Creative Software Solutions (Europe) Limited General Terms and Conditions

TCES Connections™, TCES Community™, Pro-Cloud™, Pro-Cloud Bluelight™ and TCES Health Hire Express

This General Terms and Conditions was updated on 16 August 2019.

1. General Terms and Conditions

1.1   These General Terms and Conditions ("Terms and Conditions") apply to the use of Creative Software Solutions (Europe) Limited ("CSS") Online Products and Related Services. CSS reserves the right to change these Terms and Conditions from time to time. Any such changes shall be immediately effective between the Parties.

2. Definitions

2.1   For the purpose of the Agreement, the following terms shall have the following meaning.

"Agreement" means the agreement including its appendices (also including these Terms and Conditions) between the Customer and CSS regarding the delivery of online Software Products and Related Services.

"Availability-Level" means the availability level of our online products to the Customer between 0:00-23:59 GMT during weekdays Monday to Sunday, as expressly set forth under Section 8;

"Availability Interruption" means an interruption of the agreed Availability-Level of our online products;

"Confidential Information" means any information disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") in connection with the Agreement which is disclosed in writing, verbally or by inspection and is identified as "confidential" or "proprietary" by the Disclosing Party, or which the Recipient has reason to believe is treated as confidential or proprietary by the Disclosing Party;

"Customer" means the end-user, specified in the Agreement, that is licensed under the Agreement to use the Online products and Related Services;

"Customer Data" means the data or other information that is created by the Customer and hosted by CSS;

"Data Storage" means the service to store Customer Data which is uploaded or created in the Online Products;

"Maintenance" means correction of errors, general improvements and new functions (updates and upgrades) of the Online Products that CSS from time to time upon its sole discretion decides to include into the Online Products;

 "Related Services" means the professional services CSS offers to the Customer, like implementation, training, customisation, software development, hosting, and related activities;

"Online Products" means the web-based software developed by CSS, those being Pro-Cloud™, Pro-Cloud Bluelight™, TCES Connections™ and TCES Community™ and any updates/upgrades hereof under this Agreement. The Online Products includes Data Storage of Customer Data;

"Start Date" means the start date of Online Products specified in the Agreement;

"Support" means telephone, email and chat support provided to the Customer by CSS;

"User" means the person that the Customer has authorised to use Online Product and Related Services.

3 CSS'S Obligations

3.1   CSS shall from the agreed Start Date deliver Online Product to the Customer, and additionally agreed Related Services, in accordance with the Agreement.

3.2   CSS shall provide Maintenance of Online Product to the Customer during the term of the Agreement. The Maintenance will be handled as expressly set forth in Section 7 – Maintenance and Support.

3.3   CSS offers Support of Online Product to the Customer during the term of the Agreement. The included Support is stated in the Support Agreement (SLA). The Support will be handled as expressly set forth in this document https://www.csseurope.co.uk/documents/service-level-agreement/

3.4   CSS will only have direct technical access to the Customer Data in the event of;

1. a) it is required by law to obtain such information;
2. b) it needs to access the Customer Data in order to fulfil its obligations under the Agreement.

3.5   CSS is not obliged to deliver any product or service to the Customer outside the scope of the Agreement.

4. The Customer's Obligations

4.1   The Customer hereby undertakes to:

1. Pay all applicable fees to CSS when due and as stated in the Agreement and Section 6 – Terms of Payment;
2. The Customer shall provide all required information to CSS during implementation of the Online Product and Related Services to enable CSS to meet the terms and conditions of the Agreement;
3. The Customer is responsible for its own hardware and software and it is the Customers responsibility to ensure that the Customer holds and maintains the hardware and software necessary to utilize the Online Product and Related Services. The Customer is further responsible and shall be liable for the connection between the Customer's hardware and software and the Online Product and Related Services. CSS does not guarantee function or provide support for hardware or for any software outside the Online Product.
4. The Customer shall make sure that: (i) the Customer Data is free from viruses, Trojans, worms or other harmful software or code, (ii) the Customer Data will not in any way harm or negatively affect the Online Product and Related Services, and (iii) the Customer Data will not infringe any third party intellectual property rights;
5. The Customer information for login data, security methods and other information that CSS provides for access to the Online Product and Related Services, shall be handled as Confidential Information as expressly set forth in Section 16 – Confidentiality. The Customer shall immediately notify CSS in the event that any unauthorized user has gained knowledge about information in accordance with this Section.

4.2   The Customer is bound to make sure and is responsible and liable for that all Users use the Online Product and Related Services in accordance with and subject to the terms and conditions specified in the Agreement, adhere to The Computer Misuse act (1990) and that the Online Product and Related Services is not used for, or in, any illegal activities.

4.3   The Customer shall hold CSS harmless for any damage caused by the Customers breach of its undertakings under Sections 4.1 and 4.2.

4.4   The Customer shall appoint at least one (1) technical contact person, who shall maintain a level of familiarity with and

knowledge of the operation and use of the Online Product and Related Services. The Customer shall provide CSS with name and contact information to the technical contact person, and the Customer shall notify CSS in writing of any changes in the identity of or contact information for the technical contact person.

4.5 The Customer shall report any problems with the Online Product and Related Services to CSS without any delay. The service request shall be conducted through the channels according to Section 7 – Maintenance and Support.

4.6 The Customer shall, when notifying CSS about a problem, state and when necessary demonstrate how the problem appears.

4.7 An Availability Interruption is reported when registered in CSS's maintenance and support program.

5. Intellectual Property Rights

5.1 All intellectual property rights and other rights, including without limitation design rights, trademarks, copyright, trade secrets and know-how, relating to the Online Product and Related Services shall at all times be the property of CSS and/or its affiliates). Nothing contained in the Agreement shall constitute or be construed as a transfer of ownership of any of these intellectual property rights or to otherwise give the Customer any proprietary rights to the Online Product and Related Services or any of the intellectual property rights of CSS or its affiliates. The Customer will have no right, title or interest in the Online Product and Related Services except as expressly set forth in the Agreement.

5.2 The Customer shall not (nor shall it permit any third party to):

1. copy or manufacture the Online Product or Related Services or any portion thereof;
2. translate, examine, modify, adapt, enhance, extend, decompile, disassemble or otherwise reverse engineer or otherwise attempt to derive the source code of the Online Product or Related Services by any means whatsoever;
3. use the Online Product or Related Services to provide any hosting facility management or bureau service or otherwise use the Online Product or Related Services to process the data of any third party;
4. lend, rent, or resell the Online Product or Related Services to a third party;
5. transfer the rights of usage of the Agreement to any third party.

5.3 The Customer shall promptly notify CSS of any and all material breaches of the Agreement that may come to the Customer's attention to the extent that such breach affects the Online Product or Related Services or the intellectual property rights of CSS and/or its affiliates and the Customer shall assist CSS and/or its affiliates in all steps necessary to terminate any breached license if the breach is not curable or if it is not cured promptly after notice.

5.4 The Customer shall promptly notify CSS and/or its affiliates of any actual, threatened or suspected infringement of the trademarks or CSS's and/or its affiliates other intellectual property rights, as well as any claims or allegations that the Online Product or Related Services infringe the rights of any third party.

5.5 The Customer agrees to use reasonable efforts to protect CSS's intellectual property rights and to cooperate in CSS's efforts to protect its intellectual property rights.

6. Terms of Payment

Upon signature of the Agreement between the Customer and CSS:

1. CSS will invoice the Customer according to terms of the Agreement and in accordance with this Section;
2. The Customer shall pay the fees for the Online Product and Related Services according to terms of the Agreement;

3. For travel at the request of the Customer, CSS reserves the right to invoice the Customer for travel, hotel, travel time, allowance expenses and other related costs.

4. All fees are exclusive of all taxes, including sales, use or value added taxes where applicable.

5. The fees are stated and are fixed for the Initial Term of the Online Product according to what is stated in the Agreement or the online purchase order form.

6. CSS reserves the right to change the price list (fees) for the Online Product and Related Services at any time during the term of the Agreement. The new fees shall be effective upon renewal of the Term.

7. The Customer agrees to pay all fees as specified in the Agreement within thirty (30) days, if not otherwise specified in the Agreement, from the date of CSS's invoice.

8. The Customer fails to make any payment when due, then CSS has the right to obtain interest in accordance with the Bank of England Base Interest Rate, if not otherwise stated in the Agreement, on overdue payment, and in such an event withhold the whole delivery, or parts of the same.

6.7 If the Customer has not paid within agreed payment term as stated above, CSS reserves the right to terminate the Agreement by way of written notice in accordance with Section 17.2. If CSS terminates the Agreement as a result of this Section, the Customer has no right what so ever to any compensation from CSS.

6.8 All prices and other monetary amounts referred to herein are in the currency set forth in the Agreement, and all payments under the Agreement should be made in that currency.

7. Agreed Availability-level

7.1 CSS guarantees the Customer an Availability-Level to the Online Product of 99.9% during the term of the Agreement, if not otherwise specified in the Agreement.

7.2 The Customer is aware and accepts that Online Product may be unavailable due to shutdowns reasonable in time for necessary Maintenance.

8. Measuring

8.1 As defined in the CSS Online Product Service Level Agreement

9. Availability Interruption

9.1 CSS is not responsible for any Availability Interruptions or other insufficient fulfilment of the Online Product and/or Availability-Level if the problem have been caused by any of the circumstances listed below that are not directly assignable to CSS:

1. Any problems in the Customer's hardware or software;

2. Any circumstances outside of CSS's responsibility;

3. Any other circumstances that the Customer are responsible for in accordance with the Agreement;

4. Virus or other attack on the security;

5. Circumstances that are referred to as Force Majeure, or;

6. Any circumstance what so ever causing an Availability Interruption or the like while the Customer has been restricted access to the Online Product as set forth in Section 6.6 and 6.7.

10. Technical Data

10.1 The Customer agrees that CSS may collect and use technical data and related information, including but not limited to technical information about the Customer's and/or User's device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to the Customer and/or User related to Online Product and Related Services. CSS may use this information, as long as it is in a form that does not personally identify the Customer and/or User, to improve its products or to provide services or technologies to the same.

11. Customer Data

11.1 In the relationship between CSS and the Customer, the Customer owns all rights to the Customer Data.

11.2 In the event where CSS is monitoring the usage of the Online Product and Related Services, if nothing else is agreed upon, CSS will only use the Customer Data for the purpose of, and to the extent that it is necessary for the development of the Online Product and Related Services. CSS shall upon the Customer's request, let the Customer take part of the information that has been registered concerning the usage of the Online Product and Related Services in accordance with this Section, if this is agreed upon.

12. Personal Data

12.1 The Customer agrees that the handling of personal data is managed in accordance with applicable European laws. All personal data used in connection to, or within the scope of the Online Product and Related Services, is the Customer's responsibility. CSS agrees to manage the personal data in accordance with the Agreement and the Customer's written instructions. CSS is responsible to take the necessary technical and organisational measures that have been agreed upon between the Parties. If CSS uses a supplier that handles personal data, CSS shall, as a representative for the Customer, sign an agreement with the supplier in which the supplier undertakes to comply with Section 12.1.

13. Limited Warranty; Disclaimer

13.1 CSS warrants that the Online Product will function in accordance with the current online help documentation, available within the Online Product, during the term of the Agreement (the "Warranty Period"). The warranty covers if, during the Warranty Period, the Online Product does not perform substantially in accordance with the online help documentation or is not recorded properly on the media or files to be downloaded. This warranty is void if failure of the Online Product has resulted from accident, abuse, or misapplication, or from the Customer having modified the software, or used it for a purpose or in a context other than the purpose or context for which it was designed. Any replacement software will be warranted for the remainder of the original Warranty Period. There is no warranty after expiration of the Warranty Period.

13.2 EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTIONS 15.1 AND IN SECTION 8.1, THE ONLINE PRODUCT

AND THE DOCUMENTATION (ONLINE HELP) AND RELATED SERVICES ARE PROVIDED "AS IS". ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

13.3 The warranties in Sections 15.1 and 8.1 is for the benefit of the Customer only and may not be assigned or transferred to a third party.

14. No Consequential Damages; Limitation of Liability

14.1 IN NO EVENT SHALL CSS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION DAMAGES OR LOSSES FOR LOSS OF PROFITS, LOSS OF PRODUCTION OR EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF DATA OR INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF CSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2 CSS's total liability towards the Customer shall in the event where damages have not been caused by intent or gross negligence be limited to direct losses up to but not exceeding 15% of the total contract sum of the Agreement during the year the damage, or major part thereof, has occurred.

15. Term and Termination

15.1 Unless the Agreement is terminated before end of the Term in accordance with Sections 15.2 and 15.3 below, the Initial Term of the Agreement shall commence on the Start Date specified in the Agreement and shall continue thereafter for a term of twelve (12) months, if not otherwise specified in the Agreement ("Initial Term"). Following the expiration of the Initial Term, the Agreement shall be automatically renewed for consecutive terms each corresponding to the Initial Term ("Consecutive Terms"), unless either Party notifies the other Party in writing at least three (3) months prior to the expiration of the Initial Term or current Consecutive Term, as applicable, of its intention not to renew the Agreement.

15.2 Either Party may terminate the Agreement, effective immediately upon written notice to the other Party, if:

1. The other Party fails to perform any material obligation, duty or responsibility, or is in default with respect to any material term, warranty or condition, undertaken by such Party under the Agreement and such Party fails to cure such failure or default for a period of thirty (30) days following written notice thereof;

2. The other Party: (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment for the benefit of creditors; (iii) institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against it; (iv) is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seeks reorganization under any bankruptcy act, or consents to the filing of a petition seeking such reorganization; or (vi) has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of its property or providing for the liquidation of its property or business affairs;

3. The other Party has repeatedly and materially failed to fulfil its obligations under the Agreement, regardless if such Party has cured such failures in accordance with Paragraph 14.2 (a) above.

15.3 CSS may terminate the Agreement with immediate effect in the event that the Customer materially breaches its obligations during its usage of the Online Product and Related Services as set forth in the Agreement. This should be commenced in writing by CSS to the Customer without any delay after the circumstances constituting the breach have become known to CSS.

15.4 Upon termination or expiration of the Agreement: (a) all sums due to CSS but not yet paid shall become immediately due and payable; (b) all rights and licenses of the Customer will terminate; and (c) the Customer shall return to CSS all

copies or delete all installations of the Online Product and Related Services currently in its possession as well as all Confidential Information of CSS. Upon request by CSS, a duly authorised representative of the Customer shall certify in writing to CSS that all such materials have been returned to CSS or deleted.

15.5 Any termination or expiration of the Agreement (howsoever occasioned) shall not affect any accrued rights, remedies or liabilities of either Party.

15.6 Notwithstanding the termination or expiration of the Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such termination or expiration will survive, including without limitation Sections 4, 5, 13-15 and 18.

16. Confidentiality

16.1 Any information, in whatever form, disclosed to the Customer that relates to the Online Product and Related Services and that is not publicly known will fall under the definition of "Confidential Information.".

16.2 The Recipient shall keep confidential all Confidential Information of the Disclosing Party, and shall only utilize such Confidential Information in connection with the performance of the Agreement.

16.3 The obligation of confidentiality in Section 16.2 shall not apply to information: (i) which is in the public domain or comes into the public domain through no fault of the Recipient; (ii) which is already known to the Recipient prior to the time of disclosure by the Disclosing Party, or is developed by the Recipient without reference to the Confidential Information of the Disclosing Party; (iii) which is properly received by the Recipient from a third party who has the right to disclose such information without restriction and who owes no obligation of confidentiality to the Disclosing Party; or (iv) which is required by law or by regulation of any governmental or regulatory authority, or is required by law in response to a valid order of a court or other governmental body; provided that if the Recipient believes, or is notified that, it is required by law, regulation or in response to a valid order to disclose any Confidential Information, it will promptly inform the Disclosing Party and, if requested by the Disclosing Party, at the Disclosing Party's expense, take all reasonable steps to prevent and/or limit such disclosure.

16.4 All Confidential Information supplied by the Disclosing Party to the Recipient pursuant to the provisions of the Agreement, together with all copies thereof, will remain the property of the Disclosing Party.

16.5 The confidentiality obligations set forth in this Section 16 shall survive any termination of the Agreement.

17. Force Majeure

17.1 Neither Party shall have any liability under the Agreement to the extent that it is delayed, prevented or hindered in performing any of its obligations under the Agreement (other than the obligation to pay money) as a result of a Force Majeure Event.

17.2 Either Party may terminate the Agreement effective immediately upon written notice to the other if the period that the other Party is delayed, prevented or hindered from performing its obligations arising from a Force Majeure Event that has lasted more than three (3) months.

18. Governing Law and Disputes

18.1 The Agreement shall be governed by and construed in accordance with the laws of England. "The parties submit all

their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the Courts of England.