HUME TERMS AND CONDITIONS FOR AWS MARKETPLACE

These Hume Terms and Conditions for AWS Marketplace ("Hume Terms") set forth the terms and conditions applicable to the licensing of Hume from Graph Aware Limited by the Client (as defined below). The offer of Hume licensing pursuant to these Hume Terms, and Client's purchase of the corresponding Licences, constitutes each party's respective acceptance of these Hume Terms and their entry into this Agreement, and this Agreement will become effective on the date of Client's purchase of the corresponding Licences.

1.   Interpretation

1.1.   The definitions and rules of interpretation in this clause apply in these Hume Terms.

Affiliate	includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party, as defined under the applicable law.
Agreement	contract formed when a Client places an Order, governed by these Hume Terms, with GraphAware.
Aura RAM	the total size of RAM available on Neo4j AuraDB / AuraDS instances that Hume connects to.
AWS Marketplace	Amazon Web Services Marketplace as outlined at: https://aws.amazon.com/marketplace
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Business Hours	9am to 5pm on a Business Day in England.
Client	a party who submits an Order to GraphAware through AWS Marketplace.
Dependencies	includes any additional software and its corresponding licences that the Client shall obtain, maintain and comply with at all times in order to use the Software on the terms of this Agreement, currently either one of: - Neo4j Commercial Licence; - Neo4j Developer Licence; - Neo4j AuraDB/AuraDS; or - Neo4j Evaluation Licence. Where the installation option of the Software allows for automatic download of Neo4j software as a Dependency, the Client agrees to comply with the applicable then-current Neo4j licence terms outlined at: https://neo4j.com/terms/licensing/ https://neo4j.com/terms/enterprise_us/ General compliance information on Neo4j licensing can be found at: https://neo4j.com/licensing/
Developer Seat	licence to use the Software on a personal machine of the Client's developer, for the sole purpose of installing, configuring, and testing of the Software.
Fee	the price to be paid for the Licences to the Software, for Support Services, payable by the Client as further set out in the Order.
GraphAware	Graph Aware Limited, registered in England and Wales, with registration number 08554167 and registered office at 86-90 Paul Street, London, EC2A 4NE, United Kingdom.

Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
Licence	has the meaning in clause 3.1 and is made available as Production Licence, Test Licence, or Developer Seat as further set out in the Order.
Neo4j Cores	the total number of CPU cores / vCPU cores available on the Neo4j machines that the Software connects to, so as to allow it to store and retrieve data to/from such databases. For Neo4j machines running in virtualised environments, the number of cores allotted to the virtual OS or container in which Neo4j is running.
Neo4j RAM	the total size of RAM available on the Neo4j machines that the Software connects to, so as to allow it to store and retrieve data to/from such databases. For Neo4j machines running in virtualised environments, the total size of RAM allotted to the virtual OS or container in which Neo4j is running.
Open Source Software	open source software which falls within the Open Source Definition maintained by the Open Source Initiative (opensource.org); or free software, as such term is defined by the Free Software Foundation (fsf.org); or any other third -party software which is generally made available to the public on terms which permit redistribution; Open Source Software and corresponding licences are listed at: https://graphaware.com/products/hume/terms/thirdpartylicences/
Orchestra RAM	the total size of RAM available to all instances of the standalone Orchestra engine.
Order	the subscription to Licences, detailed in the Product Listing along with their corresponding transaction, completed via the AWS Marketplace.
Product Listing	the product information listed on the AWS Marketplace including the Software Description, Support Services and GraphAware's policies and procedures incorporated or referenced in the product information. The Product Listing may also describe, incorporate or reference GraphAware's security practices or disclosures concerning Open Source Software.
Production Licence	licence for the Client to use the Software in the Client's production environment.
Software	components, modules, and features of GraphAware's Hume software, as further set out in the Order and described in the Software Description, provided by or on behalf of GraphAware as a result of GraphAware's obligations under this Agreement. The Software may contain code proprietary to GraphAware, Open Source Software, and other third-party code and is made available to the Client as specified in the Order and includes any future Software updates, upgrades, improvements or modifications thereto provided to the Client by or on behalf of GraphAware.
Software Description	the then-current description of Software at the moment of signing the Agreement as further specified on the GraphAware website at: https://graphaware.com/terms/hume-software-description/
Support Services	support services for the Software provided by GraphAware on the then-current Support Services Terms, as further specified on the GraphAware website at: https://graphaware.com/terms/support-services/
Term	period specified in the Order.
Test Licence	licence to use the Software in the Client's test environment for internal testing purposes only and not for production use.

1.2.   In the case of conflict or ambiguity between any provision contained in the body of these Hume Terms and any provision contained in the Order, third-party licence terms, Software Description, Support Services Terms the provision in the body of these Hume Terms shall take precedence.

1.3.   References to clauses are to the clauses of this Agreement or other relevant applicable terms referred to in this Agreement.

1.4.   The third-party licence terms, Software Description, and Support Services Terms linked to this Agreement form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

1.5.   This Agreement consists of one or more Orders, each of which is deemed to incorporate these Hume Terms and constitute a separate agreement between the Parties. Termination of one Order does not of itself mean that all Orders are automatically terminated.

2.   Delivery, installation, activation of the Software, Support Services and Software upgrades

2.1.   GraphAware shall make a copy of the Software available to the Client by way of download or such other means as determined by GraphAware from time to time.

2.2.   GraphAware shall provide the Client with a licence key to enable the functionality of the Software for the Term.

2.3.   The Client is authorised to use the Software only if Client is properly licensed and the Software has been properly activated with a licence key provided by GraphAware or by any other method authorised by GraphAware. The Client agrees not to bypass or circumvent activation.

2.4.   In the event GraphAware provides Support Services to the Client under the Order:

    2.4.1.   Support Services shall be provided with reasonable skill and care in accordance with the then-current Support Services Terms; and

    2.4.2.   the Client undertakes to cooperate in good faith with GraphAware in the provision of the Support Services and shall grant to GraphAware necessary access, including remote access to the Client's systems and premises which are necessary for the provision of the Support Services as further detailed in the Support Services Terms.

2.5.   In relation to Software upgrades:

    2.5.1.   GraphAware will provide Software upgrades from time to time for the term of this Agreement; and

    2.5.2.   the Client acknowledges and agrees that by installing a Software upgrade the Software Description is automatically replaced by the new Software Description version applicable to such Software upgrade.

3.   Licence and scope of use

3.1.   In consideration of the Fee paid by the Client to GraphAware, GraphAware (i) grants to the Client such non-exclusive, non-transferable, revocable, non-sublicensable Licences, for the Term, to use the Software subject to the restrictions set out below and in the Order, and (ii) subject to clause 2.4, provides Support Services.

    3.1.1.   Use of the Software shall be restricted to solely machine-readable, executable object code form or another format, as provided by GraphAware, for the Client's Internal Business Purposes only. "Internal Business Purposes" means the day-to-day business purpose of the Client. Internal Business Purposes exclude Client providing software as a service to third parties or allowing the use of the Software by, or for the benefit of, any person other than an employee or independent contractor of the Client.

3.1.2.   Use of the Software shall be restricted to the limitations as specified in the Order. Without prejudice to the generality of the foregoing, the Client shall at all times during any prevailing term of this Agreement ensure that the configuration of Dependencies does not exceed the configuration limits stated in the Order. In the event an upgraded configuration of Dependencies is implemented by the Client, the Client must purchase the applicable additional Licences from GraphAware (in accordance with its normal commercial terms then-current).

3.1.3.   The Client may not use the Software other than as specified in clause 3.1 and clause 3.1.1 without the prior written consent of GraphAware, and the Client acknowledges that additional fees may be payable on any change of use approved by GraphAware.

3.1.4.   The Client may make backup copies of the Software as may be reasonably necessary for its lawful use in accordance with this Agreement and for the purposes of backup, restore and security. The Client has no right to make, or authorise the making of, any other copies of the Software other than as permitted by this Agreement. The Client shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

3.1.5.   The Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt, reverse translate or in any other manner decode or make error corrections to the Software in whole or in part except as permitted in law nor further develop, or create any derivative product from, the Software.

3.1.6.   The Client acknowledges and agrees that the Software includes third-party software and for the purposes of this Agreement third-party software shall be deemed to be incorporated within the Software (except where expressly provided to the contrary). The use of Open Source Software shall be subject to the respective licence under which the Open Source Software is licensed.

3.1.7.   The Client shall indemnify and hold GraphAware harmless against any loss or damage which GraphAware may suffer or incur as a result of the Client's breach of any Open Source Software licence terms howsoever arising.

3.1.8.   GraphAware may treat the Client's breach of Open Source Software licence terms as a material breach of this Agreement.

3.1.9.   The Client acknowledges and agrees that should a third-party software provider terminate licences provided to GraphAware, suspend or cease to make available its software to GraphAware for use within the Software, GraphAware will take reasonable steps to mitigate the effect of such a suspension or termination, which may for example include replacing the third-party component with a component of similar functionality, or providing a workaround such that the relevant component is no longer required. In the event GraphAware is unable to find a replacement or any workaround for the continued use of the Software in accordance with this Agreement, it may terminate this Agreement with a notice in writing. The Client's sole remedy and GraphAware's entire liability shall be for the Client to obtain and for GraphAware to provide, a refund of the outstanding amount of the Fee for the remaining duration of the Term.

3.1.10. In no event shall the Client, post or publish any portion of the Software onto any websites, including, but not limited to, the following: GitHub, BitBucket, Google Code, Pastebin, Codeplex, LaunchPad, Unfuddle, JSFiddle, JSBin. The Client shall ensure that any user of the Software is aware of this restriction.

3.1.11. All licence rights not expressly granted in this Agreement are reserved by GraphAware or its licensors.

3.2. The Client may not use any information obtained by the Client under this Agreement to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.3. The Client shall not:

3.3.1. sub-license, assign, distribute, rent, lend, transfer the Software to any person or entity without prior written consent of GraphAware or novate the benefit or burden of this Agreement in whole or in part or attempt to do so; or

3.3.2. allow the Software to become the subject of any charge, lien or encumbrance.

3.4. GraphAware may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

3.5. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.6. The Client shall:

3.6.1. ensure that it at all times complies with this Agreement;

3.6.2. ensure that the Software is installed solely on equipment compatible with the Software and any Dependencies;

3.6.3. be responsible for obtaining the relevant Dependencies and complying with their licence terms;

3.6.4. keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to GraphAware on request from time to time;

3.6.5. notify GraphAware as soon as it becomes aware of any unauthorised use of the Software by any person;

3.6.6. without prejudice to other rights and remedies GraphAware may have in law, pay, for broadening the scope of the licences granted under this Agreement to cover the unauthorised use, an amount equal to the fees which GraphAware would have levied (in accordance with its normal commercial terms then -current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 4.4, from such date to the date of payment.

3.7. The Client shall permit GraphAware to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that the Client is complying with the terms of this Agreement, provided that GraphAware provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.

3.8. Notwithstanding any of the provisions above, nothing in this Agreement shall be construed as, or have the effect of, restricting any rights which the Client may have under any Open Source Software licence applicable to any Open Source Software used in the Software.

3.9. The Client shall not do anything which would cause any part of the Software which is not subject to an Open Source Software licence to become subject to an Open Source Software licence.

3.10. The Client shall be solely responsible for any data (including Client's, its customer's or any third-party data) stored in the Software or accessible through the Software and shall put in place appropriate backup processes and systems to protect such data.

4. Fees

4.1. The Client shall pay the Fees for the Term as set out in the applicable Order.

4.2.   All sums payable under this Agreement are exclusive of VAT or any relevant local sales taxes, for which the Client shall be responsible.

4.3.   The Client shall make all payments set out in the Order without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Client shall, when making the payment to which the withholding or deduction relates, pay to GraphAware such additional amount as will ensure that GraphAware receives the same total amount that it would have received if no such withholding or deduction had been required.

4.4.   If the Client fails to make any payment due to GraphAware under this Agreement by the due date for payment, then, without limiting GraphAware's remedies under clause 10, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Client shall pay the interest together with the overdue amount.

5.   Confidentiality and publicity

5.1.   Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

5.2.   During the term of this Agreement, Client hereby agrees that GraphAware shall have the right to include Client's name and logo as a customer who uses the Software on GraphAware's website and in other marketing materials promoting the Software. The Client may opt-out by sending an email to legal@graphaware.com.

6.   Export, anti-bribery and anti-corruption

6.1.   Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**"Export Control Laws"**), including United Kingdom, European Union and United States export laws and regulations, to any country for which the United Kingdom, European Union and United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

6.2.   Each party undertakes, in relation to the Export Control Laws:

6.2.1.   to contractually oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the ones set out above; and,

6.2.2.   if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with such Export Control Laws.

6.3.   Each party undertakes in relation to anti-bribery and anti-corruption to:

6.3.1.   comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption ("Relevant Requirements");

6.3.2. not engage in any activity, practice or conduct which would constitute an offence under applicable legislation; and

6.3.3. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures, to ensure compliance with the Relevant Requirements.

7. GraphAware's warranties

7.1. GraphAware warrants that the Software (excluding third-party software or Open Source Software) will conform in all material respects to the software description set out in the Software Description for a period of 90 days from the start date of the Term ("Warranty Period"). If, within the Warranty Period, the Client notifies GraphAware in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the software description, and such defect or fault does not result from the Client, or anyone acting with the authority of the Client, having amended the Software or used it outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by GraphAware, or it has not been loaded onto GraphAware-specified or suitably configured equipment, GraphAware shall, at GraphAware's option, do one of the following:

7.1.1. repair the Software;

7.1.2. replace the Software; or

7.1.3. terminate this Agreement immediately by notice in writing to the Client and refund any of the Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) on return of the Software and all copies thereof, provided the Client provides all the information that may be necessary to assist GraphAware in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable GraphAware to re-create the defect or fault.

7.2. GraphAware does not warrant that the use of the Software will be uninterrupted or error-free.

7.3. The Client accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Client.

7.4. The Client acknowledges that any Open Source Software and third-party software provided by GraphAware is provided "as is" and expressly subject to the disclaimer in clause 7.6.

7.5. The Client acknowledges and accepts that the Software and/or any component included therein may contain disabling devices which are intended to prevent use of the Software and/or component during or after expiry of the Term. In order to continue use of the Software (and provided that the Client remains licensed to use the Software) the Client may, subject to payment of the relevant fees, be required to enter a new licence key provided by GraphAware.

7.6. All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

8. Limits of liability

8.1. Except as expressly stated in clause 8.2, GraphAware shall not in any circumstances have any liability for any losses or damages which may be suffered by the Client (or any person claiming under or through the Client), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

8.1.1. special damage even if GraphAware was aware of the circumstances in which such special damage could arise;

8.1.2. loss of profits;

8.1.3. loss of anticipated savings;

8.1.4. loss of business opportunity;

8.1.5. loss of goodwill;

8.1.6. loss or corruption of data.

8.1.7. The total liability of GraphAware, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract and including GraphAware's liability for any indemnity given hereunder, shall in no circumstances exceed a sum equal to the part of the Fee paid under the Order in respect of and corresponding to the preceding 12 months prior to the relevant claim arising; and

8.1.8. The Client agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) GraphAware shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

8.2. The exclusions in clause 7.6 and clause 8.1 shall apply to the fullest extent permissible at law, but GraphAware does not exclude liability for:

8.2.1. death or personal injury caused by the negligence of GraphAware, its officers, employees, contractors or agents;

8.2.2. fraud or fraudulent misrepresentation;

8.2.3. breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

8.2.4. any other liability which may not be excluded by law.

8.3. All dates supplied by GraphAware for the delivery of the Software or the provision of Support Services shall be treated as approximate only. GraphAware shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

8.4. All references to "GraphAware" in this clause 8 shall, for the purposes of this clause 8 and clause 18 only, be treated as including all employees and subcontractors of GraphAware and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 17.

9. Intellectual property rights

9.1. The Client acknowledges that all Intellectual Property Rights in the Software, related documentation and materials, now or in the future, belong and shall belong to GraphAware, its Affiliates or the relevant third -party owners (as the case may be), and the Client shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement. All materials embodied in, or comprising the Software, including, but not limited to, graphics, user and visual interfaces, images, code, applications, machine learning models and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Software and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software, are all owned by GraphAware or its licensors. Title to the Software shall not pass from GraphAware to Client, and the Software and all

copies thereof shall at all times remain the sole and exclusive property of GraphAware. Client shall reproduce all copyright and other proprietary notices in all copies of the Software.

9.2. To the extent the Client sends or transmits any communications, comments, questions, suggestions, or related materials to GraphAware, whether by letter, e-mail, telephone, or otherwise ("Feedback") suggesting or recommending changes to the Software, including, without limitation, new features or functionality relating thereto, the Client hereby grants GraphAware a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid-up, fully-transferable, worldwide licence (with rights to sublicense through multiple tiers of sublicensees) under the Client's and its licensors' intellectual property rights to reproduce, prepare derivative works of, distribute, perform, display, and otherwise fully use, practice and exploit such Feedback for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. The Client agrees and understands that GraphAware is not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and the Client has no right to compel such use, display, reproduction, or distribution.

9.3. Subject to clause 8.1 and clause 9.8 GraphAware undertakes at its own expense to defend the Client or, at its option, settle any claim or action brought against the Client alleging that the possession, use, development or modification of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party ("Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Client as a result of or in connection with any such Claim.

9.4. For the avoidance of doubt, clause 9.3 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Client other than in accordance with the terms of this Agreement, use of the Software in combination with any hardware or software not supplied or specified by GraphAware if the infringement would have been avoided by the use of the Software not so combined, or use of a non-supported version of the Software.

9.5. If any third party makes a Claim, or notifies an intention to make a Claim against the Client, GraphAware's obligations under clause 9.3 are conditional on the Client:

9.5.1. as soon as reasonably practicable, giving written notice of the Claim to GraphAware, specifying the nature of the Claim in reasonable detail;

9.5.2. not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of GraphAware (such consent not to be unreasonably conditioned, withheld or delayed);

9.5.3. giving GraphAware and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client, so as to enable GraphAware and its professional advisers to examine them and to take copies (at GraphAware's expense) for the purpose of assessing the Claim; and,

9.5.4. subject to GraphAware providing reasonable security to the Client against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as GraphAware may reasonably request to avoid, dispute, compromise or defend the Claim.

9.6. Without prejudice to clause 9.5 if any Claim is made, or in GraphAware's reasonable opinion is likely to be made, against the Client, GraphAware may at its sole option and expense:

9.6.1. procure for the Client the right to continue to use the Software (or any part thereof) in accordance with the terms of this Agreement;

9.6.2. modify the Software so that it ceases to be infringing;

9.6.3. replace the Software with non-infringing software; or

9.6.4. terminate this Agreement immediately by notice in writing to the Client and refund any of the Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that if GraphAware modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 7.1 and the Client shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

9.7. Should any claim arise in relation to the Client's use of Open Source Software or third-party software incorporated within the Software, GraphAware will take reasonable steps to mitigate the effect of such claim, which may, for example, include replacing an infringing component with a component of similar functionality, or providing a workaround such that the relevant component is no longer required. GraphAware shall not otherwise be liable for any claim relating to Open Source or third-party software.

9.8. Notwithstanding any other provision in this Agreement, clause 9.3 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software or through the breach of any or Open Source Software licence terms by the Client.

9.9. Where a claim arises owing to alleged misappropriation of code in a component represented by GraphAware to be provided under an Open Source Software licence, GraphAware shall only be liable under this clause 9 where no reasonable developer could have identified the misappropriation of the component in question at the time it was selected for use by GraphAware.

9.10. This clause 9 constitutes the Client's exclusive remedy and GraphAware's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 8.

10. Duration and termination

10.1. 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:

10.1.1. 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 30 days after being notified in writing to make such payment;

10.1.2. 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 30 days after being notified in writing to do so; or

10.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

10.2. Without affecting any other right or remedy available to it, GraphAware may terminate this Agreement with immediate effect by giving written notice to the Client if there is a change of control of the Client within the meaning of section 1124 of the Corporation Tax Act 2010 or if the Client becomes bankrupt or otherwise insolvent.

10.3. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

10.4. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

10.5. On termination for any reason:

10.5.1. all rights granted to the Client under this Agreement shall cease;

10.5.2. the Client shall cease all activities authorised by this Agreement;

10.5.3. the Client shall immediately pay to GraphAware any sums due to GraphAware under this Agreement;

10.5.4. the Client shall immediately remove from their systems, destroy, or return to GraphAware (at GraphAware's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to GraphAware that it has done so; and

10.5.5. the Client shall not be entitled to any refund of fees paid except under clauses 7.1.3, 9.6.4, where termination is due to an established breach of GraphAware and under clause 3.1.9.

11. 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.

12. 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.

13. Entire agreement

13.1. This Agreement, the linked URLs, schedules and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

13.2. Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) ("Representation") other than as expressly set out in this Agreement or those documents.

13.3. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

14. Variation

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

15. Severance

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

15.2. If any provision or part-provision of this Agreement is deemed deleted under clause 15.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17. **Third -party rights**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18. **No partnership or agency**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19. **Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, any party may terminate this Agreement by giving fourteen days' written notice to the other party.

20. **Notices**

20.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be sent by email to the email address of the other party, as notified from time to time. Any such notice shall be deemed to have been received at the time of transmission, or if this falls outside of a Business Day at 9.00 am on the next Business Day after transmission.

20.2. Clause 20.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. **Governing law and jurisdiction**

21.1. 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.

21.2. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), but expressly excluding any claims relating to infringement or misappropriation of GraphAware's Intellectual Property Rights.