

Terms and conditions

Last updated: 2024-01-05

These terms of use apply to the use of the Services (as defined below) made available by **Species360**, with its registered office at 7900 International Drive, Suite 300, Minneapolis, MN, 55425, USA ("**Species360**"). Each organization or individual (the "**Customer**") wishing to make use of the Services (or any part thereof) is subject to these General Terms & Conditions, together with any other documents or terms that apply to the Service offered and used (the "**Agreement**").

BY CLICKING OR TAPPING ANY BUTTON OR BOX MARKED "ACCEPT", "AGREE" OR "OK" (OR A SIMILAR TERM) REFERENCING THESE TERMS, BY SIGNING UP TO THE SERVICES VIA A WEBSITE, APP OR OTHER DIGITAL CHANNEL, OR BY COMPLETING AND SENDING TO SPECIES360 AN ORDER FORM TO WHICH THESE TERMS ARE LINKED OR ATTACHED, YOU AGREE TO BE BOUND BY THESE TERMS, AND YOU AFFIRM THAT YOU ARE OF LEGAL AGE WHERE YOU LIVE AND HAVE THE LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT AS AN INDIVIDUAL OR AS AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY. YOU SHOULD PRINT AND KEEP A COPY OF THESE TERMS FOR FUTURE REFERENCE.

AGREED TERMS

1. Defined Terms

1.1. In this Agreement, unless the context otherwise requires, the terms set out in Clause 19 shall have the meanings set out in Clause 19.

2. Term

2.1. This Agreement will take effect from the Effective Date and shall continue unless otherwise terminated in accordance with Clause 13.1.

3. Services and Change Control

3.1. During the Term, Species360 shall provide to the Customer access to, and rights to use: (a) Species360's web-based proprietary platform known as Hortis, which enables Species360's customers to upload, access, track and generally manage data relating to plants, and which is made available to the Customer as a mobile application or via a dedicated website ("**hortis.com**"); (b) the Software made available via hortis.com; (c) the Documentation; and (d) any other services as may be provided to the Customer in the future (collectively, the "**Services**"), each in accordance with the Service Level Agreement.

3.2. Species360 shall use commercially reasonable efforts to ensure that *Hortis* is maintained so as to be compatible with, and accessible to Users using the then-current developments, versions and updates of Internet-related technology, within a reasonable time after such technology becomes commercially available.

3.3. Subject to Clause 3.4 below, Species360 reserves the right to change or amend the Agreement and/or the Services at any time. Any change or amendment will be notified to you in writing, by email and/or by display on *Hortis* at least fourteen (14) days prior to its effective date, and will state the effective date of such change or amendment.

3.4. Species360 will not make any of the following changes or updates to the Services without first notifying the Customer in writing: (a) a change that could have a material adverse effect on the function, use or performance of the Services; (b) a change increasing the Subscription Fee or other of the Customer's costs except as expressly permitted under this Agreement; or (c) a change that could reasonably be expected to cause the Customer or the Customer's use of the Services to not be in compliance with applicable law.

3.5. Nothing in this Agreement shall limit Species360's ability to make changes required to comply with applicable law, address a material security risk, avoid a substantial economic or material technical burden, or to reflect any changes made by Species360's service providers.

4. Licence

4.1. Subject to the terms of this Agreement, Species360 hereby grants a non-exclusive, non-transferable, non sublicensable licence to the Customer for the Term to access and use the Services in furtherance of the Customer's business purposes.

4.2. The Customer shall comply with all applicable licence terms provided by Species360 in respect of the Services from time to time.

4.3. The license granted to the Customer in respect of *Hortis* is restricted to use of *Hortis* using a web browser or mobile device that is on the Species360 Supported List.

4.4. The licence includes all periodic updates, new releases, functional and technical enhancements to the Services that Species360 elects to incorporate into and make part of the

Services, and for which Species360 does not charge an additional fee, which shall be provided to the Customer at no additional cost.

4.5. Species360 shall make available to the Customer an electronic copy of all generally available Documentation. The Customer may make a reasonable number of copies of the Documentation for the Customer's internal use, as long as the Customer reproduces all copyright notices and any other legends of ownership on each copy.

5. Customer Obligations

5.1. The Customer shall not:

5.1.1. post, transmit or otherwise make available through or in connection with *Hortis* or any Software any virus, worm, Trojan horse, Easter egg, time bomb, spyware, malware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of *Hortis* or Software;

5.1.2. use the Services in carrying on a business of software re-sale, or for any development or further licensing (including in connection with any associated or interconnected networks, including the internet or its intranet);

5.1.3. copy, translate, disassemble, de-compile or reverse-engineer *Hortis* or any Software or attempt to do any of these things, except as permitted as a matter of law; or use the Services for purposes not authorised by this Agreement;

5.1.4. sell, pledge or mortgage, or in any other way dispose of, encumber or permit a lien to attach to the Services;

5.1.5. dismantle, modify or tamper with the Services;

5.1.6. place any markings on any Services, nor delete, remove or deface any labels, marks or legends placed on such Services by or on behalf of Species360.

5.2. The Customer shall:

5.2.1. use the Services in compliance with applicable law;

5.2.2. provide reasonable assistance and cooperation to Species360, including access to any information as may be reasonable or necessary for Species360 to effect its obligations under this Agreement;

5.2.3. use reasonable endeavours to provide Species360 with access to such Customer Personnel as is reasonably requested by Species360 to assist Species360 in performing its obligations;

5.2.4. be liable for breach of any term of this Agreement by its Users and Personnel as if the Customer had committed such breach; and

5.2.5. provide such information that Species360 reasonably requests which is necessary to enable Species360 to perform its obligations under this Agreement;

5.2.6. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Species360's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

5.2.7. obtain and maintain all necessary licences, consents, and permissions necessary for Species360, its Affiliates and Personnel to perform their obligations under this agreement, including without limitation the Services.

5.3. The Customer shall not, and shall ensure that its Personnel, Users, or Affiliates shall not, use the Services in any manner (including uploading any information or other data) which is or may be: (a) abusive, insulting, threatening, harassing, degrading, hateful, or intimidating, or which otherwise fails to respect the rights and dignity of others; (b) defamatory, libellous or fraudulent; (c) obscene, offensive, inflammatory, indecent, pornographic or otherwise objectionable; (d) protected by copyright, trade mark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner; (e) likely to promote explicit or violent material of any kind; (f) likely to promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; (g) likely to deceive any person; (h) be likely to promote any illegal content or activity; (i) be in contempt of court; (j) in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; (k) advertising or promoting any services or web links to other sites; or (l) not in compliance with any requirements as specified by Species360 from time to time;

6. Charges and Invoicing

6.1. The Customer shall pay the Subscription Fee advance by the Parties within 30 (thirty) days from the date of receipt of **such an undisputed** invoice.

6.2. The Customer shall pay each invoice via electronic bank transfer or other method agreed in writing in advance by the Parties within 30 (thirty) days from the date of receipt of such invoice.

6.3. If the Customer fails to make payment within 30 days of receipt of each invoice Species360 shall have the right to charge interest of 1.5% above (calculated on a daily basis) or the maximum allowed by law, whichever is higher, on any amounts due until such time as payment is received by Species360 from the Customer.

6.4. Species360 may increase the Subscription Fee no more frequently than once per annum to reflect currency fluctuations and/or inflation. Species360 shall give the Customer not less than one month's prior notice of proposed changes. Species360 shall not increase the Subscription Fee by more than 5% per annum under this Clause 6.4. applicable to its use of the Services.

7. Taxes

7.1. The Fees are stated exclusive of any value added tax or other applicable local sales tax which shall be payable by the Customer at the prevailing rate if due.

7.2. The Customer shall be permitted to pay any withholding taxes, as required by the applicable tax laws, on any Fees due pursuant to this Agreement. However, any obligation of the Customer to pay withholding tax shall have no bearing on, and shall in no way affect amounts due to Species360, pursuant to this Agreement.

7.3. The ~~Customer shall advise Species360 in writing of withholding tax paid and if requested by Species360 the Customer shall provide Species360 with documentary evidence of any amount of withholding tax from the payment of any Fees within ten (10) working days of receiving such request.~~ Customer hereby confirms that it is exempt from paying Minnesota sales and uses taxes and Species360 will not invoice for such taxes.

7.4. Without prejudice to the foregoing, each Party shall be responsible for and must pay any taxes for which that Party is assessed in relation to the fulfilment of this Agreement.

8. Intellectual Property Rights

8.1. All Intellectual Property Rights in the Services and in all additions, corrections, improvements and upgrades to the Services ("**Species360 Intellectual Property Rights**") shall at all times remain the property of Species360 or the applicable Species360 Affiliate or Species360 Licensor.

8.2. Without prejudice to Clause 8.1, to the extent that the Customer is deemed or held by operation of law to own any Species360 Intellectual Property Rights (for example, Intellectual Property Rights in any feedback or suggestions made by the Customer to Species360), the Customer hereby assigns, with full title guarantee (by way of present assignment of present and future rights), to Species360 all of such Species360 Intellectual Property Rights free from any encumbrance and agrees to duly execute all such documentation or legal or other instruments

and to perform all such acts within its control as may be necessary to give effect to such assignment. In addition, the Customer hereby unconditionally and irrevocably waives in relation to any Species360 Intellectual Property Rights all moral rights and all author's rights or other rights of a similar kind conferred by the law of any jurisdiction.

8.3. The Customer shall not:

8.3.1. attempt to register any Intellectual Property Rights over all or any part of the Services, with any authority or other entity with the power of registration; or

8.3.2. otherwise infringe any Species360 Intellectual Property Rights.

8.4. The Customer agrees that any data that it, its Personnel, Users, or Affiliates upload as Community Shared Data shall belong to Species360, and hereby waives any intellectual property or other proprietary rights that it may have in such data. The Customer shall take all steps reasonable or necessary in order to give effect to this Clause 8.4.

8.5. Except as expressly provided in this Agreement, no rights or obligations in respect of Species360 Intellectual Property Rights are granted to the Customer or are to be implied from this Agreement.

9. Personal Data Protection

9.1. Both Parties will comply with all applicable laws relating to the protection of personal data that apply to processing of personal data under this Agreement.

9.2. The Parties agree that Species360 will process personal data only on the Customer's behalf (i) in the context of its direct business relationship with the Customer and in accordance with the Customer's instructions as documented in this Agreement, and (ii) as needed to comply with applicable law.

9.3. Species360 may transfer personal data to various locations, which may include locations both inside and outside of the European Economic Area. The duration of the processing will be the same as the duration of this Agreement, except as otherwise agreed to in writing by the parties. The scope of processing of personal data is as follows:

9.3.1. Subject-Matter, Nature and Purpose: For the purposes of Species360 providing the Services to the Customer.

9.3.2. Types of personal data: Name, address, e-mail address, social media account names, telephone number.

9.3.3. Categories of individuals whose personal data will be processed: Customer employees and individuals associated with the source and supply of plant material.

9.4. Species360 will ensure that persons authorized to process personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

9.5. Species360 will implement appropriate technical and organizational measures designed to protect personal data against anticipated threats or hazards to its security, confidentiality or integrity.

9.6. Species360 will notify the Customer without undue delay whenever Species360 learns that there has been a Security Incident. Taking into account the nature of processing and the information available to Species360, Species360 will assist the Customer at the Customer's request in complying with the Customer's notification obligations regarding Security Incidents as required by applicable privacy laws.

9.7. At the Customer's discretion, Species360 will destroy or return all personal data to the Customer after the end of the provision of services, unless applicable law requires storage of the personal data.

9.8. Species360 will provide all relevant information and assistance requested to demonstrate compliance with this Clause 9 and allow for and contribute to audits, as provided for in Clause 12.

9.9. The Customer authorises Species360 to transfer personal data to subcontractors for purposes of providing the services to the Customer. Species360 will maintain a list of the subcontractors and will provide this list to the Customer upon request. The Customer has 30 days from when a subcontractor is published to the list to object to the addition; if no objection is received, the subcontractor is deemed to be accepted by the Customer. Species360 will enter into an agreement with such subcontractor that is at least as restrictive as this Clause 9.

9.10. Taking into account the nature of the processing, Species360 will assist the Customer at the Customer's request by implementing appropriate technical and organizational measures with the Customer's obligation to respond to any requests by individuals, including but not limited to opt-out requests, request for access and/or rectification, erasure, restriction, or requests for data portability.

9.11. Taking into account the nature of the processing and the information available to Species360, Species360 also will assist the Customer at the Customer's request in meeting its compliance obligations regarding carrying out privacy and data protection impact assessments and related consultations of data protection authorities, only where such obligations relate to personal data handled by Species360.

10. Warranties

10.1. Each Party represents and warrants that it has all rights and authority required to enter into this Agreement.

10.2. Subject to Clause 10.4 below, Species360 represents and warrants that:

10.2.1. it shall provide the Services free from all liens, claims, encumbrances, security interests and other restrictions;

10.2.2. the Services will substantially conform to the Documentation and will be provided with reasonable skill and care; and

10.2.3. the Services and the use thereof by the Customer in accordance with the terms and conditions of this Agreement, shall not infringe, misappropriate or violate the Intellectual Property Rights of any third party.

10.3. Except as otherwise expressly provided in this Agreement and except for any implied terms that cannot be excluded as a matter of law, neither Party makes any representations, covenants, conditions or warranties to the other, whether express or implied, including warranties of title or implied warranties of merchantability, satisfactory quality or fitness for a particular purpose, non infringement, accuracy, availability, or error or malware-free or uninterrupted operation.

10.4. Species360 assumes no responsibility, and shall not be liable for any loss or damage arising out of or resulting from, any content that is provided as Community Shared Data. The Customer acknowledges that such content is provided by other customers of Species360, and that Species360 makes such content available to the Customer without warranty or representation of any kind. The Customer acknowledges and agrees that Species360 does not moderate such content.

10.5. The Customer shall ensure that any information or other data that it, its Personnel, Users, agents or Affiliates upload as Community Shared Data is accurate and is provided in compliance with any applicable laws and regulations.

11. Limitation of Liability

11.1. Nothing in this Agreement shall be deemed to exclude or limit either Party's liability in respect of: (a) death or personal injury arising as a result of a Party's negligence or that of its employees, agents or sub-contractors (as applicable); (b) fraud EU-286280 4 01/12/2021 Species360 Limited Hortis General Terms & Conditions (including fraudulent misrepresentation); (c) malicious acts deliberately caused by, or wilful misconduct of, a Party or its employees, agents or sub-contractors (as applicable); or (d) any other liability that cannot be excluded or limited as a matter of law.

11.2. In respect of losses not covered by Clause 11.1 and subject to Clause 11.3, each Party's annual aggregate liability to the other, whether arising in contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to this Agreement in respect of all claims, losses, or damages suffered by

the other Party, shall not exceed, in the aggregate, the lesser of (a) £5,000; or (b) an amount equal to the total Subscription Fee paid by the Customer to Species360 during the twelve (12) months immediately preceding the date of the event giving rise to the applicable cause of action.

11.3. Subject to Clauses 11.1 and 11.5, to the fullest extent permitted by law, neither Party shall be liable to the other Party for any indirect loss, incidental loss, collateral loss or consequential loss nor for the following types of loss or damage (including costs and expenses relating to or arising out of such loss or damage) whether arising from contract, tort (including negligence), breach of statutory duty, contribution or otherwise: exemplary, punitive or special damages; lost revenue, profits, contracts or business; lost anticipated savings; damaged goodwill or reputation; loss of or damage to, and restitution of, records or data; wasted management time; in each case, even if such Party has been advised of the possibility of such damages or loss.

11.4. Species360 shall be excused from the performance of, and shall not be held liable for any failure or delay in performing, any of its obligations, under this Agreement if and to the extent that such non performance or delay is caused by any acts or omissions of the Customer or any party acting for or on behalf of the Customer.

11.5. **Subject to applicable law, t**The Customer will **indemnify-be responsible to** Species360 and its Affiliates against all costs, damages and losses arising out of or in connection with proceedings brought by Species360's or its Affiliates' service providers as a result of the Customer's use, or its Personnel's, Users', Agents' or Affiliates' use, of the Services in breach of this Agreement.

12. Suspension and Audit

12.1. Species360 shall have the right to suspend the provision of all or any of the Services provided under this Agreement if the Customer fails to pay the Subscription Fee and fails to cure such violation within 30 days following the date the Customer has received Species360's notice of non-payment or demand for payment, or otherwise breaches its obligations under this Agreement. Species360 may also suspend the provision of all or any of the Services provided under this Agreement if Species360 believes that: (a) the Customer's, or any Personnel, User, or Affiliate of the Customer's, use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Species360 network or servers used to provide the Services; (b) it is required to suspend the Services in order to comply with any applicable laws; or (c) there is unauthorised third-party access to the Services.

12.2. The Customer grants, and shall ensure that any Affiliates and subcontractors of the Customer grant, to Species360 and to its authorised agents and advisors (provided they are not competitors of Species360) and to any statutory auditor of Species360 (each a "**Permitted Auditor**"), a right of access to their respective premises **during normal business hours and without interfering with business operations,** Personnel, and any other information as the

Permitted Auditors reasonably consider necessary for the performance of their duties, solely in order to verify the Customer's, its Affiliates' and subcontractors' compliance with this Agreement.

12.3. An audit may be carried out in accordance with Clause 12.2 on reasonable prior written notice of not less than ten (10) days, and not more than ~~twice~~ once during each calendar year, except if Species360 has reasonable grounds to suspect fraud or a material breach by the Customer of this Agreement, ~~in which case an audit may take place at any time with prior written notice of not less than three (3) days.~~

12.4. The Customer shall provide, and shall ensure that each Customer Affiliate and subcontractor provides, all reasonable assistance and explanations to all Permitted Auditors, as well as office space, network and internet access and phone, printer and other facilities.

12.5. Upon Species360's first written request, the Customer shall promptly provide Species360 and the Permitted Auditors with any internal audit reports of the Customer to the extent such internal audit reports are related to the Services, this Agreement and/or an audit being performed by a Permitted Auditor.

12.6. Each Party shall bear its own costs and expenses of any audit unless the audit reveals that the Customer is in material non-compliance with any of its obligations under this Agreement, in which case the Customer shall promptly pay to Species360 an amount equal to Species360's reasonable costs and expenses of the audit (including any auditor's fees).

12.7. Species360 shall use, and cause the Permitted Auditors to use, reasonable endeavours to minimise any disruption to the operations of the Customer or the performance of the Services caused by an audit.

12.8. Following an audit, Species360 shall discuss its findings with the Customer and, if appropriate, but without limiting Species360's other rights and remedies, the Parties shall agree a plan (including a timetable to implement the plan) to address any concerns identified in the audit (a Remediation Plan). Without limiting Species360's other rights and remedies, the Customer shall comply with the steps to be taken as agreed in the Remediation Plan and shall take all other necessary steps to remedy its failure and subsequently comply with its obligations at no additional cost or expense to Species360.

12.9. The Customer's refusal or obstruction to audit the Customer's records and system shall be deemed to be a material breach of this Agreement, and Species360 shall have the right to immediately terminate this Agreement according to Clause 13 of this Agreement.

13. Termination

13.1. Either Party may, by giving written notice to the other Party, terminate this Agreement (in whole or in part):

13.1.1. for convenience and without cause upon providing written notice to the other Party in accordance with Clause 13.3 below; or

13.1.2. if the other Party commits a material breach of any term of this Agreement and (if such breach is capable of remedy) fails to remedy that breach within a period of thirty (30) Days from receipt of notice in writing from the first Party specifying such breach;

13.1.3. as of the date specified in the notice of termination if the other Party suffers an Insolvency Event.

13.2. Species360 may, by giving written notice to the Customer, terminate this Agreement as of the date specified in the notice of termination if the Customer uses, or attempts to use, the Services in any manner or form that: (a) is illegal, or (b) that is reasonably likely, in the sole opinion of Species360 acting reasonably to: (i) bring the Services, Species360 and/or any Species360 Affiliate or Species360 Licensor, into disrepute, or (ii) have a material adverse impact on the goodwill of Species360 or any Species360 Affiliate or Species360 Licensor or any Species360 Intellectual Property Rights or Services.

13.3. If the Customer wishes to exercise its termination rights under Clause 13.1.1 above, it must provide no less than thirty (30) days' prior written notice of such termination to Species360. If Species360 wishes to exercise its termination rights under Clause 13.1.1 above, it must provide no less than six (6) months' prior written notice of such termination to the Customer.

14. Consequences of Termination or Expiry

14.1. Upon termination or expiry of this Agreement for any reason:

14.1.1. Species360 shall cease providing the Services;

14.1.2. the Customer shall cease using the Services and shall promptly return to Species360 all Intellectual Property Rights licensed, supplied or delivered by Species360 to the Customer pursuant to this Agreement and all copies of the whole or any part thereof; and

14.1.3. each Party shall promptly return (or, if requested by the other Party, destroy) any Confidential Information belonging to the other.

14.2. Any termination of this Agreement (for whatever reason) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into force or continue in force on or after such termination.

14.3. Notwithstanding Clause 14.1 above, Species360 shall comply with its obligations under the Data Retention Policy upon termination or expiry of this Agreement for any reason.

15. Confidentiality

15.1. Each Party undertakes that it shall not, at any time during the Term, disclose to any person any confidential information disclosed to it by, or obtained in relation to, the other Party concerning the business or affairs of the other Party or of any Affiliate, including but not limited to information relating to a Party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers **only to the extent such information meets the definition of "trade secret information" or "security information" under Minn. Stat. § 13.37 or is otherwise "not public data" under Minnesota Statutes Chapter 13 ("Confidential Information")**, except as permitted by Clause 15.2.

15.2. Each Party may disclose the other Party's Confidential Information:

15.2.1. to its employees, officers, agents, consultants or sub-contractors ("Representatives") as reasonably required for the purposes of carrying out the Party's obligations under this Agreement, provided that the disclosing Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Clause 15 as though they were a Party to this Agreement. The disclosing Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Clause 15; and

15.2.2. as may be required by law, court order or by any stock exchange or governmental or regulatory authority having applicable jurisdiction;

15.2.3. if the Confidential Information was lawfully in the possession of that Party or its Representatives (in either case as evidenced by written records) without any obligation of secrecy prior to its being received or held;

15.2.4. if the Confidential Information has previously become publicly available other than through the fault of the other Party or their Representatives; and

15.2.5. if required for the purpose of any arbitral or judicial proceedings arising out of this Agreement.

15.3. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party or to be implied from this Agreement. In particular, no licence is granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Right held, made, obtained or licensable by either Party now or in the future.

16. Force Majeure

16.1. Neither Party shall be liable to any other Party for any default under this Agreement that is caused by a Force Majeure Event. If a Force Majeure Event occurs then the Party affected shall notify the other Party as soon as reasonably practicable and shall take commercially reasonable steps to reduce the effect of the Force Majeure Event.

17. Third Party Claims

17.1. As soon as practicable after the Customer receives notice of any Third Party Claim, it shall notify Species360. Within 15 days of being so notified (but no later than 10 days before the date on which any response to a complaint is due), Species360 may assume control of the defence and settlement of such Third Party Claim. The Customer shall provide to Species360 reasonable assistance relating to any Third Party Claim at Species360's reasonable request and costs. ~~The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party Claim without Species360's prior written approval.~~

17.2. In response to a Third Party Claim, Species360 may:

17.2.1. obtain for the Customer the right to continue using any infringing Services; or

17.2.2. modify the Services in question so that it is no longer infringing; or

17.2.3. replace such portions of the Services with a non-infringing replacement item and the Customer shall implement any such replacements promptly.

18. General

18.1. Assignment

18.1.1. This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors in title and assignees.

18.1.2. Species360 may assign, novate or otherwise dispose of and be released from all or any of its rights and obligations contained in this Agreement-, ~~provided that no assignee will be an entity that is debarred from doing business with any state or federal entity; connected to organized crime; on a government "excluded persons" list; determined by Customer to be an irresponsible vendor due to previous uncured breaches of contract or other dishonest or disreputable conduct; associated with sales of illegal drugs, alcohol, tobacco, firearms, gambling, adult entertainment or adult entertainment products; or otherwise engaged in or associated with activities that would be likely to harm Customer's reputation.~~

18.1.3. This Agreement is personal to the Customer. The Customer shall not assign, novate or otherwise transfer or dispose of any of its rights and obligations, contained in this Agreement,

without the express prior written permission of Species360 and any attempt by the Customer to assign, novate or otherwise transfer or dispose of its rights and obligations shall be null and void as between the Parties.

18.2. **Entire Agreement.** The terms contained in this Agreement will supersede and replace any other terms previously agreed between the parties regarding the subject matter contained in this Agreement (including any non-disclosure agreement entered into between the Parties prior to the date of this Agreement).

18.3. **Variation.** No variation of this Agreement shall be effective unless set forth in writing and signed by each Party.

18.4. **Sub-contracting.** Species360 may sub-contract the provision of all or any of the Services.

18.5. **Governing Law and Jurisdiction**

18.5.1. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Minnesota, USA.

~~18.5.2. Any dispute arising out of or in connection with this Agreement, whether in contract or tort and including any question regarding its existence, validity or termination (“Dispute”), shall be referred to and finally resolved by arbitration under the rules (“Rules”) of the London Court of International Arbitration (“LCIA”), which Rules are deemed to be incorporated by reference into this Clause. The arbitration proceedings shall be conducted in Minneapolis, Minnesota, USA, in the English language before three arbitrators.~~

~~18.5.3. Each Party may nominate one arbitrator for the approval of the LCIA, and the third arbitrator, who shall act as Chairman, shall be appointed by the LCIA. If any arbitral nomination of a Party fails or is not approved by the LCIA, the LCIA shall appoint a replacement arbitrator. All the arbitrators may be of any nationality. The language of the arbitration shall be English.~~

18.5.42. Nothing in this Agreement shall prevent either Party from seeking any interlocutory or injunctive relief or other equitable remedy in any jurisdiction pending resolution of a Dispute.

18.6. **Severability.** If any provision of this Agreement is prohibited by law or found by a court or authority of competent jurisdiction to be void, illegal, invalid or otherwise unenforceable, such provision shall be severed and the remainder of this Agreement shall continue in full force and effect to the fullest extent permitted by law. The Parties agree to negotiate in good faith in order to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

18.7. **Waiver.** Any forbearance, delay or indulgence by either of the parties in enforcing any of the terms and conditions of this Agreement shall not prejudice or restrict the rights and remedies of the other hereunder, nor shall any waiver of any subsequent breach operate as a waiver of any breach.

18.8. Cumulative Remedies. Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity, by statute or otherwise.

18.9. Notices. Any notice or other communication given under this Agreement shall be in writing in English and shall be sufficiently given or served if delivered or sent to the address or e-mail address as the relevant Party has notified to the other in accordance with this Clause. Notice shall be deemed to have been received on the next working day if sent by e-mail, 3 days from the date of posting if sent by post within the same country, 5 days from the date of posting if sent internationally or at the time of delivery if delivered by hand.

18.10. Independent Contractor. Species360, in providing the Services, will be acting as an independent contractor. Nothing in this Agreement shall create any relationship of agent and principal, partnership, or employer and employee between the Parties or between one of the Parties and the other Party's personnel, agents, employees or subcontractors. Further, nothing in this Agreement shall give either Party any authority to act or make representations or commitments on behalf of the other Party or to create any contractual liability to a third party on behalf of the other Party.

18.11. Third Party Rights. Nothing in this Agreement shall be deemed to grant any rights or benefits to any person other than the Parties, their respective successors in title or assignees (a "Third Party"), or entitle any Third Party to enforce any provision of this Agreement and the Parties do not intend that any term of this Agreement should be enforceable by a Third Party by virtue of the Contracts (Rights of Third Parties) Act 1999. Further, the rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to this Agreement.

18.12. Publicity. ~~The Customer acknowledges that Species360 may publicly disclose that the Customer is a customer of Species360 (e.g. in customer lists etc.). Neither party will use the name, logo, or other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity, without the written permission of the other.~~

19. Definitions.

The following definitions apply to this Agreement:

19.1. Affiliate: with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity.

19.2. Species360 Intellectual Property: the meaning given in Clause 8.1.

19.3. Species360 Licensor: any third party licensor of Intellectual Property Rights to Species360 or a Species360 Affiliate.

19.4. Species360 Supported List: the supported list currently available at <https://hortis.com/requirements>, as amended from time to time.

19.5. Community Shared Data: data uploaded to the interactive portion of Hortis to which the Customer, along with other customers of Species360, may upload, access, modify and otherwise share data collaboratively with one another.

19.6. Confidential Information: the meaning given in Clause 15.1.

19.7. Control: (and its derivatives) shall have the meaning given in Section 450 of the Corporation Tax Act 2010.

19.8. Data Retention Policy: the data retention policy currently available at <https://hortis.com/privacy>, as amended from time to time.

19.9. Dispute: the meaning given in Clause 18.5.2.

19.10. Documentation: all documents and materials, including online training guides and user manuals, in any language, format or medium that are typically supplied or otherwise made available by Species360 to its customers to aid in their use of the Services, as amended from time to time.

19.11. Force Majeure Event: any action or decision of any relevant regulatory authority, industrial or civil dispute, war, governmental action, riot, strikes (other than strikes and labour disputes involving the workforce or any part thereof of the Party in question or its sub-contractors appointed by it), fire, flood, drought, act of God, epidemics, pandemics, power cut, breakdown in machinery or any other cause which is beyond the reasonable control of the defaulting Party.

19.12. Hortis: the meaning given in Clause 3.1.

19.13. Free User: a User with limited usage rights relating to the Services, in respect of whom Species360 has agreed not to charge the Subscription Fee.

19.14. Intellectual Property Rights: all intellectual property rights, including patents, trade secrets, trademarks, service marks, trade names, copyrights and other rights in works of authorship (including rights in computer software), moral and artists' rights, design rights, trade or business names, domain names, know-how, database rights and semi-conductor topography rights and whether any of the foregoing are registered or unregistered and all rights or forms of protection of a similar nature in any country.

19.15. Insolvency Event: one of the following events:

a) the affected Party takes any preparatory or other steps to implement a moratorium or voluntary arrangement, for its winding up, entry into administration, liquidation, receivership, a scheme of arrangement, or dissolution, including, but not limited to, convening a board meeting to consider any resolution or matter relating to the foregoing;

b) the affected Party is subject to any preparatory or other steps, taken by any person, to appoint a receiver, trustee, administrative receiver, administrator, examiner, liquidator, provisional liquidator, manager or similar officer is appointed over all or any part of the assets or undertaking of the affected Party;

c) the affected Party is subject to any steps taken to enforce security over the whole or any part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar officer in respect of all or any part of such assets or undertaking or a distress, execution or other similar process is levied or served against the whole or a substantial part of such assets or undertaking;

d) the affected Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or would be deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 if the words "it is proved to the satisfaction of the court that" in sub-sections (1)(e) and (2) of Section 123 were deleted therefrom; or

e) the affected Party is subject to any event in any other jurisdiction that has an effect equivalent or similar to the situations above at 1-4.

19.16. LCIA: the meaning given in Clause 18.5.2.

19.17. Permitted Auditor: the meaning given in Clause 12.2.

19.19. personal data: information that identifies an individual or relates to an identifiable individual.

19.20. Personnel: a Party's directors, officers, partners, principals, employees, agents, auditors, consultants and subcontractors.

19.21. process or processing: the collection, recording, organization, structuring, alteration, access, disclosure, copying, transfer, storage, retention, deletion, combination, restriction, adaptation, retrieval, consultation, destruction, disposal, sale, sharing or other use of personal data.

19.22. Representatives: the meaning given in Clause 15.2.1.

19.23. Rules: the meaning given in Clause 18.5.2.

19.24. Security Incident: any accidental or unauthorized access, acquisition, use, modification, disclosure, loss, destruction of, or damage to personal data, or any other unauthorized processing of personal data.

19.25. Services: the meaning given in Clause 3.1.

19.26. Service Level Agreement: the service level agreement currently available at <https://hortis.com/sla>, as amended from time to time.

19.27. Software: the computer programs and related databases made available to the Customer by Species360 under this Agreement or otherwise used in connection with *Hortis*.

19.28. Subscription Fee: the fees charged by Species360 in consideration for the Customer's use of the Services, calculated on a per-User basis (excluding any Free Users, if applicable), as communicated to the Customer by Species360.

19.29. Term: the term of this Agreement, as specified in Clause 2.1.

19.30. Third Party: the meaning given in Clause 18.11.

19.31. Third Party Claim: any allegation, claim, demand, proceeding or other action brought by a third party in respect of the Services

19.32. Users: all persons authorised by the Customer to use Hortis, provided that a "User" must be an employee or other contracted personnel of the Customer. The term "User" includes "Free Users".

Interpretation rules

In this Agreement, unless otherwise expressly specified:

a) words suggesting the singular include the plural, and vice versa;

b) words suggesting any gender include all other genders;

c) references to a person or entity include a company, corporation, firm, unincorporated or incorporated association, or statutory authority;

d) headings are for ease of reference only and shall not affect the interpretation of this Agreement;

e) references to any schedule, annex, agreement or instrument are to that schedule, agreement or instrument as amended or replaced from time to time;

f) use of the word “including” (and its derivatives such as “includes” or “include”) means including, without limitation;

g) a reference to any body is:

- if that body is replaced by another organisation, deemed to refer to that organisation; and
- if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes as that body;

h) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument, or as contained in any subsequent enactment thereof; and

i) references to Clauses are to clauses of this Agreement

No rule of construction will apply in the interpretation of any provision of this Agreement to the disadvantage of one Party on the basis that such Party put forward or drafted such provision.