

1. Definitions and interpretation

1.1 In this Contract, unless the context otherwise requires, the following words and expressions shall have the following meanings:

1.1.1 **"Acceptable Use Policy"** means the acceptable use policy governing your and the Enrolled Users' access and use of the Solution, as may be modified by us from time to time, a current copy of which is available to Enrolled Users when accessing and using the Solution;

1.1.2 **"Additional Fees"** means fees for Additional Services not included in your subscription to access and use the Solution;

1.1.3 **"Additional Services"** means additional consulting services (including implementation, training and other professional services);

1.1.4 **"Effective Date"** means the date on which this Contract is signed by you and us;

1.1.5 **"Confidential Information"** means information (in any format – including electronically stored information and tangible embodiments in whatever form (including back-ups)) that: (i) relates to, includes or comprises the existence or terms and conditions (or both) of this Contract; (ii) is marked as "confidential" (or similar); (iii) is of a nature that a reasonable person would (in all the circumstances) consider confidential, including information concerning a Party's business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, recipes and formulae, products, processes, techniques, equipment, marketing, market opportunities, plans, intentions, relationships with suppliers and customers, finances, personnel, computer software, and algorithms; and similar information of third parties that a Party maintains in confidence; or (iv) is any combination of the foregoing;

1.1.6 **"Consumer Price Index" or "(CPI)"** means the Consumer Price Index published by the Office for National Statistics or if the Consumer Price Index ceases to be published or is not published in any month, such alternative index which produces, as nearly as possible, the same result;

1.1.7 **"Contract"** means the Contract Information, these terms and conditions and any Schedules attached hereto;

1.1.8 **"Contract Information"** means the basic information about this Contract as well as the execution of this Contract, commencing on the first

page of this Contract and entitled "Contract Information";

1.1.9 **"Contract Year"** means (a) a period of 12 months commencing on the Effective Date; and (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the expiry or termination of this Contract;

1.1.10 **"Customer Materials"** means any data, document, software, material, text, graphics, multimedia, video, audio, learning material, course, catalogue, record, registration data, Third Party Property or other information or content provided to us by or on behalf of you or any Enrolled Users in connection with the use of the LMS;

1.1.11 **"Designated Contact"** means the individuals designated by you during the purchase process or thereafter and agreed to by us who are authorised to contact our customer support staff;

1.1.1 **"E-learning Content"** means collectively the Help Documentation and E-learning Courses;

1.1.2 **"E-learning Courses"** means educational course content provided by us under this Contract as specified in the Contract Information and that is designed for use within the LMS;

1.1.3 **"Enrolled User"** means a named active user, whom you have authorised to acquire an e-learning account, who has accessed the Solution and, by inputting his or her user name and password details into the LMS, has enrolled to access and use the Solution for the relevant Subscription Period;

1.1.4 **"Fees"** means the Subscription Fees and any Additional Fees, each as set out in the Contract Information and/or as otherwise agreed in writing between the Parties from time to time;

1.1.5 **"Help Documentation"** means guides, FAQs, wikis, forums, blogs, training slides and other similar Enrolled User facing materials provided via the LMS (including via a knowledge base/ help portal at <https://learnspace.support.skillsforhealth.org.uk>) designed for the purpose of assisting Enrolled Users in their use of the LMS;

1.1.6 **"Implementation Support Services"** means implementation consultancy support services to be provided by us as described in or referred to in the Contract Information where applicable;

1.1.7 **"Intellectual Property Rights" or "IPR"** means all patents, rights to inventions, copyright and related rights, rights in databases, sui generis rights, moral

rights, topography rights, design rights, trade marks, documents, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, source code, trade secrets, know-how and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

1.1.8 “**LMS**” has the meaning given in the Contract Information;

1.1.9 “**Loss**” means all losses, liabilities (including provision for contingent liabilities), fines, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (and “**Losses**” shall be construed accordingly);

1.1.10 “**Party**” means either you or us as appropriate and together means the “**Parties**”;

1.1.11 “**Permitted Use**” means the permitted use of the Solution as specified in the Contract Information;

1.1.12 “**Prerequisites**” mean any technical or organisational requirements, or specific requests for information including implementation related activities and tasks that we need you to undertake in order to implement the Solution and/or provide any Additional Services (where applicable) for you and communicated in writing to you by us either in advance of the Effective Date (whether in the Contract Information or separately) and/or after the Effective Date during implementation of the Solution and/or provision of the Additional Services (where applicable);

1.1.13 “**Scheduled Days Cost**” means those fees due to be charged to you for the provision of Implementation Support Services and/or Additional Services on agreed planned dates;

1.1.14 “**Solution**” means a cloud hosted e-learning solution comprising:

- a) the LMS; and
- b) the E-learning Content.

1.1.15 “**Subscription Fees**” means the fees for access and use of the Solution as specified in the Contract Information;

1.1.16 “**Subscription Period**” means a period of 12 months between the dates specified in the

Contract Information or in the absence of such dates a period of twelve (12) months from the Effective Date;

1.1.17 “**Supplemental Terms**” means the terms and conditions identified as such in the Contract Information;

1.1.18 “**Taxes**” means any form of taxation, levy, duty, customs fee, charge or impost of whatever nature, but excluding any taxes based solely on our net income;

1.1.19 “**Term**” means the Initial Term and all Renewal Terms (as defined in Clause 2.2), unless this Contract is earlier terminated in accordance with its terms; and

1.1.20 “**Third Party Property**” means any material embodying IPR which belong to a third party.

1.2 In this Contract, unless the context otherwise requires:

1.2.1 any references to “clauses”, “Schedules” are to the relevant clause, Schedule, of this Contract (as the case may be) unless otherwise specified;

1.2.2 “including” shall be construed without implying limitation (and variants of “including” shall be interpreted accordingly);

1.2.3 “information” includes data;

1.2.4 references to persons shall include individuals, bodies corporate, unincorporated associations and partnerships and any other person having legal capacity and shall include the successors and permitted transferee and assigns of such persons;

1.2.5 references in this Contract to law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time;

1.2.6 any obligation on a Party not to do something includes an obligation not to allow that thing to be done;

1.2.7 “subcontractor” shall include subcontractors of subcontractors, and so on;

1.2.8 Clause headings are for ease of reference only and shall not affect the interpretation of this Contract; and

1.2.9 references in this Contract to the singular shall include the plural and vice versa, and references to the masculine shall include the feminine.

- 1.3 In the event of conflict between these terms and conditions and the Contract Information, the provisions of these terms and conditions shall take precedence.

2. Term

- 2.1 **Initial Term:** This Contract shall commence on the Effective Date and will continue for the Subscription Period (the “**Initial Term**”).
- 2.2 **Automatic Renewal:** Upon expiry of the Initial Term and each subsequent Renewal Term, this Contract shall automatically renew for a successive additional Subscription Periods (each, a “**Renewal Term**”) provided that neither Party has given notice at least ninety (90) days before the end of the then-current Term that such Party does not wish to renew this Contract.

3. Fees

- 3.1 **Subscription Fees:** You agree to pay us the Subscription Fees within thirty (30) days of receipt of a valid invoice. We will invoice you for the Subscription Fees in advance unless agreed otherwise in the Contract Information.
- 3.2 **Additional Fees:** In respect of any Additional Fees we will invoice you monthly at the end of the month in which such services are provided or expenses incurred or as otherwise agreed in the Contract Information. You agree to pay such invoices within thirty (30) days of receipt of a valid invoice.
- 3.3 **Fee adjustments:** Where the Term exceeds one year, we shall be entitled to increase the Fees as follows:
- 3.3.1 we shall not be entitled to increase any Fees which have been paid in full up front; and
- 3.3.2 where increased, the Fees will be increased each year by no more than the percentage increase in the Consumer Price Index (CPI) for the previous twelve month period.
- 3.4 **Late payment:** If you fail to make any payment due to us under this Contract within thirty (30) days, we shall be entitled (without prejudice to any other right or remedy we may have) to charge interest on any amount outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, such interest being charged as a separate, continuing obligation and not merging with any judgment. You will pay the Fees into such bank account as we may notify to you from time to time, in cleared funds and without deduction or set off.

- 3.5 **Taxes:** The Fees are exclusive of any Taxes. You will pay to us an amount equal to any Taxes arising from or relating to this Contract or any payment made hereunder which are paid by or are payable by us. If you are required under any applicable law or regulation to withhold or deduct any portion of the payments due to us, then the sum payable to us will be increased by the amount necessary so that we receive an amount equal to the sum we would have received had you made no withholdings or deductions.

4. Our Services

- 4.1 **Access and use of the Solution:** In consideration of you performing your obligations under this Contract, including the payment of the Fees, we grant you a non-exclusive, non-transferable licence for your own internal business purposes during the applicable Subscription Period to:

- 4.1.1 authorise Enrolled Users to access and use the LMS and through it the E-Learning Content; and
- 4.1.2 where expressly permitted in the Supplemental Terms, upload, access and use Customer Materials via the LMS,

in all cases solely for the Permitted Use and in accordance with all usage levels (including the maximum number of Enrolled Users per Subscription Period as stated in the Contract Information) and consistent with any other restrictions set forth in this Contract and any applicable documentation.

- 4.2 **Enrolled Users:** You may grant Enrolled Users the right to exercise the licence rights granted to you by virtue of Clause 2.1. You are responsible for the Enrolled Users' use of the Solution. Prior to gaining access and use of the Solution, Enrolled Users are required to read and accept the Acceptable Use Policy. You will use all reasonable endeavours to ensure that Enrolled Users comply with the Acceptable Use Policy and that the terms of your agreement (if any) with each Enrolled User are not inconsistent with this Contract and/or the Acceptable Use Policy. If you become aware of any breach of the Acceptable Use Policy by an Enrolled User, you will use all reasonable endeavours to immediately prevent access to the Solution by such Enrolled Users. You acknowledge and agree that access and use of the Solution, including by Enrolled Users, is subject to our privacy policy available online at www.skillsforhealth.org.uk/privacy-policy.

- 4.3 **Implementation Support Services:** Subject to:

- 4.3.1 your payment of a one-time setup fee as an Additional Fee; and
- 4.3.2 your delivery and/or performance of any Prerequisites,
- we will assist you with the initial setup and configuration of the Solution by providing the Implementation Support Services. We do not represent or warrant that the amount of technical assistance provided to you pursuant to this Clause 4.3 will be sufficient to meet your needs or achieve any particular result.
- 4.4 **Delayed implementation:** Where due to your failure to deliver and/or perform any Prerequisites:
- 4.4.1 we are delayed in completing the Implementation Support Services we shall, notwithstanding such delay, be entitled to charge you the Fees in accordance with the dates set out in the Contract Information; and
- 4.4.2 we are required to undertake Additional Services (including implementation and/or training services) we reserve the right to charge you for such additional services, and we may invoice you for such charges on a time and materials basis in accordance with our then current rates.
- 4.5 **Rescheduling services:** Where you wish to reschedule previously agreed planned dates for Implementation Support Services and/or Additional Services on short notice (as described below) you shall make a request to reschedule by giving us notice in writing and upon receipt of such notice by us the rescheduling fees (calculated as set out below) shall immediately become due and payable by you to us as follows:
- 4.5.1 a request to reschedule received by us 7 or less clear calendar days' before the planned start date: 100% of the Scheduled Days Cost; and
- 4.5.2 a request to reschedule received by us between 8 to 21 calendar days before the planned start date: 50% of the Scheduled Days Cost.
- 4.6 **Updates and Revisions to Solution:** We have sole control over, and may at any time make updates, upgrades, and other changes to, the configuration, appearance, content, and functionality of the Solution.
- 4.7 **Unavailability of Solution:** we will use reasonable endeavours to give you at least seventy-two (72)

hours' notice of any times at which the Solution is expected to be unavailable to you and to Enrolled Users as a result of routine maintenance or administration work, however there may be situations in which changes are required and seventy-two (72) hours' notice cannot be given. We will minimise the impact on you as far as is reasonably practicable.

- 4.8 **Training:** You are responsible for maintaining proper training of the Designated Contacts and Enrolled Users in the operation of the Solution. If a Designated Contact contacts our customer support representatives with a problem that is covered in the Help Documentation or the self-paced training courses we provide, we reserve the right to charge you for such customer support services, unless stated otherwise in the Supplemental Terms, and we may invoice you for such charges on a time and materials basis in accordance with our then current rates.
- 4.9 **Support Services:** If you are unable to resolve an issue or question about the Solution using the Help Documentation, your Designated Contacts may contact one of our customer support representatives via our help desk. Our customer support representatives can provide support only in the English language and only to your Designated Contacts.
- 4.10 **Designated Contacts:** For continuity purposes you will use reasonable endeavours to retain the same Designated Contacts for at least ninety (90) days, unless these persons cease to be part of your organization.
- 4.11 **Exclusion from Support Services:** We will not provide support for problems external to the Solution, including:
- 4.11.1 use of the Solution in combination with any other equipment, software, or services not provided by us;
- 4.11.2 any use of the Solution in a manner not intended or documented;
- 4.11.3 input of incompatible or corrupted Customer Materials into the Solution by you or Enrolled Users;
- 4.11.4 any breach of this Contract by you, Designated Contacts or Enrolled Users; and
- 4.11.5 your own equipment and services used to access the Solution.
- 4.12 **Additional Support Services:** If we agree to undertake any maintenance or services required to

fix an issue caused by (in our sole opinion) one or more of the causes specified in Clause 4.11 these will be billed to you as Additional Services on a time-and-materials basis in accordance with our then current rates. We are under no obligation to agree to undertake such services at any time.

- 4.13 **Additional Services:** Where set out or referred to in the Contract Information or otherwise agreed in writing between the Parties, we shall, subject to payment of the Additional Fees, provide you with the Additional Services.

5. Your responsibilities

- 5.1 **Provision of information:** In connection with the Solution and the performance of this Contract you agree to provide us with such information, permissions and/or licences as we reasonably request in order to provide the Solution and perform our obligations under this Contract.

- 5.2 **Support Services:** You are responsible for providing skilled IT professionals to operate, administer and support your access and use of the Solution. Before requesting support services you will first make all reasonable investigations to ensure that the issue is one that requires us to resolve and then log the issue in a way defined by us.

- 5.3 **LMS data reporting:** The LMS has the capability to report on the data that is loaded into it (see Help Documentation for details). You are responsible for the data that is loaded into the LMS and any reports produced by it and their interpretation. We cannot be held responsible if any aspect of the data is incorrect, missing, corrupt, incorrectly formatted or in any other way unusable nor can we be held responsible for any interpretation thereof.

- 5.4 **Access to the Solution:** You acknowledge and agree that:

5.4.1 we may need to restrict your access to some parts of or all of the Solution at any time or for any period for the purposes of maintenance, upgrade, content updates, or repair. We will use reasonable endeavours to give you as much notice as is reasonably practicable in the circumstances of such planned activity and to minimise any restriction or down-time where reasonably practicable;

5.4.2 you shall at all times be responsible for (i) all Customer Material used, transmitted and stored in connection with the Solution and shall ensure that the Customer Materials comply with, and that your and

the Enrolled Users' use of the Solution complies with the Acceptable Use Policy (ii) complying with applicable laws in relation to access and use of the Solution and performing your obligations under this Contract; and

- 5.4.3 in order to access and use the Solution you are responsible for making all arrangements necessary to enable Enrolled Users to access and use the Solution via the Internet including ensuring your systems and web browsers used to access and use the Solution are kept up to date and current in accordance with the minimum technical requirements as specified in the Contract Information.

- 5.5 **Prohibited acts:** You shall not:

5.5.1 misuse the Solution by knowingly introducing viruses or other material which is malicious or technologically harmful;

5.5.2 attempt to gain unauthorised access to the Solution, the servers on which the Solution is hosted or any server, computer or database connected to the Solution; or

5.5.3 save where expressly permitted under this Contract, disclose IPR owned by or licensed to us in respect of the Solution and/or our Confidential Information to any third party without our prior written consent.

- 5.6 **Viruses:** We will take reasonable steps and have in place robust processes to ensure the integrity and resilience of our IT systems that underpin our products and services. However, subject to Clause 11.1, we cannot be liable for any Loss or damage caused by viruses or other technologically harmful or malicious material that may infect the your computer equipment, computer programs, data or other proprietary material due to your or any Enrolled Users use of the Solution or to you or Enrolled Users downloading any material from the Solution.

- 5.7 At the end of the Term or earlier termination of this Contract, you shall ensure that use of any software and/or similar materials provided by us and installed locally on your own systems ("Local Software") ceases and is decommissioned. You shall confirm to us in writing within thirty (30) days of the termination/end date, that all appropriate actions have been taken by you to remove the Local Software from your systems and that it can no longer be accessed by your staff (including the Enrolled Users) or any third parties.

6. Intellectual property rights

6.1 **Our IPR:** Save as expressly permitted under this Contract, no right or licence, express or implied is granted to you under this Contract for the use of any Totara Learning or LearnSpace trade mark, logo or service mark or other IPR.

6.2 **Pre-existing IPR:** All IPR that are owned by, or are proprietary to a Party to this Contract at the Effective Date, shall at all times remain owned by that Party exclusively and nothing in this Contract shall be deemed or interpreted to transfer ownership of any IPR between you and us.

6.3 **Open source software:** You acknowledge that in making available the Solution we make use of certain software licensed by the applicable author(s) under terms of the GNU General Public License and other open source software licences, and that the terms of the applicable licences govern the use of such software. Nothing in this Contract shall be deemed or interpreted to conflict with, contradict, restrict or otherwise diminish any rights you may have under the applicable open source software licences.

6.4 **Licence of Customer Materials:** You hereby grant us a non-exclusive, non-transferable, royalty-free licence during the Term to access, copy, distribute, modify and otherwise use the Customer Materials as reasonably necessary for us to make available the Solution to you and Enrolled Users and perform our obligations under this Contract. To the extent Customer Materials include any Third Party Property you warrant and represent that you have all necessary licences and consents with respect to the Third Party Property to grant the licence in this Clause 6.4.

6.5 **Licence restrictions:** You acknowledge and agree that we are making the Solution available for access by you and Enrolled Users as end users. Save where expressly permitted under the relevant Permitted Use or as otherwise permitted by applicable law, you shall not:

6.5.1 rent, lease, sub-license, transfer or otherwise resell the Solution or reverse engineer, recompile or disassemble it; or

6.5.2 make available, copy, or distribute the Solution, or encourage or assist the reproduction of the Solution by any third party.

6.1 **Our warranties:** We warrant that:

6.1.1 we will use reasonable skill and care in providing any services under this Contract;

6.1.2 we shall use reasonable endeavours to ensure that the E-learning Content is accurate and up to date provided that where, due to any change in applicable law (including regulatory changes), we are required to update the E-learning Content we shall have a reasonable period of time to do so and during this time we may temporarily withdraw such item(s) from the E-learning Content available through the Solution; and

6.1.3 we either own or are licensed to grant sub-licences in respect of all IPR in the Solution. Nothing in this Contract shall give you any right, title or interest in the Solution or our IPR, other than the right to use the Solution in accordance with the terms and conditions of this Contract.

6.2 **Your IPR warranty:** You warrant, represent and undertake that during the Term or at any time thereafter you shall not:

6.2.1 do, or omit to do, anything to diminish or impair any registration of any IPR owned by or licensed to us in respect of the Solution;

6.2.2 apply for or obtain registration of any IPR in the Solution or in any product which is similar to the Solution for any goods or services in any part of the world; nor

6.2.3 dispute or challenge the validity of the IPR in the Solution or any other rights owned by or licensed to us in relation thereto.

6.3 **Goodwill and further assurance:** All goodwill and reputation generated in the Solution by you shall be generated on our behalf and be for our (or our licensors') benefit and you shall hold any such goodwill generated as bare licensee for us. You shall provide such assistance as we may reasonably require in relation to the maintenance and protection of any IPR in the Solution or in relation to any application to register us (or our licensors) as proprietor(s) of any IPR in the Solution.

6.4 **Customer Materials warranty:** Where you are expressly permitted in the Supplemental Terms to upload Customer Materials to the LMS:

6.4.1 you warrant and represent that you shall not permit any Customer Materials to be

uploaded to the Solution which violates any applicable law or regulation, is in breach of the Acceptable Use Policy, or which otherwise may be regarded as: (i) harmful to others, or to our reputation, (ii) a breach of contract or confidentiality, (iii) abusive, (iv) obscene, (v) deceptive, (vi) a nuisance, or (vii) fraudulent;

6.4.2 you acknowledge that we do not monitor or approve any Customer Materials and shall not have any liability for the Customer Materials;

6.4.3 you hereby indemnify, defend and hold us our officers, directors, agents and employees harmless from and against any claims, suits, demands, actions, proceedings, judgments, penalties or Losses suffered, whether in contract, tort, or otherwise, arising out of or in connection with any third party claims (including any claim that any Customer Materials infringe, misappropriate or violates any IPR or other proprietary rights of any third party) or any regulatory actions as a result of or in connection with any Customer Materials uploaded to the LMS by any Enrolled Users, you, your employees, or any subcontractors; and

6.4.4 we acknowledge that nothing in this Contract shall give us any right, title or interest in the IPR contained within any Customer Materials.

6.1 **Removal of inappropriate material:** We may remove uploaded Customer Material from the Solution immediately and without notice if we reasonably suspect such Customer Material may violate the Acceptable Use Policy. We shall notify you (although not necessarily prior to removal of such Customer Material) if it becomes aware of any allegation that Customer Material violates the Acceptable Use Policy.

6.2 **Merger:** If you merge with another organisation that is not licensed to use the Solution then the Solution use and scope shall be restricted to only your pre-merger Permitted Use.

7. Security

7.1 **Password security:** You shall, and you shall ensure that Enrolled Users, keep secure any identification, passwords and other confidential information relation to the Solution and shall notify us immediately of any known or suspected breach of security or unauthorised use of your account,

including loss, theft or unauthorised disclosure of any passwords or other security information.

7.2 **Technical and organizational measures:** We will ensure appropriate technical and organizational measures are in place to ensure the Solution is made available for access and use in a secure manner in accordance with generally accepted industry practice for services of this nature.

7.3 **Your responsibility:** Notwithstanding Clause 7.2, we are not responsible for any breaches of security that occur due to inappropriate action by you or your Enrolled Users including disclosure of security details or allowing persons not directly employed by you access to the Solution.

7.4 **Data Protection:** The Parties shall comply with their obligations set out in Schedule 1 (Data Processing Schedule).

7.5 **Backups:** Unless otherwise agreed in the Contract Information, you are solely responsible for backing up any Customer Materials and in particular any data uploaded to the LMS by you or on your behalf.

8. Third party infringements

8.1 **Duty to notify:** You shall promptly notify us of any actual or suspected infringement of any IPR in the Solution that comes to your attention (“Infringement”).

8.2 **Conduct:** We shall have the sole right to take action against third parties in respect of any Infringement and, if required to do so by us, you shall co-operate with us in taking all steps reasonably required by us in connection with any Infringement.

8.3 **Settlement:** You shall in no circumstances purport to settle any claim or action against third parties in respect of any Infringement without our prior written consent.

9. Termination

9.1 **Material breach:** Either Party may terminate this Contract immediately by giving written notice to the other Party where that other Party commits a material breach of any term of this Contract which is not capable of remedy, or where such breach is capable of remedy, fails to remedy that breach within thirty (30) days of being notified to do so.

9.2 **Our rights to terminate:** We may terminate this Contract immediately by giving written notice to you if:

- 9.2.1 we cease to have the right to grant licences to access or use the Solution or any part of it;
- 9.2.2 you dispute or challenge the validity of the IPR in the Solution or any other rights of ours in relation thereto; or
- 9.2.3 you suffer any of the following events: (i) a winding up petition is presented or an application is made for the appointment of a provisional liquidator or an administrator or a receiver, or a notice of intention to appoint an administrator is filed at court, or a provisional liquidator or an administrator or an administrative receiver or a receiver, is appointed, or a scheme of arrangement or a voluntary arrangement is proposed, or any moratorium comes into effect; (ii) a shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, your obligations under this Contract) a resolution to wind up is passed or a winding up order is made; (iii) you are unable to pay your debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; (iv) an encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of your business or assets or any and all assets and rights used in or necessary to perform the Services, including equipment, facilities, software licences, support contracts, consumables, software and other property (tangible and intangible); or (v) any other similar process in any relevant jurisdiction which has a similar or analogous effect.

9.3 **Termination or limitation of support for abuse of support:** At our sole discretion we may terminate this Contract, or limit the availability of the support services, upon written notice to you if in our reasonable judgment, you are abusing the customer support system. By way of example such abuse may include excessive requests for assistance unrelated to errors in the Solution and/or our services or lack of cooperation with the reasonable requests of our personnel.

9.4 **Right to suspend:** We may suspend your (and/or any relevant Enrolled User's) access to or use of

the Solution and/or make any part of the Solution unavailable to you and Enrolled Users if:

- 9.4.1 immediately upon written notice if you or any Enrolled User is in breach of the Acceptable Use Policy. If, following any suspension of access or use under this sub-Clause, the relevant breach persists or (if not persisting) you have not remedied the breach to our reasonable satisfaction, we may terminate this Contract immediately by giving written notice to you;
- 9.4.2 a third party alleges that any part of the Solution infringes or otherwise breaches their IPR;
- 9.4.3 you fail to pay any amount when due to us;
- 9.4.4 you request suspension; or
- 9.4.5 you exceed the service parameters, usage levels or features of your subscription for which you are paying Subscription Fees.

9.5 **Effect of suspension:** A suspension under Clause 9.3 will continue until the issue causing the suspension or unavailability of the Solution is resolved to our satisfaction. Suspension or unavailability of the Solution does not constitute the giving of notice to terminate this Contract and fees continue to accrue until this Contract expires or is terminated.

9.6 **Payment in full:** Where we terminate this Contract pursuant to Clauses 9.1, 9.2.2, 9.2.3, or 9.3, we shall be entitled to retain any Subscription Fees paid to us and payment in full of all other outstanding Fees which would otherwise have been payable under the Term, such payment to be made within thirty (30) days of the date of termination.

10. Termination consequences

10.1 **Discontinue use:** On termination of this Contract for any reason you shall discontinue all access and use of the Solution and delete all copies and documentation previously provided, and shall confirm such deletion in writing to us upon request.

10.2 **Effect of termination on use of Solution:** Termination of this Contract will result in your access and use of the Solution being denied. In such circumstances we will promptly return any Customer Materials and/or Third Party Property supplied by you and will provide you, in electronic

form, with a snapshot copy of your then most current customer data maintained in connection with your use of the Solution.

10.3 **Without prejudice:** Expiry or termination of this Contract for any reason shall:

10.3.1 not prevent either Party from pursuing other remedies available including injunctive relief; nor

10.3.2 affect any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of expiry or termination or any rights or payments due to either Party which have accrued prior to, or which arise out of or in connection with such termination. For the avoidance of any doubt the provisions of Clauses 10, 11, 12 and 14 will survive expiry or any termination of this Contract.

11. Liability

11.1 Your attention is particularly drawn to this Clause 11, which you acknowledge is a fair and equitable apportionment of risk under this Contract.

11.2 **No limit or exclusion:** Nothing in this Contract shall operate so as to limit or exclude the liability of either Party for death or personal injury caused by negligence, nor liability for fraud or fraudulent misrepresentation, nor any other liability which cannot be excluded or limited by applicable law.

11.3 **Exclusions:** Subject to Clause 11.2, in no event shall either Party be liable to the other Party, whether arising under tort (including negligence), contract, for breach of statutory duty or otherwise, whether or not foreseeable and even if advised in advance of the possibility of such damages arising under or in connection with this Contract for any loss (whether direct or indirect) of:

11.3.1 profits;

11.3.2 sales or business opportunities;

11.3.3 agreements or contracts;

11.3.4 anticipated savings;

11.3.5 or damage to, goodwill or reputation;

11.3.6 use or corruption of software, data or information; or

11.3.7 special, indirect or consequential losses or damages of any kind.

11.4 **Liability cap:** Subject to Clauses 11.2 and 11.3, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation, restitution or otherwise arising out or in connection with this Contract in respect of all claims (including under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred percent (100%) of the total Fees paid and/or due to be paid by you in that Contract Year (or in respect of any and all claims arising after this Contract has terminated or expired, a sum equal to one hundred percent (100%) of the Fees paid and/or due to be paid in the final Contract Year of this Contract).

11.5 **Warranty disclaimer:** The Solution and any services provided under this Contract are provided on an "as is" and "as available" basis. To the maximum extent permitted by applicable law all warranties and representations not expressly stated in this Contract are excluded including implied warranties as to satisfactory quality and fitness for a particular purpose. We do not represent or guarantee that the Solution and/or any services provider under this Contract will be uninterrupted, secure, error-free, meet your needs, or achieve any particular result.

11.6 **Duty to mitigate:** Each Party must take reasonable steps to mitigate any claim for loss or damage it may make against the other under or arising out of or in connection with this Contract.

12. Confidentiality

12.1 **Duty to keep confidential:** Each Party shall at all times keep confidential and not disclose to any third party (excepting the staff, officers, representatives or advisers of the receiving Party who need to know such Confidential Information for the purposes of carrying out that Party's obligations under this Contract) any Confidential Information which it may acquire in relation to this Contract or the business and affairs of the other Party.

12.2 **Exceptions:** The obligations contained in Clause 12.1 shall not apply to any Confidential Information of either Party to the extent that:

12.2.1 such Confidential Information was publicly available or generally known to the public or lawfully in the possession of the other Party at the time of the disclosure;

12.2.2 such Confidential Information was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party;

12.2.3 such Confidential Information was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; or

12.2.4 the Parties agree in writing is not confidential or may be disclosed.

12.3 **Use of Confidential Information:** Neither Party shall use any Confidential Information of the other Party for any purpose other than to exercise its rights and carry out its obligations under this Contract.

13. Force majeure

13.1 If, and to the extent that, either Party is prevented or delayed from performing any of its obligations (other than an obligation to make payment) under this Contract by circumstances beyond its reasonable control ("**Force Majeure**"), it shall promptly so notify the other Party, specifying the matters constituting Force Majeure together with such evidence in verification of those matters as it can reasonably give and specifying the period for which it is estimated that the prevention or delay shall continue. The Party so affected shall then be relieved of liability to the other for failure to perform, or for delay in performing (as the case may be), its obligations, but shall nevertheless use its best endeavours to resume full performance of its obligations under this Contract provided that, if the Force Majeure continues for a period of two (2) months or more following notification, the Party not affected by the Force Majeure may terminate this Contract by giving not less than thirty (30) days' prior notice to the other Party. Such notice of termination shall be of no effect if the Party affected by the Force Majeure resumes full performance of its obligations under this Contract before the expiry of the notice period.

14. General

14.1 **No agency or partnership:** The Parties to this Contract are not partners or joint venturers, nor is either Party entitled to act as the other Party's agent, nor shall either Party be liable in respect of any representation act or omission of the other Party of whatever nature.

14.2 **Notices:** Any notice to be served on a Party by the other Party under this Contract shall be sufficiently served if it is personally delivered or sent by registered post or through the recorded delivery system addressed to the address referred to above or such other address as may from time to time be notified to the other Party, or sent by e-mail to the specified e-mail address of the addressee as stated in the Contract Information. Any notice referred to in this Clause 14.2 shall be deemed to have been served, if personally delivered, at the time of delivery, or if sent by registered post or through the recorded delivery system, forty-eight (48) hours after the time of posting (unless returned by the Post Office undelivered), or if sent by e-mail, twenty-four (24) hours after the email is sent.

14.3 **Assignment:** This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. We may assign our rights or obligations under this Contract, upon giving notice to you. You may only assign or otherwise transfer your rights and obligations under this Contract, or grant any sub-licence (including in respect of the Solution or any part of it), with our prior written consent.

14.4 **No waiver:** No waiver by a Party of any of the other Party's obligations under this Contract shall be deemed effective unless made in writing nor shall any waiver by a Party in respect of any breach of this Contract be deemed to constitute a waiver of or consent to any subsequent breach by the other Party of its obligations.

14.5 **Severance:** If any provision of this Contract is declared by any judicial or other competent authority to be void, voidable or illegal, invalid or unenforceable the remaining provisions shall not be affected and shall continue to apply.

14.6 **Third parties:** For the avoidance of doubt, no third party shall have any rights in respect of this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999 and the Parties shall not require the consent of any person to any variation of or amendment to this Contract.

14.7 **Entire agreement:** This Contract, together with any documents referred to in it, constitutes the entire agreement between the Parties relating to its subject matter and supersedes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that no promises, representations, inducements, agreements, or warranties, other than those set

out in this Contract, have been made to induce the execution of this Contract by said Party, provided that this Clause 14.7 will not limit the liability of either Party for misrepresentations made fraudulently or dishonestly.

14.8 **Variations:** No variation of this Contract shall be effective unless made in writing and signed by or on behalf of both Parties.

14.9 **Publicity:** You consent to our referring to you as a licensee of the Solution. We reserve the right to make a reference on our website and notify any interested third party if this Contract is terminated as is necessary to protect the integrity of our IPR.

14.10 **Remedy:** The Parties agree that any breach by you of your obligations contained in this Contract may cause irreparable harm to us and accordingly

we shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

14.11 **Supplemental Terms:** Any additional clauses agreed between the Parties shall be inserted into the Contract Information.

14.12 **Governing law:** This Contract (and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation) shall be governed by and interpreted in accordance with the laws of England and Wales. The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1

Data Processing Schedule

1. Definitions

- 1.1. **"Data Protection Legislation"** means all data protection and privacy legislation, regulations and guidance applicable in respect of a Party from time to time including, as applicable:
 - 1.1.1. Regulation (EU) 2016/679 (the **"General Data Protection Regulation"** or the **"GDPR"**) and the Data Protection Act 2018 (and, in the event that the UK leaves the European Union, all other legislation enacted in the UK in respect of the protection of personal data) and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and
 - 1.1.2. any applicable guidance or codes of practice issued by the European Data Protection Board or the Data Protection Regulator from time to time (all as amended, updated or re-enacted from time to time);
 - 1.2. **"Data Protection Regulator"** means the UK Information Commissioner's Office, the European Data Protection Board or any successor body to either regulator from time to time and any other regulator or supervisory authority with jurisdiction over either Party;
 - 1.3. **"Data Subject Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
 - 1.4. **"DPA 2018"** means the Data Protection Act 2018;
 - 1.5. **"EU Model Clauses"** means the standard contractual clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU;
 - 1.6. **"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679); and
 - 1.7. **"Sub-Processor"** has the meaning given to it in paragraph 9 of this Schedule 1 (Data Processing Schedule).
2. For the purposes of this Schedule, the words and phrases **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"**, **"Process"**, **"Processed"**, and **"Processing"** shall each have the meanings given to them in the GDPR.
 3. The Parties acknowledge that in respect of any Personal Data Processed under or in relation to this Contract (**"Customer Personal Data"**), you are the Controller and we are your Processor.
 4. To the extent that we Process any Customer Personal Data, we shall only Process Customer Personal Data for the purpose of (and to the extent required for) properly performing our obligations under this Contract and otherwise in accordance with the instructions received from you from time to time.
 5. A general description of the nature of Processing undertaken by us under this Contract is set out at Schedule 2 (Processing, Personal Data and Data Subject). The Parties may, from time to time, update Schedule 2 (Processing, Personal Data and Data Subject) to reflect any changes to the scope of the Processing.
 6. Each Party shall comply with its obligations under the Data Protection Legislation in relation to the Processing of Customer Personal Data.

7. We shall ensure that access to Customer Personal Data is limited to our personnel who need access to Customer Personal Data to meet our obligations under this Contract, and who are bound by appropriate confidentiality obligations.
8. Without prejudice to our general obligations to comply with the Data Protection Legislation in this Contract, in respect of our Processing of Customer Personal Data, we shall comply with our obligations under Article 32 GDPR. In the event of a Personal Data Breach, affecting the Customer Personal Data, we shall provide notice to you promptly and in any event within seventy-two (72) hours after we first becomes aware of such Personal Data Breach.
9. You hereby give us general authorisation to engage third-parties to process Customer Personal Data ("**Sub-Processors**") without obtaining any further written, specific authorisation from you. We will complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under this Contract. We are accountable for any Sub-Processor in the same way as for our own actions and omissions. A list of our material Sub-Processors as at the date of this Contract is set out on our website (or will otherwise be notified to you). Any objection to an amendment to the list of Sub-Processors may be escalated for discussion within ten (10) days after receipt of a notification of any change. If the Parties are (acting reasonably) unable to resolve the objection and we inform you that we nevertheless intends to appoint the relevant Sub-Processor then you may either: (i) accept the change; or (ii) terminate this Contract upon written notice within one (1) month of raising the objection (and as the your sole and exclusive remedy, we will refund any unused prepaid Fees).
10. We shall not transfer any Customer Personal Data outside of the European Economic Area without your prior written consent. The Parties agree that any such transfer of Customer Personal Data from the United Kingdom to a recipient outside the European Economic Area shall take place subject to the transfer complying with the Data Protection Legislation, including, where applicable, requiring the parties to put in place the EU Model Clauses.
11. On your request, we shall make available to you all information necessary to demonstrate compliance with our obligations under this Schedule 1 (Data Processing Schedule) and with the Data Protection Legislation.
12. We shall allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you of our compliance with this Schedule 1 (Data Processing Schedule).
13. We shall notify you promptly and without undue delay should we be required by applicable law to Process Customer Personal Data other than in accordance with this Contract or your other written instructions. In such case we shall inform you of the legal obligation, unless applicable law prohibits such information on important grounds of public interest.
14. We shall notify you immediately should we become aware that in complying with this Contract or otherwise following your instructions, we shall breach Data Protection Legislation or other applicable law.
15. Taking into account the nature of our Processing of Customer Personal Data and the information available to us, we shall provide all assistance reasonably requested by you in relation to your compliance with the Data Protection Legislation, including:
 - 15.1. your information security obligations under Article 32 GDPR;
 - 15.2. your obligations to notify a Regulatory Body of a Personal Data Breach under Article 33 GDPR, and/or a Data Subject of a Personal Data Breach under Article 34 GDPR; and
 - 15.3. your obligation to complete and review data protection impact assessments and consult with a Regulatory Body under Articles 35 and 36 GDPR.
16. Taking into account the nature of our Processing of Personal Data, we shall implement such technical and organisational measures (as far as possible) to enable us to provide any assistance reasonably requested by you for the you to respond to requests by Data Subjects of Customer Personal Data, exercising their rights under Chapter III of the GDPR.

17. Upon:
 - 17.1. Customer Personal Data no longer being required by us to provide any services under this Contract;
 - 17.2. termination or expiry of this Contract; and/or
 - 17.3. your written request,

as you reasonably direct, we shall securely return any Customer Personal Data to you, and/or, subject to paragraph 18 of this Schedule 1 (Data Processing Schedule), securely delete any Customer Personal Data.
18. If we are required by applicable law to retain a copy of any Customer Personal Data, we shall immediately inform you what we are retaining, the legal reason why it needs to be retained and the period for which it shall be retained.
19. Any responses to Data Subject Requests or to requests submitted pursuant to the Freedom of Information Act 2000 (or any other relevant current legislation) pertaining to data entered by you will be your responsibility and at your cost as Controller.

Schedule 2

Processing, Personal Data and Data Subject

Processing by the Licensor

As noted in paragraph 5 of Schedule 1 (Data Processing Schedule), the Parties may from time to time agree one or more separate, service specific, data processing schedules which shall take precedence over this Schedule 2 (Processing, Personal Data and Data Subject) as appropriate.

Purpose of Processing:	for the purposes of delivering the relevant services and meeting other obligations specified in this Contract.
Duration of the Processing:	for the Term (together with the delivery of any post-termination obligations).
Nature:	such Processing as is necessary to enable the Licensor to provide the services provided for under this Contract (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).
Types of Personal Data:	data which may be Processed under this Contract includes (without limitation): names, data of birth, addresses, telephone numbers, email addresses and other contact details together, where relevant dependent on the relevant services being delivered, with data concerning health.
Categories of Data Subject:	data subjects may include: members of the Customer's staff (including those of its associated entities or third party suppliers) and, where relevant dependent on the relevant services being delivered, Enrolled Users.