These Takeflite Solutions Online Software Services Terms and Conditions ("Terms and Conditions") along with the Takeflite Online Software Services Agreement or any other agreement for the supply of the Services ("Agreement") set out the terms and conditions upon which Takeflite Solutions will provide the Services to you. The provisioning of and your access to and use of the Service constitutes each Party's acceptance and agreement to be bound by these terms and conditions.

A. Definitions in this agreement

1. "Approved Purpose" means the Approved Purpose specified in the Takeflite Online Software Services Agreement or, if no such purpose is specified, your own internal business purposes;
2. "Charges" means the Setup Fee, the Monthly Service Fee and any or all charges to you, whether for access to hosted applications and/or for Customer Support and any other Services or goods that you purchase from Takeflite Solutions from time to time;
3. "Service" means one or more of the Online Software Services detailed in the Agreement or which Takeflite Solutions has agreed otherwise to provide whereby you and your users gain access to and use a hosted service;
4. "Takeflite Solutions", "we" and "us" means Takeflite Solutions Limited, the company registered in New Zealand;
5."Website" means any Takeflite Solutions website through which service is offered;
6. "you" and **"your"** means the person or firm or organisation who has agreed to purchase the Service from Takeflite Solutions and includes the person entering into the Agreement on behalf of the firm or organisation;
7. "your users" means all your users of the Service, including (without limitation) any third parties that you allow to use the Services or you are permitted to supply to the Services to.

B. We will:

1. provide your authorised users using authorised devices for authorised purposes with a non-exclusive and non-transferrable licence and right to use the Service for the term of the Agreement;
2. provide you with access to the Service via website addresses that are specific to your users' use of the Service;
3. provide the Service as defined in the Takeflite Solutions Service Offer at https://tflite.com/PDF/tfservice.pdf;
4. invoice you monthly in arrears for the Charges incurred through the use of the Service by your users and require payment for the Charges within 20 calendar days of the invoice date;
5. regularly update the Service;
6. comply with and be bound by the Agreement and these Terms and Conditions.

C. You:

1. must pay on demand the Charges by Visa, Mastercard or electronic transfer to a nominated bank account;
2. must comply with and be bound by the Agreement and these Terms and Conditions;
3. and your users must use the Service solely for the Approved Purpose
4. must implement an agreement with your users that takes into account and incorporates the terms of the Takeflite Solutions Online Software Services Terms and Conditions;
5. will be responsible for interoperability between your users' equipment and the Service;
6. must ensure that your users adhere to the terms of your agreement with them and the terms of the Agreement that relate to use of the Services by your users;
7. and your users must not damage, interfere with or harm the Website or Services, or any network, or system underlying or connected to them, or attempt to do so;
8. and your users must not use a robot, spider, scraper or other unauthorized automated means to access the Website or information featured on it for any purpose;
9. and your users must not enter into the Service or use the Service for anything that is illegal, offensive (including anything of a defamatory, pornographic, or racially or ethnically objectionable nature), stolen, or unsafe, anything which infringes copyright or other intellectual property rights, or any information which is prohibited by, or violates any law. You are responsible for ensuring that any use of the Service by you and your users does not breach this clause C(9). You agree that we may disclose your and/or your users' personal information, including your and/or your users' name and contact details, to the relevant authorities, parties and/or the applicable intellectual property right holders (or their representatives) if we consider that you and/or your users are in breach of this clause C(9) at any time. You must obtain all necessary consents from your users to enable us to disclose that information in accordance with this clause C(9);
10. must ensure the regular automated updates to the Takeflite Solutions desktop client are not blocked by your or your users' firewall(s) or security settings on client PCs. Blocking these updates compromises the security of the overall Service and will result in the Service being suspended to one or more client PCs in the interests of security, stability and safety;
11. must ensure your and your users' client PCs are loaded with the pre-requisite version of Microsoft Framework and update that version on all PCs upon request in a timely manner in the interests of security, stability and safety; and
12. must ensure your firewall(s) whitelist and allow full port 443 access to all website and web-service URLs supplied by us.

D. Intellectual property rights

1. Intellectual property rights in all software and content supplied to you and/or your users remains the property of Takeflite Solutions or its licensor or other content owner. You and your users will comply with the terms of any agreement required by the owner of intellectual property rights in all software and content supplied to you and/or your users as notified to you.
2. Intellectual property rights in all software and content supplied by you or your users remains the property of your organisation or its licensor or other content owner. We will comply with the terms of any agreement required by the owner of intellectual property rights in all software and content supplied by you or your users as notified to us.

E. Confidentiality and security

1. You agree that neither Takeflite Solutions nor its Service partners shall, under any circumstances, be held responsible or liable for situations where the data stored or communicated through the Service are accessed by third parties through illegal or illicit means beyond Takeflite Solutions' or its Service Partners' (as applicable) reasonable control. Electronic communications as provided within the Service are private, and only under situations where explicitly imposed by law will such communications be accessed, intercepted, disclosed, or used without the consent of at least one of the parties to the communication. Such access, interception, disclosure or use will, to the extent admissible under the applicable laws, be reported to the affected user(s) and to you, allowing the affected user(s) –if possible- to seek any available protection measures in advance.
2. Although we will not systematically monitor the content that is submitted to, stored on or disseminated via the Service, we reserve the right, at our sole discretion, to edit or delete any information or other content that evidently violates the standards for content laid out in the Agreement.
3. The Agreement and the Terms and Conditions are confidential and must not be disclosed (neither by you nor by us) to any third party without the other party's prior written approval on a case-by-case basis. Disclosure by either party if required by law or to its directors, officers, employees, advisors and consultants on a need to know basis shall not be a breach this clause E(3).

F. Customer content

1. All information and material submitted by you or your users and accepted by us via the Service by way of any contribution to the Service shall be deemed to be and shall remain the property of you and your users providing all outstanding Charges are settled. Providing all outstanding Charges are settled, you can download your and your users' information at any time and for any reason via the Service, without any assistance from us.
2. You hereby grant us the rights to copy and distribute such submitted information and material solely to the extent necessary to allow us to make the same available via the Service and at all times under the terms of the Agreement.
3. You hereby grant us the right to amend such submitted information at your request solely to the extent necessary to rectify faults.
4. You must obtain all necessary consents from your users to enable us to copy, distribute and amend submitted information in accordance with clauses F(2) and F(3).

G. Disclaimer

1. Without prejudice to the provisions under the Takeflite Solutions Service Offer, we do not warrant that the Service provided will be uninterrupted or error free, nor do we make any warranty as to the results to be obtained from your or your users' use of the Service except as set out in the Takeflite Solutions Service Offer.
2. Except as provided in the Takeflite Solutions Service Offer, you agree that your and your users' access to and use of the Service is on the basis that all warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or otherwise, whether of a like nature or not, and whether expressed or implied by law, trade custom or otherwise, are expressly excluded from this Agreement to the extent permitted by law.
3. While we may facilitate payment by credit card, we are in no way involved in the transaction itself, and responsibility for any refund rests with you.
4. While we have systems in place to reduce the risk of credit card fraud, we are not responsible for protecting members from credit card fraud. Our fraud protection systems may from time to time block legitimate credit card payments. In these cases payment will need to be made by other means.

H. Our liability to you and your users

1. We are not liable to you or your users (whether as a result of breach of the Agreement, under the Takeflite Solutions Service Offer, negligence or other tort or otherwise) for any indirect, incidental, special or consequential damages or losses arising out of access to or use of the Service or inability to access or use the Service or out of any breach of any warranty including, without limitation, damages or losses not directly resulting from acts of god or events of similar case or the consequences of viruses received by you via the Service or corrupting or harmful software code, including but not limited to: computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware, even if we are advised of the possibility of such damages or losses.

2. Our aggregate liability to you (including any liability to, or relation to, your users) for direct damages and losses (whether as a result of breach of the Agreement, under the Takeflite Solutions Service Offer, negligence or other tort or otherwise) or for any other loss or damage of any nature whatsoever is limited to the fees (excluding any Setup Fee, Project Costs for Setup or Additional Project Costs) you have paid to us under this Agreement during the one (1) immediate month prior to the event that triggered our duty to compensate you hereunder.

I. Your liability and indemnity to us

1. A breach of any term of the Agreement by any of your users is deemed to be a breach of the Agreement by you.
2. You will indemnify and hold harmless Takeflite Solutions and its Service partners (each an "**Indemnified Party**") from and against any and all losses, liabilities, damages, costs, expenses, actions and claims of whatever nature or kind arising out of or in connection with your and/or your users' access to and use of the Service.
3. You will indemnify and hold harmless each Indemnified Party from and against any damage, loss, liability, cost and expense (including legal costs on a solicitor and own client basis) suffered or incurred by an Indemnified Party resulting from any claim or proceeding brought against an Indemnified Party by your users to the extent that the Indemnified Party would not have been liable to you under the Agreement for that damage, loss, liability, cost and expense had you brought that claim or proceeding

J. Variations

1. We reserve the right at our absolute discretion at any time and without prior notice to remove, amend or vary any of the software or content supplied in connection with the Service, provided such alteration or amendment does not require any material change to this Agreement. We will notify these changes to you as soon as practicable.

2. We reserve the right at our discretion and at any time and without notice to change the hosting data centre, provided such alteration or amendment does not require any material change to this Agreement.
3. We reserve the right at our absolute discretion at any time to alter and/or amend these Terms and Conditions and/or the Agreement (with exception of Clause H "Our liability to you" and Clause I "Your liability and indemnity to us") upon giving you 30 calendar days' notice in advance of any such amendment taking effect.
4. If, upon receiving any such notice, you do not wish to continue with the Service, you may terminate the Agreement on 30 calendar days' written notice to us and the amendments will not be applicable to you during the 30 calendar days' notice period.
5. You will be deemed to have accepted any alteration and/or amendment to the Agreement and/or the Service if you continue to use the Service after the relevant period of notice has expired.

K. Charges

1. You agree that the use of any Service by anyone from your organisation or any of your users, in any way, will be chargeable to you in accordance with the provisions of the Agreement.
2. In the event that we do not receive payment of the Charges due on the due date, we reserve the right, at our sole discretion and without notice to you, to undertake any or all of the following actions:
i) turn on a late payment reminder at login;
ii) charge 2% compounding interest per month on the outstanding amount;
iii) turn off non-essential services that incur costs to the Service e.g. updating the Disaster Recovery facility;
iv) suspend our performance under this Agreement until payment is received. Takeflite Solutions reserves the right to disable operation of the online website, or reporting functionality, or all services;
3. You agree to refund to us the reasonable cost of collecting outstanding payments owed or charges incurred due to failed or referred transaction(s) or any reasonable costs incurred in collecting Charges unpaid by you;
4. In the absence of a fixed term agreement, we reserve the right to increase or decrease monthly Charges from time to time. Details of any such change will be communicated to you by post or email. We will notify you of price changes 90 calendar days in advance of the change taking effect;
5. A USD1,000 reconnection fee will apply in the event services are suspended for late payment.

L. Termination

1. The Agreement will run for the term specified in Agreement or where no term is specified, from the time your Service site is operational and will continue thereafter unless and until terminated by either of us in accordance with this Clause L.
2. Where no term has been specified, the Agreement may be terminated by you on 30 calendar days' written notice or by us on 30 calendar days' written notice to the other party at any time and for any reason.
3. We may terminate the Agreement or suspend the performance of the Service to you, at our sole discretion, immediately and without notice (unless otherwise stated in the sub-clauses below) if:
i) you breach the Agreement or the Terms and Conditions (subject to 7 calendar days' notification of the other party without remedy); or
ii) bankruptcy or other insolvency proceedings are brought against you; or
iii) you are no longer able lawfully to receive the Service; or
iv) we do not receive payment of the Charges due.
4. You may also terminate the Agreement at your sole discretion, immediately and without notice (unless otherwise stated in the sub-clauses below) if:
i) we breach this Agreement (subject to 7 calendar days' notification of the other party without remedy); or
ii) bankruptcy or other insolvency proceedings are brought against us; or
iii) we are no longer able lawfully to provide the Service.
5. If we suspend the Service, either pursuant to Clause K(2) above, or under this Clause L, you must continue paying the minimum Monthly Service Fee unless and until the Service is terminated or the term expires.
6. In the event of termination of this Agreement you will remain responsible for all Charges you have incurred prior to the date of termination.
7. In the event of termination of this Agreement we will remain responsible for providing the Service to you and your users up to the date of termination.
9. We reserve the right after the termination date to delete any email and application data that has been created through the use of the Service.
10. Termination of this Agreement does not affect any obligations that have arisen on either party prior to termination, except as otherwise indicate under the Agreement;
11. In the event of default or bankruptcy by you, use of and access to the Service is prohibited pending payment of outstanding charges. In this scenario, users (including any appointed custodians in the event of receivership) are not authorized to use the Service or access information held in the Service without prior written agreement by Takeflite Solutions. This information will be provided once outstanding charges have been settled.
12. If the term of this Agreement has been specified in any other agreement and that term has expired and the Services are still being provided then this Agreement will continue to apply and the provisions of clause L(2) shall apply.

M. Notices
1. Unless otherwise provided in this Agreement, any notices shall be sent by e-mail or post.
2. In the case of notices sent by email, such notices shall be deemed to be received when capable of being accessed by the recipient. In the case of notices sent to us by post, such notices shall be deemed to be received on the seventh business day after posting.
3. In the case of notices to you, we will use the postal or email address you have given us in your registration details or to any other address provided to us subsequently.
4. In the case of notices to us, the following details are to be used:

In writing sent by first class post to:
Takeflite Solutions,
PO Box 116,
Picton 7250, New Zealand

Or by email to:
support@tflite.com

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N. Settlement of Disputes

1. If any dispute arises out of this Agreement the parties will attempt to settle it by negotiation.
2. If the parties are unable to settle any dispute by negotiation within 21 calendar days, then any party may invite the chairperson of the New Zealand Chapter of Lawyers Engaged in Alternative Dispute Resolution to appoint a mediator to enable the parties to mediate and settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings.
3. If the dispute is not resolved within a further 30 calendar days after the appointment of a mediator, any party may then require the dispute to be referred to arbitration. If this clause is invoked the dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996 and the arbitration will take place in Auckland, New Zealand. The award in the arbitration will be final and binding on the parties.
4. Both parties will share the cost of mediation and/or arbitration equally.

O. General

1. If any part of this Agreement is deemed unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part of these conditions will not be affected.
2. This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand.
3. This Agreement sets out the whole of the parties' agreement relating to our supply of the Service. They cannot be varied except as provided herein or as agreed in writing by both parties. In particular nothing said by any employee on behalf of Takeflite Solutions should be understood as a variation of these Terms and Conditions or an authorized representation about the Service or the nature and quality of items displayed thereon. We shall have no liability for any such representation being untrue or misleading.

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