

DATED

2018

---

**YOTTA LIMITED**

and

**[CUSTOMER]**

---

Software As a Service  
Subscription Agreement

---

## Table of Contents

1.	Interpretation .....	1
2.	User subscriptions .....	4
3.	Additional user subscriptions .....	6
4.	Services .....	6
5.	Customer data .....	7
6.	Third party providers .....	8
7.	YOTTA's obligations .....	8
8.	Customer's obligations .....	9
9.	Charges and payment .....	9
10.	Proprietary rights .....	10
11.	Confidentiality .....	11
12.	Indemnity .....	12
13.	Limitation of liability .....	13
14.	Term and termination .....	13
15.	Force majeure .....	15
16.	Conflict .....	16
17.	Variation .....	16
18.	Waiver .....	16
19.	Rights and remedies .....	16
20.	Severance .....	16
21.	Entire agreement .....	16
22.	Assignment .....	17
23.	No partnership or agency .....	17
24.	Third party rights .....	17
25.	Notices .....	17
26.	Governing law .....	18
27.	Jurisdiction .....	18
	SCHEDULE 1 - Subscription Fees .....	19
	SCHEDULE 2 - Subscription Term .....	20

**DATE:**

**PARTIES**

- (1) **YOTTA LIMITED** incorporated and registered in England and Wales with company number 1987036 the registered office of which is situated at 14 Minns Business Park, West Way, Oxford, OX2 0JB (“**Yotta**”); and
- (2) [**NAME OF CUSTOMER**] incorporated and registered in [●] with company number [●] the registered office of which is situated at [●](the “**Customer**”).

**RECITALS**

- (A) Yotta has developed certain software applications access to which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of facilitating connected management by local authorities, agencies and other asset managers of street-located infrastructure.
- (B) The Customer wishes to use Yotta's service in its business operations.
- (C) Yotta has agreed to provide and the Customer has agreed to take and pay for Yotta's service subject to the terms and conditions of this agreement.

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

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

<b>“Authorised Users”</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.3.
---------------------------	---

<b>“Business Day”</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
-----------------------	--

<b>“Confidential Information”</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.
-----------------------------------	---

<b>“Customer Data”</b>	the data inputted by the Customer, Authorised Users, or Yotta on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>“Data Protection Legislation”</b>	means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
<b>“Documentation”</b>	the document made available to the Customer by Yotta online via <a href="http://www.yotta.co.uk">www.yotta.co.uk</a> or such other web address notified by Yotta to the Customer 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>“Initial Subscription Term”</b>	the initial term of this agreement as set out in Schedule 2.
<b>“Normal Business Hours”</b>	[8.00 am to 6.00 pm] local UK time, each Business Day.
<b>“Renewal Period”</b>	the period described in clause 14.1.
<b>“Services”</b>	the subscription services provided by Yotta to the Customer under this agreement via <a href="http://www.yotta.co.uk">www.yotta.co.uk</a> or any other website notified to the Customer by Yotta from time to time, as more particularly described in the Documentation.
<b>“Software”</b>	the online software applications provided by Yotta as part of the Services.
<b>“Subscription Fees”</b>	the subscription fees payable by the Customer to Yotta for the User Subscriptions, as set out in Part 1, Schedule 1.

<b>“Subscription Term”</b>	has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
<b>“Support Services Policy”</b>	Yotta's policy for providing support in relation to the Services as made available at <a href="http://www.yotta.co.uk">www.yotta.co.uk</a> or such other website address as may be notified to the Customer from time to time.
<b>“User Subscriptions”</b>	the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
<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.

- 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 faxes but not e-mail.
- 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. USER SUBSCRIPTIONS**

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Yotta hereby grants to the Customer a non-exclusive, non-transferable right, 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 In relation to the Authorised Users, the Customer undertakes that:
  - 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - 2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - 2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to Yotta within 5 Business Days of Yotta's written request at any time or times;
  - 2.2.4 it shall permit Yotta to audit the Services in order to establish the name of each Authorised User. Such audit may be conducted no more than once per quarter, at Yotta's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - 2.2.5 if any of the audits referred to in clause 2.2.4 reveal that any person other than an Authorised User has been permitted to access and use the Services, then without prejudice to Yotta's other rights, the Customer shall promptly ensure that such person ceases to access and use the Services; and
  - 2.2.6 if any of the audits referred to in clause 2.2.4 reveal that the Customer has underpaid Subscription Fees to Yotta, then without prejudice to Yotta's other rights, the Customer shall pay to Yotta an amount equal to such underpayment as calculated in accordance with the prices set out in Part 1, Schedule 1 within 10 Business Days of the date of the relevant audit.

- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 2.3.2 facilitates illegal activity;
  - 2.3.3 depicts sexually explicit images;
  - 2.3.4 promotes unlawful violence;
  - 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 2.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and Yotta 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.
- 2.4 The Customer shall not:
- 2.4.1 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;
  - 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - 2.4.3 use the Services and/or Documentation to provide services to third parties;
  - 2.4.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
  - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Yotta.

- 2.6 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. ADDITIONAL USER SUBSCRIPTIONS**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Part 1, Schedule 1 and Yotta shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Yotta in writing. Yotta shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request [(such approval not to be unreasonably withheld)]. Where Yotta approves the request, Yotta shall activate the additional User Subscriptions within [●] days of its approval of the Customer's request.
- 3.3 If Yotta approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Yotta's invoice, pay to Yotta the relevant fees for such additional User Subscriptions as set out in Part 2, Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Yotta for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

### **4. SERVICES**

- 4.1 Yotta 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.
- 4.2 Yotta shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Yotta has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.3 Yotta will, as part of the Services and at no additional cost to the Customer provide the Customer with Yotta's standard customer support services during Normal Business Hours via telephone and/or email in accordance with Yotta's Support Services Policy in effect at the time that the Services are provided. Yotta may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Yotta's then current rates.



## 5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 Yotta shall follow its archiving procedures for Customer Data as set out in its [Back-Up Policy available at [www.yotta.co.uk](http://www.yotta.co.uk) or such other website address as may be notified to the Customer from time to time, as such document may be amended by Yotta 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 shall be for Yotta to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Yotta in accordance with the archiving procedure described in its Back-Up Policy. Yotta 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 Yotta to perform services related to Customer Data maintenance and back-up).
- 5.3 Yotta shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at [www.yotta.co.uk](http://www.yotta.co.uk) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Yotta in its sole discretion.
- 5.4 If Yotta processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Yotta shall be a data processor and in any such case:
  - 5.4.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Yotta's other obligations under this agreement;
  - 5.4.2 the Customer shall ensure that it complies with its obligations under applicable Data Protection Legislation and that it is entitled to transfer the relevant personal data to Yotta so that Yotta may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - 5.4.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by applicable Data Protection Legislation;
  - 5.4.4 Yotta shall process the personal data in accordance with the terms of this agreement and the provisions of applicable Data Protection Legislation; and
  - 5.4.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **6. THIRD PARTY PROVIDERS**

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. Yotta 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 Yotta. Yotta 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. Yotta does not endorse or approve any third-party website nor the content of any third-party website made available via the Services.

## **7. YOTTA'S OBLIGATIONS**

- 7.1 Yotta undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Yotta's instructions, or modification or alteration of the Services by any party other than Yotta or Yotta's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Yotta will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, Yotta:
  - 7.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
  - 7.2.2 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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 This agreement shall not prevent Yotta 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.
- 7.4 Yotta warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## **8. CUSTOMER'S OBLIGATIONS**

### **8.1 The Customer shall:**

#### **8.1.1 provide Yotta with:**

- (a) all necessary co-operation in relation to this agreement; and
- (b) all necessary access to such information as may be required by Yotta; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

#### **8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;**

#### **8.1.3 comply with the requirements of any subcontractor engaged by Yotta to assist with the provision of the Services as notified to the Customer from time to time;**

#### **8.1.4 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, Yotta may adjust any agreed timetable or delivery schedule as reasonably necessary;**

#### **8.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement, and the Customer shall be responsible for any Authorised User's breach of this agreement;**

#### **8.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for Yotta, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;**

#### **8.1.7 ensure that its network and systems comply with the relevant specifications provided by Yotta from time to time; and**

#### **8.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Yotta'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.**

## **9. CHARGES AND PAYMENT**

### **9.1 The Customer shall pay the Subscription Fees to Yotta for the User Subscriptions in accordance with this clause 9 and Parts 1 and 2, Schedule 1 and any support fees in accordance with clause 4.3 and Part 4, Schedule 1.**

### **9.2 The Customer shall on the Effective Date provide to Yotta approved purchase order information acceptable to Yotta and any other relevant valid, up-to-date and complete contact and billing details, and Yotta shall invoice the Customer:**

- 9.2.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - 9.2.2 subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date, for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If Yotta has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Yotta:
    - 9.3.1 Yotta may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and Yotta shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
    - 9.3.2 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 Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
  - 9.4 All amounts and fees stated or referred to in this agreement:
    - 9.4.1 shall be payable in pounds sterling;
    - 9.4.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;
    - 9.4.3 are exclusive of value added tax, which shall be added to Yotta's invoice(s) at the appropriate rate.
  - 9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Yotta shall charge the Customer, and the Customer shall pay, Yotta's then current excess data storage fees. Yotta's excess data storage fees current as at the Effective Date are set out in Part 3, Schedule 1.
  - 9.6 Yotta shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

## **10. PROPRIETARY RIGHTS**

- 10.1 The Customer acknowledges and agrees that Yotta and/or its licensors own all intellectual property rights in the Services and the Documentation. 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 or the Documentation.

- 10.2 Yotta confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **11. CONFIDENTIALITY**

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.1.2 was in the other party's lawful possession before the disclosure;
  - 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Yotta's Confidential Information.
- 11.7 Yotta acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8 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.

- 11.9 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

## **12. INDEMNITY**

- 12.1 The Customer shall defend, indemnify and hold harmless Yotta 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 and/or Documentation, provided that:

12.1.1 the Customer is given prompt notice of any such claim;

12.1.2 Yotta provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

12.1.3 the Customer is given sole authority to defend or settle the claim.

- 12.2 Yotta shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.2.1 Yotta is given prompt notice of any such claim;

12.2.2 the Customer provides reasonable co-operation to Yotta in the defence and settlement of such claim, at Yotta's expense; and

12.2.3 Yotta is given sole authority to defend or settle the claim.

- 12.3 In the defence or settlement of any claim, Yotta 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 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 12.4 In no event shall Yotta, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

12.4.1 a modification of the Services or Documentation by anyone other than Yotta; or

12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Yotta; or

12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Yotta or any appropriate authority.

- 12.5 The foregoing and clause 13.3.2 state the Customer's sole and exclusive rights and remedies, and Yotta's (including Yotta's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **13. LIMITATION OF LIABILITY**

- 13.1 Except as expressly and specifically provided in this agreement:

13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Yotta shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Yotta by the Customer in connection with the Services, or any actions taken by Yotta at the Customer's direction;

13.1.2 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

13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

- 13.2 Nothing in this agreement excludes the liability of Yotta:

13.2.1 for death or personal injury caused by Yotta's negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

- 13.3 Subject to clause 13.1 and clause 13.2:

13.3.1 Yotta shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

13.3.2 Yotta's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

### **14. TERM AND TERMINATION**

- 14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, 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 12 months (each a “**Renewal Period**”), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 90 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

14.1.2 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**”.

14.2 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:

14.2.1 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 14 days after being notified in writing to make such payment;

14.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

14.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

14.2.4 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 within the meaning of section 123 of the Insolvency Act 1986 ;

14.2.5 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;

14.2.6 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;

14.2.7 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;



- 14.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 14.2.9 a receiver is appointed over the assets of the other party;
  - 14.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 14.2.11 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 14.2.4 to clause 14.2.10 (inclusive);
- the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**14.3 On termination of this agreement for any reason:**

- 14.3.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 14.3.3 Yotta may destroy or otherwise dispose of any of the Customer Data in its possession unless Yotta receives, no later than ten days 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. Yotta 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 Yotta in returning or disposing of Customer Data; and
- 14.3.4 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.

**15. FORCE MAJEURE**

Yotta shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Yotta or any other party), failure of a utility

service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **16. 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.

## **17. VARIATION**

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

## **18. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **19. 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 law.

## **20. SEVERANCE**

- 20.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **21. ENTIRE AGREEMENT**

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 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.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 21.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **22. ASSIGNMENT**

- 22.1 The Customer shall not, without the prior written consent of Yotta, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2 Yotta may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **23. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **24. THIRD PARTY RIGHTS**

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

## **25. NOTICES**

- 25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **26. 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 construed in accordance with the law of England and Wales.

## **27. JURISDICTION**

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

**This agreement** has been entered into on the date stated at the beginning of it.

**SCHEDULE 1**  
**SUBSCRIPTION FEES**

**PART 1 - SUBSCRIPTION FEES**

1. The Subscription Fees shall amount to a total of £[AMOUNT], based on [NUMBER] User Subscriptions at £[AMOUNT] per User Subscription.

**PART 2 - ADDITIONAL USER SUBSCRIPTION FEES**

1. Additional User Subscriptions may be purchased by the Customer in accordance with clause 3 at £[AMOUNT] per User Subscription.

**PART 3 - EXCESS STORAGE FEES**

1. Yotta's excess storage fees current as at the Effective Date are set out below: [INSERT EXCESS STORAGE FEES].

**PART 4 - SUPPORT FEES**

1. In accordance with clause 4, Yotta's provision of standard support fees is made without additional charge.
2. Yotta's enhanced support fees are set out below: [INSERT DETAILS]

**SCHEDULE 2**  
**SUBSCRIPTION TERM**

Initial Subscription Term: [•].

Signed by [NAME OF DIRECTOR]  
for and on behalf of  
**YOTTA LIMITED**

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of  
[NAME OF CUSTOMER]

.....  
Director