

Breathe End User Licence Agreement (EULA)

This document and the documents referred to in it are your terms of use with Centurion Management Systems Limited, a company registered in England and Wales with Company Number 03020608 and registered office at Unit 7, Foundry Court, Foundry Lane, Horsham, West Sussex, RH13 5PY, United Kingdom ('Breathe'). Our VAT number is 644498504

Please read this EULA carefully before using any Product. You may want to retain a copy for your records. The defined terms set out in clause 1 below apply throughout this EULA.

The first Acceptance (as that term is defined below) in relation to any Product creates a binding contract between Breathe and the Client on the terms and conditions set out in this EULA. Acceptance takes place on a Product by Product basis, and accordingly to the extent Acceptance occurs in relation to additional Product(s), this Agreement shall be deemed to be updated to also cover such additional Products.

On Acceptance, the Reader confirms that they are duly authorised on behalf of the Client to place an order for the applicable Product subject to the terms and conditions set out below. The Reader also warrants that the information submitted in signing up for any Product is correct and accurate to the best of their knowledge.

A: PROPERTY OF BREATHE

Following Acceptance, and subject to the payment of any Fees that are due, the Client may access and use the relevant Product through our server. The copyright, database rights and any other intellectual property rights in the programs and data which constitute the Product, are and remain the property of Breathe or its licensors.

B: LICENCE ACCEPTANCE PROCEDURE

The Client's right to use any Products is subject to Acceptance having taken place in relation to that Product and payment of any Fees which are due in relation to the use of that Product.

On Acceptance you indicate agreement to this EULA and the limited warranty and limitation of liability set out in this EULA on behalf of the Client (as this term is defined below). In this EULA, 'you' includes both the Reader and any Client.

The Products are only available to clients located in the United Kingdom. If you are not located in the United Kingdom, you should not Accept this EULA or use any Product. You should therefore read this EULA carefully before Accepting.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the definitions and rules of interpretation in this clause shall apply.

"Account Data" means any data or information which is provided to Breathe to enable the administration of the Client's account, such as contact and billing information;

"Accept/Accepting/Acceptance" means (i) completion of any step undertaken using the functionality on the Website which indicates that the Client wishes to obtain the right to use a Product, such as placing a check in the box on our sign-up form confirming that acceptance of these terms; and/or clicking the 'start using Breathe' box in relation to a Product; or (ii) the actual use of the Product;

"Agreement" or **"EULA"** means these terms of use which may be amended by Breathe from time to time as described below;

"Applicable Law" means (for so long as and to the extent that they apply to Breathe) the law of the European Union, the Data Protection Legislation and any other law that applies in the UK;

"Breathe Technology" means all the technology used in delivering the Service (including the software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to the Client by Breathe in providing the Service;

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

"Cancellation Period" means the period of 21 days starting on the applicable Effective Date;

"Card Details" means valid credit or debit card details provided by the Client for payment of the Fees;

"Client" means the corporate entity or organisation ordering the Service(s) as indicated during the sign-up process;

"Client Data" means any data, information or material provided or submitted by the Client, or the Users, using the Service or generated by the Service in the course of using the Service including but not limited to employee data held in the Service, but excluding Account Data;

"Content" means the documents, software, products and services contained or made available to the Client in the course of using the Service;

"Data Protection Legislation" means any applicable law relating to the processing of personal data and privacy in force from time to time in the UK including (where applicable) the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and any regulation from time to time in the United Kingdom which implements Directive 2002/58/EC of the European Parliament) and the GDPR and any legislation or regulation implementing the GDPR from time to time in the United Kingdom;

"Defect" means an error in the operation of the Service that causes the Service to fail to operate substantially as documented;

"Effective Date" means the date that Acceptance takes place in relation to a Product and for the avoidance of doubt, each Product which the Client is entitled to use shall have its own Effective Date;

"Fee(s)" means any and all fees, charges or other payments due to be made from the Client to Breathe as provided by the Pricing Plan in force at the time the Fees become payable;

"GDPR" means the European Union General Data Protection Regulation ((EU) 2016/679);

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, publicity rights, know-how and other trade secret rights, database rights, semiconductor topography rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

"Licence Administrator(s)" means those Users who are authorised to administer the Client's use of the Service;

"Licence Term" means the period during which the Client is licensed to use a Product pursuant to this Agreement;

"Period" means the billing period selected by the Client per Product which shall be either (i) one calendar month; (ii) one year. Each such period shall begin on the day of the month (in the case of (i) above) or day of the year (in the case of (ii) above) on which the Client became liable to pay Fees in relation to the Product (as described in Clause 9). Such date shall be recorded in the administration pages of the Website;

"Personal Data" shall have the meaning set out in the GDPR;

"Product(s)" mean each online product or service developed, operated, and/or maintained by Breathe (and its licensors, where applicable) that is available for use on the Website, such as the products known as 'Rota' and 'Breathe HR' and any other online product that is made available by Breathe from time to time;

"Pricing Plan" means the schedule of fees and billing terms currently in force which can be viewed at Breathe may replace the Pricing Plan on 30 days' prior written notice (including by email or through the administration pages in the Website) and for the avoidance of doubt such new Pricing Plan may increase the Fees payable and/or introduce new Fees;

"Reader" means the individual who purports to be authorised on behalf of the Client to enter into this Agreement or to add a Product to this Agreement;

"Service(s)" means the provision of (i) access to the Products via the Website; and (ii) any other products and services provided to the Client by Breathe, to which Breathe informs the Client are being granted under this Agreement;

"Trial Period" means a period of time which runs from the applicable Effective Date to enable the Client to use and evaluate a Product without the payment of Fees, the period of which is specified [here](#) or if no such period is specified in the hyperlink, a period of 14 days from the applicable Effective Date;

"User(s)" means the Client's employees, representatives, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by the Client (or by Breathe at the Client's request);

"Website" means breathehr.com

"Year" means each consecutive 12 month period commencing on the date that this Agreement comes into effect and each anniversary thereof.

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. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires: (i) words in the singular shall include the plural and in the plural shall include the singular; and (ii) a reference to one gender shall include a reference to the other genders.

1.5 Reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced.

1.6 References to clauses are to the clauses of this Agreement.

1.7 The words "including", "include", "for example", "in particular" and words of similar effect shall not limit the general effect of the words which precede them.

2 TRIAL PERIOD AND DURATION

2.1 If indicated on the Website, Breathe may allow access to a Product for a Trial Period, during which time Fees shall not be charged in relation to that Product (although for the avoidance of doubt, Fees will be charged for any other Product not subject to the Trial Period).

2.2 Following the end of any Trial Period, Fees shall be due in relation to the applicable Product, and the Client must provide Breathe with payment details in relation to such Fees as further described in clause 9.3, otherwise the Client's right to use the applicable Product shall terminate as described in clause 12 "Termination Upon Expiration".

2.3 If the Client has provided Card Details to Breathe, or has been permitted to pay by direct debit, access to the applicable Product shall, subject to the other terms of this Agreement, continue to be provided for so long as the Fees are paid in accordance with this Agreement unless and until this Agreement is terminated or expires.

3 DISCLOSURE

With regard to any Personal Data input by or collected from the Client that may be stored or processed in the Breathe software, such data shall be stored and processed by Breathe in accordance with Data Protection Legislation. Note that because the Products are a hosted, online application, Breathe occasionally may need to notify all Users of important announcements regarding the operation of the Product(s) and Service(s).

4 PRIVACY & DATA PROCESSING

4.1 Breathe's processing policy in relation to the Client Data provided as part of the Client's use of the Service may be viewed [here](#). The processing policy sets out the scope, nature and purpose of processing by Breathe, the duration of the processing and the types of Personal Data within the Client Data and categories of data subject. Breathe reserves the right to modify its processing policy where required by Data Protection Legislation from time to time.

4.2 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

4.3 The parties acknowledge that for the purposes of the Data Protection Legislation, for any Personal Data within:

I. the Account Data, Breathe is the data controller; and

II. the Client Data, the Client is the data controller and Breathe is the data processor;

(where data controller and data processor have the meanings as defined in the GDPR).

4.4 Breathe may process Personal Data within the Account Data outside the European Economic Area provided Breathe will comply at all times with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred.

4.5 Without prejudice to the generality of the forgoing of this clause, Breathe shall, in relation to any Personal Data within the Client Data:

I. process that Personal Data only on the written instructions of the Client unless Breathe is required by the Applicable Law to process that Personal Data otherwise. For the avoidance of doubt, entering this Agreement by the Client constitutes written instructions to Breathe to process the Personal Data within the Client Data to enable Breathe to operate and provide the Services, and to otherwise process such Personal Data as identified in this Agreement;

II. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

III. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

IV. assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

V. notify the Client without undue delay on becoming aware of a Personal Data breach;

VI. in anticipation of termination of this Agreement either return or delete the Personal Data in accordance with clause 16 "Data Return and Destruction", unless required by Applicable Law to continue to store the Personal Data; and

VII. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Client or the Client's designated auditor.

4.6 Breathe will not transfer any Personal Data within the Client Data outside of the European Economic Area.

4.7 Breathe is permitted to process the Client Data by anonymising it and (where applicable following such anonymisation) aggregating it with other data sources in connection with Breathe's development of its products, strategies, or services or any further purpose related to Breathe's business, including for analytics, marketing, research, development, benchmarking purposes and additional services. For the avoidance of doubt, following such anonymisation, the derivative data shall not be considered to be Personal Data for which Breathe is the data processor on behalf of the Client.

4.8 The Client consents to Breathe appointing the following classes of third-party processors of Personal Data under this Agreement:

I. service providers acting as processors based in the EEA who provide IT, hosting development and system administration services;

II. professional advisers acting as processors or joint controllers including lawyers, bankers, auditors and insurers based in the UK who provide consultancy, banking, legal, insurance and accounting services;

III. HM Revenue & Customs, regulators and other authorities acting as processors or joint controllers based in the United Kingdom who require reporting of processing activities in certain circumstances.

4.9 Breathe confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause with any third-party processor who has access to Personal Data within Client Data. As between the Client and Breathe, Breathe shall remain fully liable for any failure of such third-party processor to fulfil such substantially similar data protection obligations as if such actions were the actions of Breathe.

4.10 Breathe may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

5 LICENCE GRANT & RESTRICTIONS

5.1 Breathe hereby grants the Client a personal, revocable, non-exclusive, non-transferable, non-sublicensable licence to use the Product(s) via the Service for the duration of this Agreement, solely for use by the Users for the Client's own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to the Client are reserved by Breathe and its licensors.

5.2 The Client may not access the Product(s) or Service if they are a direct competitor of Breathe, except with Breathe's prior written consent. In addition, the Client may not access the Product(s) or Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

5.3 The Client shall not, and shall procure that Users shall not:

I. license, lease, sublicense, sell, resell, transfer, display, disclose, assign, distribute or otherwise commercially exploit or make available to any third party the Product(s) or Service or the Content in any way;

II. modify, duplicate copy or make derivative works based upon the Product(s), Service or the Content;

III. create internet "links" to the Product(s) or Service or "frame", "mirror", republish, transmit or distribute any Content on any other server or wireless or internet-based device;

IV. reverse compile, decompile, or in any way reverse engineer or otherwise reduce to human perceivable form all or any part of the Product(s), the Service or Content;

V. attempt to obtain, or assist third parties in obtaining, access to the Product(s), Services and/or Content (other than as provided under this Agreement); or

VI. access the Product(s) or Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Product(s) or Service, or (c) copy any ideas, features, functions or graphics of the Product(s) or Service.

5.4 The Client may use the Product(s) and Service only for internal business purposes and shall not, and shall procure that Users shall not:

I. store infringing, obscene, sexually explicit, threatening, harassing or racially or ethnically insensitive, libellous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights;

II. store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;

III. interfere with or disrupt the integrity or performance of the Product(s) or Service or the data contained therein; or

IV. attempt to gain unauthorised access to the Product(s) or Service or its related systems or networks.

6 THE CLIENT'S RESPONSIBILITIES

6.1 The Client is responsible for all activity occurring under their User accounts and shall:

I. abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with their use of the Product(s) and Service, including those related to data privacy, international communications and the transmission of technical or Personal Data;

II. carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner;

III. satisfy itself of the technical and organisational measures taken by Breathe to protect against (a) unauthorised or unlawful processing, (b) accidental loss or destruction of or (c) damage to Personal Data (available here: [security and reliability](#));

IV. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Breathe, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;

V. ensure that each User shall keep a secure password for his/her use of the Product(s) and Service, that such password shall be updated in accordance with any requirements notified to the User in the breathe software and that each User shall keep his/her password confidential;

VI. notify Breathe immediately of any unauthorised use of any password or account or any other known or suspected breach of security;

VII. report to Breathe immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by the Client or their Users; and

VIII. not impersonate another User or provide false identity information to gain access to or use the Product(s) or Service.

7 ACCOUNT INFORMATION AND DATA

7.1 Breathe does not own any of the Client Data. The Client, not Breathe, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data.

7.2 The Client undertakes that it has all necessary and appropriate rights, consents and notices in place to enable lawful transfer of any Personal Data that it supplies or otherwise makes available to Breathe under or in relation to this Agreement (whether contained within Account Data, Client Data or otherwise), and that such rights shall remain in effect for the duration this Agreement and will enable Breathe to perform its obligations under this Agreement in accordance with applicable Data Protection Legislation.

7.3 The Client shall ensure that all relevant third parties have been informed of, and where required by Applicable Law, have given their consent to the processing contemplated pursuant to this Agreement.

7.4 Breathe shall follow routine archiving procedures for Client Data, including scheduled back-ups. In the event of any loss or damage to Client Data, and subject always to any remedy which may be available under clause 4, the Client's sole and exclusive remedy shall be for Breathe to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Breathe, and Breathe shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party.

7.5 If the Client becomes a paying User of any Product, the Client hereby accepts and agrees that Breathe may include the Client's name and/or logo on the Website and Breathe can disclose the fact that the Client is a paying user of the Service. The Client may opt-out of such inclusion by sending a written request to Breathe. In order to enable Breathe to utilise its rights under this clause, the Client grants Breathe a non-exclusive, non-transferable, terminable at-will licence to use, copy, store, transmit and display the Client's Intellectual Property Rights to the extent necessary or reasonable to enable Breathe to make public announcements on the Website.

7.6 The Client shall indemnify and hold Breathe, its licensors and each such party's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

I. any breach of the Data Protection Legislation by the Client;

II. any claim from an individual whose Personal Data is processed by Breathe when providing the Services (except where such claim results from Breathe's breach of this Agreement); or

III. any inaccuracy in the Client Data as input by the Client.

8 INTELLECTUAL PROPERTY OWNERSHIP

8.1 Breathe alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Breathe Technology and any Content, Product and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Client or any other party relating to the Service. This Agreement is not a sale and does not convey to the Client any rights of ownership in or related to the Products, Service, the Breathe Technology or the Intellectual Property Rights owned by Breathe. The "Breathe" name, the Breathe logo, and the product names associated with the Service are trademarks of Breathe or third parties, and no right or licence is granted to use them.

9 FEES AND RENEWAL

9.1 Fees in relation to all Products and Services shall be calculated as described in the Pricing Plan, subject to clause 9.7.

9.2 If there is no Trial Period specified on the Website in relation to a Product, Fees shall become due from Acceptance.

9.3 If a Trial Period specified on the Website in relation to a Product, and the Client wishes to continue with a Product after a Trial Period, Fees shall be due from the first day following the Trial Period.

9.4 In order to use any Products, the Client must prior to any Fees becoming due for the applicable Product:

I. ensure that Breathe has Card Details for payment of the Fees, or

II. at Breathe's sole discretion arrange for the payment of Fees by direct debit,

failing which Breathe may immediately cease provision of access to the applicable Product in accordance with clause 12 "Termination Upon Expiration".

9.4 The provision of any Card Details or direct debit mandate, either upon the Effective Date or subsequently, shall be the Client's authorisation to charge all Fees using that payment method. For the avoidance of doubt, Breathe shall be entitled to use any payment method provided for one Product (such as Card Details or direct debit), for the payment of Fees due for any other Product.

9.5 Breathe collects Fees in advance on the first day of the Period selected during the sign-up process in relation to the relevant Product which Fees are being charged (or the next Business Day):

I. by charging the Client's card using the Card Details, or if agreed

II. by taking a payment by direct debit from the Client's bank account.

For the avoidance of doubt, the Client may have different Fee collection dates for different Products.

9.6 All payment obligations are non-cancellable and all amounts paid are non-refundable, except where expressly stated otherwise in this Agreement. The Client is responsible for paying for all Products ordered for the entire Licence Term. If the Client wishes to amend the number of Users with access to the Product the Client must make any such amendment through the administration pages in the Website and any resulting adjustment to the Fees due as calculated in accordance with the Pricing Plan shall be reflected in the next Period (with any increase in Fees being payable at the start of the next Period).

9.7 Fees for other Services or Products which are not specified in the Pricing Plan will be charged on an as-quoted basis.

9.8 Breathe's Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the Client shall be responsible for payment of all such taxes, levies, or duties in addition to the Fees and Breathe shall be entitled to charge such additional sums when collecting the Fees.

9.9 All pricing terms are confidential, and the Client agrees not to disclose them to any third party.

9.10 The Client warrants that it has provided Breathe with complete and accurate billing and contact information. The Client agrees to provide Breathe with updated information within 30 days of any change to it through the Client's administration page in the Website. If the contact information the Client has provided is false or fraudulent, Breathe reserves the right to terminate access to the Service in addition to any other legal remedies.

9.11 Breathe is only available to corporate entities or organisations and all billing will be in £ sterling.

9.12 If the Client believes their bill is incorrect they must notify Breathe in writing within 60 days of the date of the disputed invoice, following which Breathe shall assess whether any adjustment or credit is due.

10 NON-PAYMENT AND SUSPENSION

10.1 In addition to any other rights granted to Breathe herein, Breathe reserves the right to suspend or terminate this Agreement and the Client's access to a particular Product or the Services entirely if their account falls into arrears.

10.2 If any sum payable under this Agreement is not paid within 7 days after the due date or if any payment is rejected, revoked or refused then (without prejudice to Breathe's other rights and remedies) Breathe reserves the right, in its absolute discretion, to suspend the provision of access to the Product for which payment is overdue, or to all Services entirely.

10.3 If access to any Product, or all of the Services entirely, is suspended, Breathe shall be entitled to delete all Client preferences and settings in relation to the Breathe system as set up for the Client.

10.3 Breathe shall be entitled to charge interest on any overdue sums on a day to day basis (as well as after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 4 per cent above the base rate of National Westminster Bank plc from time to time in force compounded quarterly. Such interest shall be paid on demand by the Client.

10.4 Breathe reserves the right to impose a reconnection fee in the event the Client is suspended and thereafter requests access to a Product or Service(s) as applicable.

11 TERMINATION WITHIN CANCELLATION PERIOD

11.1 Breathe may at its sole discretion terminate this Agreement in relation to a particular Product with immediate effect at any time before the expiry of the Cancellation Period. Where Breathe exercises this termination right, Breathe will refund any Fees paid by the Client to Breathe in relation to that Product.

11.2 Breathe shall not be obliged to give notice of such termination to the Client, but may do so at its sole discretion in any form.

12 TERMINATION UPON EXPIRATION

The Client's right to use a Product will automatically expire at the end of the Trial Period unless the Client has provided Card Details or obtained Breathe's permission to pay by direct debit.

13 TERMINATION BY NOTICE

13.1 The Client shall be entitled to terminate its right to use individual Product(s) or all Services by selecting the applicable cancellation options within the administration pages on the Website. If the Client selects to terminate all Services entirely (or if the exercise of a termination right for a Product means that there are no other Products or Services due to be provided by Breathe) this Agreement will terminate immediately.

13.2 No refunds shall be due when individual Product(s) or all Services terminated under clause 13.1. The Client acknowledges that termination of individual Product(s) or all Services by it will result in the deletion of the Client Data (as further described in clause 16) applicable for the affected Products. Accordingly, should the Client wish to retain a copy of the Client Data following the termination, it should download a copy as described in clause 16.

13.3 Breathe may terminate this Agreement in whole or in part if Breathe decides to withdraw individual Product(s) or all Services (whether on a temporary or permanent basis) or decides to no longer permit access to individual Product(s) or all Services by the Client (by use of passwords or changes of passwords or by any other means). Where Breathe exercises its termination right on a permanent basis, Breathe will refund to the Client, on a pro-rated basis, any Fees which have been pre-paid by the Client for the affected Products, up to the total number of whole months which have been paid for, but for which Services have not been provided.

14 TERMINATION FOR CAUSE

14.1 Breathe may terminate this Agreement if the Client commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach. Without limit to the generality of the foregoing any breach of the Client's payment obligations or unauthorised use of the Breathe Technology, Product(s) or Service will be deemed a material and irremediable breach of this Agreement. If the material breach relates to only one Product used by the Client, Breathe may, in its absolute discretion, opt to partially terminate the Agreement in relation to the affected Product only.

14.2 Either party shall have the right by notice in writing to the other party to terminate all or any part of this Agreement on or at any time after the happening of any of the following events:

I. the passing by the other party of a resolution for its winding-up (except in connection with a bona fide business re-organisation) or the making by a court of competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;

II. the making of an administration order in relation to the other party or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrance of, any of the other party's assets; or

III. the other party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.

15 TERMINATION CONSEQUENCES

15.1 Following termination for any reason Breathe will terminate the Client's password, account and use of the for the affected Products or all Services (as applicable). Within 14 days of the termination of the Agreement the Client must pay to Breathe in full and without set off:

I. the Fees due up until the date of such termination, and

II. in the event of the termination of this whole Agreement, any other sums due under this Agreement.

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.

16 DATA RETURN AND DESTRUCTION

16.1 Subject to clause 21 "Internet Delays" and clause 22 "Force Majeure", [and subject always to: (a) all undisputed Fees having been paid to Breathe in accordance with clause 9; and (b) Breathe's rights under clause 10,] the Client will be able to access and download all or part of the Client Data using the tools and mechanisms provided within the Website.

16.2 A decision by the Client to terminate individual Product(s) and/or all Services as described in clause 13.1, or termination of this Agreement for any other reason, shall be considered an instruction for Breathe to securely delete or destroy the applicable Client Data and it is the responsibility of the Client to download the Client Data as described in clause 16.1 prior to such cancellation or termination if it wishes to retain it. The Client should not terminate this Agreement, individual Product(s) and/or all Services if the Client does not want the applicable Client Data to be deleted. Breathe disclaims any liability for loss suffered by the Client or any third party resulting from deletion of the Client Data in accordance with this clause 16.2.

16.3 If any law, regulation, or government or regulatory body requires Breathe to retain any documents or materials that Breathe would otherwise be required to return or destroy, it will make reasonable efforts to notify the Client in writing of that retention requirement.

17 REPRESENTATIONS & WARRANTIES

17.1 Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

17.2 Breathe warrants that it will provide the Service with reasonable skill and care. The sole remedy for breach of this warranty shall be correction of any Defects by Breathe within a reasonable time from notification by the Client of the Defect that constitutes such a breach,

providing that the Client provides all the information that may be necessary to assist Breathe in resolving the Defect, including sufficient information to enable Breathe to recreate the Defect.

17.3 The Client represents and warrants that they have not falsely identified themselves nor provided any false information to gain access to the Product(s) or Service and that their billing information is correct.

18 CONFIDENTIAL INFORMATION

18.1 Breathe will keep all Client Data confidential, providing that Client Data may be disclosed to Breathe's employees, representatives, consultants, contractors, agents and other subcontractors who may be appointed as described in clause 5 (who in turn will be legally bound to keep the Client Data confidential).

18.2 The obligation to keep the Client Data confidential will not apply to any information that:

I. is already known to the public; or

II. is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction, providing that Breathe will give the Client notice of the requirement to disclose of that disclosure as soon as practicable.

18.3 This clause shall survive termination of this Agreement, however arising.

19 MUTUAL INDEMNIFICATION

19.1 The Client shall indemnify and hold Breathe harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Client Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by the Client of their representations and warranties; or (iii) a claim arising from the breach by the Client or their Users of this Agreement, provided in any such case that Breathe (a) gives written notice of the claim promptly to the Client; (b) gives the Client sole control of the defence and settlement of the claim (provided that the Client may not settle or defend any claim unless they unconditionally release Breathe of all liability and such settlement does not affect Breathe's business or Service); (c) provides to the Client all available information and assistance; and (d) has not compromised or settled such claim.

19.2 Breathe shall indemnify and hold the Client harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including all reasonable legal and professional fees and costs) arising out of or in connection with: (i) a proven claim that the Service directly infringes the copyright, or a trademark of a third party; (ii) a claim, which if true, would constitute a substantial and actual violation by Breathe of its representations or warranties; or (iii) a claim arising from Breathe's wilful and knowing disclosure of your Client Data to any unauthorised parties unless required by law; provided that the Client (a) promptly gives written notice of the claim to Breathe; (b) gives Breathe sole control of the defence and settlement of the claim ; (c) provides to Breathe all available information and assistance; and (d) has not compromised or settled such claim. Breathe shall have no

indemnification obligation, and the Client shall indemnify Breathe pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of the Client's products, service, hardware or business process(es). The indemnity provided by Breathe in this clause shall not apply where the Client has used the Service in a manner that is not authorised by this Agreement or is otherwise inconsistent with the terms of this Agreement.

20 DISCLAIMER OF WARRANTIES

20.1 Breathe and its licensors do not warrant:

I. the accuracy, completeness or reliability of any of the content or data derived from any Product or the Services or that the Products or Services will operate error free, virus free, without interruption or securely;

II. that all program defects in relation to the Services will be corrected; and

III. that the Products or Services will operate with any hardware, software, system or data not identified in the ordering process.

20.2 The Products and Services are provided "as is" and, except as expressly set out in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of satisfactory quality, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Breathe and its licensors.

21 INTERNET DELAYS

Breathe's the Products or Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Breathe is not responsible for any delays, delivery failures, or other damage resulting from such problems.

22 FORCE MAJEURE

22.1 In this Agreement, "force majeure" shall mean any cause preventing Breathe from performing any or all of Breathe's obligations which arise from or are attributable to acts, events, omissions or accidents beyond Breathe's reasonable control including without limitation strikes, lock-outs or other industrial disputes, acts of God, pandemic, 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, interruption or failure of utility service, including but not limited to electric power, gas or water or default of suppliers or sub-contractors.

22.2 Breathe shall not be in breach of this Agreement if it is subject to a force majeure event, provided that it uses reasonable endeavours to notify you in writing of the nature and extent of the force majeure event causing Breathe's failure or delay in performance.

22.3 If the force majeure event prevails for a continuous period of more than 2 months, the Client may terminate this Agreement by giving 14 days' written notice to Breathe. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without

prejudice to Breathe's rights in respect of any breach of this Agreement occurring prior to such termination.

23 LIMITATION OF LIABILITY

23.1 Nothing in this Agreement will exclude or limit either party's liability for:

- I. death or personal injury caused by a party's own negligence; or
- II. fraud or fraudulent misrepresentation.

23.2 Breathe shall not be liable for:

- I. any loss of profits or other economic advantage;
- II. any loss of data;
- III. any loss of goodwill;
- IV. any loss of anticipated savings;
- V. any indirect or consequential losses;
- VI. any loss of administration costs or management time;
- VII. any damages or losses as a result of a force majeure event; and/or
- VIII. any exemplary or punitive losses,

arising in respect of any representation, statement, act or omission in connection with this Agreement, whether the claim arises under contract, tort, misrepresentation, breach of statutory duty or otherwise. The parties agree that the above heads of loss are reasonable to exclude.

23.3 Subject to clause 23.1, in no event shall Breathe's aggregate liability to the Client under or in relation to this Agreement, in each Year, exceed the Fees actually paid by the Client in that Year. For the avoidance of doubt, Breathe does not have a contract with any User and accordingly, the Client undertakes that it shall indemnify Breathe against any claims which Breathe receives from any Users in relation to the Products or Services.

23.4 The parties acknowledge that this clause 23 reflects a fair allocation of risk between the parties, taking into account the nature of the Services and that therefore the exclusions and limitation in this clause 23 are fair and reasonable.

24 NOTICE

24.1 Breathe may give notice by means of electronic mail to the Client's email address on record in Breathe's account information, or by written communication sent by first class mail or pre-paid post to the address on record in Breathe's account information. Such notice shall

be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

24.2 The Client may only give:

I. notice to cancel the Agreement in accordance with clause 13 “Termination by Notice”, and/or

II. instructions in relation to the destruction or retention of data in accordance with clause 16 “Data Return and Destruction”

in the administration pages of the Website.

24.3 Any other notice may be given to Breathe (such notice shall be deemed given when received by Breathe) by any of the following: letter delivered by nationally recognised overnight delivery service or first class postage prepaid mail to Breathe at the following address: Unit 7, Foundry Court, Horsham, RH13 5PY.

25 MODIFICATION TO THIS AGREEMENT

25.1 As described in the opening section of this Agreement, Acceptance takes place on a Product by Product basis, and accordingly this Agreement shall be deemed to be updated to cover additional Products following each Acceptance for each additional Product.

25.2 Breathe reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Products or Services at any time. Such modified terms and conditions will be issued or made available to the Client electronically via email or as a notification within the Website and shall be deemed effective 30 days after electronic delivery or notification. Subject to the following, continued use of the Products or Services by the Client after any such changes shall constitute the Client’s consent to such changes. If the Client does not agree to such changes, please contact us using the administration pages of the Website.

25.3 No amendment to this Agreement requested by the Client shall be effective unless this has been expressly agreed to in writing and signed by an authorised representative of Breathe.

26 ASSIGNMENT AND CHANGE IN CONTROL

This Agreement may not be assigned by the Client without the prior written approval of Breathe but may be assigned without the Client’s consent by Breathe to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this clause shall be void. Any actual or proposed change in control of the Client that results or would result in a direct competitor of Breathe directly or indirectly owning or controlling 50% or more of the Client shall entitle Breathe to terminate this Agreement for cause immediately upon written notice.

27 OTHER TERMS

27.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties agree that any dispute relating to its terms or subject matter shall be subject to the exclusive jurisdiction of the English courts.

27.2 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

27.3 No joint venture, partnership, employment, or agency relationship exists between the Client and Breathe as a result of this Agreement or use of the Products or Services.

27.4 The failure of Breathe to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Breathe in signed writing authorised by a director of Breathe.

27.5 This Agreement together with the processing policy, Pricing Plan, and any copyright notices on the Website comprises the entire agreement between the Client and Breathe in relation to the Products and Services and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. Each party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature (together “**Pre-Contractual Statements**”), other than those which are set out in this Agreement. Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

27.7 Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation or fraudulent concealment.

28 THIRD PARTIES

28.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions