ONLINE SERVICES AGREEMENT – TRIAL USE

CAUTION: BY CLICKING ON THE "I AGREE" BUTTON YOU AGREE TO BE BOUND BY THESE TERMS OF USE. PLEASE READ THEM CAREFULLY BEFORE PROCEEEDING. IF YOU DO NOT AGREE TO THESE TERMS THEN YOU MUST NOT USE THE SERVICES.

This Agreement is entered into between StructureIt Ltd (company number 5541919) with its principal place of business at 41 Luke Street, London EC2A 4DP ("**StructureIt**", "**we**" or "**us**") and you, the user of the Services ("**you**" or "**your**").

StructureIt has developed a software application which it makes available to customers as an online service.

1. DEFINITIONS

1.1 The following terms shall have the meanings ascribed to them:

"Agreement"	means these terms and the Data Protocol annexed to it as an appendix.
"Application"	means the software and other material and/or data developed or used by StructureIt, which may include Third-Party open source software, used to provide the Services.
"Customer Data"	means the data provided by or for you as part of your use of the Services, which may include personal data.
"Data Protection Legislation"	means the GDPR, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all other applicable laws relating to the processing of personal data, privacy, the protection of personal data in electronic communications, and direct marketing, including any applicable law or regulation which supersedes, replaces or implements in the United Kingdom any of the foregoing.[2]
"Data Protocol"	means a protocol setting out the types of personal data which may be processed by StructureIt in the performance of the Services, the subject matter of the processing, and the duration of the processing, as set out in Appendix 1; and any further data protocol which is agreed by the parties.
"GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data (General Data Protection Regulation).
"Intellectual Property Rights"	means patents, trademarks, copyright, design rights, domain names and database rights (whether registered, unregistered, pending or applied for) and anything related or similar thereto.
"Permitted User"	means a single individual employed or otherwise engaged by you.
"Services"	means the services provided by StructureIt under this Agreement.
"Third-Party Data and Services"	means any data and/or services obtained by StructureIt from Third-Parties from time to time for use in providing the Services.

1.2 In this Agreement the terms **personal data**, **data controller**, **controller**, **data processor**, **processor**, **process**, **data subject**, **data protection impact assessment** and **personal data breach** shall each have the applicable meaning set out in the Data Protection Legislation.

1.3   Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.

2.   SERVICES TO BE PROVIDED

2.1   StructureIt hereby permits you to use the Services, solely for the purposes of evaluating its usefulness and functionality, for a period of not more than 30-60 days from the earlier of the date you agree these terms, or you begin to use the Services (the "**Trial Period**").

2.2   You agree to be bound by the terms of this Agreement and to ensure that the Permitted User does so as well. Any references to "you" shall be deemed to include the Permitted User. You agree that you will be liable and responsible for the Permitted User's acts and use of the Services and will ensure that the Permitted User abides by the terms of this Agreement.

2.3   During the Trial Period you agree that the Services may be withdrawn or suspended at any time and that the use of the Services by you, including any information obtained via it, shall not be used for anything other than testing purposes. Accordingly, the parties agree that StructureIt shall have no liability or responsibility during the Trial Period for the use of the Services or any data provided or accessed via it. Notwithstanding the foregoing if at any time StructureIt believes that the Services, the Application and/or any hardware is or is likely to be compromised or that it is being misused in any way then StructureIt may suspend and/or withdraw the Services without notice.

2.4   You may at any time prior to the end of the Trial Period terminate this Agreement by giving notice of termination in writing. If notice of termination is not given, then StructureIt will be entitled to assume that you wish to continue using the Services and may start charging for it.

2.5   Where StructureIt needs to configure the Services for your use then you must provide such information as StructureIt reasonably requires. You will be responsible for checking that the configuration meets your requirements. You will also be responsible for the timely supply of the Customer Data (if any) and for the configuration of your networks and computer systems so that the Services can be accessed and used by the Permitted User.

2.6   After installation or commissioning of the Services you agree to conduct such tests as are capable of demonstrating the proper access to and functioning of the Services.

3.   INTELLECTUAL PROPERTY RIGHTS

3.1   The Intellectual Property Rights to the Services and Application are and shall remain the property of StructureIt and any Third-Party licensors as the case may be. The Intellectual Property Rights in the Customer Data shall remain your property or that of your licensors as the case may be, but you hereby grant (or agrees to procure for) StructureIt a licence to use the same to the extent necessary for its performance of its obligations under this Agreement.

3.2   The Intellectual Property Rights in the Third-Party Data and Services shall remain vested in the suppliers thereof (or their licensors as the case may be) and you are permitted to use the same only in conjunction with the use of the Services.

3.3   If the Third-Party Data and Services are subject to any additional limitations or restrictions, then you agree to be bound by them as and when they are communicated to you. StructureIt assumes no liability or responsibility for the content, accuracy or completeness of the Third-Party Data and Services and it will be your responsibility to verify the suitability and use made of the Third-Party Data and Services.

3.4   You must notify StructureIt immediately if you become aware of any unauthorised access to or use of the Services or the Third-Party Data and Services by any person. You agree that StructureIt may check your use of the Services to ensure that it complies with this Agreement.

3.5   StructureIt may from time to time upgrade and/or enhance the Services, which may require the temporary cessation or interruption of the Services. StructureIt shall use all reasonable endeavours to avoid doing so during working hours in the United Kingdom. Where StructureIt is required to undertake emergency maintenance which is necessary to safeguard the Services and/or any systems on which it operates then it shall be entitled to do so at any time. StructureIt reserve the right to remove or restrict access to any functionality or part of the Services at any time and without giving notice thereof.

3.6   You have the sole responsibility for ensuring that the use of the Services by you is permitted by and complies with all regulatory requirements and applicable laws.

4.   DATA PROTECTION

4.1   To the extent that the Customer Data contains personal data regulated by the GDPR then this Clause 4 shall apply; failing which the parties shall comply with all other applicable data protection and privacy laws.

4.2   Where the Customer Data includes any personal data governed by the GDPR it is agreed that you will be the data controller and StructureIt will be the data processor.

4.3   You must ensure that you are entitled to make the Customer Data available to StructureIt so that StructureIt may lawfully process any personal data in accordance with the Agreement.

4.4   StructureIt will only process personal data as is described in and for the purposes set out in the Data Protocol. If StructureIt requires access to or identifies a need to process any other personal data in order to provide the Services, it will notify you, and such processing shall be subject to the Data Protocol (as updated or amended to include that additional processing).

4.5   In respect of personal data processed by StructureIt and/or which is accessed by StructureIt in the provision of the Services, StructureIt will:

    4.5.1   implement appropriate technical and organisational measures to ensure the security of the personal data when processed by it or when in its possession or control, including against unauthorised or unlawful processing and accidental loss, destruction or damage, and a level of security appropriate to the data security risks presented by processing such data;

    4.5.2   regularly review and update the technical and organisational measures implemented pursuant to Clause 4.5.1 in order to demonstrate to you that the processing of the personal data by StructureIt is performed in accordance with the Data Protection Legislation;

    4.5.3   not transfer personal data to any country outside the European Economic Area without your prior written consent, subject to compliance with Clause 4.7 and provided always that the transfer complies with the Data Protection Legislation;

    4.5.4   provide to you all information, including written details of its data processing activities, as is required by you to demonstrate StructureIt's compliance with the Data Protection Legislation; and

    4.5.5   ensure that access to the personal data is limited to those of StructureIt's employees and contract personnel who need access to the personal data to assist StructureIt in the performance of this Agreement and that each of StructureIt's employees and contract personnel are subject to confidentiality obligations in respect of the personal data, and StructureIt will ensure that such access is revoked once no longer required and shall procure that such employees and contract personnel comply with the Data Protection Legislation in so far as it applies to them.

4.6   StructureIt shall immediately and in any event within 24 hours notify you if it becomes aware of any breach or potential breach of this Clause 4, or if it otherwise has reason to consider that there has been a personal data breach and shall provide you with all such details of the breach as are required by you, and fully co-operate with you in respect of any breach or potential breach and all measures to be taken in response to it, including providing such assistance as you may require to allow it to inform a regulatory authority or data subject of a personal data breach, to conduct a data protection impact assessment or to consult with a regulatory authority regarding the processing of personal data. To the extent that this is not directly attributable to any failure of StructureIt then the reasonable costs of StructureIt in providing such information and assistance shall be met by you.

4.7   In respect of any transfer of personal data outside the EEA or to a third country in respect of which you have given express written consent pursuant to Clause 4.5.3, StructureIt will prior to such transfer:

    4.7.1   put in place appropriate safeguards to protect such personal data to your reasonable satisfaction, which may include executing with you the European Union's model contract for exporting personal data to a data processor or data controller located outside the EEA in the form required by you, as such model contract may be amended from time to time; and

4.7.2 put in place enforceable data subject rights and effective legal remedies for data subjects as required by the Data Protection Legislation.

4.8 Where you request the transfer of any personal data outside of the EEA then you agree to pay all of StructureIt's reasonable costs (including legal fees) in doing so, including in ensuring compliance with Data Protection Legislation.

4.9 StructureIt will immediately notify you if it receives any:

4.9.1 complaint, notice or communication which relates directly or indirectly to the processing of personal data under this Agreement or to either party's compliance with the Data Protection Legislation, and will co-operate fully with you in connection with any such complaint, notice or communications; and

4.9.2 any request or objection from a data subject relating to any personal data pursuant to the Data Protection Legislation (including requests for access to personal data; rectification or erasure of personal data; restrictions of processing personal data; and portability of personal data), and StructureIt will provide all such assistance as you (at your cost) may require to respond to requests made by data subjects in accordance with the Data Protection Legislation, and will not respond to a data subject in respect of any such request or objection without your prior written consent.

4.10 StructureIt will not disclose or provide the personal data to any Third-Party, including any sub-contractor or allow any sub-contractor to process the personal data except to the extent that such sub-contractor has been expressly approved by you in writing and then only for such purposes as you have expressly authorised, and provided that:

4.10.1 it enters into a written agreement with the sub-contractor which imposes on the sub-contractor obligations equivalent to those imposed on StructureIt under this Clause 4;

4.10.2 StructureIt notifies you of any intended changes to or replacements of a sub-contractor to which you may object;

4.10.3 StructureIt remains responsible for all acts and omissions of its sub-contractors in the performance of their duties; and

4.10.4 the sub-contractor's processing of the personal data immediately terminates on the termination or expiry of this Agreement.

4.11 [Structureit uses the services of various data centres and Third-Party server hosting and processing facilities, as listed in Appendix 1 (the "**Hosting Facilities**"). While these Hosting Facilities are not intended to have access to any personal data, they may be regarded as data processors under the GDPR. You hereby consent to the use by Structureit of the Hosting Facilities in processing any personal data under this Agreement.]

5. CONFIDENTIALITY

5.1 Each party will treat as confidential all information obtained from the other party under or in connection with this Agreement which is designated as confidential by the other party or which is by its nature clearly confidential. The receiving party will not disclose such confidential information to any person (except only to those employees, agents, sub-contractors, suppliers and other representatives who need to know it) or use such confidential information for purposes other than providing or using the Services without the other party's prior written consent.

5.2 This clause will not extend to information which:

5.2.1 was in the possession of the receiving party (with full right to disclose) before receiving it;

5.2.2 is already or becomes public knowledge (otherwise than as a result of a breach of this clause); or

5.2.3 is independently developed by the receiving party without access to or use of such information.

5.3 Each party will ensure that all persons to whom it discloses the confidential information of the other party are aware prior to disclosure of the confidential nature of the information and that they owe a

duty of confidence to the other party. These obligations of confidentiality will survive termination of this Agreement.

6. WARRANTIES

6.1   The parties agree that, given that the Services are to be used for evaluation purposes only, StructureIt shall not be required nor does it give any warranties as to the fitness for any particular purpose, the usefulness or the performance of the Services. The foregoing shall be applied to the maximum extent permitted by law. StructureIt does not warrant that the Services will meet your particular requirements even when communicated to it.

6.2   The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

7. LIMITATION OF LIABILITY

7.1   Neither party shall limit its liability for death or personal injury, for any claims arising from that party's fraud or that which may not be excluded or limited by law.

7.2   StructureIt excludes all liability to the greatest extent permitted by law in contract, tort (including negligence), breach of statutory duty or otherwise for indirect losses, claims, damages, expenses or proceedings; special, incidental or consequential loss or damage; loss of profits; loss of data; and wasted management time incurred or suffered by you either directly or indirectly in connection with this Agreement. Each of the foregoing shall be deemed to be separate exclusions.

7.3   In all other instances StructureIt's total liability in aggregate under this Agreement shall be limited to no more than £100.

8. THIRD-PARTY CLAIMS

8.1   StructureIt will indemnify you against your reasonable and direct costs, claims, demands, expenses and liabilities arising out of or in connection with any substantiated or proven claim that the normal use of the Services (but not including in respect of the Customer Data, however obtained) infringes the Intellectual Property Rights of a Third-Party in any country which is a signatory to the Berne Convention on Copyright provided that:

8.1.1   you do not prejudice StructureIt's defence of that claim;

8.1.2   the infringement is not caused by or contributed to by your acts other than through its use of the Services in accordance with this Agreement;

8.1.3   StructureIt is promptly notified in writing of the details of the claim;

8.1.4   you give StructureIt all reasonable assistance it requires; and

8.1.5   StructureIt shall have the sole conduct and control of any settlement or compromise.

8.2   If your normal use or possession of the Services is held by a court of competent jurisdiction to constitute an infringement of a Third-Party's Intellectual Property Rights then StructureIt may, at its own expense:

8.2.1   procure for itself and/or you the right to continue using the Services;

8.2.2   modify or replace the Services and/or Application so as to avoid the infringement; or

8.2.3   if Clauses 8.2.1 or 8.2.2 above cannot be accomplished on reasonable terms, terminate this Agreement with immediate effect.

8.3   The foregoing states the entire liability of StructureIt with respect to infringement or alleged infringement of any Third-Party rights of any kind whatsoever.

9. TERMINATION

9.1 This Agreement may be terminated by StructureIt at any time by giving 7 days' notice thereof; otherwise this Agreement shall terminate at the end of the Trial Period.

9.2 Either party may terminate this Agreement immediately on giving notice in writing to the other party if the other party:

9.2.1 commits any material breach of any term of this Agreement and, in the case of a breach capable of being remedied, shall have failed within 7 days after the receipt of a request in writing from the first party to do so, to remedy that breach,

9.2.2 shall convene any meeting of creditors or pass a resolution for winding up or suffer a petition for winding up;

9.2.3 shall have an administrative receiver or receiver appointed over the whole or part of its assets or suffer the appointment of an administrator or liquidator;

9.2.4 being an individual commits any act of bankruptcy or compounds with his creditors or comes to any arrangements with any creditors; or

9.2.5 if the Third-Party Data and Services are no longer available whether on reasonable commercial terms or otherwise.

9.3 StructureIt may immediately terminate the Agreement if you permanently discontinue the use of the Services.

9.4 Termination of this Agreement howsoever caused shall not affect the rights of either party under this Agreement which may have accrued up to the date of termination.

10. ANCILLARY PROVISIONS

10.1 **Force majeure**: Neither party shall be liable for any delay in performance or failure to perform its obligations under this Agreement due to any cause outside its reasonable control.

10.2 **Assignment**: You may not assign this Agreement or any benefits or interests arising under it without the prior written consent of StructureIt. Should you purport to assign this Agreement in contravention of this clause then StructureIt will have the right to terminate this Agreement immediately.

10.3 **Severability**: If any of the provisions or part of a provision of this Agreement is judged to be illegal or unenforceable, the remainder will continue in full force and effect unless the substantive purpose of this Agreement would be frustrated by this, in which case either party may terminate this Agreement forthwith on giving written notice to the other. Where any provision of this Agreement is deemed unenforceable under any applicable local laws, then the offending part shall be deemed excised from this Agreement and replaced by equivalent provisions with the same effect to the fullest extent possible and permitted by such local laws.

10.4 **Waiver**: No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

10.5 **Third-Parties**: Except where expressly provided to the contrary, this Agreement is not intended to be for the benefit of, and shall not be enforceable by any person who is not specifically named at the date of this Agreement as a party to it or any person who claims rights under the Contracts (Rights of Third-Parties) Act 1999 or otherwise, and neither party can declare itself a trustee for the benefit of a Third-Party.

10.6 **Fraudulent misrepresentation**: Nothing in this Agreement shall seek to exclude any liability for fraudulent misrepresentation.

10.7 **Governing law and disputes**: This Agreement shall be subject to English law and you agree to submit to the exclusive jurisdiction of the English courts.

APPENDIX 1
DATA PROTOCOL

1.   **Purpose**

StructureIt shall only process any personal data to the extent necessary to:

(a)   host and make available the Services to you, and

(b)   provide incidental support to you in its access to and use of the Services.

2.   **Types of personal data to be processed by StructureIt**

The types of personal data which may be held may include:

(a)   First Name, Last Name, E-mail address and Organisation the individual works for.

3.   **Duration of processing**

StructureIt shall only process personal data for the purposes described above during the term of the Agreement or as otherwise instructed by you. Following termination or expiry of the Agreement StructureIt shall comply with any agreed termination provisions; failing which after a reasonable period of time and in the absence of any other instructions given under the Agreement it shall without any liability to you for doing so permanently erase the Personal Data.

4.   **Hosting Facilities**

The following Hosting Facilities are used by StructureIt (with links to their terms of use):

AWS T's and C's - https://aws.amazon.com/service-terms/

AWS Compliance - https://aws.amazon.com/compliance/programs

AZURE T's and C's - https://azure.microsoft.com/en-us/support/legal/

AZURE Compliance - https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx