

# Event Store Cloud Services Subscription Agreement

---

Version Date: November 25, 2020

---

## READING AND INTERPRETING THESE TERMS

These Terms and Conditions (these Terms) have been drafted to be clear and easy to read. Throughout these Terms, certain capitalised words and phrases have defined meanings. A list of these defined terms and their meanings, and a guide to interpreting the Terms, can be found at the end of the Terms in Section 15.

## THE PARTIES TO THIS SUBSCRIPTION AGREEMENT

We are Event Store Limited, a limited company registered in England and Wales. Our registered address is 3 Corsham Science Park, Park Lane, Corsham, England, SN13 9FU, and Our company registration number is 11389094 (Event Store/We/Us/Our).

You, the person or company identified on the relevant Order Form (You/Your), by requesting to use the Event Store Platform and paying the Service Fees, are entering into an agreement with Us (this Subscription Agreement), which will consist of Your Order Form and these Terms.

## WHAT THIS AGREEMENT DOES

These Terms set out Our obligations to You, and Your obligations to Us, under this Subscription Agreement.

Failure to comply with any of these Terms may lead to Your access to the Event Store Platform being suspended or terminated. You should download and keep a copy of these Terms for Your reference. A downloadable copy is available at <https://www.eventstore.com/cloud-services-subscription-agreement/pdf>.

---

## 1. ACCEPTANCE OF AND CHANGES TO THESE TERMS

1.1. The legally binding Subscription Agreement consisting of these Terms and the Order Form will be created between Event Store and You on the earlier of the date on which:

1.1.1. You accept an Order Form;

1.1.2. You make any payment of the Service Fees; or

1.1.3. You use the Event Store Platform either for Your own internal purposes, or in conjunction with any product or service developed or made available by You, or any person authorised by You, to any third party,

being the **Commencement Date**.

1.2. Event Store may change these Terms at any time to comply with any applicable laws or regulations, or to take account of any changes to the Event Store Platform. Event Store will give You Notice by email of the changes. Changes made in order to comply with any applicable laws or regulations will have immediate effect. Changes made as a result of any change to the Event Store Platform will take effect no earlier than 30 days after the date that Event Store notifies You of such changes. The Changes will apply only after this 30-day period, and will not have any retroactive effect. If You do not accept these Terms when they are varied in accordance with this Section 2, then You may terminate this Subscription Agreement by giving Event Store not less than 30 days' Notice.

## 2. PROVISION OF THE PLATFORM SERVICES

2.1. Event Store will provide the Event Store Platform to You through Your selected Cloud Provider, in accordance with the Service Levels, during the Subscription Term.

2.2. Your access to the Event Store Platform through the Cloud Provider Platform is subject to Your compliance with these Terms and the Cloud Provider's terms and conditions.

2.3. Event Store reserves the right to modify the Event Store Platform, its network, system configurations or routing configuration, provided that this has no material adverse effect on Event Store's compliance with its obligations under this Subscription Agreement and its provision of the Event Store Platform in accordance with the Service Levels.

## 3. YOUR OBLIGATIONS

3.1. You shall:

3.1.1. provide Event Store with:

- (a) all necessary co-operation in relation to this Subscription Agreement; and
- (b) all necessary access to such information as may be required by Event Store,

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

3.1.2. without affecting Your other obligations under this Subscription Agreement, comply with all applicable laws and regulations with respect to Your activities under this Subscription Agreement;

3.1.3. carry out all of Your other responsibilities set out in this Subscription Agreement in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Event Store may adjust any agreed timetable or delivery schedule as reasonably necessary;

3.1.4. ensure that Users use the Event Store Platform and the Documentation in accordance with the terms and conditions of this Subscription Agreement and shall be responsible for any User's breach of this Subscription Agreement;

3.1.5. ensure that Your network and systems comply with any relevant specifications provided by Event Store from time to time; and

3.1.6. be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing Your network connections and telecommunications links from its systems to the Cloud Provider's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

3.2. Event Store will not be liable for any failure by Us to perform Our obligations under this Subscription Agreement, to the extent such failure is a result of Your failure to comply with Section 1

## 4. RIGHTS OF USE

4.1. Subject to Your payment of the Service Fees and compliance by You with these Terms, Event Store hereby grants to You a non-exclusive, non-transferable, personal right to:

4.1.1. use the Event Store Platform during Service Hours for Your normal business activities;

- 4.1.2. integrate the Event Store Platform into Your products and services to allow You to offer services to Your customers incorporating the Event Store Platform during Service Hours;
  - 4.1.3. use and make calls to the Event Store API during Service Hours via any Application to the extent necessary to interoperate with the Event Store Platform; and
  - 4.1.4. copy and use the Documentation as strictly necessary to allow You and Your Users to enjoy the rights granted to the Event Store Platform under this Subscription Agreement.
- 4.2. You acknowledge that access to the Event Store Platform may take up to two Business Days from the Commencement Date to initially set up, and that use of the Event Store Platform is at all times subject to the Your compliance with these Terms and the requirements identified in this Subscription Agreement (including all minimum system requirements).
- 4.3. You acknowledge that the Event Store Platform does not include any services, systems or equipment required to access the internet (and that You are solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Event Store Platform).
- 4.4. You must not, and must procure that Your Users do not, during Your use of the Event Store Platform, access, store, distribute or transmit any Viruses.
- 4.5. You must not, and must procure that Your Users do not, during Your use of the Event Store Platform, undertake any activity, or any transmit any material, that:
- 4.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 4.5.2. facilitates illegal activity;
  - 4.5.3. depicts sexually explicit images;
  - 4.5.4. promotes unlawful violence;
  - 4.5.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 4.5.6. in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and Event Store reserves the right, without liability or prejudice to its other rights to You, to disable Your and/or Your Users' access to any material that breaches the provisions of this Section 4.5
- 4.6. You must not, and must procure that Your Users do not,;
- 4.6.1. use or permit the use of the Event Store Platform for any reason other than in accordance with these Terms and any Documentation;
  - 4.6.2. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under these Terms, attempt or allow any other person to attempt to:
    - (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute the Event Store Platform or any part of it in any form or media;
    - (b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part of the Event Store Platform;
  - 4.6.3. access or allow any other person to access any part of the Event Store Platform to build a product or service which competes with those developed by Event Store;
  - 4.6.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, permit access to, or otherwise make the Event Store Platform available to any third party, other than to Users in accordance with this Section 4.
- 4.7. You shall not misrepresent or mask Your identity or the identity of any Application when using the Event Store Platform.
- 4.8. You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Event Store Platform and, in the event of any such unauthorised access or use, promptly notify Event Store.

4.9. The rights granted under this Section 4 are granted to You only, and not to any group company, subsidiary or holding company, or any other third party.

## 5. FEES & PAYMENT

- 5.1. You shall pay the Service Fees in respect of the Platform Services in accordance with the Order Form and this Section 5.
- 5.2. Event Store will invoice You by email (**Invoice**) for the Service Fees on or after the last calendar day of each month of the Subscription Term. Any Service Credits will be applied in accordance with the Event Store SLA.
- 5.3. All Invoices shall be paid within 30 days of the Invoice date, to the Event Store bank account specified on the Invoice.
- 5.4. If You fail to pay any payment when due under this Subscription Agreement (**Non-Payment**), without prejudice to any other rights and remedies of Event Store, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 6% over the current base lending rate of HSBC Bank PLC, commencing on the due date and continuing until fully paid, whether before or after judgment. In the event of Non-Payment, all overdue payments and any interest due under this Section 4 shall, immediately after the relevant due date and be directly recoverable by Event Store.
- 5.5. All amounts and fees stated or referred to in this Subscription Agreement:
- 5.5.1. shall, unless otherwise agreed by Event Store, be invoiced in the currency specified on the Order Form;
  - 5.5.2. are, subject to Section 5.2, non-cancellable and non-refundable;
  - 5.5.3. are exclusive of value added tax or any similar sales tax, which shall be added to Invoices at the applicable rate.
- 5.6. Event Store shall be entitled to review and increase (by giving You at least 30 days' Notice) the Service Fees not more than once in any 12-month period during the Subscription Term.

## 6. CUSTOMER DATA, USER DATA & DATA PROTECTION

- 6.1. In this Section 6 the terms **controller**, **processor**, **data subject**, **processing** (and similar expressions) and **personal data breach** shall have the meanings given to them in the Data Protection Laws.
- 6.2. Event Store will process Your Personal Data, and the Personal Data of Your Personnel in accordance with our privacy policy, available at <https://www.eventstore.com/privacy>.
- 6.3. You or Your Users (as the case may be, in accordance with any agreements between You and Your Users) shall own all right, title and interest in and to all of the Customer Data.
- 6.4. Each party warrants that it shall comply with the Data Protection Laws in the course of performing its obligations under this Subscription Agreement. Additionally, You undertake that You shall:
- 6.4.1. implement appropriate technical and organisational measures to protect User Personal Data which is in Event Store's possession. Our current technical and organisational measures are available on request;
  - 6.4.2. make a complete and accurate disclosure to Users of the privacy policies and practices applicable to Your use of the Event Store Platform including the User Personal Data that is collected from Users (including via any Application) and how You use, process and share such User Personal Data with Event Store.
- 6.5. You agree not to transfer any User Personal Data directly to Event Store (other than through the Event Store Platform) without our written consent.
- 6.6. You agree that:
- 6.6.1. when Event Store processes any User Personal Data on Your behalf when performing its obligations under this Subscription Agreement, You are the controller and Event Store is the processor for the purposes of the Data Protection Laws;
  - 6.6.2. Event Store will use our affiliates, the Cloud Provider and other third parties to process Personal Data on Your behalf (**Sub-processors**) in providing the Event Store Platform to You under this Subscription Agreement;
  - 6.6.3. you have reviewed the Event Store technical and organisational measures set out in Section 4.1, and confirm that these are sufficient for the processing of the Personal Data you or your Users) will process using the Event Store

Platform; and

6.6.4. such User Personal Data may be transferred or stored outside the EEA or the country where You are located in order to provide the Event Store Platform and Event Store's other obligations under this Subscription Agreement.

6.7. Without limiting Your obligations under Section 4, You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the User Personal Data to Event Store for the duration and purposes of this Subscription Agreement so that Event Store may lawfully use, process and transfer the User Personal Data in accordance with this Subscription Agreement on Your behalf.

6.8. Without prejudice to the generality of Section 4, Event Store undertakes to You that, to the extent it processes any User Personal Data under this Subscription Agreement, it shall:

6.8.1. process any User Personal Data only in accordance with Your written instructions and to the extent, and in such a manner, as is reasonably necessary to supply the Platform Services in accordance with this Subscription Agreement or as is required by any applicable law (in which case Event Store shall, to the extent permitted by such applicable law, inform You of such legal requirement before undertaking such processing). Where Event Store is relying on applicable laws as the basis for processing User Personal Data, Event Store shall promptly notify You of this before performing the processing required by the applicable laws unless those applicable laws prohibit Us from so notifying You;

6.8.2. immediately inform You if, in its opinion, an instruction infringes any Data Protection Laws;

6.8.3. take commercially reasonable steps to ensure the reliability of those of its Personnel who may have access to any User Personal Data;

6.8.4. ensure that those of its Personnel who may have access to any User Personal Data are bound by obligations of confidentiality by virtue of a written agreement between Event Store and such persons;

6.8.5. taking into account the taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of the data subjects, in relation to the processing of User Personal Data under this Subscription Agreement, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR (and in assessing the appropriate level of security, Event Store shall take into account any risks that are presented by the processing, in particular, from a personal data breach);

6.8.6. not (and shall ensure that its Personnel do not) publish, disclose or divulge such User Personal Data to any third party, nor allow any third party (except those third parties subcontracted by Event Store to provide infrastructure and services which are essential to the provision of the Platform Services) to process such User Personal Data on Event Store's behalf without Your prior written consent;

6.8.7. where User Personal Data is provided by You from within the UK or EEA, Event Store will ensure that:

- (a) You, Event Store and/or any Sub-processor (as appropriate) have provided appropriate safeguards in relation to the transfer;
- (b) the data subjects have enforceable rights and effective legal remedies in relation to the processing of User Personal Data relating to them; and
- (c) Event Store or the Sub-processor (as appropriate) complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any User Personal Data that are transferred (including but not limited to the EU standard contractual clauses);

6.8.8. where Event Store engages any Sub-processor to process User Personal Data, enter into a written agreement with that Sub-processor incorporating terms which are substantially similar to those set out in this Section 6 and which Event Store confirms will reflect and continue to reflect the requirements of the Data Protection Laws. Event Store will remain fully liable to You for the acts and omissions of any Sub-processor;

6.8.9. taking into account the nature of the processing, assist You by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Your obligation to respond to requests for exercising the data subject's rights under the Data Protection Laws;

6.8.10. promptly notify You if it receives a request from a data subject under the Data Protection Laws in respect of any User Personal Data processed by Event Store under this Subscription Agreement and give to You (at Your reasonable

expense) Our full co-operation and assistance in relation to any request made by a data subject;

6.8.11. notify You without undue delay after becoming aware of any personal data breach affecting the User Personal Data processed by Event Store under this Subscription Agreement and provide You with such assistance as You may reasonably request in relation to the notification of such breaches to any supervisory authority and the communication of such breaches to any data subjects (as appropriate) pursuant to Articles 33 and 34 of the GDPR respectively;

6.8.12. provide You with such assistance as You may reasonably request (at Your reasonable expense) with any data protection (or privacy) impact assessments and prior consultation with any supervisory authority or other competent authorities which You consider necessary pursuant to Articles 35 and 36 of the GDPR respectively. Event Store's assistance shall, in each case, be limited to the processing of User Personal Data under this Subscription Agreement; and

6.8.13. promptly and in any event within sixty (60) days of the expiry or termination of this Subscription Agreement, at Your option either delete or return (in such format and on such media or by such means as the parties shall agree in writing) all copies of the User Personal Data processed by Event Store on Your behalf under this Subscription Agreement (provided that Event Store may retain a copy of the User Personal Data processed by it under this Subscription Agreement to the extent required by any applicable law to which Event Store is subject and only for such period as shall be required by such applicable law. Where applicable, Event Store shall notify You of such requirement and shall ensure that such User Personal Data are kept confidential and not processed for any other purpose). In the event that after sixty (60) days of the expiry or termination of this Subscription Agreement, You have not requested that Event Store return any User Personal Data held by Event Store, all User Personal Data held by Events Store pursuant to this Subscription Agreement will be destroyed; and

6.8.14. a maintain complete and accurate records and information to demonstrate its compliance with this Section 6 and immediately inform the Customer if, in the opinion of Event Store, an instruction infringes the Data Protection Legislation.

6.9. If at any time the European Commission or any supervisory authority adopt any controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme, either party may request that this Subscription Agreement shall be reviewed with a view to adopting the same (in whole or in part) in substitution for the provisions of Sections 4 to 6.8 (inclusive).

6.10. In the event that Event Store requests Your consent pursuant to Section 8.7 and such consent is not given by You, You acknowledge that Event Store shall not be responsible for any latency issues associated with the Event Store Service Platform being hosted and the Customer Data being stored on servers located within the UK or EEA.

## **7. SECURITY AND CONFIDENTIALITY OF CUSTOMER DATA**

7.1. Event Store shall maintain the confidentiality of Customer Data, and shall not without the prior written consent of the Customer, or in accordance with these Terms, disclose or copy Customer Data other than as necessary for the performance of its obligations under the Agreement.

7.2. You acknowledge that Event Store will provide the Event Store Platform through the Cloud Provider Platform, and agree to Event Store sub-contracting any of its obligations to other sub-contractors. You further agree to Event Store disclosing the Customer Data to the Cloud Provider or any other sub-contractor, solely and to the extent necessary to permit Event Store to meet its obligations under this Subscription Agreement. Event Store will enter into written confidentiality agreements with the Cloud Provider and any other sub-contractors on terms substantially similar to this Section 7. Event Store will remain liable for all acts and omissions of the Cloud Provider and other sub-contractor in respect of its obligations under this Section 7.

7.3. Event Store shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to the Customer Data held on the Event Store Platform.

7.4. Event Store shall take reasonable steps to ensure that the Event Store Platform is designed, maintained and upgraded at all times so as to minimise the risk of attack by Viruses.

7.5. You shall promptly inform Event Store if You suspect or uncover any breach of security in relation to the Event Store Platform and shall use all commercially reasonable endeavours to promptly remedy such breach.

## **8. PROPRIETARY RIGHTS**

- 8.1. You acknowledge and agree that Event Store and/or its licensors own all Intellectual Property Rights in the Event Store Platform and the Documentation. Except as expressly stated in these Terms, this Subscription Agreement does not grant You any right, title or interest in or to any Intellectual Property Rights in respect of the Event Store Platform or any Documentation.
- 8.2. Event Store confirms that it has all the rights in relation to the Event Store API and/or Event Store Service Platform that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Subscription Agreement.
- 8.3. Customer Data shall at all times remain the property of You, Your licensors, or Your Users (as the case may be). You hereby grant a worldwide, royalty-free, non-transferable, non-exclusive licence for Event Store, the Cloud Provider (and each of its other sub-contractors) to use, copy and otherwise utilise the Customer Data to the extent necessary to perform or provide the Event Store Platform or to exercise or perform Event Store's rights, remedies and obligations under this Subscription Agreement.
- 8.4. You represent and warrant to Event Store that:
- 8.4.1. You have all rights necessary in the Customer Data necessary to grant the licence to Event Store under Section 3;
  - 8.4.2. no Customer Data violates this Subscription Agreement, any applicable law or any third party's intellectual property or other right.
- 8.5. If You provide any feedback to Event Store (including suggestions, comments, improvements or ideas), You assign all right, title and interest in and to such feedback to Event Store and acknowledge that Event Store will be entitled to use, implement and exploit any such feedback for any purposes whatsoever and without any obligation of confidentiality, attribution, accounting or compensation.

## 9. INDEMNITIES

- 9.1. You agree to indemnify Event Store, Our affiliates and licensors, and each of Our and their respective Personnel against any third party claims, damages, losses, liabilities, costs, and expenses (including any reasonable legal expenses) arising out of or in connection with:
- 9.1.1. Your, or Your End Users', use of the Event Store Platform
  - 9.1.2. any breach by You, Your Personnel or Your End Users of Section 6; or
  - 9.1.3. any breach by You of Section of 8.4.
- 9.2. Event Store agrees to indemnify You against any third party claims, damages, losses, liabilities, costs, and expenses (including any reasonable legal expenses) arising out of any allegation that Your use of the Event Store Platform infringes any Intellectual Property Right.
- 9.3. The indemnities given in Sections 1 and 9.2 shall not apply unless the party seeking to rely on the indemnity (**Indemnified Party**):
- 9.3.1. promptly, and in any event within 21 days upon becoming aware of any actual or threatened claim giving rise to the right to rely on such indemnity, notifies the other party (**Indemnifying Party**) in writing of the claim;
  - 9.3.2. gives no comment or admission, and takes no action which may adversely affect, the Indemnifying Party's ability to defend or settle any indemnified claim;
  - 9.3.3. provides all reasonable assistance to the Indemnifying Party, subject to the Indemnifying Party paying the Indemnified Party's reasonable costs; and
  - 9.3.4. gives the Indemnifying Party sole right and authority to defend or settle any claim in any way the Indemnifying Party deems appropriate.

## 10. MODIFICATION AND DEPRECATION OF SERVICES

- 10.1. You acknowledge and agree that the form and nature of the Event Store Platform may change from time to time without prior notice to You, subject to the terms in Sections 2 and 10.2. Changes to the form and nature of the Event Store Platform will be effective with respect to all versions of the Event Store Platform (including previous versions of the Event Store

Platform); examples of changes to the form and nature of the Event Store Platform include without limitation changes to fee and payment policies, security patches, added functionality, and other enhancements.

10.2. If Event Store in its discretion chooses to cease providing the current version of any Subscribed Module whether through discontinuation of the Subscribed Module or by upgrading the Subscribed Module to a newer version, the current version of the Subscribed Module will be deprecated and become the **Deprecated Version** of the Subscribed Module. Event Store will issue an announcement if the current version of the Subscribed Module will be deprecated. For a period of three (3) years after an announcement (the **Deprecation Period**), Event Store may continue to operate the Deprecated Version of the Subscribed Module and to respond to problems with the Deprecated Version of the Subscribed Module deemed by Event Store in its discretion to be critical, if it is commercially viable to do so, but shall be under no obligation in this regard. During the Deprecation Period, no new features will be added to the Deprecated Version of the Subscribed Module.

## 11. TERM & TERMINATION

11.1. This Subscription Agreement will, unless otherwise terminated as provided in this Section 11, commence on the Commencement Date and continue for the Subscription Term, at the end of which it shall expire automatically.

11.2. Without affecting any other right or remedy available to it, Event Store may terminate this Subscription Agreement with immediate effect if You fail to pay any amount due under this Subscription Agreement on the due date for payment and remain in default not less than sixty (60) days after being notified in writing to make such payment.

11.3. Event Store may suspend or terminate Your access to the Event Store Platform under this Subscription Agreement immediately and without notice if:

11.3.1. You fail to make any payment by the due date;

11.3.2. Your use of the Event Store Platform materially breaches any Maximum Use Level;

11.3.3. Your breach any of the Cloud Provider's terms and conditions;

11.3.4. in the reasonable opinion of Event Store, You or Your Users materially breach any term of this Subscription Agreement;

11.3.5. Event Store reasonably determines that Your use of the Event Store Platform poses a risk to the Event Store Platform or the Cloud Provider;

11.3.6. we reasonably believe that Your use of, or that any Customer Data You or any User process using, the Event Store Platform may be unlawful; or

11.3.7. You cease to operate in the ordinary course of Your business, make an assignment for the benefit of creditors or similar disposition of Your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding in any jurisdiction.

11.4. If Your access to the Event Store Platform is suspended, You remain responsible for all fees and charges incurred during such suspension and You will not be entitled to any credit or refund. We will use commercially reasonable efforts to restore Your access to the Event Store Platform promptly following resolution of the cause of Your suspension.

11.5. Either party may terminate this Subscription Agreement by giving 30 days' Notice to the other party.

11.6. On termination or expiry of this Subscription Agreement:

11.6.1. Your rights to use the Event Store Platform shall immediately terminate;

11.6.2. each party shall return and make no further use of any equipment, property or other items (and all copies of them) belonging to the other party;

11.6.3. 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; and

11.6.4. the following Sections of these Terms shall survive the expiry or termination of this Subscription Agreement; Sections 8 (Proprietary Rights), 12 (Limitation of Liability),<sup>3</sup> (Waiver), 14.4 (Severance), 14.5 (Third Party Rights), 14.6 (Governing Law), 14.7 (Jurisdiction) and 15 (Definitions and Interpretation),



## 12. LIMITATION OF LIABILITY

12.1. This Section 12 sets out the entire financial liability of Event Store (including any liability for the acts or omissions of its Personnel) to You:

12.1.1. arising under or in connection with this Subscription Agreement, including the performance and/or availability of the Event Store Platform in accordance with the Service Levels or their non-performance and non-availability;

12.1.2. in respect of any use made by You or Your Users of the Event Store Platform or any part of it; and

12.1.3. in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Subscription Agreement.

12.2. Except as expressly and specifically provided in this Subscription Agreement:

12.2.1. You assume sole responsibility for results obtained from the use of the Event Store Platform by You, and for conclusions drawn from such use. Event Store shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Event Store by You in connection with the Event Store Platform, or any actions taken by Event Store at Your direction; and

12.2.2. 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 this Subscription Agreement.

12.3. Nothing in this Subscription Agreement excludes Event Store's liability for:

12.3.1. for death or personal injury caused by Event Store's negligence; or

12.3.2. for fraud or fraudulent misrepresentation.

12.4. Event Store's liability to You under the indemnity in Section 2 will be capped at total maximum aggregate liability of £1,000,000.

12.5. Subject to Sections 1 to 12.3 (inclusive):

12.5.1. Event Store shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect, consequential, exemplary or punitive loss, costs, damages, charges or expenses however arising under this Subscription Agreement; and

12.5.2. Event Store's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for any direct loss, costs, damages, charges or expenses arising in connection with the performance or contemplated performance of this Subscription Agreement shall be limited to the aggregate of the Service Fees paid by You during the twelve (12) month period preceding the date on which the claim arose.

## 13. NOTICES

13.1. Any notice required to be given under this Subscription Agreement shall be given in English, and sent by email to:

13.1.1. FOR EVENT STORE: [support@eventstore.com](mailto:support@eventstore.com)

13.1.2. FOR CUSTOMER: the email address provided by You on the Order Form.

13.2. You will be deemed to have received any email sent by Event Store to the email address in Section 1.2, whether or not You actually receive the email.

## 14. GENERAL

14.1. Force majeure: Neither party shall be in breach of this Subscription Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Subscription Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a

reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate this Subscription Agreement by giving 60 days' Notice to the affected party.

14.2. **Assignment:** Event Store may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Subscription Agreement. You shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Subscription Agreement without Event Store's prior written consent provided that You may disclose to a proposed assignee any information in its possession that relates to this Subscription Agreement or its subject matter which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that the proposed assignee has entered into binding confidentiality obligations with that party.

14.3. **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this Subscription 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.

14.4. **Severance:** If any provision or part-provision of this Subscription Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section 4 shall not affect the validity and enforceability of the rest of this Subscription Agreement.

14.5. **Third party rights:** No one other than a party to this Subscription Agreement shall have any right to enforce any of its terms.

14.6. **Governing law:** This Subscription Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14.7. **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Subscription Agreement or its subject matter or formation.

## 15. DEFINITIONS & INTERPRETATION

15.1. In this Subscription Agreement, the following terms shall have the following meanings:

- **Application:** any software application that enables You or a User to access the Event Store Platform.
- **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- **Cloud Provider:** the cloud services provider, as specified on the Order Form, through which You have elected to access the Event Store Platform.
- **Cloud Provider Platform:** the cloud computing service operated and maintained by the Cloud Service Provider, on which the instance of the Event Store Platform used by You is hosted.
- **Commencement Date:** has the meaning given in Section 1.1.
- **Customer Data:** any of Your information or materials that are: stored or processed by You on the Event Store Platform; collected by Event Store through Your use of the Event Store Platform; collected by Event Store through the Event Store API; in each case including any information derived from such data, information or materials, and any User Data.
- **Data Protection Laws:** (i) the GDPR and any national implementing laws, regulations and secondary legislation in the UK; any successor legislation to the GDPR and any national implementing laws or regulations; (iii) Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) (as amended); and (iv) all applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner's Office (ICO) or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.
- **Deprecated Version:** has the meaning set out in Section 10.2.
- **Deprecation Period:** has the meaning set out in Section 10.2.
- **Documentation:** the documentation made available to You by the Event Store online via eventstore.com or such other web address notified by Us to You from time to time which sets out a description of the Event Store Platform and the user instructions for the Event Store Platform.
- **EEA:** the European Economic Area.

- **Event Store API:** the application programming interface developed by Event Store which enables an Application to interoperate with the Event Store Platform.
- **Event Store Platform:** the Subscribed Modules, Event Store API, and additional services described in the Platform Services Specification by which Event Store shall host and make available to You through the Cloud Provider in accordance with the terms of this Subscription Agreement.
- **Event Store SLA:** the service level agreement for the Event Store Platform at any time, available at <https://www.eventstore.com/cloud-services-service-level-agreement>.
- **Event Store System:** the information and communications technology systems used by Event Store to deliver the Platform Services to You including all physical telecommunications, networking and computer equipment within Event Store's control.
- **GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the General Data Protection Regulation).
- **Indemnified Party:** has the meaning given in Section 9.3.
- **Indemnifying Party:** has the meaning given in Section 9.3.1.
- **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- **Invoice:** has the meaning given in Section 5.2
- **Maximum Use Level:** any maximum permitted monthly use levels for the Event Store Platform, as set out in the Order Form.
- **Non-Payment:** has the meaning given in Section 5.4.
- **Notice:** notice given to one party by the other in writing in accordance with Section 13.
- **Order Form:** the order form agreed between Event Store and You in relation to Your access to the Event Stores under this Subscription Agreement, and accepted by both parties, whether in writing or by electronic means.
- **Personal Data:** has the meaning given to that term in the Data Protection Laws.
- **Personnel:** a party's advisers, consultants, contractors, employees, officers, representatives, or subcontractors.
- **Platform Services Specification:** the specification for the Event Store Platform as set out in the Order Form.
- **Service Credit:** has the meaning given in the Event Store SLA.
- **Service Hours:** the hours during which Event Store will use commercially reasonable endeavours to make the Event Store Platform available, as set out in the Service Levels.
- **Service Fees:** the fees payable by You to Event Store in respect of this Subscription Agreement.
- **Service Levels:** the service levels in respect of Your use of the Event Store Platform as set out in the Event Store SLA.
- **Sub-processors:** those third party sub-contractors of Event Store who may process User Personal Data on behalf of Event Store under this Subscription Agreement. A list of Event Store's Sub-processors at any time is available at <https://www.eventstore.com/hubfs/Policies/event-store-subprocessors.pdf>.
- **Subscribed Modules:** the modules (or any of them) comprised in the Event Store Platform and subscribed to by You in accordance with the Order Form.
- **Subscription Agreement:** the Order Form and these Terms.
- **Subscription Term:** the term of Your subscription to the Event Store Platform, as set out in the Order Form.
- **Terms:** these terms and conditions as may be varied from time to time pursuant to Section 1.2.
- **User:** any third party to whom You provide access to the Event Store Platform under this Subscription Agreement.
- **User Data:** any of Your Users' information or materials that are: stored or processed by You on the Cloud Provider Platform using the Event Store Platform; collected by Event Store through Your Users' use of the Event Store Platform; or collected by Event Store through the Event Store API; in each case including any information derived from such data, information or materials.
- **User Personal Data:** any Personal Data contained in any User Data.
- **Viruses:** without limitation, any malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Event Store Platform.

15.2. Section and paragraph headings shall not affect the interpretation of this these Terms.

15.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].

15.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

15.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

15.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

15.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the Commencement Date.

15.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the Commencement Date under that statute or statutory provision.

15.9. A reference to writing or written includes e-mail.

15.10. References to Sections are to the Sections of these Terms.