

TERMS AND CONDITIONS

Dated

2018

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Documentation: the document made available to the Customer by the Supplier online via www.utili.co.uk from time to time which sets out a description of the Services and the user instructions for the Services.

GDPR: General Data Protection Regulation ((EU) 2016/679).

Initial Subscription Term: the initial term of the Contract as set out in the Order.

Minimum User Limit: the number of Authorised Users as set out in the Order.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order: the Customer's signed order for Services as set out in the Supplier's standard purchase order form.

Renewal Period: the period described in clause 15.1.

Services: the subscription services provided by the Supplier to the Customer under these Conditions via www.utili.co.uk or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Service Set Up Fee: the service set up fee set out in the Order.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order.

Subscription Term: has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supplier: UTILI SOFTWARE LIMITED incorporated and registered in England and Wales with company number 9315858 whose registered office is at Kemp House, 152 City Road, London, EC1V 2NX

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Conditions.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 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.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Conditions.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Conditions under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of these Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Conditions.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

3. User subscriptions

3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 2, 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

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

- (a) it shall maintain the number of Authorised Users at not less than the Minimum User Limit. If the number of Authorised Users falls below the Minimum User Limit, the Customer accepts that it shall still be charged Subscription Fees based on the Minimum User Limited and the Customer's account may be suspended and/or access to Services may be impaired or suspended at the Supplier's discretion;
- (b) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (d) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than each calendar month and that each Authorised User shall keep his password confidential;
- (e) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 3.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 10 Business Days of the date of the relevant audit.

3.3 The Customer shall not, and shall procure that no Authorised User shall, access, store, distribute or transmit any Viruses, or any material during the course of their use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;

- (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any Authorised User's access to the Services accordingly.

3.4 The Customer shall not, and shall procure that no Authorised User shall:

- (a) 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 Conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
- (f) upload, post, host or transmit unsolicited email, SMSs or "spam" messages; or
- (g) exceed a bandwidth usage of 5GB per month. If this bandwidth is exceeded or the average bandwidth usage of other Customers (as determined by the Supplier) is significantly exceeded, then the Supplier reserves the right to immediately disable the Customer's and any Authorised Users' accounts or throttle the Customer's connection until the Customer reduces its bandwidth consumption.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

4. Additional user subscriptions

4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Conditions.

4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 days of its approval of the Customer's request.

4.3 The Customer shall, within 7 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Order and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5. Services

5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Conditions.

5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance; and
- (b) unscheduled maintenance performed outside Normal Business Hours.

5.3 The Supplier provides a 99.9% uptime guarantee on all software, and on network connectivity. If in any given month, if the Customer's service is down for more than 0.1% except for any planned or unscheduled maintenance, the Customer may request a pro-rated credit for downtime.

6. Customer data

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 The Supplier shall automatically back up the Customer Data on a nightly, weekly and monthly basis. If requested to do so by the Customer and for an additional fee, the Customer may request additional back up Services. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. Subject to clause 6.5 below, the Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

6.3 The Supplier shall, in providing the Services, comply with its Terms and Conditions relating to the privacy and security of the Customer Data available at www.utili.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

6.4 The Customer acknowledges that the technical processing and transmission of the Services, including processing and transmission of any Customer Data, subject to clause 6.5 below, may be transferred unencrypted and involve (a) transmissions over various networks and (b) changes to confirm and adapt to technical requirements of connecting networks or devices.

6.5 If the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under these Conditions, the parties record their intention that the Customer shall be

the Data Controller and the Supplier shall be a Data Processor (where **Personal Data, Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). By inputting your data into your Utili account, by either the account holder or any authorised users you agree to Utili Software Limited processing this data for the following purposes; company audits, support, backups, integrations with authorised third parties, Utili marketing, software development improvements. This data is including but not limited to names, telephone numbers, email addresses, postal addresses, notes, bank details and transaction records, and in any such case:

- (a) both parties shall comply with their obligations under the Data Protection Legislation; and
- (b) without prejudice to the generality of clause 6.4(a), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- (c) without prejudice to the generality of clause 6.4(a), the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
 - (i) process that Personal Data in accordance with the Order the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.
 - (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the requirements of the Data Protection Legislation is complied with.
 - (v) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (vi) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (vii) permanently delete or return Personal Data and copies thereof to the Customer within 30 days of termination of the agreement unless required by Applicable Law to store the Personal Data.
- (d) The Customer consents to the Supplier appointing third-party processors of Personal Data under these Conditions. The Supplier confirms that it has entered or (as the case

may be) will enter into written agreements with the third-party processors in respect of the processing of Personal Data. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.5(d).

7. Third party providers

7.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7.2 The Customer accepts that the Supplier uses third party vendors and hosting partners (**Third Parties**) to provide the necessary hardware, software, networking, storage and related technology required to provide the Services. Subject to clause 6.5 above, the Supplier accepts no liability for any loss of service or loss of Customer Data caused directly or indirectly by any Third Parties.

8. Supplier's obligations

8.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any Third Party or any other party other than the Supplier or the Supplier's duly authorised contractors or agents. Subject to the foregoing, if the Services do not conform with the undertaking at clause 8.1, the Supplier will, at its expense, use its reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, held or run by Third Parties and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9. Customer's obligations

The Customer shall:

- (a) provide the Supplier with:

- (i) all necessary co-operation in relation to these Conditions; and
 - (ii) all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under these Conditions and shall comply with these Conditions;
- (c) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Conditions and shall be responsible for any Authorised User's breach of these Conditions;
- (d) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier'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.

10. Charges and payment

10.1 The Customer shall pay the Service Set Up Fee and the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 10 and the Order.

10.2 The Customer shall on the Commencement Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Commencement Date for the Services Set Up Fee and the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 15.1, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Commencement Date for the Services Set Up Fee and the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 15.1, at least 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 14 days after the date of such invoice.

10.3 If the Supplier has not received payment by the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in these Conditions:
 - (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.5 The Supplier shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3 at the start of each Renewal Period upon 30 days' prior notice to the Customer and the Contract shall be deemed to have been amended accordingly.
- 11. Proprietary rights**
- 11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these Conditions do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Conditions.
- 12. Confidentiality and compliance with policies**
- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Conditions.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Conditions.

- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 12.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 The above provisions of this clause 12 shall survive termination of the Contract, however arising.

13. Indemnity

- 13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation.
- 13.2 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 13.3 The foregoing and clause 14.3(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. Limitation of liability

- 14.1 Except as expressly and specifically provided in these Conditions:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) 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 these Conditions and the Contract; and

- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.2 Nothing in these Conditions excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Conditions or the Contract; and
 - (b) the Supplier's total aggregate liability in contract tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions or the Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 3 months immediately preceding the date on which the claim arose.

15. Term and termination

- 15.1 The Contract shall, unless otherwise terminated as provided in this clause 15, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 30 days (each a **Renewal Period**), unless:
- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of these Conditions;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.
- 15.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (c) the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (d) the Customer 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;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a

- scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the Customer;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(d) to clause 14.2 (inclusive); or
 - (i) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of the Contract for any reason:

- (a) all licences granted under these Conditions shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 14 days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) 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 Contract which existed at or before the date of termination shall not be affected or prejudiced.

16. Force majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. If such circumstances continue for more than 2 weeks then the Customer may terminate the Contract whereupon the Supplier shall refund to the Customer any payments made for Services which remain unused.

17. Variation

The Supplier reserves the right to modify, either temporarily or permanently, the Services without notice to the Customer. Except as set out in these Conditions, no variation of the

Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in these Conditions, the rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. Entire agreement

21.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

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

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23. Third party rights

These Conditions do not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

24.1 Any notice required to be given under the Contract shall be in writing and shall be sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.

24.2 A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

25. Governing law

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

26. Jurisdiction

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