Rapport3 Terms and Conditions
(Microsoft Azure hosted)

Date: 20th June 2020

1. INTERPRETATION

    1.1   Capitalised terms used in this document shall have the meanings set out below:

"Acceptance Date"	has the meaning set out at clause 2.1;
"Agreed Modules"	has the meaning set out in clause 2;
"Agreement"	means the contract formed between Cubic and Customer in accordance with clause 2, or by such other means as may be agreed between the Parties, and incorporating the Proposal and these Terms;
"Authorised Users"	those employees, agents and independent contractors of Customer who are authorised by Customer to use the Services and the Documentation, as further described in clause 6.2.2;
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are usually open for business;
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11;
"Consultancy Services"	means the services, other than the Operational Services, which are described in the Proposal and may include the creation of bespoke report functionality, training and implementation assistance;
"Cubic"	refers to Cubic Interactive Limited a company registered in England and Wales (company number 04031797) with a registered office address at The Sanctuary Suite 2, 23 Oak Hill Grove, Surbiton, Surrey, KT6 6DU;
"Customer"	refers to Cubic's counterparty as determined in accordance with clause 2;
"Customer Data"	the data inputted by Customer, Authorised Users, or Cubic on Customer's behalf for the purpose of using the Services or facilitating use of the Services by Customer or Authorised Users;
"Data Controller"	means the entity which determines the purposes and means of processing personal data
"Data Processor"	means the entity responsible for processing personal data on behalf of a Data Controller
"Data Protection Legislation"	means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation implementing the Data Protection Directive 95/46/EC of 24 October 1995 or the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002 or the General Data Protection Regulation of 25 May 2018
"Documentation"	the document(s) made available to Customer by Cubic online via Rapport3.com or such other web address notified by Cubic to Customer from time to time which sets out a description of the Services and the user instructions for the Services;

"Fees"	the fees payable by Customer to Cubic for the Services during the Term as set out in the Proposal or as otherwise agreed in writing by the Parties;
"GDPR"	The General Data Protection Regulation of 25 May 2018
"Insolvency Event"	each and any of the following in relation to a Party:

(a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a Party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a Party or any of its assets; (iii) the enforcement of any security over any assets of a Party; or (iv) the attachment, sequestration, distraining upon or execution over or affecting any material asset of a Party, which in any case is not withdrawn or dismissed as soon as reasonably practicable;

(b) the Party is unable to pay its debts as they fall due or is insolvent, or the other Party perceives (acting reasonably) that to be the case; or

(c) the Party enters into a composition or arrangement with any creditor, or its creditors or any class of them;

"Initial Term"	the period of twelve (12) calendar months immediately following the Acceptance Date;
"Intellectual Property Rights"	any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill;
"Launch Date"	the date that the parties agree, acting reasonably and following the completion of any necessary preliminary Consultancy Services, that the Operational Services are to commence;
"Modules"	means the components of the Software that Cubic makes generally available from time to time;
"Normal Business Hours"	9.00 am to 5.00 pm local UK time, each Business Day;
"Operational Services"	the provision of the software product known as 'Rapport 3' by Cubic to Customer under the Agreement via Rapport3.com or any other website notified to Customer by Cubic from time to time, as more particularly described in the Documentation;
"Proposal"	means the document to which these terms are appended to or referred in and which sets out the commercial terms of the agreement between the parties;

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"Party"	means either Cubic or Customer and "**Parties**" means both Cubic and Customer;
"Renewal Period"	the period described in clause 15.1;
"Services"	means the Operational Services and Consultancy Services. The services are described in more detail in schedule 1 of this Agreement;
"Service Levels"	means the measures set out in the appendix to these terms and conditions;
"Schedule"	Means a schedule to this Agreement and which forms an integral part of the agreement,
"Software"	the online software applications provided by Cubic as part of the Services;
'Support Services'	means the technical support, Software updates and enhancements provided by Cubic post Launch of the Software with the Customer.
"Term"	has the meaning given in clause 15.1 (being the Initial Term together with any subsequent Renewal Periods);
"Terms"	these terms and conditions;
"Third Party Services"	means any services of a third party which are procured by Cubic in relation to the Services;
"Virus"	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; and
"Website"	means the following website(s): Rapport3.com, and all associated web pages and content of each, excluding any part of the Services.

1.2   In these Terms, unless the context otherwise requires:

1.2.1   each gender includes the others and the singular includes the plural and vice versa;

1.2.2   references to clauses are to conditions of these Terms;

1.2.3   general words are not limited by example;

1.2.4   the terms "include(s)" or "including" shall be construed without limitation as to the generality of the preceding words;

1.2.5   references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

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1.2.6 the headings are for convenience only and shall not affect the interpretation of the Agreement;

1.2.7 references to legislation:

(a) include any secondary or subordinate legislation made under or pursuant to that legislation; and

(b) exclude any re-enactment or modification of that legislation made on or after the date of the Agreement to the extent they make either Party's obligations more onerous; and

1.2.8 writing includes manuscript, telexes, facsimiles, e-mails, electronic communications delivered by the Services or Software and other permanent forms.

1.3 In the event of any conflict between these Terms and the Proposal, the Proposal shall prevail.

2. **AGREEMENT**

2.1 Taken together, these Terms and the Proposal, form an offer to Customer in respect of the Services ("Offer"). Customer may accept the Offer in writing or shall be deemed to have accepted the Offer should Customer accept the provision of any part of the Services. Upon acceptance of the Offer (such date shall be the "Acceptance Date"), these Terms and the Proposal will constitute a binding Agreement upon Cubic and the Customer.

2.2 The Agreement shall only apply to the Modules ("Agreed Modules"), and the number of Authorised Users in respect of each Module, each as set out in the Proposal, as may be subsequently amended by agreement in writing between Customer and Cubic.

2.3 The Agreement includes instructions by the Customer (as a Data Controller) to Cubic (as a Data Processor) for processing personal data on behalf of the Customer.

3. **SERVICES**

3.1 Subject to the terms of the Agreement, and payment of the Fees by Customer, Cubic shall provide the Services, in respect of the Agreed Modules only, and make available the Documentation to Customer in accordance with the terms of the Agreement.

3.2 Cubic shall user commercially reasonable endeavours to provide the Consultancy Services in accordance with the Proposal.

3.3 Following the Launch Date:

3.3.1 Cubic shall use commercially reasonable endeavours to ensure that access to the Operational Services by Customer and Authorised Users is not interrupted by any event within Cubic's control, and to make the Operational Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that Cubic has used reasonable endeavours to give Customer at least two (2) Normal Business Hours' notice in advance; and

3.3.2 Cubic will, as part of the Operational Services and at no additional cost to Customer, provide Customer with Cubic's standard customer support services in accordance with Cubic's support policies as published on the Website at the time that the Operational Services are provided. Cubic may amend such policies in its sole and absolute discretion

from time to time. To the extent that such support policies conflict with the Service Levels, the support policies shall prevail.

4. CUSTOMER DATA

4.1 Customer shall own all right(s), 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.

4.2 Cubic will use its reasonable endeavours to ensure that Customer Data is maintained securely and backed up in accordance with the policy detailed in appendix 3.0 from time to time during the term of the Agreement. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy with respect to Cubic shall be that Cubic uses reasonable endeavours to restore the lost or damaged Customer Data from the latest available back up of such data that Cubic maintains. Cubic 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 Cubic to perform services related to data maintenance and back-up).

4.3 Where Customer Data has been deleted or removed by Customer, or by Cubic in accordance with Customer's instructions, it shall be at Cubic's absolute discretion as to whether it will provide any service for the recovery of this Customer Data.

5. DATA PROTECTION

If Cubic processes any personal data on Customer's behalf when performing its obligations under the Agreement, the Parties record their intention that Customer shall be the data controller and Cubic shall be a data processor and in any such case:

5.1 Customer shall ensure that it is entitled to transfer the relevant personal data to Cubic so that Cubic may lawfully use, process and transfer the personal data in accordance with the Agreement on Customer's behalf;

5.2 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 all applicable Data Protection Legislation;

5.3 Cubic shall process the personal data only in accordance with the terms of the Agreement and any lawful instructions reasonably given by Customer from time to time; and

5.4 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.

5.5 As the performance of the Agreement and the delivery of the Services implies the processing of personal data, the Data Controller and the Data Processor shall comply with the applicable data protection legislation and regulations.

5.6 The Data Processor shall ensure that in relation to personal data disclosed to it by, or otherwise obtained from the Data Controller, it shall act as the Data Controller's data processor in relation to such personal data and shall therefore:

5.6.1 from 25 May 2018, create and maintain a record of its processing activities in relation to this Agreement; the Data Processor shall make the record available to the Data Controller, any auditor appointed by it and/or the supervisory authority on first request;

5.6.2   not process the personal data for any purpose other than to deliver the Services and to perform its obligations under the Agreement in accordance with the documented instructions of the Data Controller; if it cannot provide such compliance, for whatever reasons, it agrees to promptly inform the Data Controller of its inability to comply;

5.6.3   inform the Data Controller immediately if it believes that any instruction from the Data Controller infringes applicable data protection legislation and regulations;

5.6.4   not disclose the personal data to any person other than to its personnel as necessary to perform its obligations under the Agreement and ensure that such personnel is subject to statutory or contractual confidentiality obligations;

5.6.5   take appropriate technical and organisational measures against any unauthorised or unlawful processing, and to evaluate at regular intervals the adequacy of such security measures, amending these measures where necessary; these security measures are described in Schedule 2.

5.6.6   ensure that access, inspection, processing and provision of the personal data shall take place only in accordance with the need-to-know principle, i.e. information shall be provided only to those persons who require the personal data for their work in relation to the performance of the Services;

5.6.7   promptly notify the Data Controller about (i) any legally binding request for disclosure of the personal data by a data subject, a judicial or regulatory authority unless otherwise prohibited, such as the obligation under criminal law to preserve the confidentiality of a judicial enquiry, and to assist the Data Controller therewith (ii) any accidental or unauthorized access, and more in general, any unlawful processing and to assist the Data Controller therewith;

5.6.8   deal promptly and properly with all reasonable inquiries from the Data Controller relating to its processing of the personal data or in connection with the Agreement;

5.6.9   make available to the Data Controller all information necessary to demonstrate compliance with the applicable data protection legislation and regulations;

5.6.10   at the request and costs of the Data Controller, submit its data processing facilities for audit or control of the processing activities;

5.6.11   refrain from engaging another data processor without the prior written consent of the Data Controller;

5.6.12   assist the Data Controller, subject to reasonable additional compensation, with the Data Controller's obligation under applicable data protection laws and regulations.;

5.7   Personal data processed in the context of this Agreement may not be transferred to a country outside the European Economic Area without the prior written consent of the Data Controller. If personal data

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processed under this Agreement is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU approved standard contractual clauses for the transfer of personal data.

6. <u>AUTHORISED USERS</u>

6.1 Subject to Customer fulfilling its obligations under the Agreement, including paying any Fees due in accordance with the Agreement, Cubic hereby grants to Customer a non-exclusive, non-transferable right to permit the Authorised Users (up to the maximum number agreed pursuant to clause 2 in respect of each Agreed Module) to use the Services and the Documentation during the term of the Agreement solely for Customer's internal business operations.

6.2 In relation to the Authorised Users, Customer undertakes that:

6.2.1 each Authorised User shall keep a secure password for his use of the Services and Documentation, and that each Authorised User shall keep his password confidential. Any such password used by an Authorised User in accordance with this clause 6.2.1 shall be created in accordance with any policies or guidelines published by Cubic from time to time;

6.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list to Cubic within five (5) Business Days of its written request at any time or times;

6.2.3 it shall permit Cubic to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Cubic's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Customer's normal conduct of business; and

6.2.4 if any of the audits referred to in clause 6.2.3 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Cubic's other rights, Customer shall promptly disable such passwords and Cubic shall not issue any new passwords to any such individual.

6.3 Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

6.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

6.3.2 facilitates illegal activity;

6.3.3 depicts sexually explicit images;

6.3.4 promotes unlawful violence;

6.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

6.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property,

and Cubic reserves the right, without liability or prejudice to its other rights to Customer, to disable Customer's access to any material that breaches the provisions of this clause.

6.4 Customer shall not:

6.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties:

(a) and except to the extent expressly permitted under this Agreement, 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 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

6.4.2 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; or

6.4.3 use the Services and/or Documentation to provide services to third parties; or

6.4.4 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

6.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause.

6.5 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 Cubic.

6.6 The rights provided under this clause 10 are granted to Customer only, and shall not be considered granted to any subsidiary or holding company of Customer.

7. <u>CUBIC'S OBLIGATIONS</u>

7.1 Cubic undertakes that the Services will be performed substantially in accordance with the Proposal, the Documentation and with reasonable skill and care.

7.2 Cubic shall use reasonable endeavours to provide the Operational Services in accordance with the Service Levels detailed in the appendix.

7.3 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 Cubic's instructions, or modification or alteration of the Services by any party other than Cubic or its duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Cubic will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, Cubic:

7.3.1 does not warrant that Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by Customer through the Services will meet Customer's requirements; and

7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 The Agreement shall not prevent Cubic 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.

8.   CUSTOMER'S OBLIGATIONS

Customer shall:

8.1   provide Cubic with:

8.1.1   all necessary co-operation and information in relation to the Agreement; and

8.1.2   all necessary access to such information as may be required by Cubic;

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

8.2   comply with all applicable laws and regulations with respect to its activities under the Agreement;

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

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

8.5   obtain and shall maintain all necessary licences, consents, and permissions necessary for Cubic, its contractors and agents to perform the obligations under the Agreement, including without limitation the Services;

8.6   ensure that Customer's network and systems comply with the relevant specifications provided by Cubic from time to time; and

8.7   be solely responsible for procuring and maintaining Customer's network connections and telecommunications links from its systems to Cubic's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet.

9.   CHARGES AND PAYMENT

9.1   Subject to the remainder of this clause 9:

9.1.1   the Fees payable for the Consultancy Services shall be calculated in accordance with the Proposal, or where provided following the Launch Date, in accordance with Cubic's then standard rate card; and

9.1.2   the Fees payable for the Operational Services shall be calculated for the Initial Term and each subsequent Renewal Period on the basis of the maximum number of Authorised Users agreed pursuant to clause 2. The charge per Authorised User as at the Acceptance Date is set out in the Proposal.

9.2   The Fees shall be paid to such bank account as Cubic may specify from time to time in writing within thirty (30) days of the date of an invoice, without set-off in respect of any of Cubic's liability.

9.3   If payment cannot be made within the thirty (30) day period set out at clause 9.2, Cubic may at its option either suspend the Services until payment is received, plus any interest charged by Cubic, or terminate the Services without further notice to Customer.

9.4   Cubic may change the charge per Authorised User upon thirty (30) days' notice to Customer, with changes to be effective for the next Renewal Period following the end of the written notice period or on a later date specified in the written notice. If Customer objects to a proposed change of charge per Authorised User, Customer has the right to terminate the Agreement by notice to Cubic at

support@cubic-interactive.com, such termination to take effect on the date of the proposed change or ten (10) Business Days following the date the notice of termination is sent, whichever is the later.

9.5 If Customer fails to pay any sum due and payable under the Agreement by the due date, statutory interest from time to time shall accrue on the unpaid amount from the due date to the date of actual payment (after as well as before judgment).

10. <u>PROPRIETARY RIGHTS</u>

Customer acknowledges and agrees that Cubic and/or its licensors own all Intellectual Property Rights in, or created as part of, the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant Customer any rights to, or in, 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.

11. <u>CONFIDENTIALITY</u>

11.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the 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;

11.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or

11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, 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 the 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 the Agreement.

11.4 Each Party agrees that before any of its subcontractors and/or agents may be given access to Confidential Information, each such subcontractor and/or agent shall agree to be bound by a confidentiality undertaking comparable to the terms of this Agreement. Notwithstanding the return of any Confidential Information, each Party and its subcontractors and/or agents will continue to hold in confidence all Confidential Information, which obligation shall survive any termination of this Agreement.

11.5 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (except those third parties sub-contracted by Cubic to perform services related to data maintenance and back-up).

11.6 Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitutes Cubic's Confidential Information.

11.7 Cubic acknowledges that the Customer Data is Customer's Confidential Information.

11.8 This clause 11 shall survive termination of the Agreement, however arising.

11.9   Neither Party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other Party (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.

12. <u>INDEMNITY</u>

12.1   Except in relation to any amounts due pursuant to clause 12.3, Customer shall defend, indemnify and hold Cubic, its officers, directors and employees harmless against allegations, claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Customer's or any Authorised User's use of the Services and/or Documentation, including Intellectual Property Rights claims.

12.2   Customer shall defend, indemnify and hold Cubic, its officers, directors and employees harmless against allegations, claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any claim or allegation that Cubic's use of the Customer Data infringes any Intellectual Property Right.

12.3   Cubic shall defend Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the date of the Agreement, copyright, trade mark, database right or right of confidentiality, and shall indemnify Customer for any amounts awarded against Customer in judgment or settlement of such claims, provided that:

12.3.1   Cubic is given prompt notice of any such claim;

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

12.3.3   Cubic is given sole authority to defend or settle the claim.

12.4   In the defence or settlement of any claim, Cubic may procure the right for 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 the Agreement on two (2) Business Days' notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer.

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

12.5.1   a modification of the Services or Documentation by anyone other than Cubic; or

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

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

12.6   The foregoing and clause 14.4.3 state Customer's sole and exclusive rights and remedies, and Cubic's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. <u>DISCLAIMERS</u>

13.1   Customer acknowledges that the Services are not endorsed by any professional or regulatory bodies, nor are they designed to fulfil criteria required by any professional or regulatory bodies. Customer is responsible for ensuring it meets any requirements of any professional or regulatory body which it may be subject to.

13.2   Cubic does not warrant that the website and any Software used to provide the Services to Customer will be compatible with Customer's computer and Customer is responsible for making all arrangements necessary for it to have access to the Services.

13.3   Cubic does not warrant that the Operational Services will be available continuously and accordingly Customer's access to the Operational Services may from time to time be interrupted or contain errors.

13.4   Customer assumes sole responsibility for results obtained from its use of the Services by it and any Authorised User, and for conclusions drawn from such use.

13.5   Customer is responsible for all loss or damage caused by a Virus, distributed denial-of-service attack, or other technologically harmful material that may infect its computer equipment, computer programs, data or other proprietary material due to its use, or the use of any Authorised User, of the Services and/or the Software.

13.6   Any warranties given by Cubic shall be subject to Customer using the Services and/or Software in compliance with this Agreement, and Cubic shall not be liable under this Agreement for, or required to remedy, any problem arising from any defect or error wholly caused by third party software used in connection with the Services and/or Software.

14. <u>LIMITATION OF LIABILITY</u>

14.1   This clause 14 sets out Cubic's entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Customer:

14.1.1   arising under or in connection with the Agreement;

14.1.2   in respect of any use made by Customer of the Services and Documentation or any part of them; and

14.1.3   in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

14.2   Except as expressly and specifically provided in the Agreement:

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

14.2.2   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 the Agreement; and

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

14.3   Nothing in the Agreement excludes Cubic's liability:

14.3.1   for death or personal injury caused by its negligence; or

14.3.2   for fraud or fraudulent misrepresentation.

14.4   Subject to clause 14.2 and clause 14.3:

14.4.1   Cubic 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 the Agreement;

14.4.2   to the extent any breach of this Agreement is caused by a Third Party Service, Cubic's liability to Customer shall be limited to a proportion of such amount as Cubic actually recovers from the provider of such Third Party Service, where the proportion reflects Customer as a percentage of the total number of Cubic customers impacted by the Third Party Service; and

14.4.3   Cubic's total aggregate liability in contract (including in respect of the indemnity at clause 12.3), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to five hundred thousand pounds sterling (£500,000).

15.   TERM AND TERMINATION

15.1   The Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Acceptance Date and shall continue for the Initial Term and, thereafter, the Agreement shall be automatically renewed for successive periods of twelve (12) calendar months (each a "Renewal Period"), unless:

15.1.1   either Party notifies the other party of termination, in writing, at least thirty (30) days before the end of any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Renewal Period; or

15.1.2   otherwise terminated in accordance with the provisions of the Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the " Term".

15.2   Cubic may terminate the Agreement where Customer fails to pay the Fees in accordance with clause 9.

15.3   Either Party may at any time, by notice to the other, terminate the Agreement as from the date of expiry of the notice if an Insolvency Event occurs in relation to the other.

15.4   If Customer would like to terminate the Agreement, Customer is required to e-mail Cubic at support@cubic-interactive.com stating that Customer wishes to terminate the Agreement. Cubic will cancel Customer's registration with effect from the end of the Initial Term or next Renewal Period as relevant.

15.5   On termination of the Agreement for any reason:

15.5.1   all licences granted under the Agreement shall immediately terminate;

15.5.2   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;

15.5.3   Cubic may destroy or otherwise dispose of any of the Customer Data in its possession unless Cubic receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to Customer of the then most recent back-up of the Customer Data. Cubic shall use reasonable commercial endeavours to deliver the back-up to Customer within 30 days of its receipt of such a written request, provided that 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). Customer shall pay all reasonable expenses incurred by Cubic in returning or disposing of Customer Data; and

15.5.4   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.

16. FORCE MAJEURE

Cubic shall not be liable to Customer for any delay or non-performance of Cubic's obligations under the Agreement arising from any cause or causes beyond Cubic's reasonable control

17. VARIATION

No variation of the 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 the 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 the Agreement, the rights and remedies provided under the 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 the 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   The Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

21.2   Each of the Parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

22. ASSIGNMENT

22.1   Customer shall not, without Cubic's prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

22.2   Cubic 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 the Agreement.

23. NO PARTNERSHIP OR AGENCY

Nothing in the 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. <u>THIRD PARTY RIGHTS</u>

The 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. <u>NOTICES</u>

25.1   Any notice required to be given under the 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 the 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 the 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. <u>GOVERNING LAW</u>

The 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. <u>JURISDICTION</u>

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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).

APPENDIX

SERVICE LEVELS

1. SUPPORT SERVICE LEVELS

Cubic shall use reasonable endeavours to provide the Support Services to the Customer in accordance with section 1 of the Appendix.

1.1 In consideration for the payment by the Customer of the Fees as set out in the Agreement, Cubic shall provide Support Services in respect of the Software only, including any maintenance releases and new versions of the Software.

1.2 The Customer shall pay all costs (at Cubic's then prevailing rates) and reasonable expenses incurred by the Customer for work carried out by Cubic in connection with any fault which is not covered by the Terms.

1.3 The Support Services shall comprise of a web-based support portal to register support tickets or a telephone help desk to provide first-line technical support to users of the Software. The web-based support portal is available 24 hours and the telephone help desk is available 9:00am to 5:30pm (UTC) Monday to Friday excluding public holidays or company closures as communicated to the Customer in advance.

1.4 It is not anticipated that any on-site support will be provided to the Customer. If on-site support is requested by the Customer in any month, Cubic may provide this at its option at the then applicable charging rates of Cubic. The Customer shall reimburse any travel or subsistence expenses incurred by Cubic where such expenses are incurred wholly and exclusively for the purpose of providing on-site support, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

1.5 Cubic shall only provide Support Services for the most current release of the Software and any updates to that release.

1.6 The Support Services must be reported by the Customer to Cubic using the following procedure:

1.6.1   Issues are reported via our web-based ticketing system.

1.6.2   Tickets reported with priority 1 or 2 will trigger actions from the date and time of register within the normal business hours as outlined in Appendix 1.3, or from 9am the following normal business day. The Customer must supply all relevant information to Cubic to enable it to provide the support for the problem being reported.

1.7 Cubic will use its reasonable endeavours, in coordination with the Customer, to assign the correct priority rating to any problem reported to Cubic by the Customer. Cubic will then use its reasonable endeavours to perform the activities detailed below;

Priority	Situation	Action	Timeframe
1	The Software cannot be used. Critical impact on Customer's production environment. Situation requires immediate resolution.	Cubic shall immediately undertake all activities necessary to arrive at a solution and will continue	First response to report within two hours. Effort to provide workaround within one day. Commercially reasonable

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		doing this, until an acceptable solution or workaround is available, or until it is clear that further investigation possibly including third parties, is required.	efforts to provide solution within three business days.
2	The Software is working, but under severe restrictions; a workaround is available, but situation requires short term solution.	The Company shall immediately undertake all required actions to analyse the problem and to provide a solution (or recommend one if the restricted operation is due to factors outside of the Company's control).	First response within one business day. Commercially reasonable efforts to provide solution within five business days.
3	The Software is operational under moderate restrictions.	The Company undertakes actions towards resolution as soon as practical.	Response, suggested course of resolution and expected time to completion of the solution will be communicated within 5 business days.

2. **HOSTING SERVICES**

The Software is hosted on a Microsoft Azure platform that offers 99.9% uptime and whilst Cubic intends that the Software should be available 24 hours a day, seven days a week, it is possible that on occasions the Software may be unavailable to permit maintenance or other development activity to take place.

If for any reason Cubic has to interrupt the Software for longer periods than Cubic would normally expect, Cubic will use reasonable endeavours to publish in advance details of such activity via Email.

The Azure database(s), hosting and data processing services are located in UK South (London) and UK West (Cardiff).

3. **BACKUPS**

The Rapport3 client database is backed up on a rolling 7-day cycle, with point-in-time retrieval. In addition to this, a weekly backup is also carried out and retained on a rolling 4-week basis. The Rapport3 system files, documents and images uploaded within Rapport3 are also backed up weekly.

Schedule 1: Software and Services

Services
As described in the Proposal

Schedule 2: Data Processing and Security

1. In addition to the information provided elsewhere in the Agreement, the Parties wish to document the following information in relation to the data processing activities:

The data processing performed by the Data Processor on behalf of the Data Controller relates to the provision of cloud hosted software products, as described in the Proposal, which may also include locally installed software components and mobile applications.

The data processing activity consists of providing facilities to enter, store (on third party infrastructure) and extract data which may include personal data.

The categories of personal data potentially involved are:

- User account data / full names / profiles
- Email / email history / archive
- Phone numbers
- Leave and absence data (potentially sensitive / 'special categories' of personal data)
- Expense sheets
- Timesheets and other pay related data
- Recruitment data (CV's, interviews, offers) (potentially sensitive / 'special categories' of personal data)
- Human resources data (remuneration, benefits, project rates, proof of eligibility, highly sensitive / 'special categories' of personal data such as ethnic origin, religious beliefs and trade union membership; performance reviews) (potentially sensitive / 'special categories' of personal data), photos of staff
- Contact information / customer relationship management (CRM) data (including sole traders)
- Personal data added via free-form text boxes (potentially sensitive / 'special categories' of personal data)

The data subjects are:
- clients and prospective clients (service recipients)
- any other individuals that the clients enter into the software in the course of their business

The duration of the data processing activities is in accordance with the Renewal Period (see clause 15.1).

2. Description of security measures

The Data Processor has implemented the following security measures:
- Encryption of data in transit
- Encryption of data at rest
- Network Firewalls
- Role-based security
- Privacy by design software architecture
- 'Need to know' security protocols

3. Appointed sub-processors

The Data Processor has appointed the following sub-processors:
- Microsoft