

Terms

These terms and conditions ('Terms') shall govern the use of the Services and form a legally binding agreement between you ('the Customer') and New Verve. In addition to these terms, you may wish to review New Verve's Privacy Policy and New Verve's EULA.

If you purchase Atlassian products from New Verve, the use of these products is governed by the following terms:

- [Cloud Terms of Service](#) for all Cloud products
- [Expanded Coverage Addendum](#) for all premium Cloud products
- [Software License Agreement](#) for Server and Data Center products
- [Product-Specific Terms](#) (e.g. Trello, Statuspage, Bitbucket Cloud, Opsgenie)

1. Definitions

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means the agreement between the Customer and New Verve comprising: (i) these Terms, (ii) the Proposal, and (iii) any documents specifically referred to or incorporated into these Terms;

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

"Charges" means the fees payable in respect of the Services, as specified in the Order, or otherwise agreed in writing by the parties from time to time.

"Confidential Information" means:

- any information disclosed by or on behalf of a Disclosing Party to a Receiving Party (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - was marked as "confidential"; or
 - should have been reasonably understood by the Receiving Party to be confidential;
- in relation to the Customer, the Customer Data; and
- in relation to New Verve, any information in relation to its business which is of a confidential nature (including trade secrets and any information of commercial value).

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Controller" has the meaning given to it in the Data Protection Legislation;

"Customer" means the legal person (whether company, partnership, individual or otherwise), identified in the Proposal, to whom the Services will be provided;

"Customer Data" means all data, works and materials supplied by the Customer to New Verve;

“Customer Personal Data” means Personal Data as defined in the Data Protection Legislation, that is processed by New Verve on behalf of the Customer in relation to this Agreement;

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Commissioner or other relevant regulatory authority and which are applicable;

“Data Subject” takes the meaning given in the Data Protection Legislation;

“Deliverable” means any documentation, data, design (whether registrable or otherwise), software, know-how or other works created or supplied by New Verve during the provision of the Services (whether alone or jointly);

“Disclosing Party” means the party to this Agreement that is disclosing its Confidential Information to the other party;

“Documentation” means any documentation, policies, or manuals in relation to the Services produced by New Verve and delivered or made available by New Verve to the Customer (as may be amended from time to time);

“DPA 2018” means the Data Protection Act 2018;

“EU GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

“Force Majeure Event” means an event, or a series of related events, which is beyond the reasonable control of the party affected and includes, without limit, an event which falls into one or more of the following categories:

- Acts of God;
- Compliance with a law or governmental order, rule, regulation or direction and/or any action taken by a government or public authority, including without limitation imposing an embargo, export or import restriction, quota or other restriction or prohibition, or the failure to grant any necessary licence or consent;
- 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;
- Disasters, explosions, fires or floods;
- Strikes or industrial disputes;
- Riots, rebellions, terrorist attacks, or wars;
- Pandemics;

- Difficulty or increased costs in obtaining workers, goods or transport.

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registrable or non-registrable, registered or unregistered, including any application or right of application for such rights (and these “intellectual property rights” include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, and rights in designs);

“Laws” means any applicable law, statute, by law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time;

“New Verve” means New Verve Consulting Ltd., a company incorporated in Scotland (registration number SC408161) having its registered office at 100 West George Street, Glasgow, G2 1PP, United Kingdom;

“Order” means the order made by the Customer when it confirms acceptance of a Proposal by any means, including by email or by issuing a purchase order pursuant to the Proposal;

“Payment Terms” means the terms relating to invoicing and payment, as set out in the Proposal;

“Personal Data” has the meaning given to it in the Data Protection Legislation;

“Personal Data Breach” has the meaning given to it in the Data Protection Legislation;

“Processor” has the meaning given to it in the Data Protection Legislation;

“Proposal” means the proposal issued by New Verve which describes the key aspects of the Services, including (without limitation) the project Deliverables, proposed charges, delivery timetable, and Payment Terms.

“Receiving Party” means the party to this Agreement that is receiving the other party’s Confidential Information;

“Services” means any services that New Verve provides to the Customer, or has an obligation to provide to the Customer as part of an Order;

“Services Start Date” means the date upon which the Customer begins receiving the Services;

“Website” means New Verve’s website at www.newverveconsulting.com.

2. Basis of Agreement

2.1 New Verve shall issue a Proposal, which shall include (without limitation) a description of the Services, including the project Deliverables, proposed charges, delivery timetable, and Payment Terms.

2.2 Other than those specifically incorporated into a Proposal, any samples, mock-up designs, illustrations, or other content issued or published by New Verve (e.g. in marketing campaigns or on the Website) are issued or published for the sole purpose of illustration or to provide an approximate idea of the services described in them and shall, therefore, have no contractual force.

2.3 The Customer's acceptance of a Proposal by any means, including by issuing a purchase order in response to the Proposal, shall comprise an Order for the purpose of these Terms. By submitting an Order or by otherwise accepting these Terms, the Customer agrees to contract on the basis of these Terms. Save to the extent that the parties have agreed otherwise in writing, the Customer agrees that these Terms prevail over any other terms (without limitation) which the Customer may seek to impose or introduce.

2.4 An Agreement will be formed and shall start when New Verve accepts the Customer's Order either expressly or by delivering Services pursuant to the Order.

2.5 The Agreement will supersede all and any previous agreements, arrangements, and understandings between the parties in relation to the Services, including (without limitation) any non-disclosure agreements entered into by the parties in anticipation of the provision of the Services.

3. Customer Obligations

3.1 Save to the extent that the parties have agreed otherwise in writing, the Customer shall provide to New Verve, or procure for New Verve, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable New Verve to perform its obligations under this Agreement.

3.2 The Customer shall provide to New Verve, or procure for New Verve, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by New Verve to enable New Verve to perform its obligations under this Agreement.

3.3 The Customer shall appoint a key contact (e.g. project manager), who shall have the authority contractually to bind New Verve on matters relating to the Services.

3.4 The Customer shall make available such Customer staff and applicable sub-contractors or suppliers as may be required for New Verve to provide the Services and ensure that they cooperate fully with New Verve in all material aspects.

3.5 The Customer shall carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner.

3.6 New Verve shall not be liable in any way for any inability to provide the Services in accordance with this Agreement or any breach of its obligations under this Agreement where these are directly or indirectly due to the Customer failing to perform its obligations as outlined in this Clause 3.

4. Customer Data

4.1 The Customer hereby grants to New Verve a non-exclusive licence to copy, store, export, adapt, edit and translate the Customer Data, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers (if applicable), for the performance of New Verve's obligations under this Agreement only.

4.2 New Verve warrants to the Customer that the use of the Customer Data by New Verve in accordance with this Agreement will not:

- (a) breach the provisions of any law, statute or regulation;
- (b) infringe the Intellectual Property Rights or other legal rights of any person; or
- (c) give rise to any cause of action against New Verve or the Customer,

in each case in any jurisdiction and under any applicable law.

5. Charges and Payments

5.1 The Customer shall on or prior to the Services Start Date provide to New Verve valid, up-to-date and complete payment details or approved purchase order information acceptable to New Verve and any other required valid, up-to-date and complete contact and billing details.

5.2 New Verve shall invoice the Customer and the Customer will pay all Charges, each in accordance with the Payment Terms. Where the Customer provides payment details, New Verve is hereby authorised to take payment upon the issue of an invoice.

5.3 The Customer shall notify New Verve of any changes to their bank account, billing address, and email addresses for the Customer.

5.4 New Verve shall be entitled to charge the Customer for any approved expenses reasonably and properly incurred in connection with the Services. Such expenses will be invoiced monthly in arrears, including a breakdown of expenses payable in relation to the invoicing period.

5.5 All Charges referred to in the Proposal, pursuant to the Order, are:

- (a) non-cancellable and non-refundable; and
- (b) exclusive of any applicable value-added taxes, which will be added to the Charges and payable by the Customer to New Verve.

5.6 (*Time & Materials*) If the Charges are based in whole or part upon the time spent by New Verve performing the Services:

- (a) the Charges payable shall be calculated in accordance with New Verve's daily fee rates set out in the Proposal;
- (b) standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 6.00 pm on Business Days;
- (c) New Verve shall be entitled to charge at an overtime rate of (i) 150% of the normal rate for any time worked on non-Business Days or on Business Days outside the hours referred to in clause 5.6(b) on a pro-rata basis, and (ii) 220% of the normal rate for any time worked on non-Business Days outside the hours referred to in clause 5.6(b);
- (d) New Verve shall ensure that all team members complete time sheets recording time spent on delivering the Services, and New Verve shall use such time sheets to calculate the charges covered by each relevant invoice;
- (e) New Verve shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 5. Any expenses, materials and third party services shall be invoiced by New Verve at cost or, where applicable, in accordance with any agreed budget, fixed sum or limit. Each invoice shall set out the time spent by each team member and, where applicable, shall provide a detailed breakdown of any expenses and materials, accompanied by the

relevant receipts; and

(f) New Verve shall notify the Customer before performing any Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded.

5.7 (*Fixed Price*) If the Charges in the Proposal are fixed price:

(a) the total price for the Services shall be the amount set out in the Proposal. Where staged payments have been agreed, the Charges are payable on New Verve's achievement of the agreed and corresponding project milestone. On achieving a project milestone, New Verve shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate); and

(b) for the avoidance of doubt, fixed price Charges exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by New Verve while delivering the Services, and the cost of any materials or services reasonably and properly provided by third parties required by New Verve for the supply of the Services. Such expenses, materials and third party services shall be invoiced by New Verve at cost unless otherwise agreed.

5.8 New Verve may suspend the provision of all or any part of the Services if any amount due to be paid by the Customer to New Verve is overdue, and remains overdue for a period of 15 days' following written notice from New Verve of the late payment. New Verve shall not be liable for any costs, damages, delays, interruptions or claims arising from any suspension of any Service caused by such suspension.

5.9 If the Customer does not pay any amount properly due to New Verve under this Agreement, New Verve 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.

5.10 All amounts under this Agreement will be paid in full without any deduction or withholding other than as required by law and the Customer will not be entitled to assert any rights of set-off against New Verve in order to justify the withholding of any payments due under this Agreement.

6. Confidentiality Obligations

6.1 The Receiving Party must:

(a) keep any Confidential Information it receives strictly confidential;

(b) not disclose any Confidential Information it receives to any person without the Disclosing Party's prior written consent, and then only under conditions of confidentiality approved in writing by the Disclosing Party;

(c) use the same degree of care to protect the confidentiality of any Confidential Information it receives as the Receiving Party uses to protect its own Confidential Information of a similar nature, being at least a reasonable degree of care;

(d) act in good faith at all times in relation to any Confidential Information it receives; and

(e) must only use any Confidential Information it receives for performing its obligations and/or exercising its rights under this Agreement.

6.2 Notwithstanding Clause 6.1, New Verve may disclose the Customer's Confidential Information it receives to New Verve's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer's Confidential Information for the performance of New Verve's obligations under this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer's Confidential Information.

6.3 This Clause 6 imposes no obligations upon the Receiving Party with respect to any Confidential Information that it receives that:

- (a) is known to the Receiving Party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Receiving Party; or
- (c) is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of an obligation of confidentiality.

6.4 The restrictions in this Clause 6 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.

6.5 The provisions of this Clause 6 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

7. Data Protection

7.1 The parties will comply with the Data Protection Legislation and agree that the Customer is the Controller and New Verve the Processor, in respect of all such data processing activities which New Verve carries out under this Agreement.

7.2 The Customer warrants to New Verve that it has the legal right to disclose all Personal Data that it does, in fact, disclose to New Verve under or in connection with this Agreement, and that the processing of that Personal Data by New Verve to fulfil its obligations and exercise its rights set out in this Agreement will comply with the Data Protection Legislation.

7.3 New Verve warrants to the Customer that:

- (a) it will act only on instructions from the Customer in relation to the processing of Customer Personal Data;
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Customer Personal Data and against loss or corruption of Customer Personal Data;
- (c) it will only process the Customer Personal Data for the purposes of performing its obligations and exercising its rights under this Agreement;
- (d) it will process the Customer Personal Data in compliance with all applicable Laws; and
- (e) it will not transfer or permit the transfer of Customer Personal Data to any place outside the UK or EEA without the prior written consent of the Customer, and:
 - i. the Customer or New Verve has provided appropriate safeguards in relation to the transfer as determined by the Customer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. New Verve complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound,

uses its best endeavours to assist the Customer in meeting its obligations); and
iv. New Verve complies with any reasonable instructions notified to it in advance by the Customer to the processing of the Personal Data.

(f) as an employer of fewer than 250 staff, it will maintain complete and accurate records and information to demonstrate its compliance with clauses 7.1 to 7.5 only if:

- i. the Customer determines that the processing is not occasional;
- ii. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- iii. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

7.4 New Verve shall comply with any notification requirements under the Data Protection Legislation and both Parties will observe their obligations under it, and:

- (a) New Verve will notify the Customer without delay and in any case within 24 hours if they become aware that any of the Customer Personal Data is lost or destroyed, or becomes damaged, corrupted or unusable;
- (b) New Verve will notify the Customer immediately if they receive any communication from a third party relating to the parties' obligations under the Data Protection Legislation;
- (c) New Verve will provide all reasonable assistance to the Customer to prepare any Data Protection Impact Assessment as may be required and must notify the Customer immediately if it considers that the Customer's instructions infringe the Data Protection Legislation.

7.5 New Verve shall co-operate with the Customer in relation to:

- (a) any request from the Customer to amend or delete any of the Customer Personal Data;
 - (b) any complaint or regulatory notification relating to the processing of any of the Customer Personal Data; and
 - (c) any request from a data subject for access to any of the Customer Personal Data,
- at the Customer's own cost and expense.

7.6 New Verve may be required to share personal data with its parent company, APLICACIONES Y TRATAMIENTOS DE SISTEMAS, S.A and atSistemas, LTD UK ("collectively knowmad mood"), for the purpose of delivering the Services to you. Otherwise, New Verve may not authorise any other third party or subcontractor to process the Personal Data without first notifying the Customer and providing the customer with the opportunity to consent or object to the processing of personal data but a third party or subcontractor.

8. Intellectual Property

8.1 All Intellectual Property Rights created during the performance of the Services (including in any documentation, software, know-how or other works created or supplied by New Verve) (whether alone or jointly) shall belong to New Verve, and the Customer shall have no rights in respect of any such Intellectual Property Rights except as expressly granted under this Agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as New Verve may from time to time require for the purpose of giving New Verve the full benefit of the provisions of this clause 8.1.

8.2 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from New Verve to the Customer, or from the Customer to New Verve.

8.3 New Verve hereby grants to the Customer a revocable, worldwide, non-exclusive licence to use the Intellectual Property Rights owned by New Verve solely for the purposes of receiving the Services in accordance with the terms of this Agreement during the Term. This licence shall automatically expire on the termination of this Agreement.

8.4 The licence granted by New Verve to the Customer under Clause 8.3 is subject to the following limitations (except to the extent expressly permitted in this Agreement):

- (a) the Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
- (b) the Customer must not sub-license its right to access and use the Services;
- (c) the Customer must not permit any unauthorised person to access or use the Services;
- (d) the Customer must not use the Services to provide services to third parties;
- (e) the Customer must not republish or redistribute any content or material from the Services;
- (f) the Customer must not make any alteration to the Services.

9. Warranties

9.1 New Verve warrants to the Customer that:

- (a) New Verve has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) New Verve shall at all times use its reasonable endeavours to carry out and provide the Services in compliance with all relevant Laws, including any change in Laws;
- (c) New Verve has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

9.2 New Verve warrants to the Customer that the Services, when used by the Customer in accordance with this Agreement, will not infringe the UK Intellectual Property Rights of any person.

9.3 If New Verve reasonably determines, or any third party alleges, that the use of the Services by the Customer in accordance with this Agreement infringes any person's UK Intellectual Property Rights, New Verve may at its own cost and expense:

- (a) modify the Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Services in accordance with this Agreement.

9.4 The Customer warrants to New Verve that:

- (a) it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Customer will comply with all applicable legal and regulatory requirements applying to the exercise of the Customer's rights and the fulfilment of the Customer's obligations under this Agreement.

9.5 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.

10. Acknowledgements and warranty limitations

10.1 The Customer acknowledges that:

- (a) clause 9.3 constitutes the Customer's exclusive remedy and New Verve's only liability in respect of Clause 9.2 and, for the avoidance of doubt, is subject to Clause 3;
- (b) software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, New Verve gives no warranty or representation that the Services will be wholly free from defects, errors and bugs;
- (c) complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, New Verve gives no warranty or representation that the Services will be entirely secure;
- (d) New Verve will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Services; and, except to the extent expressly provided otherwise in this Agreement, New Verve does not warrant or represent that the Services or the use of the Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

11. Indemnities

11.1 The Customer shall indemnify and shall keep indemnified New Verve 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 New Verve and arising directly or indirectly as a result of any breach by the Customer of this Agreement.

11.2 The Customer shall indemnify and shall keep indemnified New Verve against any and all claims made against New Verve alleging that the use by New Verve of any data, information, or materials supplied by the Customer that New Verve uses in performing the Services, or any data, information, or materials uploaded or stored in New Verve's hardware, software, networks and systems by the Customer infringes the Intellectual Property Rights of a third party (including legal expenses and amounts reasonably paid in settlement of legal claims).

12. Limitation of Liability

12.1 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.

12.2 The limitations and exclusions of liability set out in this Clause 12.2 and elsewhere in this Agreement:

- (a) are subject to Clause 12.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in negligence and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

12.3 New Verve shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

12.4 New Verve shall not be liable to the Customer and the Customer shall not be liable to New Verve in respect of any:

- (a) loss of profits or anticipated savings;
- (b) loss of revenue or income;
- (c) loss of use or production;
- (d) loss of business, contracts or opportunities;
- (e) loss or corruption of any data, database or software;
- (f) any special, indirect or consequential loss or damage.

12.5 The aggregate liability of New Verve to the Customer under this Agreement shall in no circumstances exceed the total amount paid by the Customer to New Verve under this Agreement in the calendar year in which the liability arises.

13. Force Majeure Event

13.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

13.2 If a Force Majeure Event continues for 90 days, New Verve may terminate this agreement by giving 10 days' written notice to the Customer.

13.3 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

13.4 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

14. Termination

14.1 Either party may terminate this Agreement with immediate effect by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and:
- (b) the breach is not remediable; or
- (c) the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.

14.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:

- i. is dissolved;
- ii. ceases to conduct all (or substantially all) of its business;
- iii. is or becomes unable to pay its debts as they fall due;
- iv. is or becomes insolvent or is declared insolvent; or
- v. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

14.3 New Verve may terminate this Agreement immediately by giving written notice to the Customer if:

(a) any amount due to be paid by the Customer to New Verve under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b) New Verve has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 14.3.

15. Effects of Termination

15.1 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 (Definitions), 3.6 (Customer Obligations), 4.2 (Customer Data), 5 (Charges and Payments), 6 (Confidentiality Obligations), 8.1 and 8.2 (Intellectual Property), 11 (Indemnities), 12 (Limitation of Liability), 15 (Effects of Termination), 16 (Notices), 19 (No Waivers), 20 (Severability), 21 (Third-party rights), 22 (Variation), 23 (Entire Agreement), 24 (Dispute Resolution), 25 (Law and Jurisdiction) and 26 (Interpretation).

15.2 The termination of this Agreement shall not affect the accrued rights of either party.

15.3 Within 30 days following the termination of this Agreement for any reason:

(a) the Customer must pay to New Verve any Charges in respect of Services provided to the Customer before the termination of this Agreement; and

(b) New Verve must refund to the Customer any Charges paid by the Customer to New Verve in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

16. Notices

16.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods and directed to the individual nominated by each party:

(a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;

(b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or

(c) sent by electronic mail, in which case the notice shall be deemed to have been received within 24 hours following sending in the absence of a failed delivery receipt;

providing that if the stated time of deemed receipt is not within 9.00 am and 6.00 pm on Business Days, then the time of deemed receipt shall be at 9.00 am on the next Business Day.

17. Subcontracting

17.1 New Verve may subcontract any of its obligations under this Agreement.

17.2 New Verve shall remain responsible to the Customer for the performance of any subcontracted obligations.

18. Assignment

18.1 The Customer hereby agrees that New Verve may assign, transfer or otherwise deal with New Verve's contractual rights and obligations under this Agreement.

18.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under this Agreement without the prior written consent of New Verve. Such consent not to be unreasonably withheld or delayed.

19. No Waivers

19.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

19.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any breach of that provision or any other provision of this Agreement.

20. Severability

20.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

20.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

21. Third-Party Rights

21.1 This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.

21.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

22. Variation

22.1 New Verve reserves the right to amend or vary these Terms at any time. New Verve shall provide 30 days' notice of any such change(s), which shall take effect upon expiry of the said notice. In the event that the Client does not accept the changes, it has the right to terminate the Agreement prior to the end of the 30 day notice period. Save as aforementioned, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. Entire Agreement

23.1 The Agreement, and any documents referred to in it, shall constitute the entire agreement between the parties and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

23.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

23.3 The provisions of this Clause 23 are subject to Clause 12.1

24. Dispute Resolution

24.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this Agreement. Accordingly, it is agreed that the procedure set out in this Clause 24 shall be followed before the serving of written notice terminating this Agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

24.2 If any disagreement or difference of opinion arises out of this Agreement, the matter shall be disposed of as follows:

- (a) the individuals at New Verve and the Customer who are respectively responsible for the co-ordination of the Services shall meet to attempt resolution;
- (b) should they not meet within 7 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then
- (c) the matter shall promptly be referred by either party to the CEO (or such equivalent position) of the Customer and the CEO of New Verve for immediate resolution.

24.3 If, within 14 days of the matter first having been referred to the parties referred to in Clause 24.2 (c) no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this Clause 24 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it under Clause 24.2 without further reference to the dispute resolution process.

24.4 For the avoidance of doubt, this Clause 24 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

25. Law and Jurisdiction

25.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law.

25.2 Subject to clause 24, any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of Scotland.

26. Interpretation

26.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

26.2 Clause headings do not affect the interpretation of this Agreement.

26.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

26.4 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.