

TERMS OF SERVICE

1. Agreement

- 1.1 These Terms of Service ('Terms'), together with the terms set out in the accompanying order form ('Order'), comprise the agreement ('Agreement') between Tapply and you, the customer specified in the Order, ('You' or 'Customer') pursuant to which Tapply will grant You the right to access and use the software described in the Order ('Software').
- 1.2 By submitting an Order or by signing or accepting these Terms, whether as part of Tapply's online ordering process or otherwise, You agree to contract on the basis of these Terms and that they prevail over any other terms which You may seek to impose or introduce, including (without limitation) any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by You.
- 1.3 Any person submitting an Order, or making any other representation, on Your behalf represents and warrants that they have the legal right and authority to bind You to the terms of the Agreement.
- 1.4 You confirm that You have had the opportunity to evaluate the Software, satisfy yourself as to its suitability, and that You have not relied on any representation or statement other than as set out in the Agreement.
- 1.5 The Agreement supersedes all and any previous agreements in relation to its subject matter. Capitalised terms are defined herein or in the Order.

2. Licence

- 2.1 In consideration of the payment of all applicable fees hereunder, Tapply hereby grants the Customer a limited, non-exclusive, non-transferable, non-sublicenseable right to install and use the Software only within the Customer's Salesforce.com instance (namely the specific configuration of Salesforce software used by the Customer under licence from Salesforce) ('SF Instance') on condition that the said right extends only to use:
 - (a) for the Customer's internal business purposes;
 - (b) in accordance with the Customer's permitted use of the SF Instance;
 - (c) by the maximum number of users permitted hereunder ('Users'); and
 - (d) in accordance with any restrictions set out in the Order.
- 2.2 You may only use the Software as specified in clause 2.1. You may not, without the prior written consent of Tapply:
 - (a) sub-license, assign or novate the benefit or burden of the licence granted under clause 2.1 ('Licence') in whole or in part;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance;
 - (c) deal in any other manner with any or all of Your rights and obligations under the Agreement; or
 - (d) access all or any part of the Software or the related documentation ('Documentation') in order to build products or services which compete with those of Tapply.
- 2.3 You shall:
 - (a) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Tapply; and
 - (b) pay, for broadening the scope of the Licence granted under this Agreement to cover any unauthorised use, an amount equal to the fees which Tapply would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 2.4 You accept and agree that Tapply or its authorised representatives may monitor, collect and record usage information relating to the Software for the purpose of verifying compliance with the terms of the Agreement.
- 2.5 The rights provided under this clause 2 are granted to the Customer (including its wholly owned operating subsidiaries) only and, unless otherwise agreed in writing by Tapply, shall not be considered granted to any other party.

3. Dependency

You acknowledge and agree that access to and use of the Software is entirely dependent on the availability and proper functioning of Your SF Instance and that Tapply has no control over your SF Instance or the services you receive from Salesforce or other third parties. You are responsible for ensuring the availability of Your SF Instance, including the payment of all fees and compliance with applicable terms of use, and You agree that Tapply is not responsible for any inability to access or use the Software, or interruption or degradation of the performance of the Software, to the extent caused by any issues, problems, errors, delays, malfunctions or inaccessibility relating to Your SF Instance or to third party technology or services, whether as a result of Your defaults or otherwise. You are solely responsible for the configuration of Your SF Instance and all technology and services necessary to access and use the Internet and Your SF Instance.

4. Restrictions

- 4.1 Except as expressly permitted under this Agreement, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless Tapply is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Tapply to carry out such action or to provide such information (and shall meet Tapply's reasonable costs in providing that information) before undertaking any such reduction.
- 4.2 The Customer may not use any information provided by Tapply or obtained by the Customer during any such reduction permitted under clause 4.1 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 4.3 You may not (a) remove or destroy any copyright notices or other proprietary markings on or relating to the Software; (b) attempt to circumvent any use restrictions or gain unauthorised access to the Software, computer systems or networks related to the Software; (c) modify or create derivative works based on the Software; (d) copy or distribute the Software; (e) allow use of the Software by anyone other than user(s) authorised and paid for by You; (f) knowingly transmit through the Software unlawful, libellous, tortious, defamatory, threatening, vulgar, or obscene material; or (g) use the Software other than as expressly permitted under clause 2 above. You acknowledge that Tapply may, upon written notice, utilise technological license control features that can limit Your access to or use of Software.

5. Fees and Payment

- 5.1 The Customer subscribes to the Software on the subscription basis set out in the Order. The initial subscription begins on the Effective Date and runs for the Initial Subscription Period, each as defined in the Order. Where a trial period has been agreed, the Initial Subscription Period begins on the first day immediately following the end of the agreed trial period (the 'Effective Date' for that purpose). Tapply will invoice the Customer on the Effective Date for the first subscription fee, as set forth in the Order, and the Customer shall make payment within thirty (30) days of receipt of Tapply's invoice. Subscription fees for each Renewal Period are due and payable immediately upon commencement of the applicable Renewal Period on issue of the applicable invoice by Tapply. The Customer will promptly provide all assistance reasonably required by Tapply in connection with invoicing and payment including (without limitation) the provisions of appropriate purchase order details.

- 5.2 If Tapply has not received payment in accordance with the terms of the Agreement it may, without prejudice to any other rights and remedies and without liability to the Customer, suspend access to all or part of the Software (as applicable) and maintain the suspension while the invoice(s) concerned remain unpaid.
- 5.3 All amounts and fees stated or referred to in the Agreement:
- (c) shall be payable in US Dollars (USD) unless otherwise agreed;
 - (d) are non-cancellable and non-refundable;
 - (e) are payable in full, net of all charges, and without set-off, deduction or withholding; and
 - (f) are exclusive of value added tax or other local taxes, which (where applicable) shall be added to Tapply's invoice(s) at the appropriate rate.
- 5.4 Customer may purchase additional user licenses at any time during the Subscription Period at the fees set forth in the Order on a pro-rata basis (based on the number of days remaining in the then applicable Subscription Period) so that all licenses will have the same expiration date.
- 5.5 Tapply shall be entitled to increase its fees upon 60 days' prior notice to the Customer and any such increase shall take effect from the start of the next applicable Subscription Period.
6. Ownership
- 6.1 The Customer acknowledges and agrees that Tapply and/or its licensors own(s) all intellectual property rights in the Software (inclusive of any modifications, enhancements, updates, improvements or new releases) and the Documentation. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Documentation. The rights granted hereunder are by way of license and do not constitute a transfer or sale of Tapply or its licensors' ownership rights in or to the Software, including, without limitation: (a) the Documentation; (b) Tapply's name, logo, domain name or trade marks; and (c) hardware, processes, algorithms, user interfaces, know-how and other trade secrets or technology (collectively, "Tapply Technology"). The Tapply Technology is protected by applicable intellectual property laws, including, but without limitation, United Kingdom copyright laws and international treaties. Except for the rights granted above, Tapply and its licensors retain all right, title and interest in and to Tapply Technology, including all intellectual property rights therein. 'Tapply', 'Taskfeed' and the Tapply logo are trade marks owned by Tapply and all rights therein are fully reserved.
- 6.2 Tapply acknowledges and agrees that You own the information in Your SF Instance and Tapply makes no claim of ownership to any such information. You hereby grant Tapply all rights to access and use the information in your SF Instance to the extent necessary for the operation of the Software and for the provision of any services, including support services, provided by Tapply. You are solely responsible for the accuracy of all information in Your SF Instance.
7. Customer Obligations
- 7.1 The Customer shall:
- (a) provide Tapply with:
 - i. all necessary co-operation in relation to the Agreement; and
 - ii. such documents, data, drawings, plans, diagrams, designs, reports, specifications or other information as Tapply may reasonably require in order to provide the Services, including but not limited to security access information and configuration services, and ensure all information is complete, true and accurate in all material respects;
 - (b) appoint a representative, who shall have the authority contractually to bind the Customer on matters relating to the Agreement;
 - (c) make available such Customer staff and applicable sub-contractors or suppliers (if any) as may be required for Tapply to comply with its obligations hereunder;
 - (d) carry out all Customer responsibilities set out in the Agreement in a timely and efficient manner;
 - (e) ensure that Users use the Software and the Documentation in accordance with the Agreement (the Customer accepting responsibility for breach by any User(s));
 - (f) obtain and maintain all Customer licences, consents, and permissions necessary for Tapply, its contractors and agents to perform their obligations under the Agreement;
 - (g) be solely responsible for the accuracy, reliability, and quality of Customer Data;
 - (h) be responsible for procuring and maintaining its network connections and telecommunications links and for 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;
 - (i) be responsible for the management and configuration of the Software, including (without limitation) any sharing or collaboration facility if permitted under the terms of the Licence, in full knowledge and acceptance of the fact that such facilities could cause Your data, including (without limitation) confidential information, to be disclosed to unintended third parties or to the public. Once external sharing features of the Software are enabled, data is made publically available in a way that third parties could gain access to Your information by guessing or programmatically attempting to construct the external sharing URLs; and
 - (j) comply with all applicable laws and regulations with respect to its activities under the Agreement.
- 7.2 The Customer acknowledges that Tapply's ability to perform its obligations hereunder depends on the Customer satisfactorily complying with the obligations stated in this Agreement and that should the Customer delay or fail to perform any such obligations then Tapply will not be liable in any way for any delay, loss or damage, cost increase or other consequences arising from such failure.
- 7.3 The Customer shall not access, store, distribute or transmit any unauthorised code, such as a virus, Trojan horse, worm or any software routine or hardware component designed to permit, either automatically or through externally applied controls, unauthorised access or use to disable, erase, or otherwise harm software, hardware, or data (together 'Contaminants') and will ensure that it does not, and that Customer personnel do not, introduce such Contaminants into the Software or the Documentation and where it detects the same, shall promptly notify Tapply of any such Contaminant issues (including, without limitation, any ransomware attacks) it experiences during the term of the Agreement and provide Tapply with all assistance reasonably required in connection with the said issues. Tapply reserves the right, without liability and without prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of this clause.
8. Data & Security
- 8.1 The Customer shall own all right, title and interest in and to all data provided and/or input by the Customer or on the Customer's behalf in connection with the Agreement ('Customer Data') and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 8.2 The Customer warrants that it owns all rights in the Customer Data and that Tapply's use and processing of the Customer Data in accordance with the Agreement will not infringe third party rights. The Customer hereby grants Tapply the non-exclusive worldwide right and licence to process, copy, store, transmit, display, print, view and otherwise use the Customer Data to the extent required in connection with Tapply's performance of the Agreement.
- 8.3 Tapply is not responsible for maintaining backup copies of any Customer Data. The Customer acknowledges and agrees that it can back up its data at any time and therefore accepts full responsibility in respect of the security and backup of any and all Customer Data and for the security and safety of its systems and software. The Customer agrees to take regular data backups to protect against data loss, corruption or other damage. Tapply's liability in relation to any data loss, corruption or security will be limited to that resulting from its failure to comply with any contractual commitments given and Tapply does not otherwise accept responsibility in those respects.

- 8.4 Any Customer personal data provided directly to Tapply by data subjects (and in respect of which Tapply is the data controller) will be processed in accordance with the Tapply's Privacy Policy (<https://www.taskfeedapp.com/privacy>). Where Tapply processes any other personal data on the Customer's behalf when performing its obligations under the Agreement, the parties agree that the Customer shall be the data controller and Tapply shall be a data processor and in any such case:
- the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out Tapply's obligations under the Agreement;
 - the Customer shall ensure that it is entitled to transfer the relevant personal data to Tapply so that Tapply may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf;
 - 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;
 - Tapply shall process the personal data only in accordance with the terms of the Agreement and any lawful and reasonable instructions given by the Customer from time to time; and
 - 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.
- 8.5 The Customer accepts that the processing of electronic communications is a fundamental requirement for the performance of Tapply's obligations and the Customer therefore consents to Tapply's interception and storage of electronic communications and Customer Data in connection with the Agreement. The Customer accepts that electronic communications involve transmission over the Internet, and over other networks, which are outside Tapply's reasonable control. The Customer accepts the risk associated with electronic communications and the possibility that they may be accessed by unauthorised parties and agrees that Tapply is not responsible for any related delay, loss or damage.
- 8.6 You are responsible for all activity occurring under your user accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Software, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) keep your account details confidential and use commercially reasonable efforts to prevent unauthorised access to, or use of, the Software, (ii) notify Tapply promptly of any known or suspected unauthorised use of any password or account or any other known or suspected breach of security; (iii) report to Tapply immediately and use reasonable efforts to stop immediately any unauthorised copying or distribution of content that is known or suspected by You or Your users; and (iv) not impersonate another Tapply user or provide false identity information to gain access to or use the Software. You will not attempt to or use your access to the Software to knowingly interfere with or disrupt the integrity or performance of the Software or the data contained therein.
9. Term, Termination & Suspension
- 9.1 This Agreement shall commence on the Effective Date and continue for the Initial Subscription Period. Thereafter, the Agreement shall automatically renew for successive periods of 12 months (each a 'Renewal Period'), unless:
- either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period (as applicable), in which case the Agreement shall terminate upon the expiry of the then applicable Period; or
 - otherwise terminated in accordance with the provisions of the Agreement.
- 9.2 Either party shall have the right to terminate this Agreement in the event of a breach by the other party, which breach has not been cured within 30 days of the receipt of written notice thereof, except in the case of Customer's failure to pay any undisputed and invoiced fees when due hereunder, which must be cured within 5 days after receipt of written notice from Tapply.
- 9.3 Either party may terminate this Agreement if the other party becomes the subject of an involuntary petition in bankruptcy or other proceeding relating to insolvency, receivership, or liquidation.
- 9.4 Upon termination of this Agreement for any reason, whether with respect to a trial period or otherwise: (i) the rights granted to Customer hereunder will immediately terminate and Customer shall immediately discontinue any use of the Software, (ii) all data inputted to the Software by the Customer and any customisations will no longer be available, and (iii) the Customer shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to Tapply. 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. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Tapply prior to the effective date of termination. Fees paid are strictly non-refundable except where the Agreement is terminated owing to breach by Tapply, in which case Tapply shall refund Customer a pro rata refund of any prepaid but unused fees for the remainder of the then applicable Subscription Period.
- 9.5 Without prejudice to any other right, power or remedy and without liability, Tapply reserves the right to limit or suspend the Services:
- if it is reasonably necessary to protect the interests of the Customer or Tapply, or the interests of any third party (including other customers) and/or to protect the security or operation of Tapply's systems or network or those of its customers;
 - if the Customer breaches any of the terms of the Agreement or Tapply reasonably believes the Customer has breached or is about to breach;
 - if the Customer fails to cooperate regarding any suspected or actual breach of the terms of the Agreement; or
 - if required to do so by law or further to a request from any regulatory or governmental authority.
- 9.6 Tapply shall not be liable for any suspension of the Services under the above circumstances and the Customer shall not be entitled to any setoff, discount, refund or other credit as a result of such suspension and/or disconnection.
10. Support and Updates
- 10.1 Tapply will provide email support to Customer for current and the immediately prior versions of the Software. Tapply will investigate all of Customer's questions and problems promptly. Customer agrees to provide adequate information to Tapply to assist in the investigation and to confirm that any problems have been resolved. Tapply does not provide guaranteed response time but will make good faith effort to answer emails within twenty-four (24) hours or less during weekdays, excluding holidays. Tapply does not offer any other support services under this Agreement.
- 10.2 Tapply shall have no obligation to provide support where faults arise from:
- misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by Tapply);
 - failure to maintain the necessary environmental conditions for use of the Software;
 - use of the Software in combination with any equipment or software not approved or designated by Tapply for use with the Software, or any fault in any such equipment or software;
 - modifications of the Software by any person other than Tapply or a person acting under Tapply's instructions;
 - any breach of the Customer's obligations under this Agreement howsoever arising or having the Software maintained by a third party;
 - any modification not authorised by Tapply; or
 - operator error.
- 10.3 Tapply may, in its sole discretion, from time to time update the Software upon written notice (provided that any such updates shall not materially and adversely impact Customer) and may include such updates, free of charge, in the Software, provided Customer has paid all applicable fees then due hereunder. The Customer shall promptly apply any updates provided by Tapply and Tapply shall not be responsible, whether with respect to the provision of support or otherwise, for any failure by the Customer to do so. If the Customer has not applied the update within 30 days of such release, Tapply may itself apply or require the update to the Software. The Customer accepts that updates may result in changes to the appearance and/or functionality of the Software.
11. Confidentiality

Confidential Information” means information directly or indirectly disclosed by either party to the other, whether orally, electronically or in writing, which is designated as confidential or would reasonably be considered to be confidential under the circumstances by a reasonable person. Tapply’s “Confidential Information” shall include, but not be limited to, the Software, Documentation, technology and technical information, product designs and business processes. Customer’s “Confidential Information” shall include any information or data submitted by Customer to Tapply or processed or generated by Customer’s use of the Software, including Customer Data. Each party agrees to use Confidential Information solely to perform obligations and exercise rights under this Agreement and not to disclose, or permit to be disclosed, either directly or indirectly, Confidential Information to any third party without the other’s prior written consent. Each party shall safeguard the Confidential Information of the other party using the same measures it uses to protect its own confidential information, but in no event less than reasonable care. Notwithstanding the foregoing, neither party bears responsibility for safeguarding information that is publicly available without breach of an obligation owed to the disclosing party hereunder, obtained from third parties not under confidentiality restrictions, independently developed or known to the recipient without breach of an obligation owed to the disclosing party, or required to be disclosed by order of court or other governmental entity. If either party breaches, or threatens to breach the provisions of this Section 11, each party agrees that the non-breaching party will have no adequate remedy at law and is therefore entitled to immediate injunctive and other equitable relief.

12. Indemnity

- 12.1 Customer shall indemnify and hold Tapply and its officers, agents, and employees harmless from any damages, losses, costs and expenses (including reasonable legal fees and court costs), arising out of a third party claim or demand alleging that any data or content submitted by Customer to Tapply infringes, misappropriates, or violates any rights of a third party including any third party intellectual property rights.
- 12.2 Tapply shall indemnify and hold Customer its officers, agents, and employees harmless from any damages, losses, costs and expenses (including reasonable legal fees and court costs), arising out of a third party claim or demand alleging that the Software, when used in accordance with this Agreement, infringes, misappropriates, or violates the intellectual property rights of a third party.
- 12.3 All and any indemnities in this Agreement are conditional upon the indemnified party:
 - a. giving the indemnifying party prompt notice of the claim;
 - b. providing reasonable co-operation to the indemnifying party in the defence and settlement of the claim, at the indemnifying party’s expense;
 - c. not making any admission regarding liability and not doing or omitting to do anything which may prejudice the indemnifying party’s ability to defend or settle the claim, and
 - d. giving the indemnifying party the exclusive authority to defend and/or settle the claim.
- 12.4 In the defence or settlement of any claim relating to the Software, Tapply may procure the right for the Customer to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 7 days’ notice.
- 12.5 In no event shall Tapply, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Software by anyone other than Tapply, (b) use of the Software in breach of the Agreement or in a manner contrary to the instructions given by Tapply, (c) use of the Software in combination with any hardware or software not provided or authorized by Tapply, or (d) the Customer’s use of the Software after notice of the alleged or actual infringement.

13. Warranty

- 13.1 Tapply warrant that during an applicable subscription term (a) the Services will perform materially in accordance with the applicable Documentation, and (d) Tapply will not materially decrease the overall functionality of the Services. If the Customer notifies Tapply in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Documentation, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Tapply, or it has not been loaded onto Tapply-specified or suitably configured equipment, Tapply shall, at Tapply’s option, do one of the following:
 - a. repair the Software;
 - b. replace the Software; or
 - c. terminate the Licence immediately by notice in writing to the Customer and refund any of the Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer’s use of the Software to the date of termination) on return of the Software and all copies thereof,provided the Customer supplies all information that may be necessary to assist Tapply in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Tapply to re-create the defect or fault.
- 13.2 Tapply warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement. Tapply does not warrant that the use of the Software will be uninterrupted or error-free.
- 13.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 13.4 Tapply 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 Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 13.5 The Agreement shall not prevent Tapply from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

14. Limitations & Exclusions

- 14.1 This clause 14 sets out the entire financial liability of Tapply (including any liability for the acts or omissions of its employees, officers, agents and sub-contractors):
 - a. arising under or in connection with the Agreement;
 - b. in respect of any use made by the Customer of all or any part of the Software, the Documentation and/or any services provided hereunder (‘Services’); and
 - c. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 14.2 Except as expressly and specifically provided in the Agreement:
 - a. the Customer assumes sole responsibility for results obtained from the use of the Software and the Documentation and for conclusions drawn from such use. Tapply shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Tapply by the Customer in connection with the Software or Services, or any actions taken by Tapply at the Customer’s direction; and
 - 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 the Agreement, including (without limitation) any implied term(s) as to satisfactory quality or fitness for purpose.
- 14.3 Nothing in the Agreement excludes the liability of Tapply:

- a. for death or personal injury caused by Tapply's negligence;
 - b. for fraud or fraudulent misrepresentation; or
 - c. for any other liability which may not be excluded or limited under applicable law.
- 14.4 Subject to clause 14.3:
- a. Tapply shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) 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, in each case whether direct or indirect, or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
 - b. Tapply's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the fees paid or payable by the Customer during the 12 months immediately preceding the date on which the claim arose. For the avoidance of doubt, the said limit applies to all and any indemnities given by Tapply.
15. Survival
- The following provisions will survive any expiration or termination if this Agreement: 4 (Restrictions), 6 (Ownership), 8 (Data & Security), 9 (Term & Termination), 11 (Confidentiality), 12 (Indemnity), 13 (Warranty), 14 (Limitations & Exclusions), 15 (Survival), 16 (Force Majeure), 17 (Conflict), 18 (Variations), 19 (Waiver), 20 (Rights & Remedies), 21 (Severance), 22 (Entire Agreement), 27 (Law & Jurisdiction).
16. Force Majeure
- Tapply shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the 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 Tapply or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
17. Conflict
- If there is an inconsistency between any of the provisions of the Agreement, the Order shall prevail over the Terms and the Terms shall prevail over any documents referred to or incorporated into the Terms.
18. Variations
- No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
19. Waiver
- No failure or delay by a party to exercise any right or remedy provided under the 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.
20. Rights & Remedies
- Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
21. Severance
- 21.1 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
22. Entire Agreement
- 22.1 The 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, including (without limitation) any non-disclosure agreements previously entered into by the parties relating to the subject matter hereunder.
- 22.2 Each of the parties acknowledges and agrees that in entering into the 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 the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.
23. Assignment
- 23.1 The Customer shall not, without the prior written consent of Tapply, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 23.2 Tapply 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 the Agreement.
24. No Partnership or Agency
- Each party confirms it is acting on its own behalf and not for the benefit of any other person. Nothing in the 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).
25. Third Party Rights

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Notices

- 26.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

27. Law & Jurisdiction

The 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. 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).