



DIGITAL **BEEHIVE**

Terms & Conditions
G-Cloud 15

Standard terms and conditions

1. Interpretation

- 1.1 The definitions and rules of interpretation in this condition apply in this Agreement.

Agreement: this agreement relating to the supply of the Services, comprised of the Quotation, these standard terms and conditions, the Operations Security Policy and Privacy Policy which are accessible via The Digital Beehive Trust Center.

Applicable Data Protection Laws: means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Applicable Laws: means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom; and (b) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in **Error! Bookmark not defined.Error! Reference source not found..**

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.

Customer: the person or party described in the Quotation.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

Data Management Policy: the suppliers policy covering how organisational data is classified, protected, retained, and securely disposed of based on its sensitivity, legal requirements, and business importance.

Digital Beehive Trust Center: means the Supplier's online resource located at <http://trust.digitalbeehive.co.uk>, which provides customers and partners with access to the Suppliers Data Management Policy, Operations Security Policy, and other security, compliance, and privacy documentation.

Effective Date: the date of this Agreement, being the date on which the Quotation is accepted and signed by the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: the subscription fees payable by the Customer to the Supplier for the Subscriptions, as set out in the Quotation.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Initial Term: the initial term of this Agreement as set out in the Quotation, which includes details of the 'Start Date' and the 'End Date' and the number of calendar months.

Normal Business Hours: 8.30 am to 5.00 pm local UK time, each Business Day.

Operations Security Policy: the suppliers policy covering how information processing systems and facilities are securely operated, monitored, and maintained to ensure the confidentiality, integrity, and availability of company information. It establishes requirements for secure system operation, change management, malware protection, monitoring, backup, logging, and resilience across all business-critical information systems.

Privacy Policy: the Suppliers policy for processing Customer Personal Data, as made available on the Website or such other website address as may be notified to the Customer from time to time.

Purpose: the purposes for which the Customer Personal Data is processed, as set out in clause 5.8(a).

Quotation: the Suppliers written quoted proposal to the Customer regarding the Services.

Representatives: in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

Renewal Period: the period described in clause 14.1.

Services: the subscription services and Software provided by the Supplier to the Customer under this Agreement via the Website or any other website notified to the Customer by the Supplier from time to time together with any other services agreed in writing from time to time, including those services set out in the Quotation which may include services relating to content or contract creation.

Service Support: the support services and services levels agreed between the Supplier and the Customer in writing, including in particular the support services included in section 4 of the Suppliers standard proposal.

Software: the online software applications provided by the Supplier to the Customer as part of the Services.

Subscription: each individual subscription purchased by the Customer pursuant to clause 9.1 entitling an individual Authorised User to access and use the Services in accordance with this Agreement.

Supplier: Digital Beehive Ltd (company number 04046113) whose registered office is at Department, 4 The Boulevard, Leeds, England, LS10 1PZ.

Supplier Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a controller.

Term: has the meaning given in clause 14.1 (being the Initial Term together with any subsequent Renewal Periods).

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

Website: the website accessible from the domain <https://login.digitalbeehive.co.uk/> or any other domain notified from time to time.

- 1.2 Condition headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular includes the plural and, in the plural, includes the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision includes all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to conditions and schedules are to the conditions and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.11 Special Conditions referred to in this Agreement shall also be incorporated and shall prevail to the extent that there is a conflict with these terms and conditions.

2. Grant of Licence

- 2.1 Subject to the Customer purchasing the Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of Authorised Users it has purchased from time to time;
 - (b) it will not allow or suffer any Subscription to be used by more than the agreed maximum number of Authorised Users;
 - (c) each Authorised User shall keep a secure, unique password for accessing the Services, unless Single Sign-On (SSO) is enabled and used by the Customer. Where SSO is implemented, the Customer is responsible for managing user authentication and access controls in accordance with its own security policies;
 - (d) it shall permit the Supplier or the Supplier's designated auditor to audit the Services to establish the number of Authorised Users
 - (e) if any of the audits referred to in clause 2.2(d) reveal that the Customer has underpaid Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Quotation within 10 Business Days of the date of the relevant audit.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this condition.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any part of the Software in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties; or
- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of any Virus or Vulnerability into the Services or the Supplier's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional Authorised Users

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Term, purchase additional Authorised Users in excess of the number set out in the Quotation and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional Authorised Users, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Authorised Users and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional Subscriptions within 7 days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional Authorised Users, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Authorised Users as set out in the Quotation and, if such additional Authorised Users are purchased by the Customer part way through the Initial Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Term or then current Renewal Period (as applicable).

4. Services

- 4.1 The Supplier shall, during the Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Service Support. .



5. Data protection

- 5.1 For the purposes of this condition 5, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This condition 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- (a) the Supplier shall act as controller in respect of the personal data and processing activities set out in its Privacy Policy;
 - (b) the Supplier shall process the personal data set out in its Privacy Policy, as a processor on behalf of the Customer in respect of the processing activities set out in its Privacy Policy
 - (c) the Supplier and Customer shall act as joint controllers in respect of the personal data and processing activities set out in its Privacy Policy.
- 5.4 Should the determination in clause 5.3 change, then each party shall work together in good faith to make any changes which are necessary to this condition 5 or the related schedules.
- 5.5 By entering into this Agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these follow the then-current version of the Privacy Policy. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 5.6 Without prejudice to the generality of clause 5.2, the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this Agreement.
- 5.7 In relation to the Customer Personal Data, the Privacy Policy sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 5.8 Without prejudice to the generality of clause 5.2 the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in the Privacy Policy, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement the technical and organisational measures set out in the Privacy Policy to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 5.8(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
 - (g) maintain records to demonstrate its compliance with this condition 5 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 5.9 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this condition 5;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
 - (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are affected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter standard data protection conditions adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).
- 5.10 Either party may, at any time on not less than 30 days' notice, revise this condition 5 with any applicable standard conditions approved by the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (**Amended Terms**). Such Amended Terms shall apply when replaced by attachment to this Agreement, but only in respect of such matters which are within the scope of the Amended Terms.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered by the Customer, with any such third party. Any contract entered, and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant

third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Supplier's obligations

- 7.1 The Supplier shall perform the Services with reasonable skill and care.
- 7.2 Notwithstanding the Supplier's obligations at condition 7.1, the Customer acknowledges that it advance of entering into this Agreement, it satisfied itself that the Services where suitable for its own internal business operations.
- 7.3 The Supplier's obligations at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the terms of condition 7.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.4 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free; or
 - (ii) that the Services, and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
 - (iv) the Software or Services will comply with any Heightened Cybersecurity Requirements.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.5 This Agreement shall not prevent the Supplier from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

- 7.7 The Supplier shall follow its archiving procedures for Customer Data as set out in its Data Management Policy and such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Data Management Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8. Customer's obligations

- 8.1 The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - (f) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

- 8.2 The Customer shall own all right, title and interest in and to all the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. Charges and payment

- 9.1 The Customer shall pay the Fees to the Supplier for the Subscriptions and/or Services in accordance with the Quotation and this clause 9.
- 9.2 The Customer shall on the Effective Date provide to the Supplier:
- (a) its approved purchase order information to the Supplier and the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Fees payable in respect of the Initial Term; and
 - (ii) subject to condition 14.1, at least 30 days prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period,and the Customer shall pay each invoice within 30 days after the date of such invoice.
 - (b) If provided for by the Quotation, its credit card details to the Supplier and the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Fees payable in respect of the Initial Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period.
- 9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.5 The Supplier shall be entitled to increase the Subscription Fees and additional Subscriptions purchased pursuant to clause 3.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Fees shall be deemed to have been amended accordingly.

10. Proprietary rights

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 10.3 The Customer acknowledges and agrees that the Supplier shall have the right to anonymise the Customer Data and Customer Personal Data and aggregate same with other such data belonging to other customers ("**Aggregated Data**"). The Customer grants the Supplier with a royalty free, perpetual right and licence to utilise such Aggregated Data for any marketing purposes proposed by the Supplier in its absolute discretion.

11. Confidentiality

- 11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Services, including but not limited to:
 - (a) the existence and terms of this Agreement or any Agreement entered into in connection with this Agreement;
 - (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (c) any information developed by the parties in the course of carrying out this Agreement.
- 11.2 The provisions of this condition shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this condition);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality Agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - (d) the parties agree in writing is not confidential or may be disclosed; or
 - (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 11.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this condition 11.
- 11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this condition.
- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including, without limitation, a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible and,

where notice of disclosure is not prohibited and is given in accordance with this condition 11.5, it takes into account the reasonable requests of the other party in relation to the content of the disclosure.

- 11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 11.8 On termination or expiry of this Agreement, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
 - (c) certify in writing to the other party that it has complied with the requirements of this condition, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this condition shall continue to apply to any such documents and materials retained by a recipient party, subject to condition 14 (Termination).
- 11.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 11.11 The above provisions of this clause 11 shall continue to apply after termination or expiry of this Agreement.

12. Indemnity

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this Agreement infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than the Supplier; or
 - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Customer's breach of this Agreement.
- 12.5 The foregoing and clause 13.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees',

agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

WARNING: you are strongly advised to read the limitations of liability set out in this condition 13.

13.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer has satisfied itself that the Services are suitable for its own requirements.;
- (b) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer (including any generated contracts generated by the Supplier on behalf of the Customer, which the Customer shall assume responsibility for checking the accuracy of), and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
- (d) the Services are provided to the Customer on an "as is" basis.

13.2 Nothing in this Agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall have no liability for any:
 - (i) loss of profits,
 - (ii) loss of business,
 - (iii) wasted expenditure,
 - (iv) depletion of goodwill and/or similar losses,
 - (v) loss or corruption of data or information, or
 - (vi) any special, indirect or consequential loss, costs, damages, charges or expenses; and
- (b) the Supplier's total aggregate liability to the Customer (including in respect of the indemnity at clause 12.2), in respect of all breaches of duty and contract occurring within any contract year shall not exceed the cap set out below. If

breaches committed in more than one contract year give rise to a single claim or a series of connected claims, the Supplier's total liability for those claims shall not exceed the single highest annual cap for those contract years.

- (c) In condition 13.3(b):
- (i) the cap is one hundred per cent (100%) of the total Fees paid in the contract year in which the breaches occurred.
 - (ii) a contract year means a twelve (12) month period commencing on the Effective Date or any anniversary of it.

13.4 References to liability in this condition 13 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods equal to the Initial Term (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and subject to condition 14.2, the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Term**.

14.2 If there is no Initial Term, this Agreement may be terminated by the Customer or the Supplier by serving on the other, in writing, at least one (1) months' notice of its intention to terminate this Agreement, which notice must be served on the last day of the then current month.

14.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 (being an individual) **OR** is deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(c) to condition 14.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

14.4 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

Neither party shall be in breach of this Agreement or otherwise liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for thirty (30) days, the party not affected may terminate this Agreement by giving not less than seven (7) days' written notice to the affected party.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Quotation, the provisions in the main body of this Agreement prevail.

17. Variation

- 17.1 Subject to condition 17.2, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



- 17.2 The Supplier reserves the right to amend the Operations Support Policy, Data Management Policy, Privacy Policy and Service Support from time to time, subject always to providing the Customer with at least sixty (60) days notice of such changes.

18. Waiver

- 18.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 18.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire Agreement

- 21.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous and contemporaneous Agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 21.4 Nothing in this condition shall limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 22.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Customer.

23. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

- 24.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 24.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

25. Digital signing and Counterparts

- 25.1 This Agreement may be executed electronically using digital signatures or in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

26. Notices

- 26.1 Any notice given to a party under or in connection with this Agreement shall be in writing which shall include email.
- 26.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

26.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

28. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

