Software and Services Developed and Fully Owned by Digital Missives Ltd.

Terms & Conditions of

Business November 2020

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Digital Missives Ltd
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Registered Office:
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www.digitalmissives.co.uk
www.l8guard.co.uk
www.firecomplianceonline.co.uk

Company No: 05381961
VAT No: 984 0743 93

1. Definitions

The 'Company' shall mean Digital Missives Ltd and its successors and assigns.

'Our Software' shall mean the computer program(s) and applications (apps) which are proprietary to the Company together with any subsequent modules, upgrades or additions to the same, including but not limited to L8guard, Fire Compliance Online and Digital Minor Works.

'Third Party Software' shall mean computer program(s) or Licence(s) for the same that are identified as being proprietary to a third party and not originated by the Company.

'Goods' shall mean tangible material, equipment and articles.

'Services' shall mean acts and work done and advice given (whether orally or in writing) by the Company in the execution of a contract. The term shall include services provided for, but not limited to, software support & maintenance, design, development, customisation and training.

'Services Period' means the period for which 'Customer' has purchased the 'Our Software and/or Services' and any subsequent renewal periods. The 'Services Period' commences upon the date of the availability to the 'Customer' for use of 'Our Software and/or Services'.

'Documentation' shall mean text and graphics material either in printed or electronic form that is published by the Company including relevant product description(s), installation and operating manuals relating to Our Software.

'Supplies' shall be the collective name for Goods, Services, Our Software, Third Party Software, Licence(s) and Documentation or any combination of these.

'Customer' shall mean the legal entity with which the Company contracts to provide Supplies.

'Third Party/Third Parties' shall mean any legal entity other than the 'Company'.

'Trial Period' shall mean the period of time which the 'Company' grants to the 'Customer' for the purpose of evaluation of 'Our Software'. The period of time granted is at the complete discretion of the 'Company', and is provided solely to allow the 'Customer' to decide if 'Our Software' meets their requirements.

'Normal Working Hours' shall mean 08:30 to 16:30 Monday to Friday except English Bank and statutory holidays. Reduced hours shall apply between the 27th and 31st of December inclusive each year.

2. General

2.1 Unless specifically agreed in writing by an Officer of the Company the Terms & Conditions herein shall comprise the complete and exclusive agreement between the Company and the Customer and shall take precedence over any other that a Customer may seek to apply.

2.2 Any contract between the Company and a Customer shall be subject to and construed in accordance with English Law and shall be subject to the Courts of England.

2.3 No delay neglect or forbearance by either party in applying any Term or Condition herein shall be deemed to be a waiver of or prejudice to any right of either party under these Terms & Conditions.

2.4 In the event that any clause or sub-clause of these Terms and Conditions is judged to be invalid or unfair by a Court of Law then it may be struck out without affect on any others.

2.5 Headings to clauses are solely for the purpose of information and identification.

2.6 No third party shall derive the right to enforce any of the terms herein by virtue of the Contracts (Rights of Third Parties) Act 1999. Any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 is not affected.

2.7 All title copyright and intellectual property rights in Our Software and Documentation and Goods shall remain vested in the Company at all times. The Customer shall use his best endeavours to protect these rights of the Company.

2.8 Should the Customer be in material breach of any Term or Condition herein then the Company shall notify the relevant party of the breach in writing and allow 14 days for the breach to be rectified. If the breach remains after this time then the Company reserves the right to cease to provide contracted Services until such time as the breach is rectified to the satisfaction of the Company. This shall be without prejudice to any other right of the Company under these Terms & Conditions.

2.9 The Company's privacy policy can be found at https://digitalmissives.co.uk/wp-content/uploads/2020/06/dm-privacy-policy-nov2019-.pdf

2.10 All content, including, but not restricted to, graphics, software, words, etc. is the property of the Company and is protected under copyright law. All rights to the Our Software, website(s) and contents are expressly reserved. All trademarks, registered trademarks, product names and company names or logos are property of their respected owners. Reference to any products, services, or other information by trade name, trademark, manufacturer and supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by the Company.

2.11 The Company, Our Software or the Service may include links to other Third Party websites and Third Party content as a service to those interested in this information. Your use of links to Third Party sites and Third Party content or service provided therein is at your own risk. The Company does not monitor or have any control over and makes no claim or representation regarding such sites or their content. When you leave Our Software and/or sites and enter Third Party sites or content, our terms and conditions no longer govern. You should review applicable terms and conditions including privacy and data gathering practices of any Third Party site before proceeding with any transaction with any Third Party.

2.12 From time to time the Company may present advertising and promotions from Third Parties on its website or through Our Software or the Service. Your business dealings or correspondence with or participation in promotions of such advertisers and any terms, condition, warranties or

representations associated with such dealings, are solely between you and such Third Parties. The Company is not responsible or liable for any loss or damage of any sort incurred as a result of any such dealings or as a result of the presence of the Third Party advertiser on its website or through Our Software or the Service.

2.13 Notices that the Company gives you (other than notice of amendment of these terms) may be provided in the following ways:

- Through email to the contact information you provide in your registration data.
- Through a notice posted elsewhere on the Our Software on the Company's website.

2.14 The Company may assign any or all of its rights hereunder to any party without your consent. The Customer is not permitted to assign any of your rights or obligations hereunder without prior written consent of the Company, and such attempted assignment will be void and unenforceable.

2.15 The Company may change these general terms from time to time at its absolute discretion without prior notice to the Customer. The Customer agrees that such changes will be binding on it. Any changes will be posted on the company's website and will amend and inform part of these general terms. The Customer is responsible for reviewing the Company's website on a regular basis to obtain any timely notice of such changes.

2.16 The Services Period shall take effect following the completion of any 'trial period' subject to the Customer providing payment or a written current and valid purchase order for the provision of paying any outstanding fees pertaining to the current Service Period. The Company will issue a notice of renewal and invoice for the next Service Period based upon the current 'Our Software and/or Services' level.

2.17 Neither party shall disclose or communicate to any person (other than as permitted by this agreement or with the prior written consent of the other party) any information in whatever form relating to the other party or its affairs, business, clients or property irrespective of whether such information is marked as confidential, of which it may become aware during the term of this agreement and it shall use its reasonable endeavours to prevent the unauthorised publication or disclosure of any confidential information and shall treat the other parties confidential information as secret and proprietary.

3. Prices & Payment

3.1 Unless stated otherwise, all quoted prices exclude VAT which will be applied at the relevant rate prevailing at the date of invoice.

3.2 Unless stated otherwise all quoted prices are valid for 30 days from the date of their quotation.

3.3 All valid invoices presented by the Company shall be paid in full by the end of the month following the month of invoice unless stated otherwise on the invoice.

3.4 The Customer shall not be entitled to delay payment because it has not utilised Our Software and/or Services provided by the Company.

3.5 The Customer shall not be entitled to apply any discount or set off against any due payment.

3.6 The Company shall retain title to all Goods supplied under the contract until it receives payment in full for such Goods. Risk in such Goods shall pass to the Customer upon their delivery.

4. Charges

4.1 The Company shall charge the Customer an Annual Fee for access to and use of Our Software and/or Services for the Services Period. The Annual Fee shall be based on the level of software functionality the Customer has chosen at the time of agreement, or subsequently adopted, and any additional Services or modules.

4.2 Where applicable, the Company shall charge an Implementation Fee agreed to by both parties prior to the Services Period start. The Implementation Fee will be invoiced upon agreement no works will commence until the Company has received this payment in full.

4.2 After the expiry of any 'free period' the Annual Fee shall be payable in full unless otherwise agreed by the Company.

4.4 The Company retains the right to review Annual Fees and will provide 30 days notice prior to the subsequent Services Period invoice being sent to the Customer.

5. Undertakings

5.1 In return for the Fee(s) the Company hereby undertakes to provide the following Services to the Customer:

- Endeavour to make any web based Our Software and related Services available at all times, except where this is prevented by factors outside of Company's control, including, but not constrained by, power supply problems, telecommunications breakdown, failure of Third Party suppliers, malicious attack or accidental damage.
- Provide assistance by telephone and/or electronic communication in order to resolve problems arising from the use or operation of the Our Software within Normal Working Hours.
- Provide advice by telephone and/or electronic communication to help the Customer to identify ways in which the use of the Our Software can be expanded or developed.
- Where a Customer has requested customisation to be done to Our Software then this may result in a non-standard version of the Our Software being produced. In these circumstances the Company shall not be obliged to freely provide upgrades to the licensed Our Software. However the Company will correct reported errors and issue revisions where appropriate.

5.2 The Company shall not be obliged to visit the premises of the Customer in order to perform the services described herein but may do so at its sole discretion and with the prior agreement of the Customer. In such circumstances the Company reserves the right to charge the Customer at its standard labour rate prevailing at the time and for the travel and subsistence costs it reasonably incurs in the visit.

5.3 The Company shall not be obliged to support, assist or advise the Customer on matters relating to computer equipment, networks, operating systems, database software or other computer applications not supplied by the Company.

5.4 The Company shall not be obliged to support or maintain custom software (such as interfaces and reports) or database configuration such as triggers or procedures that it has not developed or supplied.

5.5 The Customer undertakes to:

- Pay any Fee in accordance with the terms herein.
- Provide all information, relevant data, assistance and access to their IT system(s) as may reasonably be required by the Company in order for it to perform the Services described herein.
- Promptly comply with all reasonable instructions and advice given by the Company.
- Operate the Our Software in accordance with the Documentation.
- Comply with all applicable laws and regulations relating to Our Software and the Service.
- Ensure that it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement.
- Indemnify the Company and keep it fully indemnified from and against any costs, losses, damages, expenses and/or liabilities (including without limitation any legal fees and expenses) which may be suffered or incurred by the Company arising out of or in connections with (i) any claims, proceedings, demands or actions by Third Parties arising out of or in connection with the Company's supply of and/or the Customer's use of the Our Software and Service, and/or (ii) any breach by the Customer of its obligations under this Agreement, and/or (iii) the Customer's negligence or wilful misconduct.
- Provide accurate, current and complete information through any registration forms which form part of Our Software or the Service.
- Keep your passwords and other information used to access Our Software secure.
- Accept all risks of unauthorised access to the registration data and any other information you provide to the Company either directly or through Our Software or the Service. You are responsible for all activity on your account and all charges incurred by your account.

6. Performance & Warranty

6.1 The Customer acknowledges that Our Software is Internet based, and the Customer will require Internet access to be able to use all of the features.

6.2 The Customer acknowledges that due to the nature of the Internet, the provision of Our Software and other services may be disrupted due to problems such as, but not constrained to, power supply problems, telecoms issues, heavy demand, etc. The Company will endeavour to mitigate, if possible, any negative affect caused by such problems, but will in no way be held liable for loss(es) suffered as a result of such problems.

6.3 In the event of an error or bug in Our Software or Services being reported to the Company, the Company shall try to remedy this where such remedies exist and do not negatively affect the operation of Our Software of other existing Customers however the Company does not warrant that Our Software or the Service will meet the customer's requirements.

6.4 The Customer acknowledges that operation of Our Software and related Services is dependent on Third Party software (including but not constrained to internet browsing software such as Microsoft Internet Explorer, Mozilla Firefox, Apple Safari, etc), and that the Company has no control over the standards and deployment of such software, and that the Company shall not be liable for the performance of the Third Party software or any affect it may have on the performance of the Our Software.

6.5 Except as noted in 6.1 to 6.4, Our Software, its websites and related Services are provided to you on an 'as is' basis without warranties from the Company of any kind, either expressed or implied, including, but without limitation, implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. The Company does not represent or warrant that the information on its websites or within Our Software or the Service is accurate, complete, reliable, current or error-free, and expressly disclaims any warranty or representation as to the accuracy or propriety, character of Our Software, the Company's website, Service or any portion thereof.

6.6 Whilst the Company attempts to make access to and use of the site and Our Software safe, the Company does not represent or warrant that the site, Our Software or any content are free of viruses or harmful components.

7. Liability

7.1 The liability of the Company and/or its employees for damage to property and/or for direct or consequential loss (excluding that specified in 7.2) howsoever arising from the provision or use or performance of Supplies provided under a contract shall not exceed one time the Annual Fee charged to the Customer (or subsequently adopted through the use of additional features).

7.2 The Company and/or its employees shall not be liable for direct or consequential loss of profits, savings, revenue or contracts howsoever arising from acts omissions and/or negligence in the performance of the Our Software or Services.

7.3 Nothing in these Terms and Conditions shall be construed as limiting the liability of the Company or its employees for death or personal injury or otherwise as prohibited by law.