



TERMS OF USE FOR SAYS™ PLATFORM FOR CLIENTS

PLEASE READ ALL TERMS OF USE CAREFULLY. THESE TERMS OF USE ARE LEGALLY BINDING ON YOU AND CLIENT, AND GOVERN YOUR ACCESS TO AND USE OF THE SAYS PLATFORM TOGETHER WITH RELATED SOFTWARE, APPLICATIONS, SERVICES, PRODUCT AND CONTENT (TOGETHER "SERVICES"). THEY CONTAIN A CONSENT BY YOU TO THE TRANSFER TO, AND PROCESSING OF YOUR PERSONAL INFORMATION IN, THE UNITED STATES (CLAUSE 10.12) FOR THE PURPOSE OF YOUR ACCESS AND USE OF THE SAYS PLATFORM. SOME OTHER HIGHLIGHTS: EACH SUBSCRIPTION FOR AN APPLICATION IS ON A MONTH TO MONTH BASIS AND RENEWS AUTOMATICALLY (CLAUSE 2.1); WHEN A SUBSCRIPTION ENDS, OPTURO WILL DELETE ALL CLIENT DATA STORED FOR THAT SUBSCRIPTION (CLAUSES 2.1(d), 4.1 & 6.5); IT IS CLIENT'S RESPONSIBILITY TO DOWNLOAD AND BACKUP CLIENT DATA (CLAUSES 2.1(d), 4.1, 6.5); IT IS CLIENT'S RESPONSIBILITY TO ANONYMIZE CLIENT DATA AND COMPLY WITH APPLICABLE DATA PROTECTION AND PRIVACY LAWS (CLAUSES 6.4 & 10.11); SPECIAL PROVISIONS APPLY TO DEMO APPLICATIONS (CLAUSE 11.1); OPTURO MAY MODIFY THESE TERMS OF USE (CLAUSE 12.1); AND VENUE FOR RESOLUTION OF DISPUTES IS IN IRELAND (CLAUSE 12.11).

BY COMPLETING AN ENROLLMENT FORM FOR THE SAYS PLATFORM AND SERVICES, CLICKING THE "SIGN UP & AGREE" OR SIMILAR BUTTON FOR THE PLATFORM AND SERVICES, OR BY USING THE PLATFORM AND SERVICES, YOU AGREE TO THESE TERMS OF USE ON BEHALF OF YOURSELF AND THE COMPANY IDENTIFIED IN THE REGISTRATION (SIGN-UP) INFORMATION THAT YOU SUBMIT. YOU REPRESENT AND WARRANT TO OPTURO THAT YOU ARE OVER THE AGE OF 18, THAT YOU ARE THE INDIVIDUAL NAMED IN THE ENROLLMENT FORM, THAT THE INFORMATION IN THE ENROLLMENT FORM IS ACCURATE AND COMPLETE, AND THAT YOU HAVE THE AUTHORITY AND CAPACITY (A) TO BIND THE COMPANY TO THESE TERMS OF USE AND TO ANY STATEMENT OF WORK OR OTHER AGREEMENT YOU ENTER INTO WITH OPTURO ON BEHALF OF THE COMPANY IN CONNECTION WITH THESE TERMS OF USE AND (B) TO USE THE CREDIT CARD YOU SUBMIT FOR PAYMENT OF FEES. IF ANY OF THAT IS UNTRUE,

OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST DECLINE TO ACCEPT THESE TERMS AND MAY NOT USE THE SAYS PLATFORM OR SERVICES.

In these Terms Of Use, “**Client**” means you and the company identified in the registration (sign-up) information that you submit, individually and together; “**Opturo**” means Opturo Limited, an Irish registered company (company number 594078), with registered office at First Floor, 10/11 Exchange Place, I.F.S.C., Dublin 1, Ireland; “**Agreement**” means these Terms of Use and any statement of work or other agreement entered into by the parties hereunder; “**Platform**” means the online, software-as-a-service SAYS Platform offered by Opturo; “**Services**” means the Platform together with any software, application, service, product or content from the Platform and “**Effective Date**” means the date you first agree to these Terms of Use.

1. Other Definitions

1.1. The following terms shall have the associated meanings for purposes of this Agreement:

“**Application**” – means the software packages to which Client subscribes within the Platform as provided in Clauses 2.1 and 11.1. (together the “**Applications**”) “**Demo Application**” – has the meaning given that term in Clause 11.1.

“**Affiliate**” – means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party, for so long as such control exists. The direct or indirect ownership of more than 50% of the outstanding voting stock or other voting ownership interests in an entity, the right to receive more than 50% of the profits or earnings of an entity, or the right or power to control management or policy decisions of an entity will be deemed to constitute control.

“**Authorized User**” – means the single, named individual who agrees to this Agreement on behalf of the Client company, provided that such individual has the authority to bind the Client company to this Agreement. When and if such individual is no longer associated with the Client company, the Client company shall request Opturo to substitute another single, named individual and such other individual must agree to this Agreement (as then in effect) on behalf of himself/herself and the Client company.

“**Client Business Process**” means (a) analysis and reporting of assets under management by Client or its Affiliates for customers of Client or its Affiliates (and the underlying investor customers of such customers or of Client or its Affiliates) and/or (b) analysis and reporting of assets of investor customers by Client or its Affiliates for those customers.

“**Client Data**” means any anonymized data that is input by the Authorized User to and stored by the hosted Software, and all results, reports, and other output produced therefrom through use of the Software.

“**Confidential Information**” – means the terms of this Agreement, any computer software, and any other product, process, document or item which is by its nature confidential, any derivative works, material, idea, data or other information as well as research, developments, trade secrets, financial, technical, commercial or business affairs of either party and its employees, customers, subsidiaries, Affiliates and agents supplied to the other party in connection with this Agreement or its negotiation, whether in writing or orally or any other form. Opturo Confidential

Information includes without limitation the Confidential Information, the Platform itself, all Applications (whether fee-bearing or Demo), all Software, all Products, Content and Services from the Platform and all documentation for the Platform, Products, Content, Services and Software, and all Opturo IP. Client Confidential Information includes without limitation the Client Data.

“Intellectual Property Rights” – means patents, trademarks and service marks (whether registered or not), registered and unregistered designs, database rights, copyrights, trade secrets, industrial rights, and all similar property rights including those subsisting in any part of the world in inventions, designs, drawings, performances, computer software, Confidential Information, business names, domain names, goodwill and the style of presentation of goods or services and in applications for protection of any of the above rights.

“Opturo INC” means a company registered in Florida with whose registered office is at 15 Paradise Plaza, Suite 260, Sarasota, FL 34239.

“Opturo IP” – has the meaning given that term in Clause 3.1.

“Site” – means the web site through which Client may access and use the Software.

“Software” – means the version of each Application that is current and in production on the Effective Date and that is hosted online on a “SaaS” (multi-tenant, software-as-a-service) basis as provided herein, including any user documentation therefor, as such version is updated from time to time by Opturo through subsequent releases of the Applications which Opturo generally makes available to its online SAYS customers.

“Subscription Fee” – means the sums payable by the Client for a Subscription Month as specified in Clause 5.

“Subscription Month” – has the meaning given that term in Clause 2.1.

“Subscription Period” – has the meaning given that term in Clauses 2.1 in respect of the Applications and 11.1 in respect of Demo Applications.

“Term” – has the meaning given that term in Clause 4.1.

1.2. Unless the context otherwise requires, all references to a particular Clause are references to the corresponding Clause in this Agreement.

1.3. The headings in this Agreement are for convenience and are not to be used in interpreting the Agreement. As used in this Agreement the word “including” means “including but not limited to”. Words denoting the masculine gender include the feminine and neuter and vice versa and words denoting the singular include the plural and vice versa.

1.4. Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

2. Software Subscription

NOTE: As to Demo Applications, see Clause 11.1.

2.1. For purposes of the license granted under Clause 2.2, the Authorized User (on behalf of Client) may subscribe to one or more fee-bearing Applications by selecting them through the Authorized User/Client account on the Site.

(a) The “**Subscription Period**” for the first fee-bearing Application to which Client subscribes begins on the day of the month that the Authorized User selects the Application and pays the Subscription Fee for the first full month of the subscription in accordance with Clause 5, continues for one month, and automatically renews from month to month thereafter (on the same day of the month that the subscription began) subject to payment of the Subscription Fee for each month in accordance with Clause 5 and subject to termination of the subscription or this Agreement as provided in this Agreement.

(b) The “**Subscription Period**” for each subsequent fee-bearing Application to which Client subscribes is also on the same month to month basis, including payment of applicable Subscription Fees, with the monthly periods coinciding with the monthly periods in the Subscription Period for the first fee-bearing Application to which Client subscribes, except that the first month is a partial month beginning on the day that the Authorized User selects the Application and pays a pro-rated Subscription Fee for the first partial month in accordance with Clause 5.2, and ending on the last day of the corresponding month in the Subscription Period for the first fee-bearing Application.

(c) Each month during a Subscription Period (including a partial month at the beginning of a Subscription Period) is a “**Subscription Month.**”

(d) The Authorized User may un-subscribe to a fee-bearing Application by de-selecting it through the Authorized User/Client account on the Site. The de-selection shall become effective immediately, thereby terminating the Subscription Period for that Application, and there will be no refund of the Subscription Fee or any other fees paid by Client for the then-current Subscription Month for that Application or for any services related to the Application (such as import of Client Data for the Application under Clause 6.4). AS FURTHER DETAILED IN CLAUSE 6.5, IT IS CLIENT’S RESPONSIBILITY TO DOWNLOAD AND BACK UP ITS CLIENT DATA JUST PRIOR TO UN-SUBSCRIBING, SINCE AS OF THE TERMINATION, OPTURO WILL DELETE ALL CLIENT DATA (WHETHER INPUT OR OUTPUT) STILL STORED IN THE PLATFORM FOR THAT SUBSCRIPTION.

(e) Opturo may terminate this Agreement or any Subscription Period as of the last day of a Subscription Month by giving Client at least at least fifteen (15) days prior notice by email to the Authorized User.

2.2. For the Subscription Period for each fee-bearing Application to which Client subscribes pursuant to Clause 2.1, subject to payment of the applicable Subscription Fee by the Client for each Subscription Month of that Subscription Period, Opturo grants to the Client a non-exclusive, non-transferable right and subscription license for the Authorized User to access and

use the Software, through the Site, for that Application, subject to the restrictions and limitations in this Agreement and for the Client Business Process only.

2.3. Opturo is responsible for the deployment, operation, management, and hosting of the Software, and Services including the provisioning and maintenance of all server-side hardware, software and telecommunications capacity. Client is responsible for all hardware, software, connectivity and related infrastructure required for Client and Authorized User to access and use the Software and Services on the Internet, including an Internet connection with adequate speed, a web browser, and an adequate personal computer and software to run the browser and connect to the Internet, all as may be specified by Opturo from time to time.

2.4. Client shall permit only the single, named Authorized User to access and use the Software and Services. Client shall ensure that the Authorized User use the Software and Services in accordance with the terms and conditions of this Agreement. Client shall be responsible for any use or misuse of the Software and Services by the Authorized User and for any breach of this Agreement by him/her.

2.5. Client is solely responsible for the security all Authorized User IDs, passwords and other security devices used in connection with the Software and Services and shall take reasonable steps to ensure that they are kept confidential and secure, are used properly, and are not disclosed to unauthorized persons. Client shall immediately inform Opturo if there is any reason to believe that a user ID, password, or any other security device has or is likely to become known to any person not authorized to use it, or is being or is likely to be used in an unauthorized way.

2.6. The Software and Services shall not be used by Client, any Client Affiliate, or the Authorized User for, or on behalf of, third parties that are not authorized under this Agreement.

2.7. Client hereby acknowledges that its right to use the Software and Services will be web-based only pursuant to the terms of this Agreement and that the Software and Services will not be installed on any servers or other computer equipment owned or controlled by Client.

2.8. Client shall not allow other parties to access or use the Software and Services in any way, including by way of service bureau (other than as expressly permitted in the definition of Client Business Process), commercial time sharing, third-party training, rental use or equivalent. Without limitation, Client shall not permit any competitor of Opturo to access or use the Software and Services or any other Confidential Information of Opturo.

2.9. Client shall not: (a) attempt to circumvent any security device or access or derive the source code or architecture of any Software or Services or Opturo IP; (b) use or access any Software or Services or Opturo IP in order to build a competitive solution or to assist someone else to build a competitive solution; (c) load- or penetration-test the Software or Services or otherwise use any Software or Services in any way that is, or could reasonably be expected to be, detrimental to Opturo's ability to provide services to any other client; (d) use any Software or Services to access the data of any other client of Opturo; (e) alter, remove or conceal any copyright, trademark, trade name or other proprietary marking or notice or any government restricted rights notice that may appear in or on the Software or Services, the documentation or any other Opturo

IP; or (f) use the Software or Services in a manner that violates any applicable law, ordinance, regulation or administrative order.

2.10. The subscription license granted in this Clause 2 or under Clause 11.1 is personal to the Client and the Client shall not assign, sub-license or otherwise transfer or part with possession in any way any interest in it or grant any right under it, in whole or in part, to any third party without the prior written consent of Opturo. As to any assignment of the Agreement, see Clause 12.5.

3. Intellectual Property Rights

3.1. Client acknowledges that, as between Client and Opturo, all right, title, and interest in and to (a) the Software, and the Site (including the Applications, Services and Platform), together with their respective codes, sequences, derivative works, organization, structure, interfaces, any documentation, non-Client data, trade names, trademarks, or other related materials, (b) all improvements, substitutions, modifications, enhancements, and configurations to any of the foregoing, including any made under a statement of work between the parties, (c) all other Opturo Confidential Information, and (d) all Intellectual Property Rights in and to (a), (b) and (c) (collectively, the "Opturo IP"), is, and at all times shall remain, the sole and exclusive property of Opturo INC who has granted to Opturo an exclusive license to use, maintain and sub-license the Opturo IP.

3.2. The Opturo IP contains trade secrets and proprietary information owned by Opturo INC or its licensors and is protected by Irish, United States and other intellectual property laws, including copyright laws. Except for the limited right to access and use of the Software and Services, as expressly provided in Clauses 2 and 11.1, this Agreement does not grant to Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Software or Services or other Opturo IP.

3.3. Client, Client's Affiliates, or the Authorized User may from time to time provide Opturo with suggestions, comments, recommendations and/or feedback regarding the Software, Services, Site, Platform, Applications, and/or Opturo's related technologies ("Feedback"). Any and all Feedback is and shall be given entirely voluntarily and without compensation. As between the parties, all Feedback shall be exclusively owned by Opturo and Opturo shall be freely entitled to reproduce, prepare derivative works of, disclose to third persons, to include Opturo INC, display and perform (publicly or otherwise), sell, lease, license, distribute, and otherwise use and exploit any and all such Feedback, at its sole discretion, without obligation or liability of any kind to Client or to any other person.

3.4. Client shall not attempt, or directly or indirectly allow the Authorized User or third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Software or Services or Opturo IP in any form or media or by any means. Client shall not copy any design, feature, or graphic in the Software or Services or Opturo IP.

3.5. Client retains exclusive ownership of all Client Data. The Opturo is not granted any proprietary rights in Client Data.

4. Term/Termination

4.1. The term of this Agreement (“Term”) shall commence on the Effective Date and shall continue while any Subscription Period is in effect (see Clauses 2.1 and 11.1), subject to termination as provided in this Agreement. Upon the termination of this Agreement, all Subscription Periods shall terminate immediately. Upon termination of a Subscription Period for any reason (including by reason of termination of this Agreement), all rights granted to Client under this Agreement with respect to that Subscription Period shall immediately terminate, Client and its Affiliates shall cease accessing and using the Software that was subject to the subscription, and Client shall cause the Authorized User to cease accessing and using the Software. AS OF THE TERMINATION OF ANY SUBSCRIPTION PERIOD (WHETHER BY CLIENT OR OPTURO), OPTURO WILL DELETE ALL CLIENT DATA (WHETHER INPUT OR OUTPUT) STILL STORED IN THE PLATFORM FOR THAT SUBSCRIPTION (SEE CLAUSE 6.5 FOR ADDITIONAL DETAILS) AND, IF THE PARTIES HAVE ENTERED INTO A STATEMENT OF WORK UNDER CLAUSE 6.4, OPTURO WILL CEASE IMPORTING THE CLIENT DATA WITH RESPECT TO THAT SUBSCRIPTION.

4.2. Client shall be in default of this Agreement if Client fails to make any payment when due (including by reason of the inability of Opturo to charge the credit card provided by the Authorized User) and fails to cure same within five (5) days after receipt of email notice thereof from Opturo to the Authorized User. In addition to the monetary breach described in the previous sentence, either party will be in default of this Agreement if:

(a) the party is in material breach of this Agreement and fails to cure such breach within thirty (30) days (or such other length of time mutually agreed to by the parties) after receipt of written notice thereof from the non-breaching party; or

(b) the party is involved in any legal proceedings concerning its solvency or ceases trading or commits an act of bankruptcy or files for bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets.

4.3. If a party is in default, the non-breaching party may terminate this Agreement or any Subscription Period and/or seek any other remedies available at law or in equity, except as otherwise provided in this Agreement. In the event Client breaches or attempts to breach any of the provisions of this Agreement, Opturo shall have the right, in addition to such other remedies that may be available, to seek an injunction or such other equitable remedy as it sees fit to remedy such breach or attempt to breach, without having to post any bond or other security, Client hereby acknowledging the inadequacy of any remedy at law.

4.4. In addition, Client may terminate a Subscription Period as provided in Clause 2.1(d), Opturo may terminate this Agreement or a Subscription Period as provided in Clauses 2.1(e) and 9.2(c), and either party may terminate this Agreement as provided in Clause 12.2.

4.5. Upon any expiration or other termination of this Agreement, any provision that by its nature would be understood to survive expiration or termination shall survive, including without limitation, to the extent applicable after expiration or termination, Clauses 1, 3, 4, 5, 6.4, 6.5, 8.2, 8.3, 8.5, 9, 10, 11.3, and 12 and the paragraphs before Clause 1. All accrued but unpaid amounts that may be owing from one party to the other shall be or become immediately due and payable upon expiration or other termination of this Agreement and, subject to applicable limitations of liability under this Agreement, any claim for breach or damages arising prior to or as a result of the expiration or other termination shall survive.

5. Subscription Fees and Payment Terms

5.1. For each Subscription Month, Client shall pay to Opturo the applicable Subscription Fee by the first day of that Subscription Month. All payments of Subscription Fees must be made automatically by credit card. All payments of the Subscription Fee are services by Stripe. By the Authorized User subscribing for an Application on behalf of Client, Authorized User authorizes Opturo to charge all Subscription Fees for the subscription, and any fees and expenses under Clause 5.4, to the credit card provided by the Authorized User. Client (through Authorized User) must keep the credit card information current at all times. ANY INABILITY OF OPTURO TO CHARGE THE CREDIT CARD FOR A SUBSCRIPTION FEE WHEN DUE SHALL BE DEEMED A DEFAULT BY CLIENT IF IT FAILS TO CURE AS PROVIDED IN THE FIRST SENTENCE OF CLAUSE 4.2, except that if such inability occurs on the first Subscription Fee for a given subscription, the subscription under Clause 2.1 (and the corresponding license under Clause 2.2) shall not become effective. If Client subscribes to more than one Application in a given Subscription Month, Opturo may, at its option, charge the Subscription Fees for the Applications separately or together. Opturo is not obligated to refund any Subscription Fees or other charges.

5.2. The monthly Subscription Fee for a subscription to a given Application shall be as specified on the Opturo webpage where the Authorized User selects to subscribe to the Application on behalf of Client (as it may be modified by an agreement in writing by the parties), except that the Subscription Fee for an initial partial Subscription Month (see Clause 2.1) shall be prorated on a straight line basis. Opturo may increase the monthly Subscription Fee by no more than 15% annually for any Application at any time by giving email notice to the Authorized User (including any Subscription Fee agreed in writing by the parties), and such increase shall be effective beginning with the next Subscription Month after the notice.

5.3. The amount of the Subscription Fee does not include any applicable Taxes. Client shall timely pay all Taxes on and/or related to this Agreement and/or the licenses, services, and/or other deliverables hereunder. “Tax” means all forms of taxation and includes, without prejudice to the generality of the foregoing, corporation tax, advance corporation tax, capital gains tax, development land tax, capital transfer tax, inheritance tax, capital acquisitions tax, value added tax, income tax, pay related social insurance and national insurance contributions, amount due under the PAYE system, customs and excise duties and other import duties, stamp duty, capital duty and all other taxes, duties, levies, charges, imposts, withholding or other amount payable to or imposed by any tax authority (including all interest, fines, penalties, charges and surcharges in connection with the foregoing) and whether arising under the laws of Ireland or those of any

other jurisdiction and whether incurred as principal, agent, trustee or otherwise and whether or not the taxation in question is also chargeable against or attributable to any other person. As to any Tax that would reduce any payment to Opturo, Client shall pay an additional amount to Opturo so that the total amount actually received by Opturo, net of all such Taxes, equals the amount of the required payment.

5.4. Charges for additional services supplied to Client by Opturo (such as additional support or help desk services under Clause 6.1 and import of Client Data under Clause 6.4) and for reasonable expenses incurred by Opturo will be charged monthly to the same credit card and under the same authorization as in Clause 5.1. They will be charged monthly in advance for services that are provided on a regular schedule (such as import of Client Data under Clause 6.4) and in arrears for one-time services and for other services that are not provided on a regular schedule, unless otherwise agreed in writing.

5.5. All payments due from Client shall be paid in full and without set-off by the due date. Payments due to Opturo which are not received when due will be considered overdue and remain payable by the Client together with interest for late payment from the date payable (both before and after any judgment) at the rate of the *lower* of: three percent (3%) per annum above the Bank of Ireland's base rate from time to time but at three percent (3%) a year for any period when that base rate is below zero percent (0%) or the highest amount allowed by applicable law. This interest will accrue on a daily basis, compounded annually, and be payable on demand. Client shall pay Opturo for all reasonable legal fees and other costs of collecting any payments that are overdue under this Agreement.

5.6. In addition to Opturo's other rights under this Agreement, Opturo may, at its option, without notice or demand, and without prejudice to any other remedy, at any time after payment has become due but remains unpaid, temporarily suspend Client's access to and use of all Applications until such time as the payment is made in full.

5.7. If Opturo becomes entitled to terminate this Agreement or a Subscription Period for any reason, any unpaid sums due to Opturo throughout the term of this Agreement or that Subscription Period, will immediately become payable in full.

5.8. Client shall not charge any service, licensing or other fee to Opturo related to invoice processing, and shall pay or reimburse Opturo for any such fee charged by any third party that Client requires Opturo to use in connection with processing Opturo's invoices to Client.

6. Support; Client Data

6.1. Opturo will provide routine customer support to Client's Authorized User via email. Opturo will provide an initial response on Opturo's next business day after receipt of Client's support request submitted as required by Opturo. (Business days do not include Saturdays, Sundays, or bank holidays.) Additional support and help desk services may be available from Opturo for an additional fee. These additional services may include importing Client Data as provided in Clause 6.4 and providing for certain configurations of some Applications. These additional services shall be provided under a mutually agreed statement of work which shall set forth the

services to be provided, the compensation for the services, and other details. Each statement of work shall be subject to these Terms of Use. In the event of a conflict or ambiguity between any term of these Terms of Use and a statement of work, the terms of these Terms of Use shall govern unless such statement of work expressly provides that it shall govern with respect to such conflict.

6.2. Opturo will make available to Client as part of the customer support the error corrections and improvements that Opturo makes available to its SAYS clients generally as part of their subscriptions to the hosted Software, but specifically excluding any new Applications or other products, offerings, modules, functionality or features for which Opturo charges a separate fee, unless Client separately purchases a license or subscription thereto. Opturo reserves the right to make changes to the Software at any time and without notice. It is Client's responsibility to complete the tasks necessary to take advantage of increased or improved functionality. Client agrees that its subscription to the Software is not contingent on the delivery of any future functionality or features, or dependent on any statements made by Opturo regarding possible future functionality or features.

6.3. In connection with the customer support provided by Opturo, Client must provide in a timely manner all data and information reasonably requested by Opturo in connection with support (insofar as that Client is able to do so under the applicable data protection legislation).

6.4. Client may engage Opturo, under a mutually agreed statement of work, to import Client Data to the Platform for use by Client with one or more Application(s), subject to payment of an agreed monthly fee which Client shall pay by credit card by the same due date as for the Subscription Fees. The statement of work shall specify the monthly fee, the frequency of data imports (monthly or quarterly), how Client will identify which Client Data is for use with which Application, the schedule for the imports, the method by which Client will make the Client Data available for import, and other details. OPTURO SHALL ONLY BE RESPONSIBLE FOR IMPORTING THE CLIENT DATA THAT CLIENT MAKES AVAILABLE. WITHOUT LIMITATION, OPTURO SHALL NOT BE RESPONSIBLE FOR REVIEWING, CHECKING, VALIDATING, EDITING, RECONCILING, OR OTHERWISE PREPARING THE IMPORTED CLIENT DATA. ALSO WITHOUT LIMITATION, OPTURO SHALL NOT BE RESPONSIBLE FOR CLIENT'S FAILURE TO MAKE ANY CLIENT DATA AVAILABLE FOR IMPORT AS AGREED OR AT THE TIMES AGREED, OR FOR ANY MISSING OR LATE CLIENT DATA, OR FOR CLIENT DATA THAT IS NOT PROPERLY IDENTIFIED, OR FOR ANY OTHER DEFICIENCY IN THE CLIENT DATA. BEFORE MAKING ANY CLIENT DATA AVAILABLE TO OPTURO FOR IMPORTING, CLIENT SHALL ANONYMIZE IT SO THAT IT IS NO LONGER PERSONAL INFORMATION AS DEFINED IN CLAUSE 10.11. OPTURO SHALL NOT BE RESPONSIBLE FOR VERIFYING THAT CLIENT DATA HAS BEEN ANONYMIZED. If a statement of work under this paragraph covers Client Data for more than one Application and if the Subscription Period for one or more but less than all such Applications is terminated for any reason, the parties will negotiate in good faith an adjusted monthly fee for importing Client Data for the remaining Application(s).

6.5. Unless otherwise agreed to in writing, Opturo will, on a weekly basis, back up Client's then-existing data files. HOWEVER OPTURO SHALL NOT BE LIABLE FOR ANY LOSS OR DELETION OF CLIENT DATA OR FAILURE TO BACK IT UP. CLIENT IS REMINDED

THAT CLIENT DATA CONSISTING OF RESULTS, REPORTS, AND OTHER OUTPUT IS TRANSIENT AND GENERALLY CANNOT BE SAVED, SO IT IS UP TO CLIENT TO DOWNLOAD THAT OUTPUT WHEN PRODUCED FROM THE SOFTWARE. AS OF THE TERMINATION OF EACH SUBSCRIPTION PERIOD, OPTURO WILL DELETE ALL CLIENT DATA (WHETHER INPUT OR OUTPUT) STILL STORED IN THE PLATFORM FOR THAT SUBSCRIPTION. ACCORDINGLY, IT IS CLIENT'S RESPONSIBILITY TO DOWNLOAD AND BACK UP ITS CLIENT DATA ON A REGULAR BASIS AND AGAIN JUST PRIOR TO THE TERMINATION OF EACH SUBSCRIPTION PERIOD.

6.6. Opturo shall maintain a commercially reasonable disaster recovery plan with respect to the availability of the Software ("Disaster Recovery Plan").

7. Modifications

Opturo reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software Service and Site at any time without prior notice to Client, provided that the functionality and performance of the Software and Services is not materially adversely affected.

8. Representations and Limited Warranty

8.1. Opturo warrants to Client that the Software and Services will function substantially in accordance with its user documentation. This warranty does not apply to the Software or Services for any Demo Application or to any third party Software.

8.2. Client hereby represents that it accepts sole and complete responsibility for: (a) the selection of the Software and Services to achieve Client's intended results; (b) use of the Software and Services; and (c) the results obtained from Software and Services.

8.3. Opturo does not represent or warrant that the Client's access or use of the Software and Services will be uninterrupted or error-free. Client shall not assert any claims for negligence, gross negligence, strict liability, fraud, or misrepresentation against Opturo or Opturo Inc. (other than for bodily injury).

8.4. Neither party shall be liable under this agreement for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business; or
- (d) indirect or consequential loss or damage,

in each case, however caused, even if foreseeable.

8.5. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN CLAUSE 8.1, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS," AND OPTURO DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY, OR OTHER, INCLUDING WITHOUT

LIMITATION ALL WARRANTIES AND REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, COMPATABILITY, SECURITY, AND/OR FREEDOM FROM VIRUSES. OPTURO DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS ARISING FROM CUSTOM OR TRADE USAGE, FROM COURSE OF DEALING OR PERFORMANCE, OR FROM PROMOTIONAL MATERIALS, PROPOSALS, OR OTHER DESCRIPTIVE LITERATURE. OPTURO MAKES NO WARRANTY OR REPRESENTATION ABOUT THE SUITABILITY OF THE SOFTWARE OR SERVICES, OR THAT THEY WILL MEET ANY REQUIREMENTS OF CLIENT. OPTURO MAKES NO WARRANTY OR REPRESENTATION ABOUT, AND SHALL NOT BE LIABLE FOR, ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE SOFTWARE AND SERVICES (INCLUDING ANY THIRD PARTY CONTENT, LINKS, OR OTHER INFORMATION).

9. Indemnification; Limitation of Liability

9.1. Opturo hereby agrees to indemnify Client and its Affiliates from and against any loss, damages, costs and expenses finally awarded by a court of competent jurisdiction (but specifically excluding Client's and its Affiliates' attorneys' fees and costs) in respect of any claim, demand, action, suit or other judicial proceeding asserted, brought or threatened by a third party (each a "Claim") alleging that the hosted Software and Services as provided by Opturo hereunder infringes any third party's rights in any copyright, trademark or United States or European Union patent, except to the extent the Claim (a) relates to Client Data or other materials provided by or on behalf of Client, its Affiliates, or the Authorized User; (b) relates to the actual or alleged infringement of inventions, technologies or methods in widespread unlicensed use by third parties at the time the Software and Services are used by Client; or (c) is otherwise subject to Client's indemnification obligations under Clause 9.3. This Clause 9.1 states Opturo's entire obligation to Client and its Affiliates, and their sole remedy, with respect to any Claim against any of them for infringement, violation, or misappropriation of any Intellectual Property Right.

9.2. If the Software becomes or is likely to become the subject of a proceeding or claim of infringement, Opturo may, in its sole discretion and at its own expense, either:

- (a) obtain for the Client the right to continue to access and use the Software and Services;
- (b) replace or modify the Software and Services so that it becomes non-infringing; or
- (c) terminate this Agreement or the affected subscription immediately by email notice to the Authorized User and refunding a pro rata portion of any Subscription Fee paid by the Client for the then-current Subscription Month of the terminated subscription(s).

9.3. Client hereby agrees to indemnify Opturo, Opturo Inc., its and their Affiliates, and its and their employees, officers, directors, contractors, and agents, from and against any loss, damages, costs and expenses finally awarded by a court of competent jurisdiction (but specifically excluding the indemnified party's attorneys' fees and costs) in respect of any Claim (a) that relates to Client Data or any other content or materials provided by Client or its Affiliates or Authorized Users, including without limitation any claim that any Client Data or any such content or materials infringes or misappropriates any intellectual property of a third party, or (b)

that relates to the use by Client or its Affiliates or Authorized Users of the hosted Software and Services in breach of this Agreement or in violation of applicable law or third party rights or (c) by any customer of Client or its Affiliates or by the underlying investor customers of such customers or of Client or its Affiliates. Client also agrees to indemnify Opturo, its Affiliates, and its and their employees, officers, directors, contactors, and agents, from and against any loss, damages, costs and expenses to the extent same results from (a), (b), or (c) or from unauthorized access and/or use of the Software or Services directly or indirectly by Client or its Affiliates (or any Authorized User).

9.4. In the event a party wishes to seek indemnification from an indemnifying party as set out under this Clause 9, the party seeking indemnification shall promptly notify the indemnifying party of same. The parties agree to cooperate in good faith, and the indemnifying party shall provide reasonable assistance to the indemnified party, to defend and settle any such Claim. The indemnifying party shall have the right to participate in (but not control) the defense of any Claim, at its sole cost and expense, using counsel of its choosing. Neither the indemnifying nor indemnified party shall settle any Claim without the written approval of the other party, which shall not unreasonably be withheld, delayed, or conditioned.

9.5. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL OPTURO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS PROFITS, LOSS OF REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, COST OF SUBSTITUTE GOODS OR SERVICES, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO ACCESS AND/OR USE THE SOFTWARE OR OUT OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHERWISE, EVEN IF OPTURO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER THE DAMAGES WERE REASONABLY FORESEEABLE.

9.6. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF OPTURO FOR ANY LOSS, COSTS, EXPENSES, OR DAMAGES EXCEED THE TOTAL OF THE SUBSCRIPTION FEES AND OTHER CHARGES ACTUALLY PAID TO OPTURO BY CLIENT FOR THE THEN-PREVIOUS TWELVE MONTH PERIOD.

9.7. No action or proceeding arising out of or related to this Agreement, whether by litigation, arbitration, or otherwise, may be initiated by either party more than one year after the cause of action accrues. Excepted from the preceding sentence are actions for nonpayment of fees, or for infringement by one party of any intellectual property rights of the other party, or for breach of confidentiality.

9.8. The limitations of liability and disclaimers contained in this Agreement shall apply regardless of the success or effectiveness (or lack thereof) of any remedies provided herein. These limitations and exclusions are reflected in the pricing of the subscriptions, and they represent an agreed allocation of risk between the parties and are an essential part of this Agreement.

9.9. Each party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any damages upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise a claim for damages or indemnification arising under or in connection with this Agreement.

10. Confidentiality

10.1. As used in this Clause 10, “**Confidential Information**” means Confidential Information, as defined in Clause 1, of the other party or its Affiliates (the “**Disclosing Party**”); and “**Receiving Party**” means the party or its Affiliates receiving the Confidential Information.

10.2. Each party, on behalf of itself and its Affiliates as the Receiving Party, undertakes to the Disclosing Party:

- (a) to keep confidential all Confidential Information;
- (b) not to disclose the Confidential Information in whole or in part to any other person without the other’s written consent, save the Authorized Users and those of its employees, agents or subcontractors (“**Representatives**”) involved with the Software and who have a need to know the same and are bound by written obligations of confidentiality at least as restrictive as those in this Clause 10; and
- (c) to use the Confidential Information solely to perform its obligations and exercise its rights under this Agreement, and not otherwise for its own benefit or the benefit of any third party.

10.3. Each party shall each be responsible for compliance by its Affiliates, Authorized Users, and Representatives with this Clause 10.

10.4. If the Receiving Party becomes aware of any breach of the confidentiality or use restrictions by any Authorized User or Representative, it shall promptly notify the Disclosing Party thereof and give the Disclosing Party all reasonable assistance in connection with any proceedings which Disclosing Party may institute.

10.5. Notwithstanding this Clause 10, nothing in this Agreement is to be construed to prevent or restrict Opturo from disclosing or using in the course of its business any technical knowledge, skill, know-how, concepts or expertise of a generic nature whether acquired by Opturo in the performance of this Agreement or otherwise.

10.6. The confidentiality restrictions contained in this Clause 10 shall cease to apply to any information which:

- (a) may come into the public domain through no wrongful act of the Receiving Party;
- (b) is already known to the Receiving Party otherwise than through an unauthorized disclosure;
- (c) is lawfully obtained by the Receiving Party from a third party who in making such disclosure breaches no obligation of confidence to the Disclosing Party; or
- (d) is independently developed by an employee or agent of the Receiving Party who did not have access to the Confidential Information.

10.7. If any Confidential Information is required to be disclosed by the Receiving Party as a matter of law or by order of a court, governmental agency, or arbitral tribunal of competent jurisdiction or is needed to be disclosed in connection with the prosecution or defense of a claim under this Agreement or a related agreement, Receiving Party may make the disclosure provided (a) that Receiving Party provides the Disclosing Party with reasonable advance notice of the disclosure and (b) that Receiving Party takes reasonable and lawful actions requested by the Disclosing Party and cooperates with the Disclosing Party to avoid and/or minimize the extent of such disclosure.

10.8. The terms of this Agreement shall be treated as the Confidential Information of each party. Either party may disclose the terms of this Agreement without consent to (a) to legal counsel of the party, (b) to accountants, banks, proposed investors, and financing sources, and their advisors, (c) to its shareholders and/or governmental authorities in order to comply with securities, tax, and other laws, but only if and to the extent necessary to comply, (d) to its Affiliates for purposes of this Agreement, subject to the confidentiality and non-use obligations in this Clause 10, (e) in connection with a merger or acquisition or like transaction, subject to a written confidentiality and non-use agreement, and (g) to the extent necessary to prosecute or defend a claim.

10.9. Promptly upon expiration or termination of this Agreement, each party shall, unless legally prohibited, return, erase, or destroy all Confidential Information of the other party or its Affiliates in its custody or control, including all copies thereof, and have an officer certify the same to other party. However, nothing in this Agreement shall require the Receiving Party to delete or destroy any electronic copy of files created automatically in the ordinary course of business pursuant to the Receiving Party's standard electronic back-up and archival procedures: (a) so long as such electronic files are readily accessible only by Receiving Party's information technology specialists; and (b) provided that all Confidential Information contained in such electronic files shall remain subject to the terms and conditions of this Agreement.

10.10. Subject to this Agreement (including Clause 10.11), Opturo shall maintain reasonable administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of Client Data in accordance with applicable data protection laws. Opturo shall not access or use Client Data except as necessary to allow Opturo to perform its obligations and exercise its rights under this Agreement. Client is solely responsible for all other aspects of Client Data, including its sourcing, inputting, management, accuracy, quality, and results, and the privacy and security of protected personal information and the Client shall own all right, title and interest in and to all of the Client Data and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data..

10.11. "Personal Information" means any information that (i) can be used (alone or in combination with other information) to identify, locate or contact a specific individual, or (ii) can be associated with an identified or identifiable individual. By way of illustration, and not of limitation, Personal Information includes personally identifiable data elements, such as name, address, email address, employee number, and account number, and may also include user name and password. Personal Information may pertain to Authorized Users, underlying investor customers (of Client or its Affiliates or their customers), or other individuals. NO PERSONAL INFORMATION IS REQUIRED FROM OR ABOUT ANY AUTHORIZED USER,

INVESTOR, OR OTHER INDIVIDUAL OR IN ANY CLIENT DATA FOR ACCESS OR USE OF THE SOFTWARE, EXCEPT FOR THE REGISTRATION INFORMATION ABOUT THE AUTHORIZED USER WHICH MAY INCLUDE THEIR NAME AND BUSINESS EMAIL ADDRESS WHICH IS REQUIRED IN OPTURO'S ENROLLMENT FORM, THE LOGIN CREDENTIALS OF THE AUTHORIZED USER NECESSARY TO ACCESS AND USE THE SOFTWARE, AND CREDIT CARD INFORMATION FOR PAYMENT OF FEES. ACCORDINGLY, BEFORE ANY DATA IS INPUT TO THE SOFTWARE, CLIENT SHALL ANONYMIZE IT SO THAT IT IS NO LONGER PERSONAL INFORMATION WHEN INPUT. OPTURO SHALL NOT BE RESPONSIBLE FOR VERIFYING THAT CLIENT DATA HAS BEEN ANONYMIZED. PURSUANT TO THIS CLAUSE 10, OPTURO SHALL PROTECT AS CONFIDENTIAL INFORMATION OF CLIENT AND ITS AFFILIATES ANY PERSONAL INFORMATION THAT HAPPENS TO BE INPUT TO THE SOFTWARE BY THE AUTHORIZED USER. HOWEVER, SINCE NO PERSONAL INFORMATION IS REQUIRED FOR ACCESS OR USE OF THE SOFTWARE, CLIENT SHALL HAVE SOLE RESPONSIBILITY FOR COMPLIANCE WITH ALL APPLICABLE DATA PROTECTION AND PRIVACY LAWS AND REGULATIONS WITH RESPECT TO PERSONAL INFORMATION, which may include (a) informing Authorized Users, investors, and other individuals of the submission or transfer of their Personal Information to, or use, processing, or transfer of their Personal Information by, Opturo and Opturo's subcontractors, including transfer to or processing in the United States and hosting by an Opturo subcontractor, (b) obtaining their informed consent to such submission, use, processing, and transfer, and (c), initiating and entering into controller-to-processor "standard clauses" and an appropriate data processing addenda with Opturo. Client shall indemnify, hold harmless, and defend Opturo, its Affiliates, and its and their employees, officers, directors, contractors, and agents, from and against any loss, damages, costs and expenses arising from or in connection with (1) compliance with or violation of any applicable data protection or privacy law or regulation with respect to Personal Information and (2) any possible data breach disclosing any Personal Information, including without limitation compliance with any breach notification law, notification of individuals whose Personal Information may have been compromised, and the provision of monitoring services to such individuals.

10.12. Personal Information of Authorized User. The Authorized User is required to submit certain Personal Information (a) on Opturo's enrollment form, (b) when logging in to access and use the Software, and (c) credit card information to pay Subscription Fees and other charges in order that Opturo may carry out its obligations arising under the Agreement and in order that the Client may access the Applications. This information may be transferred to and processed in the United States, where the data protection and privacy laws may not be as protective as in Client's country. Opturo may use this information for enabling the Authorized User to subscribe to and access Application(s) on behalf of Client, providing support, processing payments, providing notices and other communications, and for marketing, statistical, and other purposes. However, Opturo will not intentionally disclose this information to third parties (other than Opturo Affiliates and Representatives) without Authorized User's permission to do so, except as required by law or to protect the rights, property or safety of Opturo, users, or others. Opturo will not sell the name or email address of the Authorized User to other companies so that they can send unsolicited email or written promotional materials. Opturo may employ other companies and individuals to perform functions on Opturo's behalf, such as hosting, maintaining, or supporting the Software, providing marketing assistance, processing credit card payments, and

providing support, but the purpose of such companies' or individuals' use of such information will be limited to performing their functions for Opturo and not for any other purpose. If the Authorized User desires to stop receiving promotional messages from Opturo, he/she may do so by following the opt-out instructions included in such messages or by contacting Opturo customer support at support@saysplatfrom.com. Should the Authorized User no longer be the point of contact for the Client, Opturo shall delete the Authorized User's Personal Information as within one week of the Authorized User ceasing this position. THE AUTHORIZED USER CONSENTS TO THE FOREGOING, INCLUDING TRANSFER TO, AND PROCESSING OF THEIR PERSONAL INFORMATION IN THE UNITED STATES OF HIS/HER PERSONAL INFORMATION.

11. Demo Applications; Unused/Dormant Accounts; Third Party Software

11.1. If the monthly Subscription Fee for a subscription to a given Application as specified on the Opturo webpage where the Authorized User may select to subscribe to the Application on behalf of Client is zero, the Application is a ***“Demo Application” under “Free Tools”***. The ***“Subscription Period”*** for each Demo Application is thirty (30) days from the date that the Authorized User selects the Application and may not be renewed or extended without Opturo's written consent. Client may not input any Client Data to or output any Client Data from any Demo Application. For the Subscription Period for each Demo Application to which Client subscribes, Opturo grants to the Client a non-exclusive, non-transferable right and license for the Authorized User to access and use the Software and Services, through the Site, for that Application, subject to the restrictions and limitations in this Agreement and solely for the purpose of demonstrating the Application for Client and its Affiliates. OPTURO SHALL NOT BE LIABLE IN ANY WAY OR FOR ANY DAMAGES WITH RESPECT TO DEMO APPLICATION SOFTWARE OR SERVICES. Without limiting the generality of the preceding sentence: (a) Opturo is not obligated to provide any customer support for any Demo Application Software or Services; (b) the warranty in Clause 8.1 does not apply, and the disclaimer and other provisions of Clause 8.4 do apply (without the exception for Clause 8.1), to Demo Application Software and Services; and (c) Clauses 9.1 and 9.2 (relating to indemnification by Opturo) do not apply with respect to any Demo Application Software and Services. To the extent that any provision of this Agreement conflicts with this Clause, this Clause shall control.

11.2. Opturo may delete Client's account if, for any thirty (30) day period, there is no subscription in effect, whether for a fee-bearing Application or for a Demo Application.

11.3. The Software for a given Application may be provided by a third party through Opturo. Third party Software is subject to any additional terms made available to Client by Opturo from time to time with respect to such Software. OPTURO SHALL NOT BE LIABLE IN ANY WAY OR FOR ANY DAMAGES WITH RESPECT TO THIRD PARTY SOFTWARE. Without limiting the generality of the foregoing: (a) Opturo is not obligated to provide any customer support for any third party Software; (b) the warranty in Clause 8.1 does not apply, and the disclaimer and other provisions of Clause 8.4 do apply (without the exception for Clause 8.1), to third party Software; and (c) Clauses 9.1 and 9.2 (relating to indemnification by Opturo) do not apply with respect to any third party Software. To the extent that any provision of this Agreement conflicts with this Clause, this Clause shall control.

12. Ancillary Provisions

12.1. **ENTIRE AGREEMENT AND VARIATIONS:** This Agreement (including any statement of work hereunder) constitutes the entire agreement between the parties. Each party confirms that it has not relied upon any promise, representation, or other term or condition not recorded in this document inducing it to enter into this Agreement. Opturo may modify any of the terms or conditions of these Terms of Use from time to time, provided that no such modification shall take effect until the start of the next Subscription Month following Opturo's notice to Client of such modification by email to the Authorized User. No other variation or amendment of this Agreement will be valid unless confirmed in writing by authorized signatories of both parties. Opturo's obligations to the Client in respect of this Agreement are limited to those specified herein. Without limitation, the parties agree that this Agreement shall supersede the terms and conditions in any Client purchase order or other ordering document and in any separate Opturo terms of use applicable to the Site.

12.2. **SEVERABILITY:** If any provision in this Agreement shall be held by a court or arbitral tribunal of competent jurisdiction to be invalid, illegal, void, or unenforceable in any jurisdiction, (i) such provision shall be enforced in that jurisdiction only to the extent that it is otherwise enforceable or is not in violation of such law, (ii) to the extent permitted and possible, the offending provision shall be deemed replaced in that jurisdiction by a provision that is valid and enforceable and that comes closest to expressing the intention of such offending provision, (iii) the offending provision shall remain in full force and effect in other jurisdictions, and (iv) all other provisions of this Agreement shall remain in full force and effect in all jurisdictions. However, if the Agreement, as so reformed, substantially alters the basis of the bargain between the parties, either party may terminate this Agreement by written notice to the other party.

12.3. **WAIVER:** No term or condition of this Agreement to be performed by a party shall be deemed waived, except by written consent of the other party. No election, claim, or other right of a party shall be deemed waived, except by written consent of that party. Any waiver of any breach of any covenant, term or condition of this Agreement shall not operate or be construed as a waiver of any other covenant, term or condition hereof, or of a prior or subsequent breach of the same covenant, term or condition, nor operate to extinguish the covenant, term or condition of the breach whereof has been waived.

12.4. **RELATIONSHIP OF THE PARTIES:** The relationship between Opturo and the Client is that of independent contractors. Neither party is agent for the other, and neither party has any authority to make any contract, whether expressly or by implication, in the name of the other party, except where that party's prior written consent has been obtained. Nothing contained in this Agreement shall construe the parties as partners, joint ventures, co-owners or otherwise as participants in a joint undertaking.

12.5. **ASSIGNMENT:** The Client shall not assign this Agreement or any rights or licenses granted under this Agreement or any benefits or interests arising under this Agreement, in whole or in part, without the prior written consent of Opturo, which will not be unreasonably withheld or delayed. Opturo may, at its option and without the consent of the Client, assign or transfer this Agreement to any other party, may assign its right to payment of any amount that comes due

hereunder, and may engage hosting providers and other subcontractors to assist it in the performance of this Agreement (subject to Clause 10 on confidentiality).

12.6. NOTICES: Any notice, election, request, demand, consent, approval, waiver, or other communication required or permitted under this Agreement shall be in writing and shall be delivered either personally, or by commercial delivery service with fees paid by sender, delivery confirmation required, or by certified or registered mail with postage fully prepaid, return receipt requested or delivery confirmation required, or by facsimile transmission, delivery confirmation required, or, if by Opturo, by email to the Authorized User. Notices, elections, requests, demands, consents, approvals, waivers, and other communication to Opturo must be delivered or sent to the Opturo's address set out at the beginning of this Agreement. Notices, elections, requests, demands, consents, approvals, waivers, and other communication to Client must be delivered or sent (a) to the Client's address as last recorded in the Authorized User/Client account on the Site or (b) by email to the email address of the Authorized User as last recorded in the Authorized User/Client account on the Site. Any such notice, election, request, demand, consent, approval, waiver, or other communication, if personally delivered, shall be deemed conclusively received when delivered to or refused at the addressee's address; or if sent by telephonic facsimile, commercial delivery service, certified mail, or registered mail, shall be presumed received on the day purportedly delivered or refused as evidenced by the delivery confirmation or return receipt; or if sent by email by Opturo shall be presumed received on the day sent. Any party may change the address or facsimile phone number to which notices, elections, requests, demands, consents, approvals, waivers, and other communications may be sent to it by giving written notice to the other party in the manner provided in this Clause, except that Client may change its postal address and the Authorized User's email address by the Authorized User updating the appropriate information in the Authorized User/Client account on the Site.

12.7. FORCE MAJEURE: Except for the payment of funds due hereunder, neither party is to be liable to the other for failure to perform its obligations under this Agreement if such failure is a direct result of circumstances beyond the reasonable control of the party in default. If either party is prevented from meeting any of its obligations due to any cause outside its reasonable control, it shall promptly notify the other party in writing of the circumstances and shall use reasonable efforts to resume performance as soon as possible.

12.8. PUBLICITY: Only after mutual agreement, shall Opturo be entitled to refer to the Client as a customer of Opturo in its sales and marketing information and use the Client's logo in such literature and from time to time issue press releases concerning this Agreement.

12.9. RIGHTS OF THIRD PARTIES: This Agreement is made for the benefit of the parties to it and (where applicable) their Affiliates, successors, and permitted assigns and expressly indemnified parties, and is not intended to benefit, or be enforceable by, anyone else.

12.10. GOVERNING LAW: All contractual and other claims and matters arising out of or in connection with this Agreement, including without limitation formation, validity, interpretation, and effect, shall be governed by the law of Ireland, and applicable intellectual property law, without regard to conflicts of law principles (except as between those specific bodies of law).

12.11. VENUE: All suits arising out of or in connection with this Agreement shall be brought solely in Ireland. The parties hereby submit to the jurisdiction of Ireland. Excepted are actions to enforce a judgment or an arbitral award or for injunctive relief, which may be filed in any court of competent jurisdiction.

12.12. LANGUAGE: The parties hereby confirm their express wish that this Agreement and all documents related thereto be drawn in English. Les parties reconnaissent leur expresse desire que la presente convention ainsi que tous les documents qui s'y attachment soient rediges dans la langue anglaise.

End of Terms of Use