

LET'S DO THIS!



General Terms and Conditions

These general terms and conditions together with any terms included in the Schedules to this Agreement shall apply, to the exclusion of all other terms and conditions, to all Cloud Based Software Services and related Services provided and offered under this Agreement.

1. Definitions

In this Agreement the following words have the following meanings unless inconsistent with the context and a reference to the singular includes the plural and vice versa:

- **“Agreement”** the Special Conditions, the General Terms and Conditions and Schedules and of this agreement;
- **“Acceptance Criteria”** means the criteria agreed between the parties that will determine acceptance of any Cloud Based Software Service(s) or Services provided under this Agreement;
- **“CLIENT”** means the party referred to as such on the second sheet to this Agreement;
- **“Cloud Based Software Service”** means any cloud hosted software service that is provided by ADAPPT to the CLIENT, where the CLIENT accesses the service through a thin client interface, such as a web browser, and ADAPPT and their appointed agents are responsible for provision of elements of the infrastructure, including the underlying servers, storage and application software required to provide the service;
- **“Cloud Based Software Services and related Services Fee Schedule”** means Schedule 1, which sets out the Services to be provided under this Agreement, and the Fees payable pursuant to this Agreement;
- **“Documentation”** means any documentation in written format including diagrams, whether in electronic or hard copy form provided by ADAPPT to the CLIENT concerning the Cloud Based Software Service(s);
- **“Fee”** means any fee or charge payable by the CLIENT to ADAPPT under this Agreement;
- **“ADAPPT”** means the party referred to as such on the second sheet to this Agreement;
- **“Initial Term”** means a period of [.....n.....] months from the date of signature of this Agreement;
- **“Intellectual Property”** means all intellectual property, including but not limited to patents, trade marks (whether registered or unregistered), domain names, registered or unregistered designs, copyright, database rights, applications for any of the foregoing and the right to apply for them in any part of the world, discoveries, creations, inventions or improvements upon or additions to an invention, confidential information, know-how and any research effort relating to any of the above, business names whether registrable or not, moral rights and any similar rights in any country.
- **“Limit of Liability”** means in the case of physical damage to property of one party arising out of the negligence of the other party, the sum of [.....£ Amount.....] and in the case of all other loss, however arising, the sum of [.....£ Amount.....] or the cumulative value of all Fees and charges falling due within the Term of this Agreement, whichever is the lesser;
- **“Notice Period”** means the period of time from either party first giving written notice to the other of their intention to terminate this Agreement that must elapse before this Agreement is terminated. The Notice Period shall be a period of [.....n.....] months expressed to expire not earlier than the end of the Initial Term;

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- **“Off-Boarding”** means the activities undertaken to support migration off the Cloud Based Software Service(s) by the *CLIENT*, including the export and subsequent removal of any data belonging to the *CLIENT* held within the Cloud Based Software Service(s). Off-Boarding activities are described in Schedule 1;
- **“On-Boarding”** means the activities undertaken to support migration onto the Cloud Based Software Service(s) by the *CLIENT*, including the import of any data belonging to the *CLIENT* to be held within the Cloud Based Software Service(s). On-Boarding activities are described in Schedule 1;
- **“Services”** means Cloud Based Software Service related services including without limitation technical support, consulting, training or other services requested by the *CLIENT* and provided by *ADAPPT* in accordance with this Agreement;
- **“Term”** means, the period from the commencement of this Agreement until the Agreement is terminated or expires in accordance with its terms and, subject to sooner termination, includes the Initial Term and any holdover or extension of the same;
- **“Working Hours”** means the ordinary working hours for the provision of Services which shall be 09.00 to 17:30 Monday to Friday time excluding public holidays applying at the relevant site where the Services are delivered. *Where ADAPPT* provides Services outside ordinary working hours it shall be entitled to charge overtime at time and a half of the agreed day rates for staff providing the Services;
- In the event of any conflict between the provisions of this Agreement (and any further agreements made pursuant to this Agreement), the following order of precedence will apply:

1. Any Special Conditions;
2. The General Terms and Conditions;
3. Schedule 1, the Cloud Based Software Services and related Services Fee Schedule;
4. Any other Schedules;
5. Any further agreement made pursuant to this Agreement. Provisions appearing in any such further agreement will only apply to that further agreement, and not to the principal Agreement including any special conditions and schedules of the principal Agreement.

2. Use of the Cloud-based Software Service

Licence and terms of license:

- 2.1 *ADAPPT* reserves and retains all rights (including Intellectual Property), title and interest in the Cloud Based Software Service(s), other than any prior rights belonging to third parties, and grants the *CLIENT* a limited, revocable, non-exclusive, non-sublicensable and non-transferrable license to use the Cloud Based Software Service(s) strictly in accordance with the provisions of this Agreement, and not further or otherwise.
- 2.2 The *CLIENT* shall not:
 - 2.2.1 Modify or alter the Cloud Based Software Service(s), whether attempted or actual, save as permitted under this Agreement.

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- 2.2.2 Reverse engineer, decompile or access any computer source code within the Cloud Based Software Service(s), whether attempted or actual.
- 2.2.3 Make available any details, technical, process or other, concerning the design and operation of the Cloud Based Software Service(s) to any third parties, without the prior written agreement of ADAPPT.
- 2.2.4 Access or use the Cloud Based Software Service(s) in any such way intended to avoid incurring Fees or exceeding agreed usage parameters.
- 2.2.5 Use the Cloud Based Software Service(s) for any unlawful or criminal purposes or acts.
- 2.2.6 Use the Cloud Based Software Service(s) for any purposes or acts that might reasonably be considered as causing offence, reputational harm, defamation or distress to ADAPPT or any third party.

General use of the Cloud Based Software Services:

- 2.3 The *CLIENT*, and where agreed the *CLIENT*'s authorised third parties, shall adhere to any service terms, acceptable use policy or other policy relating to the Cloud Based Software Service(s) as advised by ADAPPT from time to time.
- 2.4 The *CLIENT* accepts full responsibility for their activities at all times when using the Cloud Based Software Service and fully accepts the same for the *CLIENT*'s authorised third parties.

3. Changes to the Cloud-Based Software Service

- 3.1 ADAPPT reserves all rights to change, discontinue or deprecate any functionality or all of the Cloud Based Software Service(s) offered under this Agreement from time to time, subject to the provisions of this Agreement, and will notify the *CLIENT* of any material change or discontinuation to the Cloud Based Software Service(s).

4. Security

- 4.1 The *CLIENT* shall take reasonable measures to keep secure any access details required to access and use the Cloud Based Software Service(s) and will advise ADAPPT immediately of any suspected or actual unauthorised access to the Cloud Based Software Service(s) of which the *CLIENT* becomes aware.
- 4.2 In providing the Cloud Based Software Service(s), ADAPPT shall take reasonable measures to keep secure the *CLIENT*'s data according to any information impact levels (as defined by the UK Government Cabinet Office or an equivalent body from time to time) or safe harbour arrangements as agreed with the *CLIENT* under this Agreement.

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5. Term and Termination

Termination for convenience:

- 5.1 This Agreement shall be effective for the Initial Term and shall continue to be in effect thereafter unless or until terminated by either party giving to the other written notice according to the Notice Period or unless terminated in accordance with the remainder of this clause.

Termination for cause:

- 5.2 Either party shall be entitled to terminate this Agreement immediately on written notice where the other party shall:
- 5.2.1 Commit any material breach of any of the provisions of this Agreement and shall fail to remedy such breach (where capable of remedy) within 30 days of notice in writing from the party not in breach specifying the breach and requiring it to be remedied;
 - 5.2.2 Pass a resolution for its winding up or have a receiver or liquidator appointed over the whole or any part of its assets or (being an individual) becomes bankrupt or makes or attempts to make any composition with its creditors or take or suffer any similar action in consequence of debt or if the party ceases or threatens to cease trading;
- 5.3 ADAPPT shall be entitled to terminate this Agreement immediately on written notice where the *CLIENT* challenges the validity of the Intellectual Property in the Cloud Based Software Service(s) provided by ADAPPT.
- 5.4 The *CLIENT* accepts that where ADAPPT and the *CLIENT* have agreed that any or all of the Cloud Based Software Service(s) shall be provided by a third party, ADAPPT shall be entitled to terminate this Agreement

immediately ('Termination on Third Party Termination') on written notice where the third party terminates its' obligations, or becomes materially unable to meet its' obligations, for provision of any or all of the Cloud Based Software Service(s) to ADAPPT. This provision shall not be exercised without ADAPPT undertaking reasonable endeavours to secure restoration or alternate provision of the Cloud Based Software Service(s) through other means with the *CLIENT*, and ADAPPT shall not be in breach of any of its' obligations under this Agreement while such alternative arrangements are put in place. If agreement is not reached with the *CLIENT* for alternate provision of the Cloud Based Software Service(s), then ADAPPT may immediately terminate this Agreement.

Effect of termination:

- 5.5 Termination of the Agreement for whatever reason shall not affect the accrued rights or liabilities of the parties as at the date of termination, including in particular (but without limitation) rights under any provision of this Agreement which are expressed to survive termination of the Agreement.
- 5.6 Upon termination of this Agreement except by reason of the material breach or insolvency of the *CLIENT*, or by reason of Termination on Third Party Termination:
- 5.6.1 the *CLIENT* shall have the option to request return of the *CLIENT'S* data, where such data is stored by the Cloud Based Software Service(s) under the provisions for Off-Boarding in this Agreement.
 - 5.6.2 ADAPPT shall, within thirty (30) days of completion of any Off-Boarding activities, remove and destroy all copies of the *CLIENT'S* data that remain on the Cloud Based Software Service.

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6. Charges

- 6.1 The Fees payable pursuant to this Agreement and the basis for charging those Fees are as set out in Schedule 1.
- 6.2 The basis for supporting and verifying all elements of Fees is as set out in this Agreement and ADAPPT shall not be obliged to carry out any further verification or support for Fees charged by it other than as required by this Agreement.
- 6.3 Where the CLIENT subscribes to a Cloud Based Software Service from ADAPPT:
- 6.3.1 The CLIENT agrees to pay ADAPPT all fees set out in the Schedule 1 for on-going use of the Cloud Based Software Service, including adhering to any payment date schedules that may apply, for as long as the CLIENT shall continue to use the Cloud Based Software Service.
 - 6.3.2 The CLIENT agrees to pay ADAPPT any fees as may be agreed separately between the CLIENT and ADAPPT from time to time pursuant to this Agreement for the provision of specific service configurations or customisations requested by the CLIENT in support of the CLIENT'S use of the Cloud Based Software Service(s).
 - 6.3.3 The CLIENT shall not be entitled to any refund of Fees paid to ADAPPT in the event that the CLIENT ceases use of the Cloud Based Software Service, for whatever reason during a period for which the CLIENT has paid ADAPPT Fees for use of the same.
 - 6.3.4 ADAPPT shall be entitled at its absolute discretion to vary the applicable Fees for use of the Cloud Based Software Service by the CLIENT, provided that ADAPPT shall give the CLIENT no less than ninety (90) days written notice of the Fee revision.
- 6.4 Unless specifically otherwise provided in this Agreement, payment of all Fees and charges due under this Agreement and will be made by the CLIENT within thirty (30) days of date of invoice for same.
- 6.5 It is expressly agreed that any terms in the CLIENT'S purchase order for Cloud Based Software Services or Services shall by superseded by the terms of this Agreement.
- 6.6 In addition to any other remedies available at law to ADAPPT, failure to meet the due payment dates for Fees and charges will entitle ADAPPT:
- 6.6.1 Cease to provide access to the CLIENT to the Cloud Based Software Service(s) or cease to undertake Services provided under this Agreement until such time as payment is received.
 - 6.6.2 To charge the CLIENT interest on the outstanding amount from thirty (30) days from date of invoice at 8% over the base rate of the Bank of England on a daily basis for the period between the due date and the date that payment is received, as specified under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7 In the event that any sum relating to this Agreement owed by the CLIENT to ADAPPT remains not paid in accordance with the terms of this Agreement after a period of sixty (60) days from date of invoice, then in addition to any other remedies available at law to ADAPPT, ADAPPT shall be entitled to:

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- 6.7.1 Permanently remove and revoke the *CLIENT'S* use of the Cloud Based Software Service, without any obligation to restore access to the same to the *CLIENT*;
- 6.7.2 Permanently remove any copies of the *CLIENT'S* data remaining on the Cloud Based Software Service, without any obligation to restore access or provide a copy of the same to the *CLIENT*.

7. Intellectual Property

- 7.1 *ADAPPT* retains all ownership and intellectual property rights to the Cloud Based Software Service and associated Documentation, which are protected by law, applicable international treaties and conventions regarding intellectual property rights including trade secrets.
- 7.2 Save for where the terms this Agreement expressly provide otherwise, *ADAPPT* retains all ownership and intellectual property rights to any configurations or customisations made to the Cloud Based Software Service(s) undertaken for the *CLIENT*.
- 7.3 Wherever third party Intellectual Property forms part of the Cloud Based Software Service provided by *ADAPPT*, such Intellectual Property remains the property of the owning third party and shall only be used by the *CLIENT* according to the licensing terms and conditions as agreed with the owning third party from time to time.
- 7.4 Except as provided herein, the *CLIENT* agrees not to provide or otherwise make available to any third party any Intellectual Property belonging to *ADAPPT* or any portion thereof in any form without the prior written approval of *ADAPPT*.

- 7.5 For the avoidance of doubt, nothing in this Agreement shall be constructed to prohibit *ADAPPT* from providing similar Cloud Based Software Services or Services to other clients and third parties.

8. Intellectual Property Infringement

- 8.1 The *CLIENT* shall notify *ADAPPT* immediately of any action and related claims brought against the *CLIENT* alleging that the *CLIENT'S* use of any Cloud Based Software Service provided by *ADAPPT* infringes a United Kingdom patent or Copyright. *ADAPPT* shall at its sole discretion elect whether or not it wishes to defend such action. Save in cases where any of the sub-clauses of clause 8.3 below apply, *ADAPPT* shall pay all costs and damages finally awarded in such action provided *ADAPPT* shall have the sole control of the defence and all negotiations for settlement. The *CLIENT* shall provide any assistance *ADAPPT* may request in the defence of such action(s).
- 8.2 In the event that a final injunction shall be obtained against the *CLIENT'S* use of the Cloud Based Software Service by reason of such infringement *ADAPPT* will at its own expense either procure for the *CLIENT* the right to continue using such services (or parts thereof), replace or modify the same so that it becomes non-infringing or refund the fees paid for the services or parts thereof found to be infringing.
- 8.3 *ADAPPT* shall not be liable if the alleged infringement is based upon:
 - 8.3.1 use of the Cloud Based Software Service in combination with products not sold or supplied by *ADAPPT* ; or

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- 8.3.2 material alteration of the Cloud Based Software Service by anyone other than ADAPPT; or
 - 8.3.3 use of Cloud Based Software Service after the *CLIENT* has been notified by ADAPPT of a possible infringement; or
 - 8.3.4 furnishing to ADAPPT by the *CLIENT* any information, service, application or general assistance; or
 - 8.3.5 compliance with designs or specifications furnished by or on behalf of the *CLIENT*; or
 - 8.3.6 any unauthorised use of the Cloud Based Software Service(s) by the *CLIENT*.
- 8.4 The *CLIENT* shall indemnify and keep fully indemnified ADAPPT against any losses, costs, expenses or damages (together "Losses") incurred by ADAPPT in the event that such Loss is incurred by ADAPPT as a direct or indirect result of the sub-clauses of clause 8.3 above applying.
- 8.5 The foregoing states the entire liability of ADAPPT for Intellectual Property infringements by ADAPPT with regard to provision of any Cloud Based Software Service(s).
- ## 9. Personnel
- 9.1 will nominate members of its specialist staff or sub-contractors from time to time having the appropriate skills to provide any supporting Services (including without limitation configurations, customisation and help desk services) required by this Agreement.
 - 9.2 If any consultant or individual shall become no longer available for any reason, ADAPPT shall appoint a similarly experienced individual as soon as practicable.
 - 9.3 During the term of this Agreement and for a period of one (1) year after final payment has been received by ADAPPT of any fee due under this Agreement, the *CLIENT* shall not actively solicit, nor offer employment to any of ADAPPT's personnel who have been engaged in work performed under this Agreement without the prior written consent of ADAPPT.
 - 9.4 In the event of the *CLIENT* employing or using the services of any such ADAPPT personnel either directly or indirectly, without ADAPPT's prior written approval, the *CLIENT* shall pay to ADAPPT a sum equivalent to the then current annual gross earnings of that person. Such sum shall be by way of liquidated damages and shall be due and payable immediately upon the termination of such individual's employment or service with ADAPPT.
 - 9.5 ADAPPT personnel engaged in the performance of this Agreement will remain at all times under the conditions of employment of ADAPPT or sub-contracted to ADAPPT.
 - 9.6 The *CLIENT* will indemnify ADAPPT in full against all costs, charges and expenses arising out of any claim brought or threatened by any member of ADAPPT's personnel to the extent that such claim or threatened claim arises from the *CLIENT*'S negligence or the negligence of persons for whom the *CLIENT* is responsible.

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10. ADAPPT's Obligations

- 10.1 Subject to payment by the *CLIENT* of all applicable Fees, *ADAPPT* shall:
 - 10.1.1 Provide the *CLIENT* with access to any Cloud Based Software Service(s) and any Services, according to the provisions of this Agreement;
 - 10.1.2 Provide the *CLIENT* with any technical support for the Cloud Based Software Service(s), according to the provisions of this Agreement;
- 10.2 Provision of technical support for the Cloud Based Software Service(s) by *ADAPPT* to the *CLIENT* shall be subject to the provisions of the Software Support Services Schedule.
- 10.3 *ADAPPT* shall not be in breach of its' obligations under this Agreement where the *CLIENT* has not used the Cloud Based Software Service(s) in accordance with the provisions of this Agreement, or where there is a failure in computer network connections (including without limitation the internet) provided by third parties, which are used by the *CLIENT* to access and use the Cloud Based Software Service(s).
- 10.4 *ADAPPT* shall be entitled to suspend and/or withhold any of its obligations under this Agreement where the payment of Fees by the *CLIENT* is overdue until such time as payment is received.
- 10.5 *ADAPPT* shall take all reasonable precautions to ensure the health and safety of the *CLIENT'S* personnel while the same are at *ADAPPT's* premises.

11. Client's Obligations

- 11.1 The *CLIENT* shall at all times use the Cloud Based Software Service(s) in accordance with the provisions of this Agreement.
- 11.2 The *CLIENT* shall be responsible for all elements of their infrastructure required to access and use the Cloud Based Software Service(s) provided under this Agreement, including without limitation any terminals, workstations or handsets ("Access Devices") and all network infrastructure connecting the Access Devices to the public internet or private network as applicable for connection to the Cloud Based Software Service(s).
- 11.3 Where any work pursuant for this Agreement is to be carried out at the *CLIENT'S* premises then the *CLIENT* shall, subject to compliance by *ADAPPT's* personnel with the *CLIENT'S* reasonable security requirements, allow *ADAPPT* full and complete access to the area(s) where the work is to be performed and will provide adequate office accommodation and facilities for any *ADAPPT* staff working on its premises as required.
- 11.4 The *CLIENT* will within agreed timescales provide *ADAPPT* with all necessary co-operation, information, equipment, data and support and any other *CLIENT* deliverables that may reasonably be required by, or agreed with, *ADAPPT* for the performance of its obligations under this Agreement.
- 11.5 When the *CLIENT* is responsible for conducting acceptance test(s) for the Cloud Based Software Service(s) provided by *ADAPPT* under this Agreement then the *CLIENT* will ensure that sufficient data and resources are available in order to fully test the same by completion of the acceptance tests and Acceptance Criteria at the prescribed time.

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- 11.6 The *CLIENT* agrees to provide suitable Acceptance Criteria reasonably acceptable to *ADAPPT* at the same time as it specifies the requirements for provision of the Cloud Based Software Service(s). The *CLIENT* shall not be entitled to reject any Cloud Based Software Service(s) for any non-compliance with AcceptanceCriteria not notified to *ADAPPT* in accordance with the terms of this clause.
- 11.7 In the event that *ADAPPT* is delayed or precluded from providing the Cloud Based Software Service(s) or completing the acceptance tests because of the non-availability of the *CLIENT'S* personnel or inadequate or insufficient data being available or because of any request, default, neglect or want of reasonable co-operation on the part of the *CLIENT* or the non-performance or non-performance in a timely manner by the *CLIENT* of any obligation on the *CLIENT* on which *ADAPPT* performance depends then *ADAPPT* shall be entitled to invoice for all sums payable in respect of the Cloud Based Software Service(s) to be provided which will be paid by the *CLIENT* within thirty (30) days of invoice. *ADAPPT* will be entitled to charge the *CLIENT* for *ADAPPT'S* time spent re-running or completing acceptance test(s).
- 11.8 The *CLIENT* acknowledges that the value of any Services provided or performed under this Agreement is dependent upon the accuracy and completeness of information and data that the *CLIENT* has provided to *ADAPPT*.
- 11.9 Both parties undertake that where participation by their respective personnel is necessary in the execution of this Agreement, such personnel shall possess the appropriate skills and experience for any tasks assigned to them.
- 11.10 The *CLIENT* shall take all reasonable precautions to ensure the health and safety of *ADAPPT'S* personnel while the same are at the *CLIENT'S* premises.

12. Warranty

The CLIENT:

- 12.1 The *CLIENT* represents and warrants to *ADAPPT* that the *CLIENT* owns or has correctly licensed any data or information that the *CLIENT* will store, use or process within the Cloud Based Software Service(s) provided under this Agreement, and that the *CLIENT* holds all rights necessary to lawfully use the same under the provisions of this Agreement.

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- 12.2 Any configurations or customisations to the Cloud Based Software Service(s) performed in accordance with this Agreement will be performed by suitably qualified and experienced personnel in accordance with good industry practice in the relevant sector and in accordance with any specific requirements agreed pursuant to this Agreement.
- 12.3 *ADAPPT* warrants that for a period of thirty (30) days following commencement of subscription to the Cloud Based Software Service by the *CLIENT*:
- 12.3.1 The Cloud Based Software Service will substantially conform to the applicable Documentation when properly used in accordance with the provisions of this Agreement.
- 12.3.2 *ADAPPT* does not warrant that the Cloud Based Software Service or Documentation or its use by the *CLIENT* will be error free or uninterrupted. However, in the event the warranty in this clause 12.3 is breached *ADAPPT* shall be entitled to a period of thirty (30) working days (or such further time as is reasonable in the circumstances) from notice by the *CLIENT* to remedy the breach.

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- 12.3.3** The *CLIENT* acknowledges that the Cloud Based Software Service has not been prepared to meet the *CLIENT'S* individual requirements. *ADAPPT* shall not be responsible for any failure of the Cloud Based Software Service to provide any facility or function not set out in the Documentation or in respect of any results, data, information or material created using the Cloud Based Software Service.
- 12.4** *ADAPPT's* sole obligation under this warranty will be to correct any non-conformance in any Cloud Based Software Service from those set out in this Agreement, provided that the *CLIENT* has at all times used the Cloud Based Software Service in accordance with *ADAPPT's* operating instructions, applicable Documentation and this Agreement.
- 12.5** The warranty above is exclusive of and in lieu of all other conditions, warranties or other terms, whether express or implied, including any terms relating to satisfactory quality or fitness for a particular purpose.
- 12.6** Except as set out in this Agreement, *ADAPPT* excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the *CLIENT*.

13. Liability

- 13.1** Neither party shall be liable to the other for any special or consequential loss or for loss of profits, loss of business, loss of estimated saving and loss of or damage to data in each case whether direct or indirect howsoever such preceding losses were caused (in the last case in excess of the direct cost of restoring the data from backups kept by the party suffering the loss in accordance with good computing practice).

- 13.2** Neither party shall be liable to the other in its reliance on any information, documentation or data provided by the other party.
- 13.3** Subject to clause 12.4, the total liability of either party to the other in contract, tort, negligence or otherwise arising out of or in connection with the performance or observance of its obligations, or otherwise, in respect of this Agreement shall be limited to the Limit of Liability.
- 13.4** Nothing in this Agreement shall exclude or limit either party's liability for:
- 13.4.1** death or personal injury resulting from negligence; or
 - 13.4.2** fraud or fraudulent misrepresentation; or
 - 13.4.3** any other liability which by law cannot be excluded.

14. Confidentiality and Non-disclosure

- 14.1** By virtue of this Agreement, the parties may have access to information that is confidential to one another ('Confidential Information'). Confidential Information shall include all proprietary or trade secret information or data included in any Cloud Based Software Service(s) and all information clearly marked as confidential or which the party receiving it knows ought to be proprietary and confidential.
- 14.2** A party's Confidential Information shall not include information which:
- 14.2.1** is or becomes a part of the public domain through no act or omission of the other party; or
 - 14.2.2** was in the other party's lawful possession prior to the disclosures and had not been obtained by the other party either directly or indirectly from the disclosing party; or

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- 14.2.3 is lawfully disclosed to the other party by a third party without restriction or disclosure; or
- 14.2.1 is independently developed by the other party.
- 14.3 The parties agree, both during the term of this Agreement and for a period of five (5) year after termination of this Agreement, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement.

15. Notices

- 15.1** Any notice, including notices of address change, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post, facsimile or email, addressed to the recipient at the address listed on the second page of this Agreement, its registered office or any other address (including a facsimile number) notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent.
- 15.2** The notice, demand or communication will be deemed to have been duly served:
- 15.2.1** if delivered by hand, at the time of delivery;
- 15.2.2** if delivered by post, 48 hours after being posted or in the case of Airmail 7 days (excluding Saturdays, Sundays and public holidays) after being posted; or

- 15.2.3** if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission; or
- 15.2.4** if delivered by email, at the time of sending, provided that a confirming copy is sent by first class post to the other party within 24 hours after sending and that no notification informing the sender that the message has not been delivered has been received by the sender.

16. Compliance

- 16.1 ADAPPT shall have the right to audit the *CLIENT'S* use of the Cloud Based Software Service(s) for the purpose of monitoring compliance with this Agreement at any time, including the use of automated software to monitor compliance.
- 16.2 The *CLIENT* shall at all times cooperate with any reasonable request for information from ADAPPT concerning the *CLIENT'S* compliance with this Agreement.

17. Force Majeure

- Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner where it is prevented from performing its obligations under this Agreement due to force majeure ('Force Majeure'). Force Majeure means, in relation to the other party, circumstances beyond the reasonable control of that party which is without its fault or negligence, including without limitation acts of God, acts of any government or supra-national authority, war or national emergencies, riots, civil commotion, fire, explosion, flood or epidemic;

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- 17.1** If either party is affected by Force Majeure it shall promptly notify the other party of the nature and circumstances in question.
- 17.2** If the Force Majeure in question prevails for a continuous period in excess of one (1) calendar month after the date on which the Force Majeure begins, the party not in default is then entitled to give notice in writing to the defaulting party to terminate this Agreement. This notice to terminate must specify the termination date, which must not be less than thirty (30) days after which the date on the notice to terminate is given. Once notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice.

18. Survival of Terms

- The following terms of this Agreement shall survive termination for any reason: 2, 4.1, 5.5, 5.6, 6, 7, 8, 14, 16, 20, 21, 22, 23, 24, 25, 26, 27;

19. Assignment

- The *CLIENT* may not assign or transfer this Agreement or any pursuant agreements or any of the rights arising hereunder without the prior written consent of *ADAPPT*.

20. Relationship of the Parties

- Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties.

21. Third Party Rights

- The parties to this Agreement do not intend that any terms of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

22. Severability

- If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

23. Waiver

- No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy. For the avoidance of doubt, the waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

24. Variation

- This Agreement may only be varied or amended in writing and signed by duly authorised representatives of the parties. Changes to the scope of the Cloud Based

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Software Services(s) or Services pursuant to the Schedules to this Agreement, or any pursuant agreement, shall be carried out pursuant to an agreed change control process and until the scope of any change and its impact on the Fees has been agreed in writing between the parties the original scope of the Cloud Based Software Services(s) or Services shall continue to apply.

25. Publicity

- 25.1 Neither party shall make direct reference to the other party in any publicity statements or use a logo belonging to the same without the prior written agreement of the other party, such agreement not to be unreasonably withheld.
- 25.2 Either party shall be entitled to publicise this Agreement in accordance with:
 - 25.2.1 Any legal obligation upon the party; and,
 - 25.2.2 In the case of *ADAPPT* for the purposes of evidencing capability to a prospective client or purchasing entity provided that any information provided does not constitute the CLIENT'S Confidential Information and provided that any information provided is provided solely to the prospective client or purchasing entity.

26. Construction

- Headings have been included for convenience only and shall not be used in

27. Entire Agreement

- The parties to this Agreement do not intend that any terms of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

28. Governing Law

- This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

constructing any provisions of this Agreement.