

Terms and Conditions of service

This agreement (the "Agreement") between entitledto Limited ("ETL", "we", "us", "our"), whose registered office is Delta House, 16 Bridge Road, Haywards Heath, West Sussex, RH16 1UA, with company number 05191376, and (Customer) ("you", "your", "Customer",) provides the terms and conditions upon which you may access the Services.

BACKGROUND

The Customer wishes to engage ETL to provide the Services (as defined below), and ETL is willing to provide such services to the Customer, on the terms of this Agreement.

1. DEFINITIONS

"Account": the online account for use by Authorised Users to access the ETL Services, set up by ETL for the Customer;

"Agreement": means this agreement and any amendments to this Agreement from time to time;

"Authorised User": any employee or other person authorised by the Customer to access the ETL Services but excluding Clients;

"Benefits": all the means-tested benefits and tax credits available in England, Wales and Scotland: specifically, Universal Credit, Child Tax Credit, Working Tax Credit, Council Tax Support/Reduction, Housing Benefit, Income Support, ESA, JSA and Pension Credit and future means- tested benefits when they are introduced;

"Bespoke Modification": means a modification of the ETL Services, whether made through the development, configuration or integration of software, or otherwise;

"Business Day": means any weekday other than a bank or public holiday in England;

"Business Hours": means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Calculations": means calculations performed using the ETL Services including benefits, affordability and budgeting calculations;

"Change Control Process": the current version of ETL's change process, which is available on request;

"Change": where a written request for a change is received from the Customer;

"Change Request": means a change request document issued by the Customer;

"Charges": means those charges specified in Clause 8.1;

“Client”: means an individual who is a client of the Customer;

“Commencement Date”: means the date of execution of this Agreement;

“Customer Data” means all data, works and materials uploaded to or stored on the Platform by the Customer, any Authorised User or any Client in the course of a Calculation or other use of the Services;

“Customer Personal Data”: means any Personal Data that is processed by ETL on behalf of the Customer in relation to this Agreement;

“Customer Website” means the website or websites owned and operated by the Customer that is / are identified by the Customer in any relevant Services Specification or subsequently approved by ETL to carry the ETL Services;

“Data Protection Legislation”: means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

“ETL Services”: means the hosted software-based services provided by ETL, as specified in the ETL Services Specification, which will be made available by ETL to the Customer as a service via the internet in accordance with this Agreement;

“ETL Services Specification”: the specification for the Platform and the ETL Services set out in any relevant ETL Services Specification;

“ETL Website” means the website accessible to the Customer, plus any other website notified by ETL to the Customer during the Term;

“EU GDPR”: means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

“Indemnity Event” means an event which may give rise to an indemnity under Clause 18.1 or Clause 18.2;

"Intellectual Property Rights": patents rights to invention copyright and related rights, trademarks, trade names and domain names, rights in get up, rights in good-will or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and renewal or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in future subsist in any part of the world;

"Licence Fee": the charge specified for the provision of the licence to the ETL Services;

"Personal Data" means personal data under any of the Data Protection Legislation;

"Platform" means the platform managed by ETL and used by ETL to provide the ETL Services, including the application and database software for the ETL Services, the system and server software used to provide the ETL Services, and the computer hardware on which that application, database, system and server software is installed;

"Prohibited Content" means materials that constitute, or that ETL reasonably determines constitute:

- (a) material that breaches any applicable laws, regulations or legally-binding codes;
- (b) material that infringes any third party Intellectual Property Rights or other third party legal rights;
- (c) indecent, obscene, pornographic or lewd material;
- (d) material that is offensive or abusive, or is likely to cause annoyance, inconvenience or anxiety to another internet user; and/or
- (e) computer viruses, spyware, trojan horses or other malicious or harmful routines, programs or software;

"Start Date" means the date specified in any relevant ETL Services Specification;

"Support Services": means support in relation to the use of, and the identification and resolution of errors in, the ETL Services including training, or otherwise agreed by the parties in writing;

"Security Policy": means ETL's security policy (as it may be amended by ETL from time to time) which will be made available to the Customer on request;

"Services": means any services that ETL provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Supported Web Browser": means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that ETL agrees in writing shall be supported;

"Term": means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Tools": the Benefits entitlement calculation engine developed by ETL and provided as part of the ETL Services to enable advisers and users to calculate Benefit entitlement and perform better-off calculations: specifically, *Benefits Calculator*, *Affordability Calculator* and/or *Better off Calculator*; and

"UK GDPR": means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time.

2. TERM

- 2.1. This Agreement shall come into force upon the Commencement Date.
- 2.2. This Agreement shall continue in force from the Commencement Date until the end of the period of 12 months following the Start Date ("**Initial Term**"); and thereafter it shall continue in force for successive 12-month periods ("**Renewal Terms**"), subject to termination in accordance with Clause 12 or any other provision of this Agreement.

3. ETL SERVICES

- 3.1. ETL hereby grants to the Customer:
 - (a) a non-exclusive licence to use the ETL Services by means of a Supported Web Browser in connection with the Calculations during the Term;
 - (b) the right to supply and/or provide access to results of the Calculations to Clients in accordance with the Data Protection Legislation and other applicable laws; and/or
 - (c) a non-exclusive licence to make the ETL Services available to Clients through the Customer Website.

as specified in any relevant ETL Services Specification, subject to the other terms of the Agreement.
- 3.2. The licences granted by ETL to the Customer under Clause 3.1 are subject to the following limitation:
 - (a) the ETL Services may only be used by the Customer's officers, employees, agents and individual contractors acting on behalf of the Customer and Clients as permitted under Clause 3.1(c).
- 3.3. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by ETL to the Customer under Clause 3.1 is subject to the following prohibitions:

- (a) the Customer must not licence or sub-license its right to access and use the ETL Services, or sell, resell, distribute, rent, lease or lend the ETL Services;
 - (b) the Customer must not permit any unauthorised person or application to access or use the ETL Services;
 - (c) the Customer must not make any alteration to the Platform;
 - (d) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or ETL Services without the prior written consent of ETL;
 - (e) the Customer must not use the ETL Services to store or transmit any malicious code, malware, attack, bugs, viruses, Trojans or similar;
 - (f) the Customer must not use the ETL Services in any way that causes, or may cause, damage to the ETL Services or Platform or impairment of the availability, integrity, performance or accessibility of the ETL Services (including making an unreasonable number of requests to the ETL Services or otherwise placing an unreasonable load upon the ETL Services);
 - (g) the Customer must not attempt to gain unauthorised access to the ETL Services, the Platform or its related systems or networks;
 - (h) the Customer must not copy the ETL Services or any part, feature, function or user interface thereof;
 - (i) the Customer must not access or use the ETL Services to provide a product or service that is in any way competitive with the ETL Services (providing that the Customer may use the ETL Services and supply results of Calculations to Clients in accordance with this Agreement);
 - (j) the Customer must not reverse engineer, decompile, manipulate or access any source code or object code related to the ETL Services, or use any machine learning or artificial intelligence system in relation to the output of the ETL Services; and
 - (k) the Customer must not use the ETL Services in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.4. The Customer shall implement and maintain reasonable security measures relating to the Account access details to ensure that no unauthorised person or application may gain access to the ETL Services using the Account.
- 3.5. **Availability.** ETL shall use reasonable endeavours to maintain the availability of the ETL Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the ETL Services but does not guarantee 100% availability.
- 3.6. **Maintenance.** The Customer acknowledges that from time-to-time ETL may perform maintenance on the Platform, which may affect the availability and/or performance of the ETL Services. However, maintenance resulting in downtime will be unusual and would, wherever practicable, be performed outside Business Hours; and ETL shall, where practicable, give to the Customer at least 24 hours' prior

written notice of such downtime.

3.7. Without prejudice to Clause 3.5 or Clause 3.6, downtime caused directly or indirectly by any of the following shall not constitute a breach of the Agreement:

- (a) a Force Majeure Event;
- (b) a fault or failure of the internet or any public telecommunications network;
- (c) a fault or failure of ETL's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between ETL and that company;
- (d) a fault or failure of the Customer's computer systems or networks or internet connection;
- (e) any breach by the Customer of the Agreement; or
- (f) scheduled or emergency maintenance.

4. BESPOKE MODIFICATIONS

- 4.1. ETL and the Customer may agree that ETL shall design, develop and implement a Bespoke Modification or Bespoke Modifications in accordance with ETL's then current Change Control Process (a copy of which is available on request).
- 4.2. ETL's agreement to create a Bespoke Modification may be subject to the Customer paying Charges with respect to that work.
- 4.3. All Intellectual Property Rights in the Bespoke Modifications shall, as between the parties, be the exclusive property of ETL (unless the parties agree otherwise in writing).
- 4.4. From the time and date when a Bespoke Modification is first delivered or made available by ETL to the Customer, the Bespoke Modification shall form part of the ETL Services, and accordingly from that time and date the Customer's rights to use the Bespoke Modification shall be governed by Clause 3 (ETL Services).
- 4.5. The Customer acknowledges that ETL may make any Bespoke Modification available to any of its other customers or any other third party.

5. SUPPORT SERVICES

- 5.1. ETL shall provide the Support Services to the Customer during the Term.
- 5.2. ETL shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in ETL's industry.
- 5.3. ETL may suspend the provision of the Support Services if any amount due to be paid by the Customer to ETL under this Agreement is overdue, and ETL has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

6. CUSTOMER OBLIGATIONS

- 6.1. The Customer shall be solely responsible for familiarising itself with the functionality of the ETL Services, for ensuring that the ETL Services meet the Customer's requirements, and for its use of the ETL Services and their features,

including any training in relation to the use of the ETL Services of all Authorised Users.

6.2. The Customer must ensure that all Authorised Users are familiar with the functionality of the ETL Services including any acknowledgements and limitations specified in Clause 17 (Acknowledgements) and Clause 13 (Liability).

6.3. Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to ETL, or procure for ETL, such:

- (a) co-operation, support and advice; and
- (b) information and documentation,

as are reasonably necessary to enable ETL to perform its obligations under the Agreement.

6.4. The Customer must not act in any way to bring ETL into disrepute.

6.5. The Customer must during the Term:

- (a) keep the Customer Website up to date and in good working order;
- (b) ensure that the quality of design, content and functionality on the Customer Website does not materially deteriorate;
- (c) ensure all marketing relating to the Customer Website (both online and offline) is in accordance with applicable law, any applicable codes of practice, and good industry practice generally; and
- (d) ensure that the access to the ETL Services is in such form and on such pages of the Customer Website as may be specified or agreed by ETL from time to time.

6.6. The Customer must not:

- (a) include any Prohibited Content or any hyperlink to Prohibited Content on the Customer Website;
- (b) market the Customer Website using spam or unsolicited emails or other unsolicited communications, or using any form of spyware, parasiteware, adware or similar software, or using any other antisocial or deceptive methods;
- (c) advertise, directly or indirectly, ETL Services on any advertising platform that has been notified by ETL to the Customer as a prohibited advertising platform;
- (d) provide access to the ETL Services in any location other than on the Customer Website;
- (e) make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of ETL;
- (f) include any hyperlink to ETL Website from the Customer Website (apart from as may be expressly permitted under this Agreement) without the prior written consent of ETL; or
- (g) include any reference to ETL or ETL Website on the Customer Website (apart from as may be expressly permitted under this Agreement) without the prior written consent of ETL.

6.7. The Customer must not:

- (a) represent to any person that it is an agent or distributor of ETL;
- (b) pledge or purport to pledge ETL's credit;
- (c) commit or purport to commit ETL to any contracts; or
- (d) otherwise incur any liability or potential liability on behalf of ETL.

6.8. The Customer undertakes that it will not, during the Term and without the prior written consent of ETL, take any action that will or is reasonably likely to have a material negative impact on the reputation and/or goodwill of ETL.

7. CUSTOMER DATA

7.1. The Customer hereby grants to ETL a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of ETL's obligations and the exercise of ETL's rights under the Agreement. The Customer also grants to ETL the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.

7.2. The Customer warrants to ETL that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

8. CHARGES

8.1. The Charges due to be paid by the Customer to ETL under this Agreement are as follows:

- (a) Licence Fee and other amounts in respect of the Services or otherwise as specified;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) any other amounts which are due from the Customer to ETL under this Agreement; in each case as may be varied in accordance with the Agreement.

8.2. The Licence Fee and all other amounts stated in or in relation to this Agreement are exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to ETL.

8.3. ETL may adjust the Licence Fee with effect from the first anniversary of the Start Date and thereafter once in every twelve month period during the Term by the percentage increase in the Consumer Prices Index during the previous year.

8.4. Without prejudice to its rights under Clause 8.3, ETL may elect to vary any element of the Charges, upon and from the end of the Initial Term or any Renewal Term, by giving to the Customer not less than 90 days' prior written notice of variation.

9. PAYMENT

- 9.1. ETL shall issue invoices for the Licence Fee to the Customer annually in advance. ETL shall issue invoices for any other Charges as agreed between the Parties.
- 9.2. The Customer must pay the Charges to ETL within the period of 30 days following the issue of an invoice in accordance with this Clause 9.
- 9.3. If the Customer does not pay any amount properly due to ETL under this Agreement, ETL may:
 - (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

10. INTELLECTUAL PROPERTY

- 10.1. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from ETL to the Customer, or from the Customer to ETL.
- 10.2. The Customer acknowledges that all Intellectual Property Rights (excluding the Intellectual Property Rights in the Customer Data) created by or on behalf of ETL and arising out of or in connection with the Services, whether or not such Services were requested by the Customer, shall be owned by ETL.
- 10.3. Except as expressly stated in the Agreement, the Agreement does not grant the Customer any rights to, under or in any Intellectual Property Rights in or arising out of or in connection with the Services.

11. SUSPENSION

- 11.1. **Late Payment:** Without prejudice to rights under Clause 9.3, in the event that the Customer fails to make payment to ETL of any Charges in accordance with Clause 9.2 and such amounts remain outstanding for a period of 30 days following the date on which they were due to be paid, ETL may, at its sole discretion, immediately upon notice to the Customer, suspend access to the ETL Services until such time as payment of any outstanding amounts is made.
- 11.2. **Breach:** In addition to the above ETL may suspend access to the ETL Services in the event of a material breach by the Customer of any of its obligations under this Agreement.
- 11.3. **Reinstatement:** At any time whilst access to the ETL Services is suspended, ETL may, at its sole discretion, reinstate such access if ETL is satisfied that the reason for the suspension has been rectified by the Customer.
- 11.4. ETL's right to suspend access to the ETL Services is in addition to any other rights ETL may have under this Agreement, including, but not limited to, its termination rights as set out below.

12. TERMINATION AND EFFECTS OF TERMINATION

- 12.1. In the event of suspension of access to the ETL Services as set out in Clauses **Error! Reference source not found.** and **Error! Reference source not found.**, ETL may terminate this Agreement immediately if it has, in its sole opinion, cause to continue such suspension for a period of 90 days.
- 12.2. In addition, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party is in material breach of the Agreement (and fails to remedy any breach that is capable of remedy within thirty days of receipt of written notice); or
 - (b) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 30 days.
- 12.3. Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term by giving to the other party not less than two (2) Months' prior written notice of termination.
- 12.4. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 7.1, 9, 12, 13, 14, 15, 16.4, 19, 20, 21, 22, 23, 24, 25, 26.
- 12.5. Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 12.6. Within 30 days following the termination of the Agreement for any reason the Customer must pay to ETL all of ETL's outstanding unpaid invoices and interest; and, in respect of the Services supplied but for which no invoice has been submitted, ETL may submit an invoice, which shall be payable within 14 days following the date of issue of the invoice.

13. LIABILITY

- 13.1. Nothing in this Agreement will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 13.2. The limitations and exclusions of liability set out in this Clause 13 and elsewhere in this Agreement:
- (a) are subject to Clause 13.1; and

- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

13.3. ETL shall not be liable to the Customer in respect of any:

- (a) losses arising out of a Force Majeure Event;
- (b) loss of profits or anticipated savings;
- (c) loss of goodwill or reputation;
- (d) loss of business, contracts or opportunities;
- (e) loss of revenue or income;
- (f) loss of use or production;
- (g) loss or corruption of any data, database, software, providing that this sub-Clause 13.3(g) does not apply to liabilities under Clause 14 (Confidentiality) or 15 (Data Protection); and
- (h) any special, indirect loss, costs, damages, charges or expenses.

13.4. Except in circumstances where ETL is in breach of Clause 16.2, ETL will not be liable to the Customer in respect of any liabilities (or related losses, damages, costs or expenses) arising directly or indirectly out of any reliance placed by the Customer, any Authorised User or any Client on any Calculations or other output of the Services.

13.5. Subject to Clause 13.6, the liability of ETL to the Customer under this Agreement in respect of any event or series of related events shall not exceed the amount equal to 150% of the amount paid and payable by the Customer to ETL under this Agreement in the 12 month period preceding the commencement of the event or events.

13.6. The liability of ETL to the Customer under this Agreement in respect of claims arising in connection with any breach of Clause 14 (Confidentiality) and Clause 15 (Data protection) proven in court or settled out of court or under the indemnity in Clause 18.1 (IPR indemnity) shall not exceed the greater of:

- (a) GBP 100,000; and
- (b) the amount equal to 500% of the amount paid and payable by the Customer to ETL under this Agreement in the 12 month period preceding the commencement of the event or events which has given rise to the claim.

14. CONFIDENTIALITY

- 14.1. Each party ("**Recipient**") shall keep confidential any confidential information which the other party ("**Discloser**") supplies to the Recipient in connection with this Agreement, provided that this shall not prevent disclosure to any of the Recipient's subsidiaries (the Recipient and its subsidiaries together herein referred to as the "**Recipient's Group**") or those officers, employees, agents, investors and

professional advisers of the Recipient or other members of the Recipient's Group who are in each case required in the course of their duties to receive and consider the confidential information. Confidential information will include all information marked as being confidential and any other information which ought reasonably to be assumed to be confidential. The obligations as to confidentiality in this Agreement will not apply to any information which:

- (a) is available to the public other than because of any breach of this Agreement;
- (b) is, when it is supplied, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
- (c) is independently obtained by whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or
- (d) is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure.

15. DATA PROTECTION

- 15.1. Each party shall comply with the Data Protection Legislation with respect to the processing of the Customer Personal Data.
- 15.2. The Customer warrants to ETL that it has the legal right to disclose all Personal Data that it does in fact disclose to ETL under or in connection with this Agreement.
- 15.3. The Customer shall only supply to ETL, and ETL shall only process, in each case under or in relation to this Agreement:
 - (a) the Personal Data of data subjects falling within the categories specified in our Data processing information policy (which is available on request) or such other categories as may be agreed by the parties in writing.
- 15.4. ETL shall only process the Customer Personal Data for the purposes specified in the Data processing information policy.
- 15.5. ETL shall only process the Customer Personal Data during the Term and for a period specified by the Customer, following the end of the Term, subject to the other provisions of this Clause 15.
- 15.6. ETL shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Legislation), as set out in this Agreement or any other document agreed by the parties in writing.
- 15.7. The Customer hereby authorises ETL to make the following transfers of Customer Personal Data:
 - (a) ETL may transfer the Customer Personal Data to its third-party processors in the jurisdictions identified in the Data processing information policy and may permit its

third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and

- (b) ETL may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 15.8. ETL shall promptly inform the Customer if, in the opinion of ETL, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Legislation.
- 15.9. Notwithstanding any other provision of this Agreement, ETL may process the Customer Personal Data if and to the extent that ETL is required to do so by applicable law. In such a case, ETL shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 15.10. ETL shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 15.11. ETL and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 15.12. ETL must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, ETL shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third-party processor, and if the Customer objects to any such changes before their implementation, then ETL shall use reasonable endeavours to take the Customer's reasonable objections into account. ETL shall ensure that each third-party processor is subject to equivalent legal obligations as those imposed on ETL by this Clause 15.
- 15.13. As at the Commencement Date, ETL is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties, and third parties within the categories, identified in the Data processing information policy.
- 15.14. ETL shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Legislation.

- 15.15. ETL shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Legislation. ETL may charge the Customer at its standard time-based charging rates for any work performed by ETL at the request of the Customer pursuant to this Clause 15.15.
- 15.16. ETL must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after ETL becomes aware of the breach.
- 15.17. ETL shall make available to the Customer all information necessary to demonstrate the compliance of ETL with its obligations under this Clause 15 and the Data Protection Legislation. ETL may charge the Customer at its standard time-based charging rates for any work performed by ETL at the request of the Customer pursuant to this Clause 15.17, providing that no such charges shall be levied with respect to the completion by ETL (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.
- 15.18. ETL shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 15.19. ETL shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of ETL's processing of Customer Personal Data with the Data Protection Legislation and this Clause 15. ETL may charge the Customer at its standard time-based charging rates for any work performed by ETL at the request of the Customer pursuant to this Clause 15.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by ETL of this Agreement or any security breach affecting the systems of ETL.
- 15.20. If any changes or prospective changes to the Data Protection Legislation result or will result in one or both parties not complying with the Data Protection Legislation in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

16. WARRANTIES AND INDEMNITY

- 16.1. ETL warrants to the Customer that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 16.2. ETL shall use its best endeavours to ensure that the Calculations generated by the Tools shall be materially accurate based on the inputs into the relevant calculator, except that this Clause 16.2 shall not apply where the Customer has breached Clauses 3.1, 3.2 or 3.3 of this Agreement. The Customer shall notify ETL on becoming aware of any inaccuracies in the Calculations generated by the relevant calculator and ETL shall use reasonable endeavours to resolve the source of such inaccuracies.
- 16.3. The Customer warrants to ETL that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 16.4. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.
- 16.5. Except in circumstances where ETL is in breach of Clause 16.2, the Customer hereby indemnifies ETL and undertakes to keep ETL indemnified against any claims, liabilities, losses, costs and expenses (including legal expenses and amounts paid in settlement of claims) suffered or incurred by ETL arising directly or indirectly out of the reliance placed by:
- (a) the Customer;
 - (b) any Authorised User; or
 - (c) any Client,
- on any Calculation or other output of the Services.

17. ACKNOWLEDGEMENTS

- 17.1. The Customer acknowledges that any legal or financial information or commentary provided on the ETL's website or through the Services is provided for information purposes only and is not advice and should not be relied on as legal or financial advice. ETL will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the ETL Services.
- 17.2. Whilst ETL shall use reasonable endeavours to secure the ETL Services and shall comply with its Security Policy in relation to the security of the ETL Services, the Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, ETL cannot guarantee that the ETL Services will never be subject to a security breach.

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 0161 980 6276
 www.entitledto.co.uk

entitledto
independent | accurate | reliable

18. INTELLECTUAL PROPERTY INDEMNITY

- 18.1. ETL shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer arising out of or in connection with any claim, demand or action alleging that the receipt of the ETL Services by the Customer in accordance with this Agreement infringes or has infringed any Intellectual Property Rights of a third party.
- 18.2. The Customer shall indemnify and shall keep indemnified ETL against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by ETL arising directly or indirectly out of the use by ETL of the Customer Data or the Customer's trade marks, logos and other branding in accordance with this Agreement.
- 18.3. If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this Clause 18, the Indemnified Party shall:
- (a) upon becoming aware of an actual or potential Indemnity Event, notify the Indemnifying Party;
 - (b) provide to the Indemnifying Party all such assistance as may be reasonably requested by the Indemnifying Party in relation to the Indemnity Event;
 - (c) allow the Indemnifying Party the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Indemnity Event; and
 - (d) not admit liability to any third party in connection with the Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Indemnity Event without the prior written consent of the Indemnifying Party,
- and the Indemnifying Party's obligation to indemnify the Indemnified Party under this Clause 18 shall not apply unless the Indemnified Party complies with the requirements of this Clause 18.3.

19. STATUS

- 19.1. The relationship between ETL and the Customer will be that of independent contractor and nothing in this Agreement shall render the parties or the parties' staff an employee, worker, agent or partner of the other party, irrespective of the nature of the Services being provided to the Customer by ETL.

20. AMENDMENT

- 20.1. No modification or variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement.

21. ASSIGNMENT

- 21.1. The Customer may not assign or transfer this Agreement or any rights under this Agreement, or purport to do any of the same without ETL's prior written consent.

22. RIGHTS OF THIRD PARTIES

- 22.1. Except insofar as this Agreement expressly provides that a third party may in his own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

23. ENTIRE AGREEMENT

- 23.1. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding whether oral or written between the parties in relation to such subject matter.

24. WAIVER

- 24.1. In no event will any delay, failure or omission in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question.

25. SEVERANCE

- 25.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

26. GOVERNING LAW

- 26.1. This Agreement shall be governed by the laws of England and Wales and, in the event of any dispute (including non-contractual disputes) the parties hereby submit to the exclusive jurisdiction of the English Courts.

27. EXECUTION

- 27.1. This Agreement shall take effect upon you accepting these terms by signing it as indicated below.
- 27.2. By completing any of the above acts, you represent to us that you (being the individual providing such acceptance) are authorised to bind the company or other organisation on whose behalf you are entering into this Agreement.