

## EQUIMETRICS V-PRO TERMS AND CONDITIONS OF SERVICE

This agreement is entered into between Equimetrics Limited, a company registered in Ireland under company number 676674 and having its registered office at Carriganog, Owing Hill, Pilltown, Kilkenny, Ireland (“**Equimetrics**” or “**Supplier**”) and the Customer and sets out the terms and conditions governing the supply of Services to the Customer and the use of the Products.

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 12 (LIMITATION OF LIABILITY).**

**BY USING THE SERVICES AND THE PRODUCTS THE CUSTOMER ACCEPTS THESE TERMS AND CONDITIONS OF SERVICE.**

### 1. **INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

" <b>Applicable Law</b> "	all applicable laws, statutes, regulations from time to time in force.
" <b>Applicable Data Protection Laws</b> "	means the Irish Data Protection Acts 1988 – 2018, the General Data Protection Regulation (( <i>EU</i> ) 2016/679) (the “ <b>GDPR</b> ”), SI No. 336 of 2011 European Communities (Electronic Communications Networks and Services (Privacy and Electronic Communications) Regulations 2011 and any other applicable laws which relate to the protection of personal data.
" <b>Authorised Users</b> "	those employees of the Customer who are authorised by the Customer to use the Services, the Documentation and the Products, as further described in clause 2.
" <b>Business Day</b> "	a day other than a Saturday, Sunday or public holiday in Ireland when banks in Dublin are open for business.
" <b>Change of Control</b> "	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and <b>controls, controlled</b> and the expression <b>change of control</b> shall be interpreted accordingly.
" <b>Confidential Information</b> "	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.1.
" <b>Customer</b> "	means the equine veterinary clinic or professional qualified and practising equine veterinarian that purchased the Product from Equimetrics, its agents, resellers or distributors.

<b>"Customer Data"</b>	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>"Customer Personal Data"</b>	any personal data within the meaning of the GDPR to the extent incorporated within the Customer Data.
<b>"Data Processing Addendum"</b>	means the data processing addendum governing the processing of Customer Personal Data by the Supplier in the course of providing the Services to the Customer.
<b>"Dispute"</b>	a disagreement between the parties in relation to the performance of this Agreement.
<b>"Dispute Notice"</b>	written notice of the Dispute, setting out its nature and full particulars.
<b>"Documentation"</b>	the document made available to the Customer by the Supplier from time to time which sets out a description of the Services and the user instructions for the Services.
<b>"Effective Date"</b>	the date of this Agreement.
<b>"Heightened Cybersecurity Requirements"</b>	any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 360/2018), all as amended or updated from time to time.
<b>"Initial Subscription Term"</b>	the initial term of one (1) year from the Effective Date.
<b>"Normal Business Hours"</b>	9.00 am to 5.00 pm local Irish time, each Business Day.
<b>"Online Order Form"</b>	means the e-commerce order platform provided by the Supplier on their website, which the Customer uses to select and pay for their subscription for the Services.
<b>"Product" or "Products"</b>	means the Equimetrics V-Pro equine device.
<b>"Renewal Period"</b>	the period described in clause 13.1.

<b>"Services"</b>	the subscription services provided by the Supplier to the Customer under this Agreement, as set out in Part 1 of Schedule 1 and more particularly described in the Documentation.
<b>"Software"</b>	the online software applications provided by the Supplier as part of the Services.
<b>"Subscription Fees"</b>	the licences fees and/or other subscription fees payable by the Customer to the Supplier for the Services, as set out in the Online Order Form.
<b>"Subscription Term"</b>	has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
<b>"Virus"</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>"Vulnerability"</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term <b>Vulnerabilities</b> shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

- 1.9 A reference to **writing** or **written** includes email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. GRANT OF LICENCE AND ACCEPTABLE USE POLICY**

- 2.1 Subject to the Customer paying the Subscription Fees in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services and/or the Products that:
- 2.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 2.2.2 facilitates illegal activity;
  - 2.2.3 depicts sexually explicit images;
  - 2.2.4 promotes unlawful violence;
  - 2.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 2.2.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.3 The Customer shall not:
- 2.3.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
  - 2.3.2 access all or any part of the Services, Documentation and/or the Products in order to build a product or service which competes with the Services and/or the Products; or
  - 2.3.3 use the Services and/or Documentation to provide services to third parties; or
  - 2.3.4 subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Documentation and/or the Products available to any third party except the Authorised Users, or

- 2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Documentation and/or the Products, other than as provided under this clause 2; or
- 2.3.6 introduce or permit the introduction of, any Virus or Vulnerability into the Services or the Supplier's network and information systems.
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Documentation and/or the Products and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.5 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. SERVICES**

- 3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
  - 3.2.1 planned maintenance carried out during the maintenance window of 9.00 am to 5.00 pm Irish time; and
  - 3.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance.
  - 3.2.3 where unscheduled maintenance is performed, the Supplier shall reasonably endeavour to ensure that the maintenance period does not extend beyond a timeframe of seventy two (72) hours.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours.

### **4. DATA PROTECTION**

- 4.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 4, and the [Data Processing Addendum \(https://www.equimetrics.ie/wp-content/uploads/2026/02/Equimetrics-Data-Processing-Addendum.pdf\)](https://www.equimetrics.ie/wp-content/uploads/2026/02/Equimetrics-Data-Processing-Addendum.pdf), are in addition to, and do not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 4.2 The [Data Processing Addendum \(https://www.equimetrics.ie/wp-content/uploads/2026/02/Equimetrics-Data-Processing-Addendum.pdf\)](https://www.equimetrics.ie/wp-content/uploads/2026/02/Equimetrics-Data-Processing-Addendum.pdf) sets out the parties' rights and obligations in relation to the processing of personal data, including any Customer Personal Data, and is incorporated herein by reference.
- 4.3 To the extent the Supplier processes Personal Data in its capacity as controller of such Personal Data, the Customer consents to, (and shall procure all required consents, from its Authorised Users in respect of) all actions taken by the Supplier in connection with the processing of such Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.equimetrics.ie/privacy-policy/>.
- 4.4 The Customer acknowledges and agrees that the Supplier may create, retain, use and share anonymised and aggregated data generated by or for the Supplier in relation to the use of the Services for the Supplier's legitimate business purposes.

**5. THIRD PARTY PROVIDERS**

5.1 The Supplier is not responsible for and makes no warranties or representations of any kind in relation to the accuracy or reliability of, any information or content howsoever obtained from any third party and/or for the results obtained, or any errors or omissions arising, from the use of such third party information or content.

5.2 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

**6. SUPPLIER'S OBLIGATIONS**

6.1 The Supplier shall perform the Services substantially in accordance with the Documentation and with reasonable care and skill.

6.2 The Supplier's obligations at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services (and/or the Products) contrary to the Supplier's instructions, or modification or alteration of the Services (and/or the Products) by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the terms of clause 6.1, the Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3 The Supplier:

6.3.1 does not warrant that:

- (a) the Customer's use of the Services, Documentation and/or the Products will be uninterrupted or error-free; or
- (b) that the Services, Documentation, the Products and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- (c) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (d) the Software, Documentation, Products and/or Services will comply with any Heightened Cybersecurity Requirements.

6.3.2 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, Documentation and Products may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 This Agreement shall not prevent the Supplier 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 this Agreement.

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

6.6 The Supplier shall follow its archiving procedures for Customer Data, as such procedures may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its archiving procedure. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.)

## **7. CUSTOMER'S OBLIGATIONS**

7.1 The Customer shall:

7.1.1 provide the Supplier with:

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

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

7.1.2 without affecting its other obligations under this Agreement, comply with all Applicable Law with respect to its activities under this Agreement;

7.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.4 ensure that the Authorised Users use the Services, Documentation and the Products in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

7.1.5 ensure that all Authorised Users are suitably qualified and trained in the use of the Services and the Products;

7.1.6 use (and procure that all Authorised Users use) the Products with all reasonable care and in accordance with the instructions for use as may be made available from time to time by the Supplier;

7.1.7 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services and the Products, and shall obtain and maintain all necessary permissions, consents or approvals of its customers' to use or administer the Services and the Products on or in relation to their respective horses;

7.1.8 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

- 7.1.9 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 7.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 7.3 For the avoidance of doubt, the Customer is solely responsible for the accuracy, currentness and completeness of the Customer Data and any and all other information or data inputted by the Customer and/or its Authorised Users in the course of using the Services and/or the Products. The Supplier shall not be responsible for any inaccuracies, errors or harm arising out of or in connection with any error, omission, fault or negligence of the Customer and/or its Authorised Users.
- 7.4 The Customer warrants and represents to the Supplier that it is duly qualified and licensed to carry on the business of an equine veterinary clinic practice and to provide equine veterinary services to its customers and their horses. The Customer is responsible for the medical treatment, diagnosis, monitoring, and care of its customers' horses. The information, data and/or results derived or obtained from using the Services and/or the Products does not constitute medical advice or veterinary medical advice. The Services are provided for informational purposes only and do not substitute professional veterinary medical advice or consultations with veterinary healthcare professionals.
- 8. CHARGES AND PAYMENT**
- 8.1 The Customer shall pay the Subscription Fees to the Supplier for the Services in accordance with this clause 8 and the Online Order Form. The Subscription Fees shall be payable either monthly, quarterly or annually as set out in the Online Order Form.
- 8.2 If the Supplier has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- 8.2.1 the Supplier may, on no less than five (5) Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 8.2.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in Ireland from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.3 All amounts and fees stated or referred to in this Agreement:
- 8.3.1 shall be payable in Euro (€) or US Dollars (\$);
- 8.3.2 are, subject to clause 12.3.1, non-cancellable and non-refundable;
- 8.3.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.4 The Supplier shall be entitled to increase the Subscription Fees:

- 8.4.1 annually upon 90 days' prior notice to the Customer and the Online Order Form shall be deemed to have been amended accordingly; and
- 8.4.2 at any time on written notice to the Customer if during the course of its use of the Services and/or the Product, the Customer stores excessive amounts of data or exceeds the standard monthly allowance.

**9. PROPRIETARY RIGHTS**

- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, Documentation and the Products. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Documentation or the Products.
- 9.2 The Supplier confirms that it has all the rights in relation to the Services, the Documentation and the Products that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

**10. CONFIDENTIALITY**

- 10.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Services, including but not limited to:

- 10.1.1 the existence and terms of this Agreement;
- 10.1.2 any information that would be regarded as confidential by a reasonable business person relating to:
  - (a) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- 10.1.3 any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
  - (a) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
  - (b) Customer Data shall constitute Customer Confidential Information.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

- 10.2 The provisions of this clause shall not apply to any Confidential Information that:
  - 10.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - 10.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 10.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound

- by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 10.2.4 the parties agree in writing is not confidential or may be disclosed.
- 10.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- 10.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (“**Permitted Purpose**”); or
- 10.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 10.
- 10.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 10.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 10.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 10.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this Agreement.
- 10.7 On termination or expiry of this Agreement, each party shall:
- 10.7.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- 10.7.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
- 10.7.3 certify in writing to the other party that it has complied with the requirements of this clause;
- provided always that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 13 (Termination).
- 10.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 10.9 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 10.10 The above provisions of this clause 10 shall survive for a period of five (5) years from termination and/or expiry of this Agreement.
- 11. INDEMNITY**
- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, Documentation and/or the Products, provided that:
- 11.1.1 the Customer is given prompt notice of any such claim;
- 11.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 11.1.3 the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services, Documentation and/or the Products in accordance with this Agreement infringes any Irish patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts to the extent awarded against the Customer in judgment or settlement of such claims, provided that:
- 11.2.1 the Supplier is given prompt notice of any such claim;
- 11.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- 11.2.3 the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 11.4.1 a modification of the Services, Documentation and/or the Products by anyone other than the Supplier; or
- 11.4.2 the Customer's use of the Services, Documentation and/or the Products in a manner contrary to the instructions given to the Customer by the Supplier; or
- 11.4.3 the Customer's use of the Services, Documentation and/or the Products after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
- 11.4.4 the Customer's breach of this Agreement.
- 11.5 The foregoing and clause 12.6 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **12. LIMITATION OF LIABILITY**

- 12.1 Except as expressly and specifically provided in this Agreement:
- 12.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services, Documentation and/or the Products by the Customer and/or its Authorised Users, and for conclusions drawn from such use in the care, treatment or monitoring of its customer's horses or otherwise. The Supplier shall have no liability whatsoever for any damage or harm of any kind caused by errors or omissions in any Customer Data, information, instructions or scripts provided to the Supplier by the Customer and/or its Authorised Users in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 12.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Agreement; and
  - 12.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 12.2 Nothing in this Agreement excludes the liability of a party:
- 12.2.1 for death or personal injury caused by its negligence; or
  - 12.2.2 for fraud or fraudulent misrepresentation.
- 12.3 To the maximum extent permitted by Applicable Law:
- 12.3.1 the Supplier shall have no liability for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages (including liquidated damages), charges or expenses; and
  - 12.3.2 the Supplier's total aggregate liability to the Customer (including in respect of the indemnity at clause 11.2), in respect of any or all claims or liability howsoever arising out of or in connection with this Agreement shall not exceed the total Subscription Fees paid or payable by the Customer under this Agreement in the twelve (12) month period preceding the date on which the event giving rise to the liability occurred.
- 12.4 WHILE THE PRODUCTS (INCLUDING THEIR COMPONENT PARTS) ARE VIGOROUSLY TESTED AND SAFETY CERTIFIED FOR THEIR INTENDED USE IN THEIR RELEVANT TERRITORIES, THE SUPPLIER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO ANY HORSE FROM WEARING THE PRODUCT OR FOR ANY LOSS OF ANY DESCRIPTION ARISING FROM ANY INJURY TO A HORSE OR TO ANYONE WORKING WITH, CARING FOR OR HAVING OWNERSHIP OF A HORSE ARISING FROM THE USE OF THE PRODUCT, THE SERVICES AND/OR THE DOCUMENTATION. THE SUPPLIER MAKES NO WARRANTIES IN RELATION TO THE ACCURACY OF THE INFORMATION, DATA OR OUTPUTS OBTAINED FROM USING THE PRODUCT, THE SERVICES AND/OR THE DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SUPPLIER WILL NOT BE RESPONSIBLE FOR SUCH INFORMATION, DATA OR OUTPUTS OR FOR ANY CONSEQUENCES ARISING OUT OF PROVIDING INACCURATE INFORMATION REGARDING THE HORSE, FOR ANY LOSS OR DAMAGE ARISING FROM THE PRODUCT'S HARDWARE OR COMPONENT PARTS, ANY ELECTRICAL FAULTS, CONNECTIVITY FAULTS, AND/OR FOR ANY INAPPROPRIATE, UNSUITABLE,

DEFECTIVE OR UNSAFE ENERGY SUPPLY SOURCE OF ANY KIND USED BY THE CUSTOMER AND/OR ITS AUTHORISED USERS.

- 12.5 THE CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE SUPPLIER, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS AND DIRECTORS, FROM AND AGAINST ALL CLAIMS, SUITS, DEMANDS, DAMAGES, LOSSES OR EXPENSES (INCLUDING REASONABLE LEGAL AND ATTORNEY'S FEES AND COSTS), LIABILITY ARISING OUT OF ANY CLAIM MADE OR SUIT BROUGHT BY A THIRD PARTY AS A RESULT OF THE INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS THAT MAY ARISE FROM THE USE OF ANY AND ALL PRODUCTS AND/OR SERVICES AND THE HARMFUL OR OTHERWISE UNSAFE EFFECT OF THE PRODUCTS AND/OR SERVICES, INCLUDING ANY CLAIM BASED ON THE USE, SALE, DISTRIBUTION OR MARKETING OF SUCH PRODUCTS OR SERVICES.
- 12.6 References to liability in this clause 12 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.7 Nothing in this Agreement excludes or limits the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

### **13. TERM AND TERMINATION**

- 13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of twelve (12) months (each a "**Renewal Period**"), unless:
- 13.1.1 either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 13.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".
- 13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 13.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- 13.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 13.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
- 13.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 13.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
  - 13.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - 13.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 13.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3 to clause 13.2.8 (inclusive);
  - 13.2.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - 13.2.11 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
  - 13.2.12 in the case of the Supplier only, if there is a change of control of the Customer.
- 13.3 On termination of this Agreement for any reason:
- 13.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
  - 13.3.2 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than six (6) months after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
  - 13.3.3 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.

#### **14. FORCE MAJEURE**

Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay

or non-performance continues for ten (10) weeks, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the affected party.

**15. CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

**16. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. WAIVER**

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**18. RIGHTS AND REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Applicable Law.

**19. SEVERANCE**

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20. ENTIRE AGREEMENT**

20.1 This Agreement, and all documents referenced herein, constitute the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter. For the avoidance of doubt, this Agreement shall supersede and prevail over any terms and conditions set out in any Customer order form or Customer purchase order for the Services.

20.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

**21. ASSIGNMENT**

- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 21.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

**22. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, unless expressly agreed in writing 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).

**23. NOTICES**

- 23.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 23.1.1 delivered by hand or registered post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 23.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
    - (a) Supplier: [info@equimetrics.ie](mailto:info@equimetrics.ie);
    - (b) Customer: as set out in the Online Order Form.
- 23.2 Any notice shall be deemed to have been received:
- 23.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 23.2.2 if sent by registered post or other next business day delivery service, at 9.00 am on the Business Day after posting; or
  - 23.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**24. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of Ireland.

**25. ALTERNATIVE DISPUTE RESOLUTION**

- 25.1 If a Dispute arises out of or in connection with this agreement or its performance, validity or enforceability, then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- 25.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars, together with relevant supporting documents. On service of the Dispute Notice, the Supplier and Customer shall attempt in good faith to resolve the Dispute;

- 25.1.2 if for any reason the Supplier and the Customer are unable to resolve the Dispute within 60 days of it being referred to them, it shall be submitted for mediation by a mediator or other appropriate independent third-party expert agreed by the parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin. The cost of any such mediator or expert shall be borne equally by the parties.
- 25.2 If for any reason the Dispute is not resolved within 15 working days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of Ireland in accordance with clause 26.
- 25.3 Nothing in this clause 25 shall prevent or delay a party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

**26. JURISDICTION**

Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).