7 GBP per calendar month (due from the commencement of the Agreement and then on that date for each following month) for the duration of the Term;or
  - (b) 70 GBP (due immediately) for the provision of Services for the first 12 months, after which the Charges automatically revert to 2 (a).