

## Saassistant Terms and Conditions

These terms and conditions (“**Terms and Conditions**”) shall be incorporated into each order placed with the Supplier for use of the App whether made by an Order Form or any other documentation.

### IT IS HEREBY AGREED

#### 1. Interpretation

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

“Authorised Users”	those employees, workers, 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 2.2.3.
“Agreement”	the Terms and Conditions and any respective Order Form(s) entered into between the parties.
“App”	the ‘Hoist’ app version 1.0 or later as released by the Supplier from time to time.
“Business Day”	a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.
“Change of Control”	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
“Confidential Information”	information that is proprietary or confidential and is either clearly labelled as such.  <b>controller, processor, data subject, personal data, personal data breach, processing, and appropriate technical and organisational measures:</b> as defined in the Data Protection Legislation.
“Customer”	the person identified as a Customer on an Order Form, or the person otherwise receiving the 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”	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the

Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended);

“Documentation”	the document made available to the Customer by the Supplier which sets out a description of the Services and the user instructions for the Services.
“Effective Date”	the date of this Agreement as set out in the Order Form.
“End-User Terms”	the terms and conditions which Authorised Users are required to enter into before using the App as may be amended by the Supplier from time to time.
“Initial Subscription Term”	the initial term of this Agreement as set out in the Order Form starting from the Effective Date or the end of any Trial Period as the case may be.
“Maintenance”	maintenance of the App and Services including a release of the App that corrects faults, adds functionality or otherwise amends or upgrades the App.
“Normal Business Hours”	9.00 am to 5.00 pm local UK time, each Business Day.
“Order Form”	an order form (or any other document including an email) agreed between the parties which sets out the key commercial terms of each order for the use of the App and the Services.
“Renewal Period”	the period described in clause 15.1.
“Services”	the provision of the App and its content by the Supplier.
“Subscription Fees”	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order Form.
“Subscription Term”	has the meaning given in clause 15.1 (being the Trial Period (if there is one), Initial Subscription Term together with any subsequent Renewal Periods).
“Supplier”	the company who provides the App with the following company details: Saassistant Ltd, a company registered in England and Wales with company number (12596780) and its registered office at International House, 24 Holborn Viaduct, London, United Kingdom, EC1A 2BN.

“Support Services”	has the meaning given in clause 5.3.
“Trial Period”	the free trial period for use of the Services for the duration set out in the Order Form.
“User Subscriptions”	the user subscriptions purchased by the Customer pursuant to the Order Form and clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.
“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.
“Vulnerability“	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.2 Clause, schedule, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate, or unincorporated body (whether or not having separate legal personality).
- 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 this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

- 1.9 A reference to writing or written includes e-mail, but not fax.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. User subscriptions**

- 2.1 Subject to the Customer purchasing the User Subscriptions, subject to the terms of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 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;
  - 2.2.2 each Authorised User shall keep a secure password for his use of the Services and Documentation, and that each Authorised User shall keep his password confidential;
  - 2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time ;
  - 2.2.4 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and account identification of each Authorised User and the Supplier's data processing facilities to audit compliance with this Agreement. Each 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;
  - 2.2.5 if any of the audits referred to in clause 2.2.4 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 individuals' accounts and the Supplier shall not issue any new accounts to any such individual; and
  - 2.2.6 if any of the audits referred to in clause 2.2.4 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 Form within 10 Business Days of the date of the relevant audit.
- 2.3 The Customer acknowledges that Supplier may at any time, and without notice, incorporate licence management software into the App for the purpose of ensuring that the Customer's licence rights are not exceeded.

2.4 The Customer shall not, and shall procure that any Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 2.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.4.2 is in breach of any third party rights;
- 2.4.3 facilitates illegal activity;
- 2.4.4 depicts sexually explicit images;
- 2.4.5 promotes unlawful violence;
- 2.4.6 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.4.7 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 immediately disable the Customer's access to any related Services.

2.5 The Customer shall not:

- 2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and to the extent expressly permitted under this Agreement:
  - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the App and/or Documentation (as applicable) in any form or media or by any means;
  - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the App and/or Documentation; or
  - (c) study or test the functioning of the App (including any underlying software or any part of it);
- 2.5.2 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;
- 2.5.3 use the Services and/or Documentation to provide services to third parties;
- 2.5.4 subject to clause 23.1, 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,
- 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or

- 2.5.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 2.6 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.
- 2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. Additional user subscriptions**

- 3.1 Subject to clause 3.2 and clause 3.3, 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 Form and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 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 Form 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).

### **4. Trial Period**

- 4.1 The Supplier may at its discretion offer a Trial Period for use of the Services. For the avoidance of doubt any Services provided during the Trial Period are subject to these Terms and Conditions.
- 4.2 Any Trial Period shall [include **OR** exclude] Support Services.

### **5. Services**

- 5.1 The Supplier shall, during the Subscription Term, in consideration for the timely payment of the Subscription Fee, provide the Services and make available the Documentation to the Customer subject to the terms of this Agreement.
- 5.2 The Customer accepts that the Services may be subject to periods of downtime to allow for scheduled and unscheduled Maintenance to be carried out by the Supplier (or any third party on behalf of the Supplier). The Supplier will attempt to provide the Customer with at least 7 days' notice of any scheduled Maintenance, but shall not be in breach of the terms of this Agreement if it fails to do so.

5.3 The Supplier will in consideration of the Support Fee, provide the Customer with the Supplier's standard customer support services during Normal Business Hours ("**Support Services**") which shall comprise up to 2 hours in total of telephone, e-mail or remote assistance each week in respect of setting-up the App, onboarding Authorised Users on to the App, providing training on the App and/or other general assistance provided by the Supplier's non-specialist support team having reasonable functional and technical knowledge about the App.

5.4 The Supplier may at its discretion choose to provide and the Customer may purchase enhanced support services separately at the Supplier's then current rates if it requires support outside of Normal Business Hours or specialist technical support.

## **6. Customer data**

6.1 The Customer shall own all right, title, and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier 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. The Supplier shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

6.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.

6.4 The parties acknowledge that:

6.4.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation; and

6.4.2 if the Supplier processes any personal data: outside of the Customer's instructions; in order to ensure the functionality of or improve its services generally; or in order to provide services to Authorised Users or other customers outside of this Agreement, then it shall be an independent controller of that personal data.

6.5 Where the Supplier processes personal data on behalf of the Customer, the Customer will ensure that it has all required notices in place and is duly and lawfully authorised to transfer the personal data to the Supplier for the duration of this Agreement so that the Supplier may lawfully use and otherwise process the personal data in accordance with this Agreement on the Customer's behalf.

6.6 In relation to any personal data processed by the Supplier on behalf of the Customer, the Supplier shall:

6.6.1 process that personal data only in accordance with the documented written instructions of the Customer, including with regard to any transfers of personal data to a country outside of the EEA or UK ("**Third Country**")

unless the Supplier is required by the laws applicable to it to process personal data, in such a case, the Supplier shall inform the Customer of that legal requirement before processing, unless such notification is prohibited by law;

- 6.6.2 personal data may be transferred or stored in a Third Country only where the Customer and/or the Authorised Users are located in a Third Country in order to carry out the Services and the Supplier's other obligations under this Agreement;
  - 6.6.3 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;
  - 6.6.4 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 6.6.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by applicable law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use);
  - 6.6.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and allow for audits during Business Hours, including inspections, conducted by the Data Controller (or its appointed representatives), provided the Customer provides reasonable notice and causes minimum disruption to the Supplier's business during any such audits; and
  - 6.6.7 inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 6.7 Each party shall 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 (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 6.8 The Customer consents to the Supplier appointing third-party processors of personal data under this Agreement. The Supplier confirms that it has entered, or (as the case may be) will enter, with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. 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.

- 6.9 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

## **7. Third party providers**

The Customer acknowledges that the Services may enable or assist it to access website content of 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 websites, or any transactions completed, and any contract entered into by the Customer, with any such third parties. 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 websites made available via the Services.

## **8. Supplier's obligations**

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and 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, in breach of the terms of this Agreement, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance in order to remedy non-conformance in all material respects. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

- 8.3 The Supplier:

8.3.1 does not warrant that:

- (a) the Customer's use of the Services will be uninterrupted or error-free;
- (b) the Services will be available at all times;
- (c) that the Services, Documentation, and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- (d) the Software or the Services will be free from Viruses or Vulnerabilities.

- 8.3.2 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, 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.
- 8.4 Any agreed timescales or deadlines for the delivery of the Services are estimates only and the Supplier shall not be in breach of this Agreement for failing to deliver any of Services within the agreed dates.
- 8.5 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 8.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **9. Customer's obligations**

- 9.1 The Customer shall:
- 9.1.1 provide the Supplier with:
- (a) all necessary co-operation in relation to this Agreement; and
  - (b) 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;
- 9.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 9.1.3 read, follow, and comply with any instructions for set-up and use of the Services contained in the Documentation;
- 9.1.4 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 9.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and End-User Terms. The Customer shall be responsible for the actions of each Authorised User as if they were its own including any breach by an Authorised User of this Agreement and/or End-User Terms;
- 9.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors, and agents to perform their obligations under this Agreement, including without limitation the Services;

- 9.1.7 ensure that its hardware, network, and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 9.1.8 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres. For the avoidance of doubt, the Supplier shall be solely responsible for 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 Subscription Fees and Support Fees in accordance with this clause 10 and the Order Form.

10.2 The Customer shall on the Effective 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:

10.2.1 its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:

- (a) on the Effective Date, or, where a Trial Period is agreed, the day after the Trial Period expires, for the Subscription Fees and Support Fees payable in respect of Services and/or Support Services to be provided during the Initial Subscription Term; and
- (b) thereafter at the intervals referenced in the Order Form. Where the Order Form fails to clearly specify intervals for payment, the Supplier shall be entitled to bill the Customer for the Subscription Fee and/or Support Fee either monthly, quarterly or annually from the date initial payment was billed above (either the Effective Date or the day after the Trial Period expires);

10.2.2 its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

- (a) on the Effective Date, or, where a Trial Period is agreed, the day after the Trial Period expires, for the Subscription Fees and Support Fees payable in respect of Services and/or Support Services to be provided during the Initial Subscription Term; and
- (b) thereafter at the intervals referenced in the Order Form. Where the Order Form fails to clearly specify intervals for payment, the Supplier shall be entitled to bill the Customer for the Subscription Fee and/or Support Fee either monthly, quarterly or annually from the date initial payment was invoiced above (either the Effective Date or the day after the Trial Period expires,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 10.3 If the Supplier has not received payment within 30 days after the due date, then without prejudice to any other rights and remedies of the Supplier:
- 10.3.1 the Supplier may, without liability to the Customer, disable the Customer's account and/or 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
  - 10.3.2 the Supplier may charge interest which shall accrue on a daily basis on such overdue amounts at an annual rate equal to 4% over the then current base lending rate of Starling Bank from time to time, 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 this Agreement:
- 10.4.1 shall be payable in pounds sterling;
  - 10.4.2 are non-cancellable and non-refundable; and
  - 10.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate and which the Customer is responsible for paying.
- 10.5 The Supplier shall be entitled to increase any fees or charges due under this Agreement at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Order Form 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, this Agreement does 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 this Agreement.

## **12. Confidentiality**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known and easily accessible other than through any act or omission of the receiving party;
  - 12.1.2 was in the other party's lawful possession before the disclosure;
  - 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- 12.1.4 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 shall 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 this Agreement.
- 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 this Agreement.
- 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 The Supplier shall be entitled to issue a press release and other content (such as a customer case study) on its website and owned media regarding the relationship between the parties and provision of Services to the Customer and is permitted to use the Customer's name, logos and marks solely for that purpose. In all other cases no party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party.

### **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 or Authorised Users' use of the Services and/or Documentation, provided that:
- 13.1.1 the Customer is given prompt notice of any such claim;
- 13.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 13.1.3 the Customer is given authority to defend or settle the claim, provided that any settlement is approved by the Supplier before it is entered into.

### **14. Limitation of liability**

- 14.1 Except as expressly and specifically provided in this Agreement:
- 14.1.1 the Customer assumes sole responsibility for any decisions or conclusions it makes arising from, in connection with or resulting from use of the Services and Documentation;
- 14.1.2 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;

- 14.1.3 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 Agreement; and
- 14.1.4 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.2 Nothing in this Agreement excludes the liability of the Supplier:
  - 14.2.1 for death or personal injury caused by the Supplier's negligence; or
  - 14.2.2 for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:
  - 14.3.1 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 this Agreement; and
  - 14.3.2 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 this Agreement shall be limited to £[AMOUNT].

## 15. Term and termination

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Trial Period (if applicable), Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of equal length to the Initial Subscription Term (each a "Renewal Period"), unless:
  - 15.1.1 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 this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - 15.1.2 otherwise terminated in accordance with the provisions of this Agreement;and the Trial Period, Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 15.2 The Customer also understands that where it does terminate this Agreement pursuant to clause 15.1, although its subscription will not be renewed for the next Renewal Period, it will not be eligible for a refund, or partial refund, of the Subscription Fee and/or Support Fee paid or owed in respect of the Customer's current Initial Subscription Period or Renewal Period as the case may be.
- 15.3 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- 15.3.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 15.3.2 the Customer commits a material breach of any other term of this Agreement 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;
  - 15.3.3 the Customer repeatedly breaches any of the terms of this Agreement 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 this Agreement;
  - 15.3.4 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;
  - 15.3.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors 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 that other party;
  - 15.3.6 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 the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 15.3.7 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 Customer;
  - 15.3.8 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
  - 15.3.9 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;
  - 15.3.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
  - 15.3.11 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 15.3.4 to clause 15.3.10 (inclusive);
  - 15.3.12 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 15.3.13 there is a change of control of the Customer.
- 15.4 On termination of this Agreement for any reason:

- 15.4.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 15.4.2 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;
- 15.4.3 where the Customer requests a copy of the Customer Data, the Supplier shall use reasonable commercial endeavours to deliver back-up Customer Data to the Customer within 30 days of its receipt of such a written request provided that it has received appropriate authorisation from its Authorised Users to disclose their personal data and that it has paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). If it does not make such a written request within 10 Business Days of termination, the Supplier reserves the right to dispose of the Customer Data. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data;
- 15.4.4 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
- 15.4.5 any clauses which are intended to come into force on, or survive, termination shall remain in full force and effect.

## **16. Force majeure**

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, 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), pandemic, epidemic, 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, provided that the Customer is notified of such an event and its expected duration.

## **17. Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Order Form, the Order Form shall prevail.

## **18. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this 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.

## **20. Rights and remedies**

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

## **21. Severance**

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.2 If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. Entire agreement**

22.1 This Agreement 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.

22.2 Each party acknowledges that in entering into this Agreement 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 this Agreement.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **23. Assignment**

23.1 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 this Agreement.

23.2 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 this Agreement.

## **24. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **25. Third party rights**

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

## **26. Notices**

26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by e-mail to the e-mail addresses set out in the Order Form.

26.2 Any notice shall be deemed to have been received:

26.2.1 if delivered by hand, on signature of a delivery receipt;

26.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

26.2.3 if sent by e-mail, at 9.00 am on the next Business Day after transmission provided that no bounce-back or failure of transmission notice is received.

## **27. Governing law**

This Agreement 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.

## **28. 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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).