

Enterprise Terms & Conditions

Introduction

These are the terms and conditions upon which we provide our services. When we use the words "we", "our" and "us", we are referring to BookingLive Software Limited. We are a company registered in England & Wales. Our registered office is located at The Maltings, East Tyndall Street, Cardiff, CF24 5EA and our registered number is 09012100.

When we use the words "you" or "your", we're referring to you, our client, being the business or organisation wishing to use our Software.

Please note that your use of the Software (defined below) is subject to these terms and conditions ("the Conditions") and all services that we deliver are provided subject to these Conditions. We hope that you will take the time to read them through carefully.

These Conditions form part of the Agreement that we will have with you that is based on our Statement of Work, which we may have sent to you via "Echosign" or offline in electronic or hard copy format. When you accept the Statement of Work, you are acknowledging that you also accept these Conditions. This will create a legally enforceable contract between us and any further changes can only be made as set out in these Conditions.

1. Interpretation

1.1 We will use a number of words and phrases repeatedly in these Conditions so, to make things, easier, we will define what we mean when we use them here:

Acceptance Tests means the tests to be carried out on the Software to make sure that it meets the Statement of Work.

Additional Fees means fees that we charge over and above those outlined within the quotation, for example where you have asked us to carry out additional work that is not covered within the Statement of Work or where you haven't kept to your obligations under this Agreement and as a result, we have incurred extra costs. Subject to clause 8.2, these fees will be charged at £850 per person per day, calculated on a pro rata basis rounded to the nearest whole

hour, subject to change. Where the additional work is yet to commence, we will notify you in writing of these Additional Fees

Agreement means this agreement between you, our client, and us, BookingLive Software Limited, which is made up of the Statement of Work and these Conditions. Please note that any earlier documents, such as quotations or estimates do not form part of this Agreement and, whilst we provide them in good faith, they are not binding upon us.

BookingLive Software means the software platform developed and owned by BookingLive from which the Software is constructed.

Bookings Allowance means the number of bookings that may be placed using the Software. Further bookings may be placed above and beyond the Bookings Allowance but where this occurs, Additional Fees will be charged and settled by you in accordance with these Conditions.

Browser Specification refers to Google Chrome Desktop, which must be used for all back-office administration of the Software.

Build Services means the setup of the Software, which services will commence upon your acceptance of the Statement of Work, unless you inform us to the contrary.

Commencement Date means the date you accept these Conditions in connection with the Order.

Customer Success Manager means any individual appointed by us to project manage the setup of your Software and who will be available to you within normal office hours (being Monday – Friday, 09:00 – 18:00 GMT).

Deliver, Delivered, Delivery refer to the point at which the Software is free for you to deploy as you wish, or when the Software has passed the Acceptance Tests and is ready to be deployed.

Delivery Date means the date upon which you inform us that you are satisfied that the Software is ready to be deployed or, the last date upon which the Acceptance Tests may be taken or the actual date upon which you start using the Software, whichever is the earlier.

Design Services means the scoping and design stage of the Software, the end result of which is the Statement of Work.

Fees means the fees you pay to us in consideration for the Software and the supply by us of the Services.

Infringement means the infringement of the Intellectual Property Rights of a third party.

Intellectual Property Rights means any copyright, trade marks, patents, confidential information and all other intellectual property and proprietary rights, powers and benefits, including the right to register, transfer, licence and assign the same.

Iteration, if applicable, means the Delivery of a predefined selection of an element or a version of the Software as set out in the Agreement.

Licence means the non-exclusive licence of the Software detailed at clause 2.

New Release means any approved, modified or corrected version of any of or any part of the Software, which we may issue from time to time.

Order means the Software chosen by you to be Delivered by us under the Agreement.

Parties, Party means us and/or you.

Payment Terms means the payment terms that apply in respect of the payment by you of the Fees, as specified in the Statement of Work.

Post-Delivery Services are the services we supply once the Software has been Delivered.

Project Manager means the individual nominated in the Statement of Work (and his or her replacement, if applicable) nominated by you to manage the work we undertake relating to the Order prior to Delivery, who will be available to provide us with instructions, content and other materials whenever reasonably practicable.

Seal means an unobtrusive message in graphical or plain text format stating that the Software is “powered by Booking Live” or other similar words to that effect and which will usually be found in the footer of Software or an operational or marketing communication of some sort.

Services means the Design Services, the Build Services and/or the Post-Delivery Services.

Server means the server(s) that we provide for the purpose of hosting and delivering the Services.

Specified Purposes means the use and operation of the Software for processing data created by you or your Users.

Software refers to the BookingLive Software outlined in the Agreement.

Statement of Work (*previously Project Brief*) means the description and configuration of the Software agreed between the Parties relating to the Order.

Term means the duration of this Agreement from the Commencement Date until the termination of this Agreement in accordance with these Conditions.

Training means additional services provided to you relating to the use of the Software.

Unlawful Material means content or data provided or generated by you and/or your customers that constitutes spam, hate speech or which is defamatory, infringes the intellectual rights or privacy of any third party, pornographic, blasphemous, illegal or otherwise generally offensive or in poor taste.

User means an individual who uses the Software on your behalf and who is employed by or contracted to you for that purpose, amongst others.

Your Material means content and data that is provided by you or which is generated by you or your customers through the use of the Software.

Warranty means the warranty we give at clause 10.1.

Warranty Period shall be 1 month starting on the date that Delivery takes place.

Working Hours shall refer to 08:00 - 18:00 GMT Monday to Friday (excluding days the banks in England are closed for business).

1.2 Any reference in this Agreement to any provision of any Act of Parliament shall include reference to any subordinate legislation (as defined in the Interpretation Act 1978) made pursuant thereto and shall be deemed to be a reference to such Act of Parliament or subordinate legislation as amended, modified or re-enacted (whether before or after the date hereof) and any reference to any provision of any such Act or subordinate legislation shall also include where appropriate any provision of which it is a re-enactment (whether with or without modification).

1.3 In this Agreement words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting the singular number shall include the plural and vice versa and references to persons shall include bodies corporate unincorporated associations and partnerships.

1.4 Unless otherwise stated, references to clauses and sub-clauses are references to clauses and sub-clauses of these Conditions. The clause headings

are for ease of reference only and shall not affect the construction or interpretation of these Conditions.

2. Services

2.1 In consideration of your payment of the Fees, we will:

2.1.1 deliver the Software in accordance with the Agreement;

2.1.2 grant you a non-exclusive licence to use the Software on the Server for the Specified Purposes;

2.1.3 give you and your Users access to the Server for the Specified Purposes; and

2.1.4 provide the Post-Delivery Services.

2.2 Any media, documentation or training notes that we provide will remain our property at all times and may not be copied or distributed in any manner without our written permission.

2.3 You acknowledge that for us to provide the Services successfully in accordance with the Agreement (including, where relevant, the Statement of Work), we require your co-operation and collaboration on a timely basis. Further information on what we will need from you can be found in the Statement of Work and you accept that if you are not able to comply with those responsibilities, the Delivery of the Software may be delayed and Additional Fees may be incurred.

3. Access And Use

3.1 On or before the Delivery Date, we will supply you with details of our security procedures and log-in details for the Software so that you may administer it yourself. From the Delivery Date for the remainder of the Term, you may gain access to the Software via the Internet using an internet browser that matches or exceeds the Browser Specification.

3.2 We may revise our security procedures as we feel appropriate from time to time and when we do, we will alert you to the changes we have made as soon as

we can. You undertake to comply with our security procedures at all times, which can be found [here](#).

3.3 Users will be given the opportunity to change their passwords and should they do so, you undertake to encourage them to select suitably secure alternatives. Each User is required to have their own log in details and password.

3.4 Should you become aware or suspect that an unauthorised person has obtained or has attempted to obtain access to the Software or any data processed and accessed by the Software, whether stored on the Server or elsewhere, you will notify us immediately. In particular, we will need to know the circumstances in which the security breach was made or suspected and where such access was gained through the fraudulent use of existing User accounts, you will ensure that the Users in question immediately change their passwords.

3.5 You will not attempt to obtain access to, use or interfere with any software or data that belongs to us or any third party (including any other client of ours) that is stored on the Server other than as specifically permitted under these Conditions. You will indemnify us against any loss, damage or liability that we may sustain or incur as a result of your breach of this undertaking.

4. Software Services

4.1 We offer a number of variations of the Software on an 'as available' basis. The different variants are outlined in the Statement of Work.

4.2 We will invoice you for and you will pay the Fees applicable to the Software chosen in the Agreement in accordance with the Payment Terms. Should you fail to pay the Fees when they are due then, without prejudice to any other rights or remedies that may be available to us, we may suspend the provision of the Software and Services of any description until payment has been made. Should we exercise our right to suspend provision, we will notify you immediately.

4.3 You acknowledge that all Intellectual Property Rights created, developed, subsisting or used in or in connection with the Software are and shall remain our property but are licensed to you in accordance with clause 2 above. We may terminate this Agreement on notice in writing with immediate effect should you question or dispute our ownership of any such Intellectual Property Rights at any time.

5. Design Services

5.1 You will consider the draft Statement of Work, produced as part of the Design Services, and advise us of any changes you wish to make. We will liaise with you in good faith in order to achieve the configuration that you desire for a Fee and within a timescale that you consider acceptable. Once you indicate you are happy with the content of the Statement of Work by signing, its content will be incorporated into the Agreement.

5.2 We retain full legal ownership of the Statement of Work and you may not reuse this elsewhere.

6. Build Services

6.1 On receipt of:

- (a) your written confirmation that you wish to proceed; and
- (b) your payment of the Fees (or such part of them as stated in the Agreement relating to the Software);

we will commence the Build Services.

6.2 Where the Software is to be developed in Iterations, we will make available each Iteration to you so that you may carry out the Acceptance Tests. We will not be obliged to start work on the next Iteration until you have accepted the previous Iteration, though we may, at our discretion, choose to do so.

6.3 Once the Software or that Iteration of them (if not the whole) has passed the Acceptance Tests, it shall be deemed to have been accepted by you as Delivered. Should we not receive from you any indication of any failure of the Software (or Iteration) to achieve the Statement of Work within seven days of our notifying you that the Software (or Iteration) was ready for Acceptance Tests, we shall be entitled to regard the Acceptance Tests as satisfied and you will be deemed to have accepted Delivery of the Software (or the Iteration in question). Any further work that you ask us to carry out on the Software following Delivery will be subject to Additional Fees unless that work is required to correct a fault that has resulted in a breach of the Warranty.

6.4 You accept that any timescales provided in the Statement of Work are estimates only. We will try to complete the Build Services and Deliver the

Software within any timescales provided in the Statement of Work but we will not be liable for our failure to do so nor will we be in breach of this Agreement solely by reason of our failure to meet those timescales, if any. For the avoidance of doubt, time shall not be of the essence for the purpose of this clause or any part of this Agreement save where expressly stated to the contrary.

6.5 If necessary we may agree with you to reprioritise other elements of the Build Services that have, following Delivery of one of more previous Iterations, gained a greater degree of importance. You acknowledge that rearranging the provision of the Build Services may create additional technical demands upon us and if those demands require additional work from us, Additional Fees may apply. However, in discussing the rearrangement of the provision of the Build Services with you, we shall advise you of any applicable Additional Fees and we shall not make changes to the provision of the Build Services until you have consented in writing to those changes and the Additional Fees applicable.

6.6 If you fail to take Delivery of any Iteration or part, module or the whole of the Software in accordance with these Conditions or if either Party terminates this Agreement for whatever reason, whether before or after the Delivery Date, you will be liable to pay to us all sums due for the time we have spent and the materials used to that point in time, in addition to any and all costs and expenses that we incur as a result of your default, termination or rescheduling of Delivery to a later date.

6.7 We will invoice you for and you will pay the Fees applicable for the Build Services in accordance with the Payment Terms. Should you fail to pay the Fees when they are due then, without prejudice to any other rights or remedies that may be available to us, we may suspend the provision of all further Build Services and any other Services of any description until payment has been made. Should we exercise our right to suspend provision, we will notify you immediately.

6.8 Should you require us to modify and/or enhance the Software after we have agreed the Statement of Work with you, we will carry out those modifications and enhancements only once you have accepted in writing any Additional Fees and/or changes to timescales that might be warranted as a result. The acceptance of further Build Services and additional requirements for the Software will be at our general discretion and in exercising that discretion, we will consider issues such as workloads and technical demands but we will not withhold our acceptance unreasonably. The detail of any further Build Services

that you ask us to perform will be agreed between us using the Change Control Procedure in accordance with clause 7 below.

6.9 In the event that new inventions, designs or processes evolve in the provision of the Build Services or otherwise as a result of this Agreement, you acknowledge that these inventions, designs and processes will be our property unless we have agreed with you to the contrary in writing.

7. Change Control Procedures

7.1 This clause details the processes to be used to generate a change to the Statement of Work. The procedure laid out below shall be referred to as “Change Control” or “Change Control Procedure”.

7.2 The Account Manager and the Project Manager shall conduct discussions relating to proposed changes to the Statement of Work in good faith. Until such time as both have signed an addendum to this Agreement, we will continue to provide the Services and both Parties shall perform their obligations in accordance with this Agreement. On the completion of the addendum, the Parties shall comply with the Agreement as varied.

7.3 Any work undertaken by us (or on our behalf) in connection with any proposed change to the Statement of Work shall be undertaken entirely at our expense and liability unless you agree with us in writing the nature of the work and the Additional Fees or other payment due in respect thereof.

7.4 Any discussions, negotiations or other communications that may take place between the Parties in connection with any proposed change to this Agreement, including but not limited to the submission of any written communications, prior to the signing by both the Account Manager and the Project Manager of the relevant addendum, shall be without prejudice to the rights of either Party.

7.5 Neither Party shall unreasonably withhold or delay their agreement to any proposed change to the Statement of Work.

7.6 Should either Party wish to amend the Statement of Work, that Party shall submit details of the proposed variation (a “Change Request”) to the other Party addressing, as far as possible, the following points:

7.6.1 the originator and date of the proposal for the proposed change;

7.6.2 the reason for the proposed change;

7.6.3 full details of the proposed change;

7.6.4 a proposed timetable for implementation of the change, if any;

7.6.5 proposals for acceptance of the change;

7.6.6 the price, if any, of the proposed change; and

7.6.7 details of the likely impact, if any, of the proposed change on other aspects of this Agreement.

7.7 Within one week of the submission of the Change Request (or such other period as may be agreed between the Parties) the receiving Party shall respond to the Change Request in writing and, if appropriate, we will meet with you to discuss the proposed change.

7.8 The discussions that we have with you following the submission of a Change Request will result in either:

7.8.1 agreement on the changes to be made to this Agreement, including agreement on the date upon which the changes are to take effect, such agreement to be expressed in the form of a revised Statement of Work; or

7.8.2 no further action being taken on that proposed Change Request.

7.9 A copy of any proposed changes to this Agreement that we agree with you in accordance with clause 7.8.1 above, which we have both signed in accordance with clause 7.10, shall constitute an addendum to this Agreement. We will uniquely identify each addendum with a unique sequential number.

7.10 No amendment to these Conditions or to the Agreement will be valid unless confirmed in writing by a director on our behalf together with a duly authorised person signing on your behalf.

7.11 Requests for new features that involve updates to the Software will not usually be treated as Change Requests but instead we shall consider such requests for inclusion in our product roadmap. We choose and prioritise feature requests based on what, in our discretion, we perceive to be the overall need for the feature requested and the value that it would add to our clients and their customers and we balance these factors against technical and design issues arising from the inclusion of those features.

8. Bookings Allowance And Post-Delivery Services

8.1 We will commence supply of the Post-Delivery Services on the Delivery Date. You will pay the Fees applicable for the Post-Delivery Services in accordance with the Payment Terms.

8.2 Fees charged for the Post-Delivery Services are calculated as outlined within Additional Fees.

8.3 You acknowledge that it is your responsibility:

8.3.1 to ensure that you do not infect the Server, our other systems or the systems of any third party with any form of malware (such as viruses, trojans, worms and such like); and

8.3.2 to ensure that the Software is not used to process, host or distribute Unlawful Material.

Should we become aware of the existence of any Unlawful Material, we may remove it immediately without notice and we may suspend the provision of the Post-Delivery Services forthwith. You accept that we may take such action that we consider necessary to protect the Server and our other systems in the event that we become aware that any such malware exists and that this may disrupt the provision of the Post-Delivery Services. In the event that we conclude that such malware has been introduced to the Server or our other systems as a result of your failure to take reasonable security precautions in your use of the Software we may charge Additional Fees.

8.4 We use preferred hosting partners that provide you with a secure and safe environment. More information about these services and technologies is available [here](#).

8.5 When you place an Order, you accept the risk that reliability of hosting services, internet intermediaries, your internet service provider, and other service providers cannot be assured, and the responsibility for choosing to use a technology that does not provide perfect security or reliability.

8.6 You agree that if you believe the security of your account has been compromised in any way, you will notify us immediately. You shall be held fully responsible for any misuse or compromise to your account for which we are not properly notified.

8.7 Should the Software exceed the Bookings Allowance, we will provide you with options for increasing these allowances. It is your responsibility to monitor the performance of the Software to ensure that it remains as specified in the Statement of Work, as amended on agreement between the Parties from time to time.

8.8 We reserve the right to implement up to 48 hours of a “no bookings” period upon the Software going live to allow any potential domain name system (DNS) issues to be fully propagated.

9. Interest, Charges And Value Added Tax

9.1 We will charge interest in respect of the late payment of any sum due under these Conditions (after as well as before judgment) at the rate of 8% per annum above the Official Bank Rate from time to time of the Bank of England from the due date until payment in cleared funds is received.

9.2 You will pay Value Added Tax at the appropriate rate in addition to all sums you are due to pay to us under this Agreement.

9.3 We reserve the right to charge you for all expenses and charges, whether administrative and/or legal incurred in the collection or pursuing payment of any sum due under this Agreement where payment of that sum has not been made on or before its due date.

9.4 Invoices accounting for Additional Fees are due for payment 7 days from the date of each such invoice.

10. Warranty, Support And Training

10.1 We warrant that we will develop the Software with reasonable care and skill and that during the Warranty Period, the Software will perform substantially in accordance with the Statement of Work.

10.2 Should you discover an apparent fault in the Software you should notify us immediately stating the circumstances in which the fault arose and providing such further information as we may require. Should you notify us of an apparent fault, we will investigate to see if a fault is present. If it is, we will take reasonable

corrective measures to ensure that the Software does perform correctly, or in the case of Software, in accordance with the Statement of Work.

10.3 The following response and resolution times are applicable to support tiers 2 and above and are provided as an indication only and governed by our working hours:

Severity Level	Condition	Response Time	Resolution Time
1	A critical issue where the Software does not function or is preventing business operations. A large number of end-users are prevented from working with no procedural workaround.	1 hour	24 hours
2	An issue that is creating a significant operational impact. A large number of end-users are impacted by issue but they are still able to work in a limited capacity.	4 hours	5 business days
3	A non-critical issue where there is moderate operational impact or non-critical loss of functionality on production Software. A small number of end-users are affected.	1 business day	20 business days

4	Questions that pertain to usage questions or clarification of documentation or other non-impacting issue.	5 business days	60 business days
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10.4 Should we receive notification of a fault from you in accordance with clause 10.2 above, we may make recommendations concerning your use of the Software or other issues in your control affecting the performance of the Software. You will implement those recommendations at the earliest possible opportunity and you acknowledge that should you fail to do so, the performance and/or effectiveness of the Software may be adversely affected.

10.5 We will not be responsible for the diagnosis and/or rectification of any fault resulting from:

10.5.1 your failure to implement our recommendations;

10.5.2 improper use or operation of the Software, or your failure to operate the Software in a manner consistent with our directions, or the use of the Software otherwise than for the Specified Purposes, including any purpose for which it was not designed;

10.5.3 the use of a browser that does not meet (where applicable) the Browser Specification;

10.5.4 the quality, accuracy, correctness, appropriateness or other characteristics relating to the integrity of the data stored or processed by the Software.

10.6 You alone are responsible for all content and data to be processed by the Software and you will control the processing and use of that content and data. We will not be responsible for any fault or error in any such content or data.

10.7 We may choose to provide support even though the faults you have notified us have arisen because of one or more of the issues cited in clauses 10.4 and 10.5. Where we provide support in such a situation, that support will be the subject of Additional Fees as set out in the Statement of Work. We will also be entitled to charge Additional Fees for support provided in circumstances where a reasonably skilled and competent user of the Software would have judged your request to have been unnecessary.

10.8 You will not allow any third party to correct faults or to provide any support for the Software at any time either during the Term or thereafter. You will not directly or indirectly solicit the services of any person in our employment or contracted to us at any time during the Term or for a period of six months following the termination of this Agreement to provide Training or support related to the Software nor will you accept any such services from any such person at any time.

10.9 We provide Training during the onboard as outlined in the Statement of Work as part of the Fees. Remote training after this time is free, Onsite training will be subject to Additional Charges.

10.10 Where you ask us to provide support services for something that is in our opinion described or dealt with adequately in any directions or help facilities that we provide, such support will be subject to Additional Charges as applicable from time to time.

10.11 With the caller's consent (which may be implied after informing the caller) on a call-by-call basis, we reserve the right to record all phone calls received for quality and training purposes.

11. Property And Confidentiality in the Software

11.1 The Software contains information that is confidential to us. We own all Intellectual Property Rights in the Software.

11.2 You will not:

11.2.1 attempt to obtain access to, use or interfere with any programs or data belonging to us and stored on the Server (other than access to and use of the Software in accordance with these Conditions) or any of our other clients;

11.2.2 modify merge or combine the whole or any part of the Software with any other software or documentation.

11.3 You will:

11.3.1 respect the confidential nature of the Software;

11.3.2 limit administrative access to the Software to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Software;

11.3.3 reproduce our copyright and trade mark notices on any copy of the Software that you make in accordance with these Conditions; and

11.3.4 generally do anything else necessary to protect the confidential information and our Intellectual Property Rights in the Software;

11.3.5 indemnify us against any loss, damage or liability that we may sustain or incur as a consequence of your breach of your obligations under clauses 11.2 and/or 11.3.

12. Property And Confidentiality in Your Material

12.1 We will keep confidential all information (written or oral) concerning your business and affairs that we obtain during the negotiation of this Agreement and the provision of the Services, save where such information is trivial or obvious or is in the public domain (otherwise than through a breach of this Agreement).

12.2 Save for disclosures in accordance with clause 12.3 below or where such disclosures are required for the purpose of compliance with law, regulations or the order of a court or other properly constituted statutory body, we will ensure that your confidential information (including confidential information about your customers that is processed by the Software) will not be disclosed, provided or made available to any third party without your specific prior written authority.

12.3 The restriction set out at clause 12.2 above shall not apply in respect of disclosure of Your Material to our employees, agents and sub-contractors where those individuals need to know or to access the same, in which event such disclosure shall only be to the extent necessary to enable us to perform our obligations under this Agreement.

12.4 We will ensure that our employees, agents and sub-contractors are aware that the information, content and data provided by you or your customers may be confidential and where it is, that such individuals owe you a personal duty of confidence.

12.5 We will notify you immediately should we discover breach of confidence by any of our employees, agents and sub-contractors and we will assist you with any legal proceedings that you may choose to bring against such individuals for breach of confidence.

12.6 All data maintained on master files and data processing reports or any other medium supplied by and belonging to you will remain your property and we will give access to that data to your officers and employees or any person acting on your authority or nominated by you at all reasonable times.

12.7 On termination of this Agreement, we will make Your Material available to you for twenty working days. Thereafter, we will securely erase Your Material.

12.8 The obligations as to confidentiality in clauses 11 and 12 shall remain in full force and effect notwithstanding the termination of this Agreement (howsoever occasioned) but shall not extend to any information that was rightfully in the possession of either Party prior to the commencement of negotiations leading to this Agreement or which is otherwise public knowledge or becomes so at some later date (other than as a result of breach of the Agreement).

13. Data Protection And Your Material

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation (which shall mean: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) 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). This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

13.3 Without prejudice to clause 13.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.

13.4 Without prejudice clause 13.1, we shall, in relation to any Personal Data processed in connection with the performance of our obligations under this Agreement, we shall:

13.4.1 process that Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process Personal Data (Applicable Laws). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;

13.4.2 ensure that we have 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 our 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 us);

13.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

13.4.4 not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:

- (a) either party has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) we comply with reasonable instructions notified to it in advance by you with respect to the processing of the Personal Data.

13.4.5 assist you, at your own expense, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

13.4.6 notify you without undue delay on becoming aware of a Personal Data breach;

13.4.7 at your written direction, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

13.4.8 maintain complete and accurate records and information to demonstrate our compliance with this clause 13 and shall immediately inform you if, in our opinion, an instruction infringes Data Protection Legislation.

13.5 You do not consent to us appointing any third party processor of Personal Data under this Agreement.

13.6 You warrant that and will undertake to ensure that Your Material will not contain payment details, obscene, offensive, defamatory or otherwise unlawful material nor will it infringe the Intellectual Property Rights of any third party or otherwise harm our goodwill and/or reputation. You will indemnify and hold us harmless and keep us fully and effectively indemnified against all actions, proceedings, claims, demands, damages and costs (including legal costs on a full indemnity basis) occasioned to or incurred by us as a result of any breach of this warranty and undertaking.

YOUR ATTENTION IS DRAWN TO THE PROVISIONS OF CLAUSES 14 & 15

14. Limitation To Warranty

14.1 We will have no liability to remedy any breach of any warranty, undertaking or representation given in this Agreement where such breach or failure results from your misuse of the Software or breach of any of your obligations under this Agreement.

14.2 You accept that the Software specified in the Statement of Work was not designed and produced to your individual requirements and that you were responsible for selecting it.

14.3 You accept that we have no in-depth knowledge of your business or precise requirements, regardless of whether you have informed us of any such

requirements have been communicated. Consequently, and without prejudice to the foregoing, we do not warrant that the use of the Software will meet your requirements or that the operation of the Software will be uninterrupted or error free.

14.4 Subject to the contents of this clause 14, all conditions, warranties, terms, collateral contracts and undertakings, whether any of the foregoing are express or implied by statute or otherwise, in respect of the Software and the Services are hereby excluded to the fullest extent permitted by law.

15. Limitation And Liability

15.1 The following provisions set out our entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to you in respect of:

15.1.1 any breach of our contractual obligations arising under this Agreement (other than a breach the warranty we give at clause 16.1); and

15.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement.

15.2 Our liability to you for death or injury resulting from our own negligence or that of our employees, agents or sub-contractors shall not be limited. Nothing in these Conditions shall be interpreted so as to exclude or limit any such liability.

15.3 Any act or omission on our part or by our employees, agents or sub-contractors falling within clause 15.1 above shall for the purposes of this clause 15 be known as an “Event of Default”. If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

15.4 Our liability to you in respect of damage to physical property resulting from an Event of Default shall be limited to £500,000. For the avoidance of doubt, physical property does not include software, computer code or data.

15.5 Save for our liability to you for damage to physical property, our entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the Fees paid or payable in accordance with these Conditions in the calendar year ending on the date of the Event of Default (or the first

thereof, if more than one give rise to substantially the same claim, loss or damage).

15.6 Leaving aside the limitations on our liability set out in clauses 15.4 and 15.5, should a court decide that following an Event of Default you are justified in terminating this Agreement for total failure of consideration, we will refund to you all Fees that you have paid to us.

15.7 Under no circumstances shall we be liable to you for loss of data or software restoration, or for loss of profits, goodwill, opportunity or for any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or you had previously advised us of the possibility of you incurring the same.

15.8 You will give us not less than twenty-eight days in which to remedy any Event of Default, starting with the day upon which you notify us of that Event of Default.

15.9 We will have no liability to you in respect of any Event of Default unless you give us written notice of it within three months of the date you became aware of the circumstances giving rise to the Event of Default (or the date when you ought reasonably to have become so aware, if earlier).

15.10 We will indemnify you against any loss or damage that you sustain or incur as a result of our breach of clause 12.4.

15.11 Nothing in this clause shall confer upon you any right or remedy to which you would not otherwise be legally entitled.

16. Intellectual Property Rights

16.1 We warrant that we are entitled to grant the Licence to you and that the use by you of the Software in accordance with these Conditions will not give rise to an Infringement.

16.2 Subject to the provisions of clause 16.4 below we will indemnify and hold you harmless against any action, liability, cost or expense (including legal costs and expenses) to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Software by you constitutes an Infringement, provided that you:

16.2.1 give us notice of the Infringement as soon as it comes to your attention;

16.2.2 give us the sole conduct of the defence to any claim or action in respect of an Infringement and do not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon our express instructions; and

16.2.3 act in accordance with our reasonable instructions and give us whatever assistance as we might require in respect of the conduct of the defence to the allegation of infringement, such as the preparation of evidence and other documents required as part of the court process.

16.3 We will not be liable to you in respect of an Infringement that results from any breach by you of your obligations under this Agreement.

16.4 In the event of an Infringement, at our expense and in our discretion, we may:

16.4.1 procure the right for you to continue using the Software; or

16.4.2 make such alterations modifications or adjustments to the Software so that it becomes non-infringing without incurring a material diminution in performance or function; or

16.4.3 replace the Software with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function; or

16.4.4 terminate this Agreement and refund the Fees.

16.5 You will indemnify and hold harmless us against all liabilities, costs and expenses arising out of an Infringement that we incur as a result of using Your Materials and/or developing the Software in accordance with your instructions.

16.6 The provisions of clause 15 above shall not apply to this clause 16. Your sole remedy in respect of our breach of the warranty given at clause 16.1 above shall be as set out in clause 16.4 above, together with the indemnity given at clause 16.2 above.

16.7 You will indemnify us against any claim of the infringement of third party Intellectual Property Rights, whether alleged or proven, arising from the processing of your content or data or any content or data generated by your customers using the Software.

16.8 The Seal will be displayed during the Term with due discretion in the Software and on operational and marketing communications. We may use your name and brand identity together with a link to the Software in our portfolio

and you grant us a licence to use your trade marks and copyright for that purpose only.

17. Confidentiality

17.1 Each Party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Agreement or during the period of operation of this Agreement save that information which:

17.1.1 is trivial or obvious;

17.1.2 is already known to the receiving Party or is in its possession before the disclosure hereunder free of any obligation to keep it confidential; or

17.1.3 is in or enters the public domain other than as a result of a breach of this clause.

17.2 Each Party undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 17.1 above by its employees, agents and sub-contractors.

18. Termination

18.1 This Agreement shall continue until terminated in accordance with the provisions of this clause.

18.2 This Agreement may be terminated:

18.2.1 By us forthwith in writing if you fail to pay any sum due hereunder within twenty eight days of the date upon which your payment of that sum was due and time shall be of the essence in respect of compliance with the period of payment.

18.2.3 By either Party forthwith in writing if the other Party commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within twenty-eight days of a written request to remedy the same.

18.2.4 By either party forthwith in writing if the other Party convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver administrator (whether out of court or otherwise pursuant to the provisions of Schedule B1 of the Insolvency Act 1986) or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or an application is made to court for the appointment of an administrator (otherwise than for the purpose of an amalgamation or reconstruction).

18.2.5 By us forthwith in writing in the event that an Infringement has occurred and we have chosen to terminate the Agreement in accordance with clause 16.4.4.

18.2.6 By us forthwith in writing if there shall be any change in your management, Control or ownership of you. "Control" for the purpose of this clause means the power to require compliance in some respect material hereto whether by means of voting rights contract or otherwise.

18.2.7 By us forthwith in writing should you breach the undertaking you have given under clause 13.3.

18.2.8 By either Party with not less than 30 days written notice, once the minimum term has passed.

18.3 We may terminate this Agreement notwithstanding any delay, forbearance or service we provide following the occurrence of grounds for such termination.

18.4 Any termination of this Agreement pursuant to this clause 18 shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of any Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

19. Contact And Notices

19.1 As soon as reasonably practicable after the date of the Order, you will notify us of the identity of and contact details for your Project Manager and you will thereafter inform us immediately of the identity of and contact details for any replacement Project Manager.

19.2 Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post, or by email (subject to confirmation of receipt in the form of the transmission of an automated read receipt or an email from the intended recipient expressly acknowledging receipt) to the individual nominated on behalf of the recipient Party and at the contact details contained within the Statement of Work (or, in respect of either Party, such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered at the time of delivery (if sent by post) upon the expiration of 48 hours after posting or (if sent by email) immediately on the transmission of an automated read receipt or an email from the intended recipient expressly acknowledging receipt).

20. Force Majeure

20.1 No Party hereto shall be liable or deemed to be in breach of its obligations hereunder by reason of any delay in performing, or failure to perform, if the delay or failure was due to any cause beyond its reasonable control, including without limitation, act of God, explosion, flood, tempest, fire or accident; war or threat of war, national emergency, acts of terrorism, sabotage, insurrection or civil disturbance; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, regional or local authority; strikes, lock-out or other industrial actions or trade disputes (whether involving employees of the Parties or of a third party); unavailability or shortages of goods, materials, fuel, part-machinery, or transportation; power failure or breakdown in machinery; or default of third party suppliers or subcontractors (an "Event of Force Majeure").

20.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

20.3 If a default due to an Event of Force Majeure shall continue for more than four weeks then the Party not in default shall be entitled to terminate this Agreement. No Party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

21. General

21.1 This Agreement in conjunction with the Statement of Work constitute the entire agreement between the Parties and supersede all prior agreements, representations, statements and understandings between the Parties in respect of the subject matter hereof. In the event of any conflict of terms, those contained within the Statement of Work shall take precedence. You agree that you have not relied upon any representation or statement not recorded in these Conditions or the Statement of Work in entering into this Agreement.

21.2 The waiver by any Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of any Party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

21.3 If any court or administrative body of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provisions a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

21.4 This Agreement shall be binding upon and ensure for the benefit of the successors in title of both parties.

21.5 You may not assign this Agreement nor any of your rights and obligations hereunder nor sub-license the use (in whole or in part) of the Software without our prior consent.

21.6 We will be entitled to assign this Agreement and any of its rights and obligations at any time.

21.7 Nobody other than the Parties has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.

21.8 This Agreement shall be governed by and construed in accordance with English law and the Parties hereto agree to submit to the exclusive jurisdiction of the English Courts.