

**ATHEON ANALYTICS LIMITED  
SKUTRAK TERMS OF SERVICE**

**1 DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause 1 apply in the Contract:

**"Atheon Analytics"** means Atheon Analytics Limited a company incorporated in England, with registration number 05448507 and whose registered office address and principal place of business is at Cranfield Innovation Centre, University Way, Cranfield, Beds MK43 0BT and a reference to "Us", "We" or "Our" is a reference to Atheon Analytics;

**"Authorised Users"** means those of Your employees, agents and independent contractors who are authorised by You to use the Services by You creating accounts for such users in order for them to access and use the Services;

**"Beta Service"** has the meaning given to it in Part 4;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**"Commencement Date"** means the date on which You confirm Your acceptance of these terms, whether by indicating acceptance via the Website, signature of the Order Form or otherwise;

**"Confidential Information"** means information disclosed before or after the Commencement Date in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of either party for the time being confidential to the relevant party and trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential;

**"Contract"** means the contract between Us and You for the provision to You of the Services, such Contract comprising these terms and conditions and any Order Form and excluding all other terms and conditions;

**"Direct Data"** means Retailer Data licensed directly to Us by a Retailer;

**"Effective Date"** means the date the Services are first made available to You;

**"Fees"** means the fees payable by You to Us for the Services, being the fees as published on the Website, or if an Order Form is issued, then the fees specified in the Order Form;

**"Free Service"** has the meaning given in Part 2;

**"Good Industry Practice"** means the standard of skill, care, knowledge, and foresight which would reasonably and ordinarily be expected from an experienced person engaged in the provision of hosted services of the kind provided pursuant to the Contract;

**"Initial Term"** means a period equal to the Notice Period unless otherwise agreed in the Order Form;

**"Normal Business Hours"** means 9.00 am to 6.00 pm UK time, each Business Day;

**"Notice Period"** means a period of 6 months unless otherwise agreed in the Order Form;

**"Order Form"** means any acknowledgement of order issued by Us to which these terms may be attached or referenced;

**"Portal Data"** means Retailer Data collected by Us on Your behalf from a Retailer's website;

**"Premium Services"** has the meaning given in Part 3;

**"Quarter"** means a period of one quarter, (i.e. three consecutive months) measured from the date of the first invoice from Us for the Fees or from the end of the last preceding quarter;

**"Retailer"** means any organisation which sells Your products on Your behalf and provides You with access to Retailer Data;

**"Retailer Data"** means data generated by the Retailers which is collected by Us for the purpose of providing the Services to You or facilitating Your use of the Services and includes Portal Data and Direct Data;

**"Services"** means the services provided by Us to You under the Contract via the Website which may be either Free Services or Premium Services;

**"Software"** means the online software applications provided by Us as part of the Services and includes (without limitation) the software developed by Us or Our third party licensees and comprised in Our SKUtrak system and all updates, upgrades, modifications, releases and versions thereof, including:

- a) the source code and object code; and
- b) all other works or material recorded or embodied in the software, including any associated documentation (in human or machine readable form) and the audio or visual content in any screen displays in the user interface;

**"Term"** has the meaning given in clause 14.3 (Part 2) as applicable to the Free Service or clause 15.9 (Part 3) as applicable to the Premium Service;

**"Virus"** means any thing or device (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;

**"Website"** means Our website at skutrak.com or any sub-domain thereof or any other website as notified to You by Us from time to time;

**"You"** or **"Your"** means the organisation receiving the Services under the Contract;

**"Your Data"** means the data generated by You which is collected by Us for the purpose of providing the Services to You or facilitating Your use of the Services.

- 1.2 In the Contract clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 The Contract shall be binding on, and enure to the benefit of, the parties to the Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 A reference to "writing" or "written" includes fax but not email.
- 1.8 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.9 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **PART 1: GENERAL TERMS FOR ALL SKUTRAK LICENCES**

### **2 INTRODUCTION AND AUTHORISED USERS**

- 2.1 The Contract between You and Us shall include:
  - 2.1.1 any special terms set out in the Order Form; and
  - 2.1.2 all of the terms and conditions set out in Part 1 (General Terms); and
  - 2.1.3 where You are using Our Free Service, all of the terms and conditions set out in Part 2 (Free Terms); or
  - 2.1.4 where You are using Our Premium Service, all of the terms and conditions set out in Part 3 (Premium Terms).
- 2.2 Subject to Your compliance with the conditions set out in clause 2.3, We shall grant to You a non-exclusive, non-transferable licence to permit the Authorised Users to use the Services during the Term solely for Your internal business operations. This licence does not permit further sub-licensing without Our prior written consent.

- 2.3 The conditions referred to in clause 2.2 are:
- 2.3.1 signature by Us and You of the Order Form or Your indication of Your acceptance of these terms via the Website; and
  - 2.3.2 Your compliance with the restrictions set out in these terms and conditions.
- 2.4 If there is a conflict or inconsistency between some or all of the documents which make up the Contract, the Order Acknowledgment shall prevail over these terms and conditions.
- 2.5 The licence in clause 2.2 does not permit You to allow any other holding or subsidiary companies to access, use or benefit from the Services.
- 2.6 You shall not, and shall procure that Your Authorised Users, staff and representatives do not store, distribute or transmit:
- 2.6.1 any Viruses to the Software or any of Our systems; or
  - 2.6.2 any material during the course of Your use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or which is likely to cause damage or injury to any person or property.
- We reserve the right, without liability to You, to disable Your access to any part or all of the Services that breaches the provisions of this clause 2.6.
- 2.7 You shall not, 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 by the Contract:
- 2.7.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
  - 2.7.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 2.7.3 access all or any part of the Services and/or the Software in order to build a product or service using the information obtained from the Services and/or the Software which competes with the Services; or
  - 2.7.4 subject to any permitted licencing as stated in the Contract, use the Services to provide services to third parties; or
  - 2.7.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except to the extent permitted under the Contract to the Authorised Users; or
  - 2.7.6 attempt to obtain, or assist third parties in obtaining, access to the Services other than as provided under this clause 2.
- 2.8 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, You shall promptly notify Us

and shall indemnify Us against all claims, damages, losses, costs, liabilities and expenses which We may suffer or incur as a result of any unauthorised access or use that is due to Your actions or omissions.

### **3 SERVICES**

3.1 We shall, during the Term, provide the Services to You on and subject to the terms of the Contract. You will provide Your Data to Us throughout the Term to enable Us to provide the Services.

3.2 We act as Your agent regarding the collection of Portal Data to enable Us to provide the Services. By entering into this Contract, You instruct Us to access the relevant Retailer's system(s) and extract Portal Data on Your behalf.

3.3 We will, subject to clause 5, host Your Data and/or Retailer Data and use the Software to analyse Your Data and/or Retailer Data in order to provide the Services to You.

3.4 We shall use commercially reasonable endeavours to make the Services available twenty-four hours a day, seven days a week except for:

3.4.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

3.4.2 unscheduled maintenance performed outside Normal Business Hours or for emergency maintenance (which may be carried out at anytime) provided that We use reasonable endeavours to give You as much advance notice as is reasonably practicable in the case of unscheduled maintenance.

3.5 We will, as part of the Services and at no additional cost to You, provide You during Normal Business Hours with Our standard customer support services as described in more detail on the Website. You may purchase enhanced support services separately at Our then current rates.

3.6 The Contract shall not prevent You or Us 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 the Contract.

### **4 SOFTWARE**

4.1 We warrant that We are the owner of or authorised licensee of all rights in the Software that are necessary to grant all rights that We purport to grant under and in accordance with the terms of this Contract.

### **5 DATA**

5.1 You own or are the licensor of all rights, title and interest in and to all of Your Data and/or Portal Data and warrant that You have adequate permission to enable Us to use Your Data or Portal Data to provide the Services.

5.2 You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.

- 5.3 We warrant that We have a licence to lawfully use Direct Data for the Services.
- 5.4 We shall maintain, in accordance with Good Industry Practice, appropriate administrative, physical and technical safeguards calculated to ensure the protection of the security, confidentiality and integrity of Your Data and/or Retailer Data and shall perform a daily back-up of Your Data and/or Retailer Data in accordance with Good Industry Practice.
- 5.5 Without prejudice to clause 5.4, You acknowledge that We do not provide archiving or data storage or security services and accordingly We shall not be responsible for any loss, destruction, alteration or disclosure of Your Data and/or Retailer Data caused by any third party (except those third parties sub-contracted by Us to perform services related to maintenance and back-up of Your Data and/or Retailer Data).
- 5.6 You warrant and undertake to Us that:
- 5.6.1 You own the copyright and other intellectual property in all Your Data and/or Portal Data submitted by You for the supply of Services or are otherwise entitled to reproduce, have reproduced, manipulate or have manipulated Your Data and/or Portal Data in the course of the Services;
  - 5.6.2 none of Your Data will be unlawful, libellous or in any way contravene any requirement of law or code of practice or infringe the rights of any third party;
  - 5.6.3 You have no reason to believe that any Portal Data will be unlawful, libellous or in any way contravene any requirement of law or code of practice or infringe the rights of any third party;
  - 5.6.4 Your Data will not contain any Virus;
  - 5.6.5 You have no reason to believe that any Portal Data will contain any Virus; and
  - 5.6.6 replication, storage, conversion, transmission and other dealing by Us of Your Data and/or Portal Data in the course and for the purposes of provision of the Services will not be in any respect unlawful or infringe any rights of any third party (save to the extent that such unlawful or infringing activity would not have occurred but for use of the Software in the provision of the Services).
- 5.7 We do not believe that Your Data and/or Portal Data will contain any personal data (as defined in the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018). If We process any personal data on Your behalf when performing Our obligations under the Contract, You acknowledge that we shall be joint controllers of the personal data contained in Your Data and/or Portal Data and in any such case:
- 5.7.1 You acknowledge and agree that the personal data may be transferred or stored outside the EEA or the country where You and the Authorised Users are located in order to carry out the Services and Our other obligations under the Contract;
  - 5.7.2 You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully use, process and transfer the personal data in accordance with the Contract on Your behalf;

- 5.7.3 You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 5.7.4 We shall process the personal data in accordance with the terms of the Contract and any lawful instructions reasonably given by You from time to time provided they do not infringe upon Our legal obligations as a data controller; and
- 5.7.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5.8 You acknowledge and accept that We may collect user generated data in relation to the Authorised Users which may contain personal data. If We process personal data as part of this process You acknowledge that We are the data controller in relation to the data collected. Our processing of that personal data shall be governed by Our privacy policy which can be found at <https://www.skutrak.com/privacy-policy>.

5.9 Subject to the controller relationships set out in clauses 5.7 and 5.8, both parties warrant that they will comply with all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## **6 THIRD PARTY PROVIDERS**

- 6.1 You acknowledge that the Services may from time to time enable or assist You to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that You do so solely at Your own risk.
- 6.2 We make no representation 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 You, with any such third party.
- 6.3 Any contract entered into and any transaction completed via any third-party website is between You and the relevant third party, and not Us; We recommend that You refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website.
- 6.4 We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **7 YOUR OBLIGATIONS**

7.1 You shall:

7.1.1 provide Us with:

- (a) all necessary co-operation in relation to the Contract; and
- (b) all necessary access to such information as may be required by Us;

in order to render the Services, including but not limited to Your Data and/or Retailer Data, security and access information;

- 7.1.2 comply with all applicable laws and regulations with respect to Your activities under the Contract;
- 7.1.3 ensure that the Authorised Users use the Services in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;
- 7.1.4 ensure that Your network and systems comply with the relevant specifications as notified to You by Us or as described on the Website;
- 7.1.5 be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet; and
- 7.1.6 procure that Your Authorised Users shall, keep all account log in information and passwords safe and secure and not disclose them to any third party.

## **8 PROPRIETARY RIGHTS**

- 8.1 You acknowledge and agree that We and/or Our licensors own all intellectual property rights in the Software, the Services. Except in relation to Your Data or as expressly stated herein, the Contract does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Services.

## **9 CONFIDENTIALITY**

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
  - 9.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 9.1.2 was in the other party's lawful possession before the disclosure without any obligation of confidentiality;
  - 9.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 9.1.4 is independently developed by the receiving party, without relying on the other party's Confidential Information, and for which independent development can be shown by written evidence; or
  - 9.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.



- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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 the Contract.
- 9.3 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 the Contract.
- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.5 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.
- 9.6 We acknowledge that Your Data is also Your Confidential Information.
- 9.7 The obligations of confidentiality remain in force for a period of five years as of the termination or expiration of the Contract.

## **10 INDEMNITIES**

- 10.1 Subject to clause 10.4, We shall defend You, Your officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims. You shall indemnify Us against all claims, damages, losses, costs, charges, liabilities and expenses that We may suffer or incur:
- 10.1.1 as a result of a breach of or inaccuracy in any of the warranties in clause 5.6; or
- 10.1.2 as a result of acting upon instructions provided by You in respect of the Services, Your Data and/or Retailer Data. In particular, You acknowledge that We are acting as Your agent and so if any claim or allegation is made against Us by a Retailer as a direct or indirect result of Your instruction to Us to provide the Services to You and to access Retailer Data, You will indemnify Us as stated in this clause 10.1.
- 10.2 A party seeking the benefit of an indemnity shall:
- 10.2.1 give the indemnifying party prompt notice of any relevant claim;
- 10.2.2 provide reasonable co-operation to the indemnifying party in the defence and settlement of such claim, at the indemnifying party's expense; and
- 10.2.3 the indemnifying party is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim the subject of its indemnity in clause 10.1, We may procure the right for You 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 the Contract on fourteen (14) days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You other than to refund to You on a pro rata basis any pre-paid Fees for Services not provided by the date of termination.

- 10.4 In no event shall We, Our employees, agents and sub-contractors be liable to You under clause 10.1 to the extent that the alleged infringement is based on:
- 10.4.1 a modification of the Services by anyone other than Us; or
  - 10.4.2 Your use of the Services in a manner contrary to the instructions given to You by Us; or
  - 10.4.3 Your use of the Services after notice of the alleged or actual infringement from Us or any appropriate authority.
- 10.5 This clause 10 states Your sole and exclusive rights and remedies, and Our (including Our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **11 LIMITATIONS OF LIABILITY**

- 11.1 Nothing in the Contract shall exclude or limit:
- 11.1.1 Your or Our liability:
    - 11.1.1.1 for death or personal injury caused by negligence; or
    - 11.1.1.2 for fraud or fraudulent misrepresentation; or
    - 11.1.1.3 for any other liability which may not be limited or excluded by law.
  - 11.1.2 Your obligation to pay the Fees in accordance with this Contract.
- 11.2 Subject to clause 11.1 and except as expressly and specifically provided in the Contract:
- 11.2.1 You assume sole responsibility for results obtained from the use of the Services by You, and for conclusions drawn from such use;
  - 11.2.2 We shall have no liability for any damage caused by mistakes, defects, Viruses, poor quality, omissions or inaccuracies in Your Data and/or Retailer Data or in any information, instructions or scripts provided to Us by You in connection with the Services or from reproduction by Us in the course of provision of the Services of such mistakes, defects, Viruses, poor quality, omissions or inaccuracies, all of which will be for Your sole account and You shall indemnify Us against the same, or for any actions taken by Us at Your direction;
  - 11.2.3 We shall have no liability to You for any failure to perform, or delay in performing, any Services which is caused or contributed to by a breach by You of Your obligations under the Contract and unless otherwise agreed in writing We shall be entitled to rely on all of Your Data and/or Retailer Data, information and materials provided by You without verifying the same;
  - 11.2.4 any services not expressly described in the Contract including without limitation any consultancy services or any modification or development of the Services after the Effective Date shall be provided subject to Our agreement at its then current rates for such services and shall be governed by Our terms for provision of such services; and

- 11.2.5 all other 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 the Contract.
- 11.3 Subject to clause 11.1, neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
- 11.3.1 loss of profits, or business; or
  - 11.3.2 depletion of goodwill; or
  - 11.3.3 loss of use of any asset; or
  - 11.3.4 pure economic loss; or
  - 11.3.5 loss from which procedures and precautions that would generally be implemented by a person exercising a degree of skill, diligence, prudence and foresight, would reasonably and ordinarily be expected from a reasonably and appropriately skilled and experienced person in the same or similar circumstances could have prevented or reduced; or
  - 11.3.6 special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
- 11.4 Subject to clause 11.1, both party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not exceed a sum equal to 150% of the total Fees paid by You during the twelve (12) months immediately preceding the date on which the claim arose.
- 11.5 Subject to clause 11.1, We shall have no liability to You under the Contract if We are prevented from or delayed in performing Our obligations under the Contract, or from carrying on Our business, by acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, 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, epidemic illness or default of suppliers or sub-contractors which is caused by an event of a kind described in this clause.

## **12 TERM AND TERMINATION**

- 12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- 12.1.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
  - 12.1.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

- 12.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 12.1.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- 12.1.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- 12.1.6 the other party ceases, or threatens to cease, to trade; or
- 12.1.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
- 12.1.8 a notice is served by You pursuant to clause 15.15. For clarification, the termination only becomes effective at the end of the notice period set out in clause 15.15.

12.2 On termination of the Contract for any reason:

- 12.2.1 all licences granted under the Contract shall immediately terminate, We will terminate access to, and You will cease all use of, the Services;
- 12.2.2 You shall return and make no further use of any documentation provided to You by Us pursuant to the Contract (and all copies of the same);
- 12.2.3 We may destroy or otherwise dispose of any of Your Data in its possession, but will retain any user generated data collected from Authorised Users subject to Our privacy policy as set out in clause 5.8;
- 12.2.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
- 12.2.5 clauses 1, 2.7, 2.8, 5.6, 8, 9, 11, 13.1 to 13.11 and 15.12.2 shall continue to have effect notwithstanding termination for any reason.

## **13 GENERAL**

- 13.1 Any notice required to be given under the Contract 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 the Contract, or such other address as may have been notified by that party for such purposes.

- 13.2 Failure to exercise, or any delay in exercising, any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 13.3 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law or other rights available under the Contract.
- 13.4 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force; if any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 13.5 The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 13.6 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in these terms.
- 13.7 No variation of the Contract shall be effective unless in writing signed by authorised signatories of the respective parties.
- 13.8 Neither party shall, without the prior written consent of the other party (not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of Your rights or obligations under the Contract.
- 13.9 Except as expressly stated, nothing in the Contract 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).
- 13.10 The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.11 Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## **14 PART 2: FREE SERVICE TERMS**

- 14.1 This Part 2 shall apply in addition to Part 1 and only where You have agreed to Our no-charge Service ("**Free Service**"). Part 3 shall not apply where You are using Free Services.

- 14.2 You acknowledge that, as the Free Services are provided to You free of charge, the Service is provided "as is" and We make no representations or warranties (whether express or implied) in respect those Services. We are not responsible for any loss, liability or damage that You suffer in reliance on any output produced by the Service or loss of Your Data and/or Retailer Data.
- 14.3 The Contract shall commence on the Commencement Date and shall continue for the period in which You use the Free Service until terminated in accordance with clause 14.4. The period in which You use the Free Service shall constitute the "Term" for the Free Service.
- 14.4 We may at any time terminate the Contract by notice in writing to You without liability.

### **15 PART 3: PREMIUM SERVICE TERMS & CHARGES FOR PREMIUM SERVICES**

- 15.1 This Part 3 shall apply in addition to Part 1 and only where You have agreed to purchase Our paid-for Service ("**Premium Service**"). Part 2 shall not apply where You are purchasing Premium Services.
- 15.2 We warrant that the Premium Services will be performed with reasonable skill and care and in accordance with applicable laws and that the functionality of the Premium Services will not, subject to clauses 3.4.1 and 3.4.2 (Part 1) be materially decreased during the continuance of the Contract.
- 15.3 The warranty at clause 15.2 shall not apply to the extent of any non-conformance which is caused by Your breach of any provision of the Contract, or use of the Services contrary to Our instructions, or modification or alteration of the Software and/or Services by any party other than Us or Our duly authorised contractors or agents.
- 15.4 We:
- 15.4.1 do not warrant that Your use of the Services will be uninterrupted or error-free; nor that the Services and/or the information obtained by You through the Services will meet Your requirements; and
  - 15.4.2 are 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 You acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 15.5 You shall promptly notify Us in writing if, in Your reasonable opinion, the Services do not conform with the warranty in clause 15.2. Within 7 days of You notifying Us of such non-conformance, We shall, acting reasonably, either confirm that the Services do not conform with that undertaking (in which case clause 15.6 will apply) or request further information from You regarding the alleged non-conformance.
- 15.6 In accordance with clause 15.5, if We agree that the Services do not conform to the warranty in clause 15.2, We will, at Our expense and option, use all reasonable commercial endeavours:
- 15.6.1 to promptly correct any such non-conformance; or
  - 15.6.2 provide You with an alternative means of accomplishing the desired performance.

- 15.7 If We are unable to comply with Our obligations in clauses 15.6.1 and 15.6.2 within 28 days of Us confirming the non-conformance to You in accordance with clause 15.5, either party shall have the right to terminate the Contract immediately on written notice.
- 15.8 Without prejudice to clause 5.4 (Part 1) You acknowledge that We do not provide archiving or data storage or security services and accordingly in the event of any loss or damage to Your Data and/or Retailer Data, We shall in full settlement and satisfaction of its liability to You for such loss, use reasonable commercial endeavours to restore such of Your Data and/or Retailer Data which has been lost or damaged, from the latest back-up of such of Your Data and/or Retailer Data maintained by Us in accordance with clause 5.4 (Part 1).
- 15.9 The Contract shall, unless otherwise terminated as provided in clause 12 (Part 1) commence on the Commencement Date and shall then continue indefinitely, for a period of at least the Initial Term, until terminated:
- 15.9.1 by either party giving the other party prior written notice equivalent to the Notice Period;  
or
- 15.9.2 in accordance with the provisions of the Contract,
- and this shall constitute the "Term" for the Premium Service.
- 15.10 You shall pay the Fees to Us.
- 15.11 The Fees shall be paid by You each Quarter in advance unless agreed otherwise by Us and You. You shall pay Our invoice within thirty (30) days after the date of such invoice.
- 15.12 If We have not received payment within thirty (30) days after the due date for payment of any invoice then without prejudice to any of Our other rights and remedies:
- 15.12.1 We may, without liability to You, disable Your passwords, account and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 15.12.2 interest shall accrue on such due amounts at an annual rate equal to the rate applicable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 15.13 All amounts and fees stated or referred to in the Contract:
- 15.13.1 shall be payable in pounds sterling;
- 15.13.2 are, subject to clause 10.3 (Part 1) non-cancellable and non-refundable; and
- 15.13.3 are exclusive of value added tax, which shall be added to Our invoice(s) at the appropriate rate.
- 15.14 Subject to clause 15.15, We shall be entitled to increase the Fees at any time during the Term by giving You 30 days' (or such alternative time period as set out in the Order Form) prior written notice (the "Revised Fees"). The Revised Fees shall become payable on the expiration of the notice given under this clause.

- 15.15 Should You not agree to the increase in clause 15.14, You are permitted to serve notice to terminate within 10 Business Days of receipt of the notice in clause 15.14. If notice to terminate is received, this Contract shall continue for the Notice Period (beginning on Atheon's receipt of your notice in this clause 15.15) and the fees due during this period shall continue at the existing price rate and not the Revised Fees. If notice to terminate is not given by You within the 10 Business Day notice period, the Revised Fees shall automatically become payable on the expiration of the notice given under clause 15.14.
- 15.16 If the Contract is terminated by You in accordance with clause 12.1 or clause 15.7, then We will refund to You on a pro rata basis any pre-paid Fees for Services not provided by the date of termination, such refund to be made within 30 days from that date.

## **16 PART 4: BETA SERVICES**

- 16.1 We may from time to time, but shall not be under an obligation to, offer to provide to You a Service which is clearly designated as beta, pilot, non-production or by a similar description ("**Beta Service**"). You are under no obligation to use a Beta Service, but if You do then You acknowledge that a Beta Service is a no-charge Service intended for evaluation or testing purposes and not for production use. Therefore, any Beta Service will be deemed to be a type of Free Service and the terms of Parts 1 and 2 apply equally to Beta Services in addition to this Part 4. Part 3 shall not apply where You are using Beta Services.
- 16.2 During the provision by Us of any Beta Service which You elect to use, You shall use reasonable endeavours to provide suggestions, recommendations or other feedback ("**Feedback**") and You grant to Us a worldwide, perpetual, irrevocable, royalty-free licence to use the Feedback to incorporate all or part of it into on going or future services or products provided by Us from time to time.
- 16.3 Without prejudice to clause 14.4, We reserve the right at any time without liability to You to:
- 16.3.1 discontinue all or part of the Beta Service;
  - 16.3.2 disable Authorised Users' access to all or part of the Beta Service; or
  - 16.3.3 convert the Beta Service into a Premium Service at which point You will no longer receive this service unless You agree to enter into a new Contract for the provision of the applicable Premium Service in accordance with these terms and conditions.