

SUBSCRIBER AGREEMENT

This agreement (the "Agreement") is a legal agreement between the Customer (as defined below) and Nimbox Ltd. (a company registered in England and Wales with company number 08280927) whose registered office is The Waterscape, 42 Leeds and Bradford Road, Leeds LS5 3EG ("Nimbox").

The Nimbox Services provide a range of security-focused tools enabling the Customer's Users and Guests to collaborate on business information securely, to edit, share, and backup files online, and to have remote access to Customer-owned file servers.

Nimbox permits use of the Nimbox Services and Documentation by the Customer on the basis of this Agreement. By checking the box confirming acceptance of this Agreement, the Customer agrees to be bound by the terms of this Agreement.

AGREED TERMS

Nimbox and the Customer now agree as follows:

1 Definitions

1.1 In this agreement (the "Agreement"), the following terms will have the meanings assigned to them below:

"**Acceptable Use Policy**" means Nimbox's policy relating to the acceptable use of the Nimbox Services made available to the Customer by Nimbox online at www.nimbox.co.uk/acceptable-use or such other web address notified by Nimbox to the Customer from time to time;

"**Account**" is an instance of the Nimbox Services made exclusively available to the Customer;

"**Customer Data**" means any and all data, information and content which are i) uploaded, stored or installed by the Customer onto the Nimbox Services or ii) created, realised or developed by the Customer while using the Nimbox Services;

"**Documentation**" means the documents made available to the Customer by Nimbox online at www.nimbox.co.uk or such other web address notified by Nimbox to the Customer from time to time which sets out a description of Nimbox Services and the User and Guest instructions for the Services;

"**Effective Date**" means the date on which the Customer checks the box confirming its acceptance of the terms of this Agreement or the date on which the Customer otherwise agrees to the terms of this Agreement whether orally or otherwise;

"**Fee Effective Date**" means the date on which the Customer's free trial expires;

"**Fees**" means the subscription fees payable by the Customer for the User Subscriptions, as detailed at www.nimbox.co.uk/pricing and any additional User Subscriptions purchased under clause 3.2;

"**Group**" means in relation to a company, that company, any Subsidiary or Holding Company from time to time of that company, and any Subsidiary from time to time of a Holding Company at that company. The terms 'Subsidiary' and 'Holding Company' shall be defined in section 1159 of the Companies Act 2006 as modified and re-enacted from time to time;

"**Guest**" means a guest of the Customer who is authorised on a temporary basis to use the Nimbox Services including guests within the Customer's Group;

"**Information**" means any and all documentation, materials, software, code and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, pricing, transactions, software, suppliers or methods of one Party and disclosed to or otherwise obtained by the other Party in connection with this Agreement;

"**Intellectual Property**" means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto, the right to apply for registration of and/or register such rights and all extensions and renewals thereof;

"**Nimbox Services**" means the services provided by Nimbox to the Customer under this Agreement using the Software, as more particularly described in the Documentation;

"**Normal Business Hours**" means 9:00am to 5:00pm, GMT on any Working Day;

"**Parties**" means the Customer and Nimbox and "**Party**" shall be construed accordingly;

"**Premium Support Services**" means the email and telephone support services in relation to Nimbox Services provided by Nimbox to the Customer as detailed in the Customer's 'welcome pack';

"**Software**" means Nimbox's software provided as part of Nimbox Services, including any updates and modifications made available from time to time by Nimbox;

"**Standard Support Services**" means the email support services in relation to Nimbox Services provided by Nimbox to the Customer as described at support.nimbox.co.uk/knowledge_base/topics/contact-our-support-team;

"**Term**" means the term of this Agreement as detailed in clause 13.1;

"**Users**" means an employee, sub-contractor or agent of the Customer who is authorised to use the Nimbox Services;

"**User Subscriptions**" means the user subscriptions purchased by the Customer which entitle Users to access and use the Nimbox Services and the Documentation in accordance with this Agreement;

"**Working Day**" means any day falling on or between Monday to Friday, excluding all public and bank holidays in England and Wales; and

"**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.

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

- 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 A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the Effective Date under that statute or statutory provision.
- 1.6 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders.
- 1.7 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context and reference to the whole includes reference to part).

2 Licence to use Nimbox Services

- 2.1 In consideration of the payment of the Fees by the Customer, and subject to the restrictions and Customer obligations set out in this Agreement, Nimbox hereby grants to the Customer a non-exclusive, non-transferable right to permit the Users and the Guests to use Nimbox Services and the Documentation commencing on the Effective Date during the Term solely for the Customer's normal internal business operations in accordance with the terms of this Agreement.
- 2.2 Guests will only be entitled to use the Nimbox Services and Documentation for occasional use. If such use exceeds access and use of the Nimbox Services on more than 5 occasions in any one Consecutive Month during the Agreement then they will be deemed to be a User and the User Subscription will be increased.
- 2.3 In relation to the Users, the Customer undertakes that:
 - (a) the maximum number of Users that it authorises to access and use Nimbox Services shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Nimbox Services;

- (c) each User shall keep a secure password for her use of the Nimbox Services and Documentation and that each User shall keep her password confidential;
- (d) it shall permit Nimbox to audit Nimbox Services in order to establish the name of each User. Such audit shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) if any of the audits referred to in clause 2.3(d) reveal that access has been provided to any individual who is not a User, then without prejudice to Nimbox's other rights, the Customer shall if requested by Nimbox, promptly disable such access to any such individual; and
- (f) if any of the audits referred to in clause 2.3(d) reveal that the Customer has underpaid Fees to Nimbox, then without prejudice to Nimbox's other rights, the Customer shall pay to Nimbox an amount equal to such underpayment as calculated in accordance with Nimbox's then current price list within 10 Working Days of the date of the relevant audit.

2.4 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, the Customer shall not nor permit others to, and shall procure the Users and Guests shall not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
- (b) rent, lease, sublicense, sell, assign, pledge, transfer or otherwise dispose of the Software, on a temporary or permanent basis;
- (c) translate, reverse engineer, decompile, disassemble, unbundle, modify or create derivative works based on the Software, except as expressly permitted by law;
- (d) vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software; or
- (e) access all or any part of Nimbox Services and Documentation in order to build a product or service which competes with Nimbox Services and/or the Documentation.

- 2.5 The Customer undertakes to prevent any unauthorised access to, or use of, the Nimbox Services and, in the event of any such unauthorised access or use, promptly notify Nimbox.
- 2.6 The Customer shall not, and shall procure the Users and Guests shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of Nimbox Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts illegal sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property, and Nimbox reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material or User Account that breaches the provisions of this clause.
- 2.7 The Customer shall comply, and shall procure the Users and Guests comply, with the Acceptable Use Policy in force from time to time.
- 2.8 If any User or Guest breaches any of the terms and conditions of this clause 2 Nimbox shall have the right to suspend the Users' and/or Guests' (as applicable) access to the Nimbox Services and to ask the User, Guest and/or the Customer to remedy the breach within such timeframe determined by Nimbox. Nimbox shall inform the Customer of the above Users' or Guests' breach as soon as practicable. If the Users, Guests and/or the Customer fail to remedy said breach within the applicable timeframe, Nimbox shall have the right to (immediately terminate the User's and/or Guest's access to the Nimbox Services.
- 2.9 If Nimbox has reasonable evidence of i) possible serious risks to the Software or Nimbox Services provoked by the Customer Data, or ii) fraudulent or illegal activities of the Customer, Nimbox is entitled to immediately suspend or terminate the accesses of the Users and Guests involved.
- 2.10 The integrity of the Software is protected by technical protection measures so that the Intellectual Property rights in the Software are not misappropriated. The Customer must not attempt in any way to remove or circumvent such technical protection measures, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in its possession for private or commercial purposes, any means whose sole purpose is to facilitate the unauthorised removal or circumvention of such technical protection measures.

- 2.11 All rights that are not expressly or specifically granted in this Agreement to the Customer are reserved to Nimbox.

3 Additional User Subscriptions

- 3.1 Subject to clause 3.2, the Customer may, from time to time during the Term, purchase additional User Subscriptions and Nimbox shall grant access to the Nimbox Services and the Documentation to such additional Users in accordance with the provisions of this Agreement.

- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer is entitled to activate additional User Subscriptions and shall pay to Nimbox the relevant Fees for such additional User Subscriptions on its monthly billing date and, if such additional User Subscriptions are purchased by the Customer part way through a month, such Fees shall be pro-rated for the remainder of that month. For example, if the Customer creates another Standard User account 10 days into its 30 day billing period, the Customer shall pay Fees equivalent to 20 days remaining in that period.

4 Provision of Nimbox Services

- 4.1 Nimbox shall use its reasonable endeavours to make Nimbox Services available 24 hours a day, seven days a week, except for maintenance that may be required as set out in our platform status page status.nimbox.co.uk which provides live system metrics and details of future planned maintenance and incidents where Nimbox Services may not be provided.

- 4.2 Nimbox shall be entitled at any time to improve or update the Nimbox Services in case of: i) improvements or updates necessary to fix defects, bugs, malfunctioning or errors of the Nimbox Services or to provide new features; and/or ii) to cure security vulnerabilities of the Nimbox Services; and/or iii) the application of any new laws, regulations acts or orders of the authorities.

- 4.3 Nimbox shall not be liable for any failure to provide Nimbox Services in accordance with this Agreement to the extent that such failure is caused directly or indirectly by the Customer's negligence or breach of any term of this Agreement.

5 Support Services

- 5.1 Nimbox will, as part of Nimbox Services and at no additional cost to the Customer:

- (a) where the Customer is on a Standard Support Services plan, provide the Customer with Nimbox's standard email support services; or
- (b) where the Customer is on a Premium Support Services plan provide the Customer with Nimbox email and telephone support services;

both during Normal Business Hours and in accordance with Nimbox's policy from time to time in place when Nimbox Services are provided.

6 User Data

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 Nimbox shall, in providing the Nimbox Services, comply with its Data Privacy and Compliance Policy available at www.nimbox.co.uk/privacy-compliance or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Nimbox in its sole discretion. In the event of any serious loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Nimbox to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Nimbox. Nimbox shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Nimbox to perform services related to Customer Data maintenance and back-up).

6.3 If Nimbox processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Nimbox shall be a data processor and in any such case:

- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Nimbox so that Nimbox may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
- (b) the Customer 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; and

- (c) 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.

7 Warranties

7.1 Nimbox undertakes that the Nimbox Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of Nimbox Services contrary to Nimbox's instructions, or modification or alteration of Nimbox Services by any party other than Nimbox or Nimbox's duly authorised contractors or agents. If the Nimbox Services do not conform with the foregoing undertaking, Nimbox will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, Nimbox:

- (a) does not warrant that the Customer's use of Nimbox Services will be uninterrupted or error-free; or that the Nimbox Services, the Documentation and/or the information obtained by the Customer through the Nimbox Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Nimbox Services and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 Nimbox warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

8 Customer Obligations

8.1 The Customer shall:

- (a) only use the Nimbox Services in accordance with the terms of the Agreement for its own internal purposes;
- (b) use the Nimbox Services in accordance with Nimbox's reasonable instructions and any laws, regulations and licenses which may apply to the Customer's use of the Nimbox Services from time to time;
- (c) carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Nimbox may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Users and the Guests use the Nimbox Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any User's and/or Guest's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Nimbox, its contractors and agents to perform their obligations under this Agreement;
- (f) ensure that its network and systems comply with the relevant specifications provided by Nimbox from time to time including those set out at support.nimbox.co.uk/knowledge_base/topics/supported-operating-systems;
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Nimbox's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- (h) provide Nimbox with up-to-date information, co-operation and support as Nimbox shall reasonably require pursuant to this Agreement.

9 Fees and Payment

- 9.1 Nimbox shall invoice and the Customer shall pay the Fees in accordance with this clause 9 unless otherwise agreed between the parties in the Schedule or otherwise in writing.

- 9.2 All amounts and Fees stated in this Agreement:
- (a) are exclusive of Value Added Tax and any other applicable taxes, duties and assessments which shall be payable by the Customer in the manner prescribed by law;
 - (b) shall, unless otherwise agreed between the parties, be payable in pounds sterling; and
 - (c) are non-cancellable and non-refundable.
- 9.3 Fees shall be payable monthly in advance by direct debit.
- 9.4 If the Fee Effective Date is not the first day of a month, the Fees from the Fee Effective Date to the end of that month shall be pro-rated for the remainder of that month and such Fees shall be payable and be added to the following monthly bill.
- 9.5 The Customer shall on the Effective Date provide to Nimbox (or its payment agent) valid, up-to-date and complete bank account details and any other relevant valid, up-to-date and complete contact and billing details Nimbox may require and, the Customer hereby authorises Nimbox to charge such bank account via direct debit for the Fees monthly in advance.
- 9.6 If the Customer fails to make any payment due to Nimbox by the due date for payment then, without prejudice to Nimbox's other rights and remedies, Nimbox may:
- (a) charge the Customer interest on the overdue amount at four percent (4%) above the official interest rate of the Bank of England. Such interest shall accrue on a daily basis from the due date of payment until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by Nimbox; and/or
 - (b) without liability to the Customer, suspend access to the User and Guest passwords, the Account and access to all or part of the Nimbox Services and/or any other services provided under on in connection with this Agreement (or any part of them) while the amounts remain unpaid.
- 9.7 Nimbox shall be entitled to increase the Fees upon 30 days' prior notice to the Customer.

9.8 If, at any time whilst using the Nimbox Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Nimbox shall charge the Customer, and the Customer shall pay, Nimbox's then current excess data storage fees.

9.9 The Fees and other sums payable under this Agreement shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Customer shall pay to Nimbox such sum as will, after the deduction or withholding has been made, leave Nimbox with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

10 Intellectual Property

10.1 All Information of Nimbox and all Intellectual Property in the Software and in or arising from the Nimbox Services and/or any other services provided under or in connection with this Agreement shall be and shall remain at all times the exclusive property of Nimbox or relevant third party and the Customer shall acquire no right, title or interest in or to the same and shall use such items solely as permitted by the terms of this Agreement.

11 Confidentiality

11.1 Subject to the remainder of this clause 11, neither the Customer nor Nimbox shall, without the other Party's prior written consent, disclose to any third party Information (other than the business name of the other Party) which comes to that Party's attention pursuant to this Agreement. Each Party shall only use the Information of the other Party to exercise its rights and/or perform its obligations under this Agreement.

11.2 The Customer agrees that Nimbox may disclose the Information of the Customer to any relevant third party to the extent reasonably required by such third party in order to allow provision of the Nimbox Services and/or any other services provided under or in connection with this Agreement.

11.3 The provisions of clause 11.1 shall not apply to information which:

- (a) is in or comes into the public domain otherwise than by breach of this Agreement, except that any compilation of otherwise public information in a form not publically known shall nevertheless be treated as confidential Information;

- (b) is in the other Party's possession prior to the commencement of negotiations for this Agreement as shown by written evidence that predates the date of such negotiations;
 - (c) is or was lawfully received from a third party not under an obligation of confidentiality in respect of the same as shown by written evidence that predates the date of this Agreement;
 - (d) was developed independently of and without reference to the other Party's Information; or
 - (e) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required), in which case each Party shall promptly notify the other Party of any such disclosure requirement.
- 11.4 Nimbox shall be entitled to publicise that the Customer has licensed the Software and purchased the Nimbox Services from Nimbox in its advertising or promotional materials (including as case studies), press releases, tenders, proposal, speeches, articles and other similar materials.
- 11.5 Each Party shall be entitled to divulge the other Party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this Agreement provided that the receiving Party shall ensure that such persons are aware of and, shall procure that such persons comply with, these confidentiality obligations.
- 11.6 The restrictions contained in this clause 11 shall continue to apply after termination or expiry of this Agreement without limit in time.

12 Liability

- 12.1 This clause 12 sets out the entire financial liability of Nimbox (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Agreement;

- (b) in respect of any use made by the Customer of the Nimbox Services, the Documentation and/or any other services provided under or in connection with this Agreement or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Nimbox Services and the Documentation by the Customer, and for conclusions drawn from such use. Nimbox shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Nimbox by the Customer in connection with the Nimbox Services, or any actions taken by Nimbox at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Nimbox Services and the Documentation are provided to the Customer on an "as is" basis.

12.3 Nothing in this Agreement shall exclude or limit Nimbox's liability for:

- (a) death or personal injury caused by its (or its employees', agents' or contractors') negligence; and
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability the exclusion or limitation of which is not permitted by English law.

12.4 Subject to clause 12.2 and clause 12.3:

- (a) Nimbox shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: loss of profits; loss of business; depletion of goodwill and/or similar losses; or loss or corruption of data or information; or pure economic loss; or for any special, indirect

or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

- (b) Nimbox'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 this Agreement shall be limited, where the liability relates to:
 - (i) the Nimbox Services, to the greater of (i) the total Fees paid or payable by the Customer under this Agreement during the twelve (12) month period prior to the date the liability first arose and (ii) one hundred pounds sterling.

13 Term

- 13.1 This Agreement shall, unless otherwise terminated as provided in this Agreement, commence on the Effective Date and shall continue for the free trial (the length of which is set out at www.nimbox.co.uk/signup) ("**Free Trial**") from the Effective Date (and unless the Customer terminates in writing prior to the end of the Free Trial period) will continue for a period of one month after the Free Trial and thereafter this Agreement shall be automatically renewed for successive periods of one month, unless either party notifies the other party of termination, in writing, to expire at the end of the month in which the notice was received.

14 Termination

- 14.1 A Party shall have the right to terminate this Agreement at any time on immediate notice to the other Party in the event that the other Party:
 - (a) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - (b) commits an irremediable material breach of this Agreement, persistently repeats a remediable material breach or commits any remediable material breach and fails to remedy it within thirty (30) days of receipt of the notice of the breach requiring remedy of the same; or

- (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 14.2 Nimbox may terminate this Agreement (or any part of it) and/or the Nimbox Services (or any part of them):
- (a) by serving written notice on the Customer with immediate effect, if termination is required for legal or regulatory reasons;
 - (b) on serving thirty (30) days prior written notice to the Customer if Nimbox or its third party suppliers no longer operates or provides any or all of the products or services used in relation to the Nimbox Services or intends to cease operating or providing any or all of such products or services in the immediate future.
- 14.3 The termination of this Agreement shall be without prejudice to the accrued rights and liabilities of either Party subsisting under this Agreement prior to termination.
- 14.4 Nimbox may at its sole discretion suspend immediately the provision of the Nimbox Services and/or any other services provided under this Agreement (or any part of them) until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing if Nimbox is entitled to terminate this Agreement. Any suspension of the Nimbox Services shall not exclude Nimbox's right subsequently to terminate this Agreement.

15 **Consequences of Termination**

15.1 Upon termination of this Agreement for any reason, the Customer shall:

- (a) immediately cease to make use of the Nimbox Services;
- (b) immediately pay any outstanding sums due under this Agreement; and
- (c) either return or destroy all of Nimbox's Information or any document containing part thereof, together with all copies of such Information (including, to the extent reasonably possible, all electronic copies) and shall on reasonable request provide written confirmation that such steps have been taken; and
- (d) Nimbox may destroy or otherwise dispose of any of the Customer Data in its possession.

15.2 Any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

15.3 Any terms and conditions forming part of this Agreement which are agreed by the Parties to survive termination or which by their nature are to survive termination, shall survive and continue in full force and effect.

16 **Force Majeure**

16.1 Nimbox shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Nimbox or any other party), failure of a utility service or transport or telecommunications network, adverse economic impacts, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers or sub-contractors.

17 Notices

17.1 Notices sent in respect of any matter arising in respect of this Agreement shall be in writing and must be sent either by:

(a) pre-paid first class post; or

(b) delivered by hand; or

(c) email.

17.2 A notice shall be sent or delivered to the address specified in this Agreement (as updated by notice in accordance with this section) or email notified by each party to the other from time to time.

17.3 Notice is deemed given:

(a) in the case of hand delivery – at the time the delivery is made;

(b) in the case of posting– two (2) Working Days after the notice is posted; and

(c) in the case of email – one (1) Working Day after the date the sender receives a successful delivery confirmation.

18 General

18.1 The Customer shall not assign, purport to assign or otherwise transfer this Agreement and/or any of its obligations thereunder, in whole or in part, without Nimbox's prior written consent.

18.2 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18.3 Unless otherwise stated herein, this Agreement can only be modified by the written and signed agreement of the Parties.

- 18.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 Nimbox may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.6 If any part of this Agreement is held unlawful, invalid or unenforceable, that part shall be considered struck out and the remainder of this Agreement shall remain in full force and effect. Nimbox and the Customer shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.
- 18.7 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement 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 this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 18.8 The Parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it unless specifically provided for this Agreement.
- 18.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Agreement Version: 1.5 | Last Updated: 12 April 2018