

INFONETICA LIMITED COMMERCIAL TERMS

1. Infonetica Details

Name:	Infonetica Limited
Registration No.:	04503405
Registered Address:	The Civic Centre, High Street
City:	Esher
Country:	UK.
Post Code:	KT10 9SD
Telephone:	+44 (0) 20 8334 6900

Customer Details

Name:	As set out in the Call-Off Contract
Registration No.:	
Registered Address:	
City:	
Country:	
Post Code:	
Fax:	
Email:	
Telephone / Mobile:	
VAT (or Tax) Registration No.:	

2. Commencement and Initial Term

Effective Date: As set out in the Call-Off Contract.

Initial Term: As set out in the Call-Off Contract.

3. Software / Service Option Details

Service	Details
Implementation	As set out in the Call-Off Contract
ReDA Software Service	As set out in the Call-Off Contract

Additional training/development	As set out in the Call-Off Contract
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4. Pricing

Pricing is set out in Appendix A.

5. Special Terms

Any Special Terms shall be set out in the Call-Off Contract.

6. Terms and Conditions

The Customer agrees that this Contract consists of the following documents:

- A. SERVICES AND PRICING**
- B. INFONETICA'S TERMS AND CONDITIONS**
- C. SERVICE LEVEL AGREEMENT FOR ReDA**

The Appendices identified above are an integral part of these Commercial Terms and form part of the Contract between the Customer and Infonetica.

7. Data Processing Details - As set out in the Call-Off Contract.

APPENDIX A: SERVICES AND PRICING

- 1. Annual Fees** – as set out in the Call-Off Contract.
- 2. Implementation Fees** – as set out in the Call-Off Contract.
- 3. Additional Fees** – as set out in the Call-Off Contract.

APPENDIX B: INFONETICA'S TERMS AND CONDITIONS

1 Definitions

1.1 The following definitions and rules of interpretation apply in this Contract:

"Account"	means the Customer's authorised ReDA account(s).
"Account Information"	means passwords, usernames and any other information related to the Account or the Service.
"Additional Fees"	means the additional fees set out in Services and Pricing.
"Annual Fees"	means the annual fees set out in Services and Pricing.
"Call-Off Contract"	means the call-off contract agreed between a Customer and Infonetica for the provision of the Service under the G-Cloud framework.
"Commercial Terms"	means the document setting out the main commercial terms of this Contract executed by the Parties.
"Conditions"	means these terms and conditions set out in clauses 1 to 27 (inclusive).
"Confidential Information"	means all information that is proprietary or confidential to a Party, whether or not stated to be confidential or marked as such, however, and in whatever form, disclosed (whether in writing, orally or otherwise) including: (a) the terms of this Contract; (b) all confidential or proprietary information relating to the: (i) business, finances, affairs, management, customers, clients, suppliers, plans, intentions, marketing or market opportunities of the disclosing Party; and (ii) operations, processes, product information, know-how, technical information, designs, trade secrets, technology or software of the disclosing Party; and (c) any other information that is identified as being of a confidential or proprietary nature or which a reasonable person would consider being of a confidential nature.
"Contract"	means the contract between Infonetica and the Customer for the sale and purchase of the Services comprising of the Commercial Terms, Services and Pricing, these Conditions and the SLA.
"Contributor"	means a third party who has supplied or licensed software, content and/or other information to Infonetica which is contained or included within the Service.
"Customer Data"	means the data, information or documentation inputted, added or uploaded into the Software by the Customer or the Users for the purpose of using the Service.
"Customer Working Days"	means Monday to Friday excluding national holidays in the applicable Customer territory.
"Data Protection Laws"	means all applicable laws from time to time in force in the United Kingdom relating to the protection of personal data, including the Data Protection Act 2018 and (for so long as it is directly applicable in the United Kingdom) the General Data Protection Regulation ((EU) 2016/679) (" GDPR "), and any laws substituting, re-enacting or replacing any of the foregoing, as amended or updated from time to time and in force in the United Kingdom.
"Effective Date"	means the date this Contract commences, as set out in the Commercial Terms.
"Force Majeure Event"	has the meaning given to it in clause 16.1.
"Hosting Provider"	means the hosting provider engaged by Infonetica to provide the Hosting Service.
"Hosting Service"	means the Software hosting service.
"Implementation Fees"	means the implementation fees set out in Services and Pricing.
"Inappropriate Content"	has the meaning given to it in clause 11.1.

“Initial Term”

means the period set out in the Commercial Terms commencing on the Effective Date.

“Insolvency Event”

a Party is Insolvent where any of the following occur: a) it suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; b) it commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the affected Party with one or more other companies, or the solvent reconstruction of the affected Party; c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the affected Party other than for the sole purpose of a scheme for a solvent amalgamation of the affected Party with one or more other companies, or the solvent reconstruction of the affected party; d) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the affected Party; e) a floating charge holder over the assets of the affected Party has become entitled to appoint, or has appointed, an administrative receiver; f) a person becomes entitled to appoint a receiver over the assets of the affected Party, or a receiver is appointed over the assets of the affected Party; g) a creditor or encumbrancer of the affected Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; h) any event occurs, or proceeding is taken, with respect to the affected Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h); or i) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

“Intellectual Property Rights”

means any and all of the following: (a) rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights, and mask-works; (b) trade mark and trade name rights and similar rights; (c) trade secret rights; (d) patents, designs, algorithms and other industrial property rights; (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated, including, but not limited to logos, rights of publicity and rights to remuneration) whether arising by operation of law, contract, license, or otherwise; and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

“Licence”

means the licence granted in clause 3.1.

“Location”

means an Organisational Unit where a Project is carried out.

“Losses”

means all direct losses, liabilities, damages, costs, fines, charges, claims, demands, actions, proceedings, orders, assessments, and expenses (including management time, professional advice and fees, and reasonable legal fees), disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

“Maximum Number of Users”	means the maximum number of Users with Write Access, and/or as the context requires, the maximum number of Users entering Participants Data Only and Users with Read Only Access, as set out in the Commercial Terms.
“Maximum Storage”	means the maximum amount of data permitted to be stored on the Service, as set out in the Commercial Terms.
“Native Format”	means the format used to store and manage data within Infonetica’s service infrastructure. In this case a Microsoft xlsx file containing the customer data only.
“Organisational Unit”	means the entity, division, department or organisational unit of the Customer which may access or use the Service as set out in the Commercial Terms.
“Participants”	means human volunteers participating in a Project.
“Party”	means either Infonetica or the Customer and “Parties” means both of them.
“Project”	means a research study, either interventional (which are also called Clinical Trials) or observational, which involves Participants.
“ReDA”	means Research Database Application.
“Renewal Term”	has the meaning given to it in clause 7.2.
“Revision”	means a version of a particular Service often described in terms of a major revision number, and minor revision number, and a build number.
“Service”	means: <ul style="list-style-type: none"> (i) the Software, Hosting Service, and provision of any other software owned or licensed by Infonetica and/or its Contributors (including all Revisions); (ii) the provision and/or development of content and information which is owned or licensed by Infonetica and/or its Contributors for the purpose of providing the Software; (iii) any additional training and/or development services (including content, materials and documents relating to such training and/or development); and/or (iv) any implementation-related services, content, materials and documents; as set out in the Commercial Terms and Services and Pricing.
“Service Fees”	means all fees and charges (plus applicable taxes) payable for use of the Service including, but not limited to, the Annual Fees, the Implementation Fees and the Additional Fees as set out in Services and Pricing.
“Services and Pricing”	means details of the Service and Service Fees set out in Appendix A: Services and Pricing.
“SLA”	means the service level agreement set out in Appendix C: Service Level Agreement for ReDA.
“Software”	means Infonetica’s software application known as ReDA.
“Suggestions”	means all comments, suggestions ideas, graphics, questions or other information submitted by the Customer to Infonetica regarding the Service.
“Users”	means the users authorised by the Customer to use the Service, and includes Users with Write Access, Users entering Participants Data Only and Users with Read Only Access (as set out in the Commercial Terms and the Services and Pricing).
“Virus”	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or any other service or device; prevent, impair or otherwise

adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and or any other self-propagating or other such program or other similar things or devices.

“Working Days”

means Monday to Friday excluding national holidays in England.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Words in the singular include the plural and in the plural include the singular.
- 1.6 A reference to one gender includes a reference to the other gender.
- 1.7 Headings do not affect the interpretation of this Contract.
- 1.8 In this Contract any phrase introduced by the words “including”, “include”, “in particular” or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words.
- 1.9 References to sections, paragraphs, clauses and appendices are to the sections, paragraphs, clauses and Appendices of this Contract.
- 1.10 If there is a conflict or incompatibility between the Commercial Terms, these Conditions, Services and Pricing and the SLA, then the term in highest listed document below shall take precedence:
 - 1.10.1 Commercial Terms;
 - 1.10.2 Services and Pricing;
 - 1.10.3 these Conditions; and
 - 1.10.4 the SLA.

2 Service

- 2.1 Infonetica shall provide:
 - 2.1.1 access to and use of the Service to the Customer in accordance with the terms of this Contract;
 - 2.1.2 the Service with reasonable skill and care; and
 - 2.1.3 the Service in accordance with the SLA, providing always that the Customer complies with its responsibilities as set out in this Contract, and in particular paragraph 2.3 of the SLA.

3 Restricted Licence

- 3.1 Subject to the terms of this Contract, Infonetica hereby grants to the Location(s) of the Customer a non-exclusive, revocable, non-transferable, non-sublicensable licence to access and use the Service (the “**Licence**”).
- 3.2 All rights not expressly granted to the Customer are hereby reserved by Infonetica and the respective Contributor. Infonetica and each Contributor may assert and enforce the provisions of this Contract directly on its own behalf.
- 3.3 The Customer shall, and shall procure that its Users shall, keep its Account Information confidential. The Customer shall inform Infonetica promptly upon the unintended or undesired disclosure of any portion of such Account Information.

- 3.4 Prior to providing Users with access to the Service, the Customer shall ensure that all Users are aware of the terms of this Contract and any other terms relating to the Service notified to the Customer by Infonetica.
- 3.5 The Licence entitles the Customer to a Maximum Number of Users to access and use the Service in accordance with the terms of this Contract. If the Customer wishes to increase the number of Users, such increase shall be subject to additional fees payable to Infonetica in accordance with the Services and Pricing and clause 6.
- 3.6 The Customer shall ensure that the Service is accessed only by Users using their assigned passwords.
- 3.7 The Licence entitles the Customer to an agreed number of Projects at an agreed number of Location(s) per year as set out in Services and Pricing. If the Customer exceeds the number of Projects and/or Location(s) when using the Service, such Projects and/or Location(s) shall be subject to additional fees payable to Infonetica in accordance with clause 6.
- 3.8 The Customer shall only use the Service in:
 - 3.8.1 connection with the Customer's own internal business purposes; and
 - 3.8.2 combination with data originating from the Location.
- 3.9 Except to the extent such activities are expressly agreed by the Parties or, where applicable, cannot be excluded by law, the Customer shall not, and shall procure that the Users shall not:
 - 3.9.1 attempt to copy, modify, adapt, edit, abstract, duplicate, create derivative works from, store, archive, frame, mirror, reproduce, republish, download, display, publish, transmit, or distribute, redistribute, broadcast, transmit, sell or in any way commercially exploit the Software or any part of the Software;
 - 3.9.2 interfere in any way, whether wilfully or negligently, whether by action or omission, with the functionality or accessibility of the Service;
 - 3.9.3 attempt to de-compile, reverse compile, disassemble, reverse engineer, extract the source code from, or otherwise reduce to human-perceivable form, any part of the Software;
 - 3.9.4 attempt to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from the Software;
 - 3.9.5 use the Service in any other way than its permitted purpose and in accordance with any training, manuals or instructions issued from time to time by Infonetica;
 - 3.9.6 provide the Service as part of an outsourced service to third parties or make the Service available in any way to any third party; or
 - 3.9.7 combine, merge or otherwise permit the Service (or any part of it) to become incorporated in any other program, nor arrange or create derivative works based on it.
- 3.10 The restrictions set out in this clause 3 shall specifically extend to any penetration or similar testing, whether automated or manual, designed to find security vulnerabilities of the Software, that may be undertaken by the Customer or any nominated third party of the Customer. The Customer acknowledges that such testing could expose Confidential Information or data (whether personal data or not) within the Software relating to other customers of Infonetica, and that in order to safeguard and protect such Confidential Information and data, the Customer warrants that it shall not, directly or indirectly, carry out such testing without prior written consent of Infonetica. The Customer shall, upon request, be provided with relevant aspects of penetration tests conducted by a third party on Infonetica's behalf.
- 3.11 If the Customer or a User breaches this Contract, or Infonetica reasonably believes that the Customer or a User has breached this Contract, Infonetica may, without prejudice to its other rights and remedies, suspend access to the Service to the Customer or any User by blocking without prior notification the IP address(es) of the Customer or such Users.

4 Customer Obligations

4.1 The Customer shall:

- 4.1.1 provide Infonetica with all necessary:
 - (i) co-operation in relation to this Contract; and
 - (ii) access to such information as may be required by Infonetica, in order to provide the Service.
- 4.1.2 comply with all applicable laws and regulations with respect to its activities under this Contract;
- 4.1.3 carry out all other obligations of the Customer set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Infonetica may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 4.1.4 ensure that the Users use the Service in accordance with the terms of this Contract and shall be responsible for any User's breach of this Contract; and
- 4.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Infonetica, its contractors and agents to perform their obligations under this Contract.

5 Intellectual Property Rights

5.1 The Parties agree that as between Infonetica and the Customer, Infonetica is the owner of all rights, title and interest, including all Intellectual Property Rights to the Software and the Service.

5.2 Nothing in this Contract shall limit or exclude Infonetica's ability to use information relating to the Customer's use of the Service ("**Usage Information**"): (a) to enhance its internal operations, products or services; (b) to produce statistics, research and reports for existing, potential or new customers; and/or or (c) to produce and distribute statistics, research, reports and/or market data and trends for general commercial purposes; providing that **all** of the following conditions are satisfied before such use:

- 5.2.1 the Usage Information is always in aggregated form;
- 5.2.2 the Usage Information does not in any way identify the Customer or its Users;
- 5.2.3 the Usage Information does not include or make use of any Intellectual Property Rights belonging to the Customer;
- 5.2.4 the Usage Information does not in any way include (or allow for the identification of) any personal data and complies in all respects with Infonetica's data protection obligations under this Contract and under Data Protection Laws;
- 5.2.5 the Usage Information does not include or expose any Customer Data;
- 5.2.6 the Usage Information does not include any of the Customer's Confidential Information and in no way breaches Infonetica's obligations under this Contract in relation to confidentiality; and
- 5.2.7 Infonetica's use of the Usage Information does not breach any of its other obligations under this Contract.

5.3 The Customer hereby grants to Infonetica an irrevocable, worldwide, exclusive, royalty free licence to use the Suggestions for any commercial or other purpose whatsoever. The Customer hereby warrants that the Suggestions shall not violate any Intellectual Property Right of a third party.

5.4 The Customer shall not remove any proprietary notices, labels, or marks on any component of the Service.

6 Payment

6.1 In consideration for access and use of the Service, the Customer shall pay the Service Fees to Infonetica.

6.2 Infonetica shall invoice the Customer:

- 6.2.1 upon execution of this Contract for the Implementation Fees (as set out in Services and Pricing);
- 6.2.2 unless stated otherwise in Services and Pricing, upon execution of this Contract for any applicable Additional Fees (as set out in Services and Pricing);
- 6.2.3 upon the Effective Date, and annually in advance thereafter, for the Annual Fees (as set out in Services and Pricing) for each year; such fees to be calculated in accordance with this clause 6 and any service credits due in accordance with the SLA; and
- 6.2.4 monthly in arrears for any other fees, expenses and materials.
- 6.3 Where, at the Customer's request and/or as a result of the Customer's actions or inactions, the implementation support as described in the Commercial Terms and Services and Pricing is varied in scope or requires an increased level of assistance by Infonetica, Infonetica reserves the right to charge to the Customer additional fees based on the applicable day rates for its consultants and developers at the time of implementation. For the avoidance of doubt, the Implementation Fees shall not be increased where additional time or resources required to complete implementation is due to the actions or inactions of Infonetica as opposed to the Customer.
- 6.4 Any increases during the Initial Term or any Renewal Term to:
 - 6.4.1 the number of Projects started using the Service;
 - 6.4.2 the number of Users (in excess of the stated Maximum Number of Users);
 - 6.4.3 storage requirements (in excess of the Maximum Storage); or
 - 6.4.4 the Location(s) requiring access to the Service;will incur additional fees to the Customer.
- 6.5 Infonetica shall monitor such increased requirements or usage of the Customer as set out in clause 6.4 during each year of the Initial Term and any Renewal Term, and shall be entitled to invoice the Customer at the end of such year (in addition to the Annual Fees already paid by the Customer for that year) for such increased requirements. The additional fees set out in Services and Pricing are correct as at the Effective Date, but may be increased annually by Infonetica in accordance with clause 6.7. The increased requirements shall also be considered by Infonetica when calculating the next year's Annual Fees.
- 6.6 Any changes during the Contract to the Customer's Authentication Option as set out in the Commercial Terms requires a minimum of 14 days' notice to Infonetica. The Customer acknowledges that changes to the nominated Authentication Option may incur additional implementation fees (which will be charged on a time and materials basis, based on the prevailing day rate at the time), and that ongoing support costs may be adjusted accordingly. Infonetica cannot be held responsible or liable for any issues that may arise out of un-notified changes by the Customer to their internal authentication configuration(s), and any fixes required will be charged on a time and material basis, based on the prevailing day rate at the time.
- 6.7 Infonetica shall increase the Annual Fees on each anniversary of the Effective Date by the percentage equal to that month's Consumer Price Index (where such percentage is positive) plus 3%. Increases for each subsequent year shall be calculated on the applicable Annual Fees for the then current year.
- 6.8 Unless otherwise stated in writing from Infonetica, the Customer shall pay all fees and charges invoiced within 30 days of the date of Infonetica's invoice, in full and cleared funds, without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 6.9 The Service Fees and other charges payable under this Contract are exclusive of any applicable sales tax. If sales tax is payable on a taxable supply made under or in connection with this Contract, an additional amount is payable by the Customer equal to the sales tax. The Party making the taxable supply must provide a tax invoice to the recipient of the taxable supply.
- 6.10 If the Customer fails to pay any fees by the due date, then Infonetica may charge interest on overdue invoices at the rate of 4% per year above the base lending rate of National Westminster Bank Plc,

calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgement.

- 6.11 If the Customer believes its invoice is incorrect, it must contact Infonetica in writing within 10 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit (any such adjustment or credit to be subject to verification by and agreement of Infonetica).
- 6.12 In addition to any other rights of Infonetica, Infonetica may suspend or terminate this Contract and the Customer's access to and use of the Service if any amounts are not paid by their due dates as defined in clause 6.8. The Customer will continue to be charged for the Service Fees during any period of suspension.
- 6.13 If either Party terminates this Contract for any reason, any amount payable by the Customer shall be due:
 - 6.13.1 immediately, if already invoiced; and
 - 6.13.2 if not yet invoiced, Infonetica shall have the right to submit an invoice for such amounts due, and such invoice is immediately upon receipt by the Customer.
- 6.14 If the Customer's or any User's access to the Service is suspended in accordance with clause 3.11 or 6.12, Infonetica may impose a reconnection fee, (to cover labour and third party costs to return the Service to the condition that it was before disconnection).
- 6.15 The day rates for Infonetica's consultants and developers as may be set out in the Commercial Terms are correct as at the Effective Date. For any additional work Infonetica shall provide the Customer with a quote using the day rates for its consultants and developers applicable at that time.

7 Term

- 7.1 This Contract commences on the Effective Date and, subject to earlier termination in accordance with clause 6.12, 8, 10.3.7, 16.2 or 17.2 of these Conditions, or paragraph 11.1 of the SLA, shall continue for the Initial Term.
- 7.2 This Contract will automatically extend for further 12 month periods (each a "**Renewal Term**") at the end of the Initial Term and each Renewal Term unless terminated in accordance with clause 6.12, 8, 10.3.7, 16.2 or 17.2 of these Conditions, or paragraph 11.1 of the SLA.

8 Termination

- 8.1 Either Party may terminate this Contract:
 - 8.1.1 in accordance with other clauses in these Conditions;
 - 8.1.2 without reason upon giving not less than ninety (90) days prior written notice to the other Party which shall not expire earlier than the last day of the Initial Term or any subsequent Renewal Term; or
 - 8.1.3 immediately by giving the other Party written notice upon any material breach of any provision of this Contract by the other Party, which is irremediable or (if such breach is remediable) fails to be remedied by the other Party within 30 days of being notified by the other Party of such breach.
- 8.2 Infonetica may terminate this Contract immediately, by giving the Customer written notice, if:
 - 8.2.1 the Customer suffers an Insolvency Event; or
 - 8.2.2 Infonetica determines, in its reasonable judgment, that any action or inaction by the Customer or a User, interferes with the operation or use of the Service, or that any Customer Data includes Inappropriate Content.
- 8.3 Infonetica may retain the Service Fees already paid by the Customer for the unexpired term of the Initial Term or Renewal Term (as applicable) where the Contract is terminated by Infonetica pursuant to clauses 6.12, 8.1.3, 8.2 or 10.3.7.
- 8.4 Infonetica shall refund to the Customer a proportion of the Annual Fees paid in advance by the Customer that relates to the period after the effective date of termination of this Contract to the end of the Initial Term or Renewal Term (as applicable) where:

8.4.1 the Customer terminates this Contract pursuant to clauses 8.1.3, 16.2 or 17.2; or

8.4.2 Infonetica terminates the Contract pursuant to paragraph 11.1 of the SLA.

For the avoidance of doubt, Implementation Fees and any Additional Fees are never refundable.

8.5 Upon the termination of this Contract (howsoever occasioned):

8.5.1 any accrued rights or liabilities of either Party shall not be affected;

8.5.2 all rights and licences of the Customer under this Contract shall terminate; and

8.5.3 clauses of this Contract which are expressly stated to or implicitly survive, or operate upon, termination, shall survive termination and continue in force. Additionally, the following provisions shall survive termination and continue in force (where applicable, to the extent relevant after termination): clauses 3 (Restricted Licence), 5 (Intellectual Property Rights), 6 (Payment), 8 (Termination), 11 (Customer Data), 12 (Data Protection), 14 (Limitation of Liability), 15 (Confidential Information), 25 (Notices) and 27 (Governing Law/Jurisdiction).

8.6 Upon termination of this Contract, the Customer shall return to Infonetica all Account Information, software, Confidential Information of Infonetica and all other information and documentation received from Infonetica or derived from the Service and shall delete any such information or documentation held in electronic form.

8.7 As soon as reasonably practicable upon termination of this Contract, Infonetica shall return to the Customer all Confidential Information of the Customer. At the Customer's request, Customer Data from the Service will be provided in the Native Format in accordance with paragraph 10 of the SLA. If the Customer requests any other transition support services, Infonetica may, at its sole discretion, provide a quote for such services in accordance with clause 6.15.

9 Equipment Operation

9.1 The Customer is solely responsible for acquiring, maintaining and securing its network connections, all computer hardware and software, telephone, and other equipment including telecommunications links, and all communications and other services needed to access and use the Service. Infonetica accepts no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any Losses to the Customer arising as a result of problems, conditions, delays, delivery failures or any other loss or damage arising from or relating to the Customer's network connections, servers or telecommunications links, or caused by the internet.

10 Security, Hosting and Data Storage

10.1 Although Infonetica has taken significant measures to ensure the security of information submitted by the Customer in using the Service, Infonetica cannot guarantee the security of information collected during the Customer's use of the Service.

10.2 If the Customer exceeds the Maximum Storage (as set out in the Commercial Terms) on the Service, then Infonetica:

10.2.1 shall notify the Customer that it is exceeding the Maximum Storage on the Service; and

10.2.2 may, at its discretion charge the Customer additional fees per annum for each 1GB of storage the Customer exceeds the Maximum Storage of the Service as set out in clause 6.

10.3 Without prejudice to the Customer's other obligations, the Hosting Service shall be provided by Infonetica on the following terms:

10.3.1 The Customer shall not use the Software as a repository for placing or storing archived files.

10.3.2 The Customer shall not input, add or upload Inappropriate Content to the Software or Service.

10.3.3 The Customer acknowledges that the Hosting Provider will be requested to implement the back-up regime as part of the specification for Hosting Service but Infonetica shall not be liable for any failure by the Hosting Provider to perform such back-ups.

10.3.4 The Customer acknowledges that Infonetica is dependent on a Hosting Provider to provide the Hosting Service. Infonetica will use its reasonable endeavours to select a reputable

Hosting Provider, taking into account the commercial aspects of the offering of such Hosting Provider including prices of the relevant services.

10.3.5 Notwithstanding any other provision of this Contract, Infonetica does not undertake or agree to provide the Hosting Service at a service level which exceeds those provided to Infonetica by the Hosting Provider.

10.3.6 The Customer acknowledges and agrees that the Software may be inaccessible or inoperable from time to time including as a result of equipment malfunctions, repairs or replacements carried out by the Hosting Provider or reasons beyond Infonetica's reasonable control.

10.3.7 This Contract shall automatically terminate upon immediate written notice if the agreement between Infonetica and the Hosting Provider is terminated as a result of any breach by Infonetica that is caused by the Customer's breach of this Contract (including, but not limited to, a breach by the Customer of clauses 10.3.1 to 10.3.6 which entitles the Hosting Provider to terminate, suspend or take action against Infonetica pursuant to its hosting agreement with Infonetica).

10.4 This clause 10 shall at all times be subject to the provisions of clause 12.

11 Customer Data

11.1 In relation to the Customer Data, Customer shall procure that the Customer Data does not:

11.1.1 breach applicable law, including without limitation any Data Protection Laws;

11.1.2 breach the terms of Infonetica's contract with its Hosting Provider;

11.1.3 infringe any third party's rights, including without limitation Intellectual Property Rights; or

11.1.4 include any material which is or could be considered harmful, obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, discriminatory, liable to incite racial or ethnic hatred, menacing, harassing, blasphemous, or causes or is designed to cause damage, injury or harm to any person or group; or

11.1.5 include any material which contains or may contain a Virus, hereafter referred to as "**Inappropriate Content**".

11.2 The Customer hereby grants (and shall procure the grant of) a royalty-free, non-transferable (save to the extent set out in this clause 11), non-exclusive licence for the term of this Contract to Infonetica (together with a right for Infonetica to sublicense the same to and any third party suppliers engaged by Infonetica) to access the Customer Data **only**:

11.2.1 to the extent necessary to provide the Service;

11.2.2 where the Customer or any User is or may be in breach of clause 11.1;

11.2.3 where the Customer Data infringes or may infringe any rights of a third party; or

11.2.4 where Infonetica is required to do so by law.

11.3 Where Inappropriate Content is identified by Infonetica, Infonetica shall attempt to notify the Customer immediately but is hereby authorised without prior consultation with the Customer to amend and if necessary to delete such aspects of the Customer Data affected by the sub-clauses referenced above, provided that Infonetica will use reasonable efforts to retrieve the remaining Customer Data and make it available to the Customer.

11.4 Other than where clause 11.3 applies, the Customer acknowledges that Infonetica has no control over any Customer Data and does not purport to monitor the content of the Customer Data.

11.5 The Customer shall indemnify, and keep Infonetica, its officers, directors, employees, agents, successors, and assignees indemnified at all times from and against all Losses, which are suffered by, and defend, and hold harmless against all such Losses which are brought or threatened against or incurred by, Infonetica, its officers, directors, employees, agents, successors, and assignees, in respect of any Customer Data which is inputted, added or uploaded into the Software by the Customer or any User in breach of clause 11.1.

12 Data Protection

- 12.1 Both Parties will comply with all applicable requirements of the Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Laws.
- 12.2 If Infonetica processes any personal data on the Customer's behalf when performing its obligations under this Contract (the scope, nature, purpose and duration of which and the types of personal data will be set out in the Commercial Terms), the Parties acknowledge that for the purpose of the Data Protection Laws, the Customer is the controller and Infonetica is the processor. In any such case, and without prejudice to the generality of clause 12.1:
- 12.2.1 Infonetica shall process the personal data only on the written instructions reasonably given by the Customer from time to time, unless Infonetica is required by the Data Protection Laws to process the personal data. Where Infonetica is relying on such applicable laws as the basis for processing, Infonetica shall promptly notify the Customer of this before performing the processing required by such applicable laws unless these laws prohibit Infonetica from notifying the Customer;
- 12.2.2 the Customer warrants, represents and undertakes that:
- (i) all personal data sourced or inputted into the Software by the Customer and /or provided to or accessed by Infonetica in performing its obligations under this Contract shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, data subjects), with the Data Protection Laws and any other applicable data protection legislation; and
 - (ii) all processing instructions given by it to Infonetica in respect of the personal data shall at all times be in accordance with the Data Protection Laws and any other applicable data protection legislation;
- 12.2.3 each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.2.4 Infonetica shall ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 12.2.5 Infonetica shall, at the Customer's cost and within four days of a request from the Customer, provide such reasonable assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to Infonetica) in relation to any request from a data subject and in ensuring compliance with the Customer's obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.2.6 the Customer agrees that Infonetica may transfer personal data to countries outside the European Economic Area provided that the following conditions are fulfilled: (a) the Customer or Infonetica has provided appropriate safeguards in relation to the transfer; (b) the data subject has enforceable rights and effective legal remedies; and (c) Infonetica complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any personal data that is transferred;

- 12.2.7 Infonetica shall notify the Customer without undue delay on becoming aware of a personal data breach;
- 12.2.8 Infonetica shall, at the written direction of the Customer, delete or return the personal data to the Customer on termination of this Contract, and delete existing copies thereof as soon as reasonably practicable (and in this regard the Customer acknowledges that it could take up to 100 days for back-ups to be processed), unless storage of any personal data is required by applicable law; and
- 12.2.9 Infonetica shall within three months of a request from the Customer (and at the Customer's cost) make available to the Customer, such information as is reasonably necessary to demonstrate its compliance with this clause 12, and allow for audits (including inspections) by the Customer or the Customer's designated auditor for this purpose, subject to the Customer:
 - (i) giving Infonetica reasonable prior notice of such information request, audit and/or inspection being required by the Customer (and paying Infonetica's reasonable associated costs); and
 - (ii) ensuring that any such audit or inspection is undertaken during normal business hours, with minimal disruption to Infonetica's business.

For the purposes of this clause 12.2.9, the Customer acknowledges that Infonetica may not be able to procure access to physical facilities of its hosting sub-processors and can only provide such access to audits as any such sub-processor may make available to Infonetica.

- 12.3 The Customer consents to Infonetica's use of sub-processors engaged in the processing of the Customer's personal data by way of a general authorisation in respect of all sub-processors which exist at the date of this Contract and which may be appointed from time to time by Infonetica. Infonetica shall make available to the Customer a list of all sub-processors which exist at the date of this Contract on its website accessible at <http://www.infonetica.net/12Ac4tY>, which the Customer may review at any time. In advance of any changes concerning the addition or replacement of its sub-processors, Infonetica shall update this list, thereby giving the Customer the opportunity to object to such changes.
- 12.4 The Customer acknowledges that Infonetica is reliant on the Customer for instructions as to the extent to which Infonetica is entitled to process any personal data. Consequently, to the maximum extent permitted by law, Infonetica shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any Losses arising from or in connection with any processing it carries out in accordance with the Customer's instructions.
- 12.5 The Customer shall indemnify Infonetica and hold Infonetica harmless against all Losses suffered or incurred by, awarded against or agreed to be paid by, Infonetica and any sub-contractor, sub-processor or service provider arising from or in connection with any:
 - 12.5.1 alleged or actual non-compliance by the Customer with the Data Protection Laws;
 - 12.5.2 processing carried out by Infonetica or any sub-contractor, sub-processor or service provider pursuant to any processing instructions from the Customer that infringes any Data Protection Laws; or
 - 12.5.3 breach by the Customer of any of its obligations under this clause 12, except to the extent Infonetica is liable under clause 12.6.
- 12.6 Subject at all times to clause 14, Infonetica shall be liable for any losses, costs, expenses or liabilities incurred by the Customer under or in connection with Infonetica's breach of this clause 12:
 - 12.6.1 only to the extent caused by the processing of personal data under this Contract and directly resulting from Infonetica's breach of this clause 12; and
 - 12.6.2 in no circumstances to the extent that any such losses, costs, expenses or liabilities (or the circumstances giving rise to them) are contributed to or caused by any breach of this Contract by the Customer.

- 12.7 In this clause 12, **“appropriate technical and organisational measures”, “controller”, “data subject”, “personal data”, “personal data breach”, “processing” and “processor”** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including process, processed and processes shall be construed accordingly).

13 Warranties

- 13.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Contract.
- 13.2 Infonetica warrants to the Customer that Infonetica has obtained the necessary consents and licences necessary to provide the Service to the Customer, for use by the Customer in accordance with the terms and conditions of this Contract.
- 13.3 Although Infonetica has taken reasonable steps in developing the Service so that it is secure and stable, Infonetica does not warrant the Service shall be:
- 13.3.1 uninterrupted or free from errors; or
 - 13.3.2 interoperable with third party software or equipment.
- 13.4 Save to the extent set out in this clause 13 or to the extent that any exclusion is prohibited by law, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.
- 13.5 Except as expressly and specifically provided in this Contract, the Customer assumes sole responsibility for results obtained from the use of the Service by the Customer, and for conclusions drawn from such use. Infonetica shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Infonetica by the Customer in connection with the Service, or any actions taken by Infonetica at the Customer's direction.
- 13.6 Any warranties given by Infonetica shall be subject to the Customer using the Service in compliance with this Contract, and Infonetica shall not be liable under this clause for, or required to remedy, any problem arising from any defect or error caused by the Customer or any User, or their use of the Service, or any third party software used in connection with the Service.

14 Limitation of Liability

- 14.1 This clause 14 sets out the entire financial liability of Infonetica (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 14.1.1 arising under or in connection with this Contract, including a failure to perform or delay in performance of any of its obligations hereunder;
 - 14.1.2 in respect of any use made by the Customer of the Service or any part of it; or
 - 14.1.3 arising under or in connection with any other agreement under which the Customer provides or receives goods or services to or from any third party; and
 - 14.1.4 in respect of any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Contract.
- 14.2 This clause 14 sets out the entire financial liability of the Customer (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Infonetica:
- 14.2.1 arising under or in connection with this Contract; and
 - 14.2.2 in respect of any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Contract.
- 14.3 Nothing in this Contract excludes the liability of either Party for:
- 14.3.1 death or personal injury caused by the Party's negligence;
 - 14.3.2 fraud or fraudulent misrepresentation; or
 - 14.3.3 any liability which cannot be excluded or limited by law.
- 14.4 Subject to clause 14.3:
- 14.4.1 neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:

- (i) loss of profits;
- (ii) loss of business;
- (iii) depletion of goodwill and/or similar losses;
- (iv) loss or corruption of data or information;
- (v) pure economic loss; or
- (vi) special, indirect or consequential loss, costs, damages, charges or expenses, however arising under this Contract; and

14.4.2 and subject to clauses 14.3, 14.5, 14.6, 14.7 and 14.8 each Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract (in respect of one event or a series of connected events and however that liability arises) shall be limited to the total Annual Fees payable by the Customer for the Initial Term or Renewal Term in which the claim arose.

14.5 Subject to clauses 14.3 and 14.8, the Customer's total aggregate liability to Infonetica arising in connection with any breach by or on behalf of the Customer of any of the provisions of clauses 3.9 and/or 3.10 of this Contract shall be limited to twice the total Annual Fees payable by the Customer for the Initial Term or Renewal Term in which the claim arose.

14.6 Subject to clause 14.3, Infonetica's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with breach by Infonetica of clause 13.2 of this Contract (in respect of one event or a series of connected events and however that liability arises) shall, subject to clause 13.6, be limited to twice the total Annual Fees payable by the Customer for the Initial Term or Renewal Term in which the claim arose.

14.7 Subject to clause 14.3, Infonetica's total aggregate liability under clause 12.6 of this Contract (in respect of one event or a series of connected events and however that liability arises) shall, be limited to twice the total Annual Fees payable by the Customer for the Initial Term or Renewal Term in which the claim arose.

14.8 Subject to clause 14.3 of this Contract, nothing in this clause 14 of this Contract shall limit:

14.8.1 the Customer's obligation to pay all fees and other monies due to Infonetica (including but not limited to the Service Fees); and/or

14.8.2 the Customer's liability under clauses 11.5 and 12.5 of this Contract.

15 Confidential Information

15.1 Each Party may have access to Confidential Information of the other Party under this Contract. Confidential Information of a Party shall not include information that:

15.1.1 is or becomes publicly known through no act or omission of the receiving Party;

15.1.2 was in the other Party's lawful possession prior to the disclosure;

15.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;

15.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or

15.1.5 is required to be disclosed by law (including, where applicable, the Freedom of Information Act 2000, Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records or the Environmental Information Regulations 2004), by any court of competent jurisdiction or by any regulatory or administrative body.

15.2 Each Party shall hold the Confidential Information of the other Party in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the Confidential Information of the other Party for any purpose other than the implementation of this Contract.

15.3 If a Party is required to disclose the Confidential Information of the other Party pursuant to clause 15.1.5, the Party shall, to the extent permitted by law, use its reasonable endeavours to give the other

Party as much notice of this disclosure as possible, unless the giving of such notice is legally prohibited.

15.4 Each Party agrees to take all reasonable steps to ensure that the Confidential Information of the other Party to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.

15.5 Each Party to this Contract shall as soon as reasonably practicable notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges any Confidential Information and shall give the other Party reasonable assistance in connection with any proceedings which the other Party may institute against such person for breach of confidence.

16 Force Majeure

16.1 Infonetica shall have no liability to the Customer under this Contract if it is hindered, prevented from or delayed in performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Infonetica or any third party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (each a “**Force Majeure Event**”), provided that the Customer is notified of such an event and its expected duration.

16.2 In the event that either Party is prevented from performing its obligations under this Contract for 60 days or more, either Party shall have the right to terminate the Contract on 30 days’ notice.

17 Variation

17.1 Infonetica may vary the terms of this Contract at any time in the event of changes in market conditions (including material exchange rate fluctuations) which adversely affect Infonetica’s ability to provide the Service. Infonetica shall notify the Customer in writing of any such proposed variation which variation, subject to clause 17.2, shall take effect 120 days after the date of Infonetica’s notice.

17.2 If the Customer is unable to agree with the proposed variation referred to in clause 17.1, the Customer shall notify Infonetica within 30 days and shall be entitled to serve at least 90 days’ written notice to terminate this Contract.

17.3 Subject to clauses 17.1 and 17.2, no variation of this Contract shall be effective unless it is in writing and signed by the Parties.

18 Relationship of the Parties

18.1 Each Party is acting as an independent contractor and is not an agent, partner, or in a joint venture with the other Party for any purpose, nor is there any fiduciary or other relationships between the Parties other than the contractual relationship expressly provided for in this Contract.

18.2 Neither Party has authority to assume or create any obligation for or on behalf of the other Party, express or implied, with respect to this Contract or otherwise.

19 Assignment

19.1 The Customer shall not, without the prior written consent of Infonetica, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights, licences or obligations under this Contract.

19.2 Infonetica may at any time assign, transfer, charge, subcontract or deal in any other manner all or any of its rights or obligations under this Contract.

20 Severance

20.1 If any provision of this Contract is prohibited by law or judged by a court to be void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

20.2 If any provision or part-provision of this Contract is deemed deleted under clause 20.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 Successors and Assignees

21.1 This Contract shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assignees, and references to a Party in this Contract shall include its successors and permitted assignees.

21.2 In this Contract references to a Party include references to a person:

21.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that Party's rights under this Contract (or any interest in those rights); or

21.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise their rights, and in particular those references shall include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that Party. For this purpose, references to a Party's rights under this Contract include any similar rights to which another person becomes entitled as a result of a novation of this Contract.

22 Entire Agreement

22.1 This Contract sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and merges and supersedes all prior agreements, writings, commitments and discussions.

22.2 Each Party acknowledges that in entering into this Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether or not in writing) of any person (whether a party to this Contract or not) relating to the subject matter of this Contract, other than as expressly set out in this Contract.

23 Waiver

23.1 A waiver of any right under this Contract is only effective if it is in writing, and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

24 Third Party Rights

24.1 Except as expressly set out in clause 3.1, this Contract does not confer any rights on any person or party (other than the Parties and, where applicable, their successors and permitted assigns) pursuant to the Contract (Rights of Third Parties) Act 1999.

25 Notice

25.1 All notices, requests, claims, demands and other communications between the Parties shall be in writing.

25.2 All notices shall be delivered:

25.2.1 by hand or next working day delivery service;

25.2.2 by fax; or

25.2.3 by e-mail,

to the address of the Party specified below or such other address as either Party may notify to the other Party in writing.

- 25.3 All notices shall be deemed to have been received:
- 25.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address of the Party;
 - 25.3.2 if sent by next working day delivery service, at the time recorded by the delivery service; and
 - 25.3.3 if sent by fax or e-mail, at 9.00 am, on the next Working Day (when sent by Infonetica) and the next Customer Working Day (when sent by the Customer) after transmission, provided that the sender does not receive a delivery failure notice.
- 25.4 The address for notices to Infonetica are as follows, except if notified otherwise to the Customer in accordance with clause 25.2:
Address: Infonetica Ltd, Lower Ground Floor Office, The Civic Centre, High Street, Esher, Surrey, KT10 9SD, United Kingdom
Fax: +44 (0) 20 8043 0031
Email: enquiries@infonetica.net
- 25.5 The addresses for notices to the Customer are those set out in the Commercial Terms.

26 Dispute Resolution

- 26.1 If a Party has any dispute with the other Party in connection with this Contract (a “**Dispute**”), then that Party will promptly give full written particulars of the Dispute to the other Party, and the Parties will, within thirty (30) days of delivery of those particulars, meet and in good faith try to resolve the dispute.
- 26.2 If the Dispute is not resolved the Parties in accordance with clause 26.1, then the Parties shall consider whether the Dispute should be referred to an alternative dispute resolution procedure (including mediation, arbitration or binding expert determination). If the Parties do not agree that the Dispute should be referred to an alternative dispute resolution within seven (7) days of a failure to resolve the Dispute in accordance with clause 26.1, either Party may commence proceedings in Court.
- 26.3 Nothing in this clause shall prejudice the right of either Party to:
- 26.3.1 apply to Court for interim relief to prevent the violation by the other Party of any proprietary interest, or any breach of the other Party’s obligations which could cause irreparable harm to the first Party; or
 - 26.3.2 bring proceedings intended to result in the enforcement of a settlement agreement entered into between the Parties in accordance with the foregoing provisions of this clause 26 or otherwise.

27 Governing Law/Jurisdiction

- 27.1 This Contract and any dispute or claim arising out of or in connection with this Contract or its subject matter of formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of England.
- 27.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter of formation (including non-contractual disputes or claims).

APPENDIX C: SERVICE LEVEL AGREEMENT FOR ReDA

Introduction

Infonetica shall without limitation to the express commitments described in this SLA use its reasonable endeavours to provide continuous and consistent service with respect to the Service. This is expressly subject to clause 10.3.5 of the Conditions.

This SLA relates only to the Service being provided wholly within the infrastructure of Infonetica. This includes all services hosted by Infonetica and provided to the Customer (including the services of the Hosting Provider, as applicable, but subject at all times to clause 10.3.5 of the Conditions).

1 Definitions

Definitions used in this Appendix shall have the following meanings. Any capitalised terms which are not defined below shall have the meaning give to it in clause 1 of the Conditions.

Customer Standard Working Hours	The hours of 9AM to 5PM on a Customer Working Day for a single time-zone.
Hardware and Software Stack	The combination of server, operating system, database, web server, network, firewall, and any other hardware or software required to provide the Service.
Internally Stored Referenced Documents	Documents that are not stored within but are referenced by the database and stored elsewhere within Infonetica's infrastructure.
Physical Media	Without limitation, electronic media such as compact discs or writable DVDs, or USB storage drives or paper media, or any other physical device used to convey information to or from a Customer.
Permitted Downtime	The downtime allowed to the Supplier under this agreement which includes but is not limited to paragraphs 2.2, 3 and 11.
Standard Working Hours	The hours of 9AM to 5PM GMT/BST (as applicable) on an English Working Day for a single time-zone.
Transportation Provider	A postal or courier service chosen by the Customer for the transportation of Physical Media.
Zero Downtime	A reference to an update or maintenance procedure that is intended to take place without disruption to a Service.

2 Service Availability

2.1 Infonetica will use reasonable endeavours to provide the Customer and their Users with the service availability set out below the "service availability target":

- 2.1.1 99.9% Uptime Service Level during Standard Working Hours on Working Days;
- 2.1.2 without limiting the requirements under paragraph 2.1.1, 99% Uptime Service Level on a 24 x 7 basis.

2.1.3 Service Availability shall have certain exclusions from Uptime Service Level calculations as detailed in 'Service Availability Exclusions'.

2.2 Infonetica will always plan to execute 'Zero-Downtime' upgrades and maintenance schedules but reserves the right to plan a scheduled outage with forty-eight (48) hours advance notice where such an outage would occur **outside** the Standard Working Hours and with five (5) Working Days' notice where such an outage would occur within Standard Working Hours. Infonetica will endeavour to schedule such outages outside Customer Standard Working Hours and limit their occurrence to strictly necessary upgrades and required maintenance. Notice of 'Zero-Downtime' upgrades and maintenance schedules are broadcast by e-mail to the Customer designated administrator and/or a notice within the Service. Details of all scheduled outages are broadcast by e-mail to the Customer's designated administrator. Where considered appropriate and practical Infonetica may (at its discretion) contact the Customer by phone in addition to contact by e-mail. In the event of any outages over and above the service availability target the Customer will receive a service credit calculated as shown in the paragraph 'Failure to meet Uptime Service Levels'. Planned outages do not count when calculating whether the service availability target has been met.

2.3 Customer Responsibilities

2.3.1 The Customer must notify the affected Users of scheduled outages.

2.3.2 The Customer must maintain up-to-date profile information of their Users and administrators in order to receive notifications that may be made via e-mail or telephone.

2.3.3 The Customer is responsible for properly maintaining the functional operation of all workstation equipment including connectivity to the internet. Prior to alleging any connectivity problems, the Customer should verify they are able to access at least 3 of the following major sites www.google.co.uk, www.google.com, www.google.com.au, uk.msn.com and www.yahoo.com.

2.3.4 The Customer may use Microsoft Edge (Chromium) or other industry-standard web-browser of equivalent or better functionality when viewing or using the Service.

2.3.5 Browser support is subject to ongoing support by the browser manufacturer and may change over time.

2.3.6 Infonetica will test with Microsoft Edge (Chromium), and the most recent versions of Chrome and Firefox.

2.3.7 Where the Customer has opted for authentication through its active directory then the Customer must give Infonetica at least 14 days' notice when making configuration changes that may affect Infonetica's ReDA system, and additional fees may be applicable in accordance with clause 6 of the Conditions.

3 Service Availability Exclusions

3.1 The following exclusions shall not be considered as periods of service outage for the purpose of calculating service credit or when calculating whether the service availability target has been met:

3.1.1 Outages caused by any type of denial of service attack regardless of the target.

3.1.2 Outages caused by action or inaction of the Customer or disclosure of system security information to an unauthorised party by the Customer which requires temporary suspension of service to protect data integrity.

3.1.3 Outages that occur at the request of the Customer.

3.1.4 Network connectivity issues which are not directly attributable to Infonetica or its data centre's provision of service to the internet.

3.1.5 Implementation of Revisions that require suspension of the Service to ensure data-integrity and security. Infonetica aims to provide such upgrades outside of Customer Standard Working Hours, although they may occur during Customer Standard Working Hours.

3.1.6 Outages that occur which are beyond the control of Infonetica, including where attributable to its Hosting Provider.

- 3.1.7 Outage scheduled in accordance with 'Service Availability' notification periods set out in paragraph 2.2.
- 3.1.8 Outages as a result of a Force Majeure Event.
- 3.1.9 Any outage caused by a lack of adherence to paragraph 2.3.7.

4 Failure to meet Uptime Service Levels

4.1 Subject to paragraphs 2.2, 3 and 11 of this SLA, if Infonetica fails to meet the Service Availability as set out in paragraph 2.1.1, Infonetica shall:

- 4.1.1 promptly, at no additional charge, use all reasonable efforts to minimise the impact of and correct the problem and begin meeting the Service Uptime Level as soon as is practicable; and
- 4.1.2 provide a financial credit in relation to the Service Availability set out in paragraph 2.1.1 **only** (representing a pro rata portion of the Annual Fees) to be applied automatically against future fees as detailed below:

UPTIME	CONTRACTUAL CREDIT FOR THE APPLICABLE MONTH
98.00%	3%
97.00%	5%
96.00% or less	8%

i.e. If over a month the service availability falls to 98% then the 3% of the monthly (pro rata of annual licence fee) will apply.

4.2 Infonetica will, upon written request from the Customer, make available within 10 Working Days of the next month, a report to the Customer of Service Availability levels for the preceding month.

5 Security and Control

- 5.1 Where applicable, Infonetica shall maintain the hosted service within a physically secure and electronically protected environment. Infonetica shall provide an infrastructure stack comprising of hardware firewalls, dedicated application servers, and dedicated database servers. In addition, monitoring and maintenance performed by commercial agreement with its host provider, Infonetica shall perform scheduled checks of security patches, analysis of system logs, ensure the integrity of data backups, and proactive planning of appropriate future infrastructure. Infonetica shall restrict administrative access to required and suitably qualified personnel.
- 5.2 In the event of actual or suspected breach related to security of the Service, Infonetica will provide notice to the Customer within eight (8) hours of the becoming aware of the issue.
- 5.3 The Customer shall, or shall procure the following:
 - 5.3.1 the Customer must use discretion granting administrator privileges;
 - 5.3.2 the Users must not share their login identifier or password; and
 - 5.3.3 the Customer must advise Infonetica within eight (8) hours of becoming aware of any actual or suspected access to the Service by an unauthorised party.

6 System and Software Maintenance

Infonetica shall at all times ensure a Hardware and Software Stack appropriate to meet the needs of the Service.

6.1 Thirty (30) Minute Reboot

Should the server stop responding then Infonetica shall ensure the affected server be rebooted as quickly as possible and no later than thirty (30) minutes after Infonetica first becomes aware the server has stopped responding. The thirty-minute reboot guarantee refers to the time between Infonetica becoming aware the server requires a reboot and the server physical-reboot-process beginning.

6.2 Data Restoration

In the unlikely event that system failover provisions shall require a restoration of system databases, user accounts, or other managed system resources, Infonetica must inform the Customer of the expected duration of the data restoration procedure and any other information that may affect the timescale for full restoration of the Service.

7 Customer Support

7.1 Support Provision

The following methods of Customer helpdesk support are available (depending on the level of support chosen) to customers using the Service:

7.1.1 An online help module.

7.1.2 Telephone support during Standard Working Hours.

7.1.3 E-mail to helpdesk@infonetica.net during Standard Working Hours.

8 Support Severity Categories for Support Requests

Support Severity categories are determined by Infonetica's triage process.

Without limiting the provision for Service Availability and Service Availability Exclusions, severity categories and response times are as follows:

8.1 Severity Levels

Severity	Description
1	Outages that prevent access to the Service or a defect causing data loss.
2	A question relating to a perceived reduction of functionality.
3	A question relating to the usage of the Service.
4	A request for functional enhancement of the Service.

8.2 Support Response Times and Elevation Levels

	Severity 1	Severity 2	Severity 3	Severity 4
Response Times	Within 1 hour	Within 4 hours	Within 24 hours	Within 24 hours
Status Updates	Every 2 hours during Hours of support	As Needed	As Needed	As Needed
Elevation to Management	Immediate	As Needed	As Needed	As Needed
Resolution Report	Yes	No	No	No

9 Implementation of new Service Revisions

9.1 Infonetica may periodically release upgrades to the Service to improve both Service Availability and enhance Service features. Release schedules will be broadcast by e-mail to the Customer's designated administrator. Full details of enhanced and new functionality within major revision changes and significant minor revision changes will be emailed or posted on the service site before release. No new Revision will contain changed functionality which adversely affects existing content but may require a period of data migration between revisions that shall be governed by Service Availability Exclusions.

10 Customer Data Release Requests

- 10.1 On termination of the Contract with Infonetica, the Customer may request a Customer Data release of their data in the Native Format as stored on Infonetica's servers in accordance with this paragraph 10.
- 10.2 Requests for a Customer Data release must always be made using the 'Data Release Request' form signed by an Authorised Officer or officers of the Customer. Requests for Customer Data that do not conform to the requirements will be notified to the Customer as an attempted security breach.
- 10.3 Infonetica will provide Customer Data releases within twenty-eight (28) Working Days of the written and duly authorised request reaching an authorised officer of Infonetica. Requests for Customer Data release outside of timescales set out in this paragraph may be requested by the Customer at an additional cost to the Customer.
- 10.4 Customer Data releases shall be provided only by secure file transfer protocol and be made available only for window of forty-eight (48) hours, after which time the Customer Data export will be destroyed for reasons of security.
- 10.5 The Customer may optionally and at additional cost request a physical copy of the Customer Data. In the event the Customer requests a physical copy of the Customer Data the Customer is responsible for the secure passage of the Customer Data once it leaves Infonetica's control and shall indemnify Infonetica against any action resulting from the loss of the Physical Media, its use or misuse, or the use or misuse of the contained Customer Data. Infonetica shall be responsible for the secure delivery to the chosen Transportation Provider.

11 Business Continuity Provision

- 11.1 At any time, Infonetica may discontinue a Service to its customers. If Infonetica decides to discontinue a Service which it is providing to the Customer, Infonetica shall give the Customer 120 days' notice in writing that it will be discontinued, at the end of such notice period the Service shall come to an end and if this is the only Service which Infonetica provides to the Customer, this Contract shall terminate. During this notice period, Infonetica will deliver, upon request, the Customer Data in its Native Format and, where stored on Infonetica's infrastructure, any Internally Stored Referenced Documents referenced by the database such as word documents or text files.