

IMPLEMENTATION STATEMENT OF WORK

TO BE AGREED WITH CUSTOMER

DATA SHARING APPENDIX

Personal Data sharing purpose	TO BE AGREED WITH CUSTOMER
Objectives and benefits of Personal Data sharing	
Personal Data being shared	
Client justification for Processing, in accordance with Article 6 GDPR	
Special Categories of Personal Data being shared	
Client justification for Processing in respect of Special Categories of Personal Data, in accordance with Article 9 GDPR	
Media for sharing Personal Data	
Persons between whom Personal Data will be transferred	
Frequency of Personal Data transfer	
How Personal Data is stored by Mobyssoft	
How long Personal Data is stored by Mobyssoft	
How Mobyssoft will destroy Personal Data	
Subcontractors for Processing of Personal Data	

MOBYSOFT LIMITED: TERMS AND CONDITIONS (these “Terms and Conditions”)

1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

“Access Date”: the date on which it is estimated that the Configuration Services will be completed, as specified in the relevant SOW;

“Agreement”: these Terms and Conditions together with the Order Form, each SOW agreed in accordance with these Terms and Conditions, and any document referred to in these Terms and Conditions, the Order Form or any SOW;

“Authorised Users”: those employees and independent contractors of the Client who are entitled to use the Subscription Services under this Agreement, as further described in Clause 4 and the maximum number of which is as specified in the Order Form;

“Break Date”: has the meaning given to it in the Order Form;

“Business Day”: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;

“Business Hours”: 9.00 am to 5.00 pm on Business Days;

“Clause”: a clause of these Terms and Conditions;

“Client Data”: the data inputted by the Client, Authorised Users, or Mobyssoft on the Client's behalf, for the purpose of using the Services or facilitating the Client's use of the Services, and which may include Personal Data;

“Client Obligations”: the obligations required to be completed by the Client in order for the relevant Access Date to be met as set out in the Order Form and/or any SOW;

“Commencement Date”: has the meaning given to it in Clause 2.1;

“Confidential Information”: any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it (and any reports, information or enriched data made available as part of the Services by Mobyssoft to provide to the Client analytics, including projected balances and decisions based on algorithms, shall be considered “Confidential Information” of Mobyssoft);

“Configuration Services”: the services provided by Mobyssoft to the Client under this Agreement for the configuration of the Subscription Services, as more particularly described in the Specification and/or a SOW;

“Controller”: has the meaning set out in UK GDPR;

“Data Sharing Appendix”: the appendix to the Order Form setting out the scope, nature and purpose of Processing by Mobyssoft, the duration of the Processing, the types of Personal Data that Mobyssoft is to Process, and the categories of Data Subject;

“Data Subject”: has the meaning set out in UK GDPR;

“Data Protection Laws”: in relation to any Personal Data which is Processed in the performance of this Agreement, the Data Protection Act 2018 and the UK GDPR, in each case together with any national implementing laws, regulations, secondary legislation and any other applicable or equivalent data protection or privacy laws, as amended or updated from time to time, in the UK, and any successor legislation to such laws;

“Deliverables”: any outputs of the Services and any other documents, products and materials provided by Mobyssoft to the Client as specified the Order Form or a SOW;

“Effective Date”: the date on which Mobyssoft shall commence provision of the Services, as described in the Specification;

“Extended Term”: has the meaning given to it in Clause 3.1;

“Fees”: the fees payable by the Client to Mobyssoft for the provision of the Services, as set out in the Order Form and/or a SOW;

“Initial Term”: has the meaning given to it in the Order Form;

“IPR”: copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Order Form”: the written document Mobyssoft provides to the Client containing specific information relating to the particular services supplied or to be arranged to be supplied by Mobyssoft to the Client;

“Party”: Mobyssoft or the Client, and **“Parties”** means both of them;

“Personal Data”: has the meaning set out in UK GDPR, and relates only to personal data, or any part of such personal data, of which the Client is the Controller and in relation to which Mobyssoft is the Processor and providing services under this Agreement;

“Personal Data Breach”: has the meaning set out in UK GDPR;

“Process/Processing”: has the meaning set out in UK GDPR;

“Processor”: has the meaning set out in UK GDPR;

“Properties”: the Client’s unique tenanted, or leasehold, residential properties in respect of which the Client accesses and uses the Services;

“Property Cap”: the maximum number of Properties in respect of which the Client subscribes to use the Services, as specified in the Order Form;

“Public Network”: any network including the Internet or mobile telephone networks;

“Regulatory Body”: any regulatory body whose function it may be (amongst other things) to enforce and administer any codes of practice including ICSTIS and the Advertising Standards Authority;

“Retail Prices Index”: the Retail Prices Index excluding mortgage interest payments (RPIX) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree most closely resembles such index;

“Services”: the Subscription Services, the Configuration Services and the Training Services, and any other service agreed in writing between the Parties in a SOW;

“Special Categories of Personal Data”: those categories of data listed in Article 9(1) UK GDPR;

“Specification”: the specification describing the Services, as set out in, or as appended to, the Order Form and/or any SOW;

“Statement of Work” or “SOW”: a statement of work agreed in accordance with these Terms and Conditions, containing a description of further products and/or services to be provided by Mobyssoft to the Client, including further rights and obligations for the Parties in relation to such products and/or services;

“Subscription Services”: the subscription services made available by Mobyssoft to the Client under this Agreement through the Internet, as more particularly described in the Order Form and the Specification, and any SOW;

“Supervisory Authority”: means any regulatory authority responsible for the enforcement of Data Protection Laws;

“Third Party”: a third-party supplier of Third Party Services;

“Third Party APIs”: any application programming interface made available to Mobyssoft by a third party and the use of which Mobyssoft incorporates into the Services to the extent set out in the Order Form or any SOW;

“Third Party Services”: any services provided by a third-party supplier to the Client in respect of the Services to the extent set out in the Order Form or any SOW;

“Third Party Terms”: the terms and conditions of the supply to the Client of Third Party Services;

“Training Services”: the training services provided by Mobysoft to the Client in respect of use of the Subscription Services, as more particularly described in the Specification, and any SOW;

“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 device; and

“UK GDPR”: Regulation (EU) 2016/679 General Data Protection Regulation as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

- 1.2 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.3 a **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.4 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.5 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.6 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.7 any phrase introduced by the terms **“including”**, **“include”**, **“in particular”** or any similar expression, shall be construed as illustrative and shall be deemed to be followed by the words **“without limitation”** unless the context requires otherwise; and
- 1.8 a reference to **“writing”** or **“written”** includes in electronic form and similar means of communication (except under Clause 10).

2. Agreement

- 2.1 The Order Form, as signed by the Client, constitutes an offer by the Client to purchase the Services in accordance with these Terms and Conditions. Mobysoft shall only be considered as having accepted the Order Form when Mobysoft issues written acceptance of the Order Form, at which point and on which date this Agreement shall come into existence (**“Commencement Date”**).
- 2.2 These Terms and Conditions apply to this Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 In the event of a conflict between these Terms and Conditions, SOWs and the Order Form, then:
 - 2.3.1 a SOW shall prevail over
 - 2.3.2 the Order Form, which shall prevail over
 - 2.3.3 these Terms and Conditions.

3. SOW agreement process

- 3.1 This Agreement governs the overall relationship of the Parties in relation to the Services, and sets out:
 - 3.1.1 in this Clause 3, the procedure for the Client to request the provision of Services, in addition to those Services set out in the Order Form, from Mobysoft under separate SOWs; and

- 3.1.2 in the Order Form and these Terms and Conditions, the applicable terms that are deemed incorporated into each SOW unless the SOW states otherwise.

The Order Form may also contain or append the first SOW, relating to implementation of the Services, as appropriate.

- 3.2 The Client shall be entitled from time to time to request in writing the provision of any Services from Mobyssoft.

- 3.3 Within 10 Business Days of receipt of a written request from the Client, Mobyssoft shall either:

- 3.3.1 inform the Client that Mobyssoft is not able to provide the requested Services; or
- 3.3.2 complete a draft SOW containing the information referred to in the template SOW appended to the Order Form, and shall submit the draft SOW to the Client for written approval containing the following detail:
 - (a) that the SOW forms part of this Agreement;
 - (b) overview of what the SOW relates to and why it is needed;
 - (c) the objective of the SOW, together with success criteria;
 - (d) any services delivered under, and any Deliverables arising from, the SOW;
 - (e) any assumptions made by Mobyssoft in the delivery of the SOW;
 - (f) Client responsibilities to facilitate the delivery of the SOW;
 - (g) project schedule for delivery of the SOW;
 - (h) the fees payable by the Client in respect of the SOW; and
 - (i) execution requirements to enter into the SOW.

- 3.4 A SOW shall not enter into force, be legally binding or have any other effect unless:

- 3.4.1 the SOW has been signed by the authorised representatives of both Parties; and
- 3.4.2 as at the date the SOW is signed, this Agreement has not terminated.

- 3.5 Each SOW:

- 3.5.1 shall be entered into by the Parties;
- 3.5.2 forms a separate contract between the Parties; and
- 3.5.3 shall incorporate the Order Form and these Terms and Conditions, and each other SOW then in force where applicable.

- 3.6 Any variation to this Agreement agreed by the Parties in accordance with these Terms and Conditions shall be deemed to apply to all future SOWs entered into after the date of such variation (to the extent that the variation is relevant to any SOW).

- 3.7 Each SOW shall form part of this Agreement when executed by each Party. Termination or expiry of this Agreement shall terminate all extant SOWs. Termination or expiry of a SOW in accordance with the terms of this Agreement shall not affect the validity of this Agreement or any other executed SOW.

4. Subscriptions

- 4.1 Subject to the Client paying the Fees and otherwise complying with this Agreement, Mobyssoft hereby grants to the Client, a non-exclusive, non-transferable, revocable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services in respect of Properties up to the Property Cap only during the term of this Agreement, in accordance with this Agreement.

- 4.2 In relation to the Property Cap, the Client undertakes that:

- 4.2.1 the maximum number of Properties in respect of which it accesses and uses the Services must not exceed the Property Cap, unless otherwise agreed between the Parties from time to time;
- 4.2.2 it must maintain a written, up to date list of current Properties and provide such list to Mobyssoft within 10 Business Days of Mobyssoft's written request at any time or times; the Client acknowledges that Mobyssoft shall remotely audit the Services in order to establish the number of Properties on an ongoing basis;
- 4.2.3 if the audit referred to in Clause 4.2.2 reveals that the number of Properties exceeds the Property Cap, then, without prejudice to Mobyssoft's other rights and remedies, the Client must promptly cease using the Services in respect of any excess Properties (unless additional

Fees are agreed for such excess in accordance with Clause 4.2.4 and Clause **Error! Reference source not found.**); and

4.2.4 if the audit referred to in Clause 4.2.2 reveals that the Client has underpaid the Fees to Mobyssoft, then without prejudice to Mobyssoft's other rights and remedies:

- (a) the Client must pay to Mobyssoft an amount equal to such underpayment as calculated pro rata in accordance with Mobyssoft's time and materials rates then in force within 30 Business Days of the date of the relevant audit, unless any such additional Properties mean that the Subscription Services are required to incorporate and analyse data beyond the existing scope of this Agreement, in which case the additional payment required shall be calculated in accordance with Mobyssoft's time and materials rates from time to time; and
- (b) if such expanded use by the Client is to continue in future, the Parties must agree a variation to this Agreement on that basis in accordance with Clause **Error! Reference source not found.**.

4.3 In relation to Authorised Users, the Client undertakes that:

- 4.3.1 the maximum number of Authorised Users that it authorises to access and use the Services must not exceed the number set out in the Order Form, unless otherwise agreed between the Parties from time to time; the Client acknowledges that Mobyssoft shall remotely audit the Services on an ongoing basis in order to establish the name and password of each Authorised User and the number of locations from which the Services are being accessed;
- 4.3.2 if the audit referred to in Clause 4.3.1 reveals that any password has been provided to any individual who is not an Authorised User, then, without prejudice to Mobyssoft's other rights and remedies, the Client must promptly disable such passwords and access, and Mobyssoft shall not issue any new passwords to any relevant accessing individual; and
- 4.3.3 if the audit referred to in Clause 4.3.1 reveals that the Client has underpaid the Fees to Mobyssoft, then without prejudice to Mobyssoft's other rights and remedies, the Client must pay to Mobyssoft an amount equal to such underpayment as calculated in accordance with Mobyssoft's prevalent prices from time to time, within 30 Business Days of the date of the relevant audit.

4.4 The Client must not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 4.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 4.4.2 facilitates illegal activity or promotes unlawful violence;
- 4.4.3 depicts sexually explicit images;
- 4.4.4 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 4.4.5 is otherwise illegal or causes damage or injury to any person or property;

and Mobyssoft reserves the right, without liability (subject to Clause 6.2) or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this Clause 4.4.

4.5 The Client must not:

- 4.5.1 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:
 - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
- 4.5.2 access all or any part of the Services in order to build a product or service which competes with the Services;
- 4.5.3 use any data or Confidential Information of Mobyssoft to benchmark the Services against any product or service which competes, or might reasonably compete, with the Services, and must otherwise comply with the requirements of Clause 5 in respect of such data or Confidential Information;
- 4.5.4 use the Services to provide services to third parties;

- 4.5.5 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;
- 4.5.6 disclose the results of any program benchmarking tests to any third party without Mobyssoft's prior written consent; or
- 4.5.7 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement.

4.6 The Client must prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Mobyssoft. Notwithstanding any other obligations on the Client contained within this Agreement, the Client warrants that any remote access to the Services by Authorised Users is undertaken on a secure basis with appropriate safeguards in place to protect both the Services and any Client Data.

4.7 The Client may purchase subscriptions for additional Properties and/or Authorised Users in excess of the number set out in the Order Form, and Mobyssoft shall grant appropriate expanded access to the Services in accordance with the provisions of this Agreement:

- 4.7.1 If the Client wishes to purchase additional subscriptions, it must notify Mobyssoft; Mobyssoft shall evaluate such request for additional subscriptions and respond to the Client with approval or rejection of the request.
- 4.7.2 Where Mobyssoft approves the request, the Parties must complete a variation in accordance with Clause **Error! Reference source not found.**, following which Mobyssoft shall activate the expanded access within the timeframe agreed in such variation.
- 4.7.3 If Mobyssoft approves the Client's request to purchase additional subscriptions, the Client must, within 30 days of the date of Mobyssoft's invoice, pay to Mobyssoft the relevant fees for such additional subscriptions and, if such additional subscriptions are purchased by the Client part-way through the Initial Term or any Extended Term (as applicable), such fees shall be pro-rated from the date of activation by Mobyssoft for the remainder of the Initial Term or then current Extended Term (as applicable).

5. Mobyssoft obligations

- 5.1 Mobyssoft undertakes that the Services will be performed with reasonable skill and care and substantially in accordance with the Specification.
- 5.2 The undertaking at Clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Mobyssoft's instructions, or modification or alteration of the Services by any party other than Mobyssoft or Mobyssoft's duly authorised contractors or agents.

Mobyssoft:

- 5.2.1 does not warrant that the Client's use of the Services will be uninterrupted or error-free, or that the Services and/or the information obtained by the Client through the Services will meet the Client's requirements;
- 5.2.2 subject to compliance with Data Protection Laws, may, at its absolute discretion, from time to time either host the Services on its own servers or use third party suppliers to do so in whole or in part. The Client acknowledges that Mobyssoft may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on the Client or reasonably restrict the Client's rights due to the requirements of the third-party suppliers; and
- 5.2.3 is not responsible for any delays, delivery failures, security or privacy breaches, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including Public Networks, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 5.3 Mobyssoft warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 5.4 Mobyssoft shall be entitled, at any time, to make changes to the Services which do not reduce the functionality set out in the Specification.
- 5.5 Mobyssoft shall comply with all applicable laws and regulations with respect to its activities under this Agreement.

6. Third Parties

- 6.1 Where Mobyssoft arranges the provision of any Third Party Services as part of the Services, the Client agrees that its use of such Third Party Services shall be subject to its compliance with the relevant Third Party Terms. Any such Third Party Terms form a contract that is solely between the Client and the relevant provider of such Third Party Services; the enforcement of any contractual obligations arising out of such Third Party Terms is the responsibility of the Client and the relevant Third Party (being the parties to such Third Party Terms), and (subject to Clause 6.2) Mobyssoft shall not have any liability for the failure of either the Client or the Third Party Services provider to fulfil such obligations. The Client indemnifies and shall keep indemnified Mobyssoft against all losses, damages, claims, costs and expenses suffered or incurred by Mobyssoft arising out of or in connection with the Client's breach of any Third Party Terms.
- 6.2 Where the Services incorporate the use of any Third Party APIs (and/or data or functionality available through any Third Party API), the Client acknowledges that any such Third Party API (and such data and functionality) is made available to Mobyssoft on an "as is" basis; as such, Mobyssoft does not give any warranty, and shall have no responsibility and/or liability (subject to Clause 6.2), in respect of the performance, availability, uptime and/or quality of any Third Party API (and/or any such data or functionality).

7. Variations

- 7.1 Except as expressly provided otherwise in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing signed by each of the Parties, expressed to be for the purpose of such amendments.
- 7.2 If Mobyssoft would like to make any change to this Agreement, Mobyssoft may recommend a proposal for the change. If the Client would like to make any change to this Agreement, one of the Client's authorised representatives may request that Mobyssoft makes a proposal for bringing about the change.
- 7.3 To the extent the change is feasible, Mobyssoft shall state within a reasonable time what would be the effects of the change, including on cost, Fees, timetable and any impact on the rest of the Services and this Agreement and any other agreement between the Parties.
- 7.4 Neither Party shall unreasonably withhold or delay agreement to a change reasonably requested by the other Party. Both Parties shall use their respective reasonable endeavours to agree to the change and in a timely manner.
- 7.5 To the extent the change affects any timescales, the timescales shall be automatically extended accordingly.
- 7.6 The final agreed change shall be noted in writing and signed by each of the Parties. A status log of any such changes shall kept by each of the Parties.
- 7.7 Until a variation in the form required by this Clause **Error! Reference source not found.** is signed by both Parties, no change shall come into effect.

8. Client obligations

- 8.1 The Client must provide Mobyssoft with:
- 8.1.1 all necessary co-operation in relation to this Agreement; and
 - 8.1.2 all necessary access to such information as may be required by Mobyssoft;
- in order to provide the Services, including in respect of Client Data, security access information and Configuration Services.
- 8.2 Mobyssoft shall not have any liability (subject to Clause 6.2) for any delays or failures to accurately perform its obligations if caused by any failure or delay on the Client's part or on the part of the Client's employees, agents or subcontractors or by any breach by the Client of this Agreement or any other agreement (including in respect of all Client Obligations). Mobyssoft shall use its reasonable endeavours to perform its obligations under this Agreement within any timescales set out in this Agreement. If there is any slippage in time, Mobyssoft shall use its reasonable endeavours to reschedule delayed tasks to a mutually convenient time. Any such failure and/or delay shall be considered to be a breach (and where relevant a material breach) of this Agreement by the Client.
- 8.3 The Client must:
- 8.3.1 comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 8.3.2 carry out all other Client responsibilities (including in respect of the Client Obligations) set out in this Agreement in a timely and efficient manner; in the event of any delays in the Client's provision of such assistance, Mobyssoft may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 8.3.3 ensure that the Authorised Users use the Services in accordance with this Agreement and be responsible for any Authorised User's breach of this Agreement;
- 8.3.4 obtain and maintain all necessary licences, consents, and permissions necessary for Mobyssoft, its contractors and agents to perform their obligations under this Agreement, including the Services;
- 8.3.5 ensure that its network and systems comply with the relevant specifications provided by Mobyssoft from time to time; and
- 8.3.6 be exclusively responsible for procuring and maintaining its network connections and telecommunications links from its systems to Mobyssoft's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the Internet.

9. Client Data

- 9.1 The Client shall own all right, title and interest in and to all of the Client Data and is exclusively responsible for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 9.2 The Parties acknowledge that, for the purposes of Data Protection Laws, the Client is the Controller and Mobyssoft is the Processor of any Personal Data. The scope, nature and purpose of Processing is as set out in the Data Sharing Appendix.
- 9.3 Each Party confirms that it holds, and during the term of this Agreement will maintain, all registrations and notifications required in terms of the Data Protection Laws which are appropriate to the performance of its obligations under this Agreement.
- 9.4 Each Party shall, in the performance of this Agreement, comply with the Data Protection Laws.
- 9.5 Mobyssoft will:
 - 9.5.1 Process Personal Data only on documented instructions from the Client, unless required to do so by Data Protection Laws or any other applicable law to which Mobyssoft is subject; in such a case, Mobyssoft shall inform the Client of that legal requirement before Processing, unless that law prohibits Mobyssoft to so inform the Client;
 - 9.5.2 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 9.5.3 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Mobyssoft's systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Mobyssoft);
 - 9.5.4 notify the Client as soon as reasonably practicable before appointing any subcontractor in respect of Processing of Personal Data, and ensure that any such subcontractor is subject to a contract for Processing that complies with Data Protection Laws (being, as a minimum, the requirements set out in Article 28(3) of UK GDPR in respect of the obligations of Processors); if the Client (acting reasonably) objects to the appointment of the subcontractor for reasons relating to the Processing of Personal Data, and Mobyssoft is unable to accommodate such objections to the Client's reasonable satisfaction, the Client shall have the right to terminate this Agreement on 90 days' written notice; for the avoidance of doubt, any appointment of subcontractors in the same corporate group or banner as an existing subcontractor (for example, a subsidiary in the UK, in a different country within the European Economic Area or otherwise any adequate jurisdictions for data processing purposes) shall not require further approval from the Client;
 - 9.5.5 taking into account the nature of the Processing, assist the Client by putting in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Laws, to the extent that such requests relate to this Agreement and Mobyssoft's obligations under it;

- 9.5.6 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with the Client's obligations under Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 9.5.7 at the Client's option, delete (to the extent practicable) or return all the Personal Data to the Client after termination of this Agreement or otherwise on the Client's request, , unless applicable law requires Mobyssoft's ongoing storage of the Personal Data, and subject always to Clause 1.7; Mobyssoft will delete Personal Data in live systems within seven days, and Personal Data in backup systems within 90 days, of termination or the Client's request, as applicable;
- 9.5.8 make available to the Client all information necessary to demonstrate Mobyssoft's compliance with this Clause 9.5, and allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client, provided that:
 - (a) Mobyssoft is given reasonable notice of any such audit;
 - (b) any audit takes place during normal business hours and with no unreasonable disruption to Mobyssoft's business;
 - (c) the Client (or its nominee) shall have access only to information relating to the Processing of Personal Data and Mobyssoft's compliance with this Clause 9.5; and
 - (d) the Client (or its nominee) shall not have access to any information that is proprietary to Mobyssoft, or confidential information that Mobyssoft holds on behalf of third parties;
- 9.5.9 inform the Client immediately if, in Mobyssoft's opinion, an instruction from the Client infringes Data Protection Laws;
- 9.5.10 notify the Client as soon as is reasonably practicable (and in any event within 24 hours) if Mobyssoft becomes aware of a Personal Data Breach relating to Mobyssoft's obligations under this Agreement; and
- 9.5.11 not transfer any Personal Data outside of the United Kingdom and the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (a) Mobyssoft has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) Mobyssoft complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) Mobyssoft complies with reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data.

- 1.2 The Client will notify Mobyssoft as soon as is reasonably practicable if the Client becomes aware of a Personal Data Breach relating to either Party's obligations under this Agreement.
- 1.3 The Client shall undertake appropriate data protection impact assessments to ensure that Processing of the Personal Data complies with Data Protection Laws. Mobyssoft will provide the Client with reasonable assistance, where necessary and upon the Client's request, in carrying out any data protection impact assessment and undertaking any necessary prior consultation of the Supervisory Authority.
- 1.4 It is the Client's responsibility to ensure that Personal Data is dealt with in a way that is compliant with the "data protection principles" set out in Data Protection Laws.
- 1.5 The Client shall ensure that:
 - 9.9.1 it is able to justify the Processing of Personal Data in accordance with Data Protection Laws (including, where applicable, obtaining any and all consents of Data Subjects required in order to commence the Processing), and that it has recorded or documented this in accordance with the record keeping requirements of the Data Protection Laws;
 - 9.9.2 where Personal Data falls within the Special Categories of Personal Data, the Processing of such Special Categories of Personal Data is justified as lawful under Data Protection Laws;
 - 9.9.3 where the Processing of Special Categories of Personal Data is not justified as lawful under Data Protection Laws, no such data will be sent to Mobyssoft; and

9.9.4 it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Mobysoft for the duration and purposes of this Agreement.

1.6 Each Party agrees to indemnify, and keep indemnified and defend at its own expense, the other Party, against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable, due to any failure by the first Party or its employees or agents to comply with this Clause 9.

1.7 In the course of Processing Client Data, Mobysoft may derive anonymised, aggregated data based on Client Data (where, for the avoidance of doubt, such derived data shall not include Personal Data). The Client acknowledges that Mobysoft owns all such anonymised, aggregated data and that Mobysoft may use such data as Mobysoft considers appropriate, at its discretion, including for:

- 9.11.1 statistical analysis;
- 9.11.2 development and enhancement of the Services and related Mobysoft products;
- 9.11.3 the publication of industry statistics and market trends; and
- 9.11.4 reporting on benchmarking to third parties;

subject to Mobysoft's continued compliance with Data Protection Laws in respect of such usage.

2. Billing and payment terms

2.1 In consideration of obtaining the Services that Mobysoft provides pursuant to this Agreement, the Client must pay to Mobysoft the relevant Fees.

2.2 Mobysoft may issue invoices to the Client at such intervals, and in such instalments, as is set out in the Order Form or any SOW.

2.3 The Client must pay the Fees to Mobysoft:

- 10.3.1 within 30 days of the date of receipt of Mobysoft's invoice; and
- 10.3.2 by such payment method as Mobysoft sets out in the relevant invoice; no payment shall be considered paid until Mobysoft has received it in cleared funds in full.

2.4 All amounts payable by the Client under this Agreement:

- 10.4.1 must be in the currency in force in England from time to time;
- 10.4.2 must be paid in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law), save in the event of material breach of this Agreement by Mobysoft; and
- 10.4.3 are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.

2.5 Mobysoft may increase the Fees with effect from each anniversary of the Effective Date at the rate of any percentage increase in the Retail Prices Index in the preceding 12-month period.

2.6 If the Client is late in paying any part of any monies due to Mobysoft under this Agreement and such payment remains outstanding for seven days following Mobysoft providing notice to the Client of such outstanding payment, Mobysoft may (without prejudice to any other right or remedy available to Mobysoft whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:

- 10.6.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of 4% above The Bank of England's base rate from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
- 10.6.2 recover Mobysoft's costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
- 10.6.3 suspend performance of this Agreement (or any relevant SOW) until payment in full has been made.

3. Commencement, duration and termination

3.1 This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with the termination provisions of this Agreement, this Agreement shall continue for the Initial Term and shall automatically extend for 12 months ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. Either Party may give notice to the other Party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

- 3.2 The Client shall have the right, on a one-off basis, to give not less than 90 days' notice in writing to terminate this Agreement on the first anniversary of the Effective Date. If no such notice is served by the date falling 90 days before the first anniversary of the Effective Date, the Client's right to terminate shall lapse. All notices for termination after such date shall be in accordance with Clause 3.1 or Clause 3.3 only.
- 3.3 Without affecting any other rights or remedies that it may be entitled to, either Party may give notice in writing to the other Party terminating this Agreement immediately if the other Party:
- 11.3.1 is in material breach of any of its obligations under this Agreement, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party;
 - 11.3.2 gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; and/or
 - 11.3.3 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 3.4 On termination of this Agreement:
- 11.4.1 any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect;
 - 11.4.2 termination shall not affect 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;
 - 11.4.3 all licences granted under this Agreement shall immediately terminate and the Client must immediately cease all use of the Services; and
 - 11.4.4 outstanding unpaid invoices rendered by Mobyssoft shall become immediately payable by the Client.

4. IPR

- 4.1 The Client acknowledges and agrees that Mobyssoft owns all IPR in the Services. This Agreement does not grant the Client any IPR in respect of the Services except to the extent set out in Clause 4.
- 4.2 Mobyssoft 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, this Agreement.

5. Confidentiality

- 5.1 Each Party must keep the other Party's Confidential Information confidential and must not:
- 13.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
 - 13.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 5.

Each Party must use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

- 5.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:
- 13.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
 - 13.2.2 it does so subject to obligations equivalent to those set out in this Clause 5.
- 5.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by 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 such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 5.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

- 5.4 The obligations of confidentiality in this Clause 5 shall not extend to any matter which either Party can show:
- 13.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement;
 - 13.4.2 was independently developed by it;
 - 13.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 13.4.4 was in its written records prior to receipt.
- 5.5 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.
- 5.6 On termination of this Agreement, each Party must:
- 13.6.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 13.6.2 erase or destroy (at the other Party's instruction) all the other Party's Confidential Information from its computer systems (to the extent possible); in respect of Mobysoft's Confidential Information the Client must erase or destroy it from live systems within 14 days of termination, and all back-up systems within 90 days of termination; and
 - 13.6.3 certify in writing to the other Party that it has complied with the requirements of this Clause 5.6, 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, or to the extent required for the maintenance of sensible business records. The provisions of this Clause 5 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.
- 5.7 The provisions of this Clause 5 shall continue to apply after termination of this Agreement.
- 5.8 Mobysoft may identify the Client as Mobysoft's client and the type of services provided by Mobysoft to the Client, provided that, in doing so, Mobysoft shall not reveal any of the Client's Confidential Information (without the Client's prior written consent).
- 5.9 Mobysoft may use the Client's Confidential Information to provide reports to third parties for analysis and benchmarking purposes, provided that, in doing so, Mobysoft does not disclose any such Confidential Information and discloses only moderated, aggregated and anonymised information from which it is not possible to identify the Client, any tenant of the Client, or any Confidential Information of the Client.

6. Limitation of liability

- 6.1 Except as expressly and specifically provided in this Agreement:
- 14.1.1 the Client assumes exclusive responsibility for results obtained from the use of the Services by the Client, and for conclusions drawn from such use. Subject to Clause 6.2, Mobysoft shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Mobysoft by the Client in connection with the Services, or any actions taken by Mobysoft at the Client's direction;
 - 14.1.2 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; and
 - 14.1.3 the Services are provided to the Client on an "as is" basis.
- 6.2 Nothing in this Agreement excludes or limits either Party's liability for:
- 14.2.1 death or personal injury caused by its negligence;
 - 14.2.2 fraud or fraudulent misrepresentation; or
 - 14.2.3 any other liability which cannot be excluded or limited by law.
- 6.3 Subject to Clause 6.2:
- 14.3.1 Mobysoft shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or

- information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- 14.3.2 Mobyssoft's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to:
- (a) £250,000 in respect of such liability arising under Clause 9;
 - (b) £250,000 in respect of such liability arising under Clause 4;
 - (c) £250,000 in respect of such liability arising under Clause 5; and
 - (d) in respect of any other such liability, the greater of (i) £50,000, and (ii) the total Fees paid by the Client to Mobyssoft during the 12 months immediately preceding the date on which the claim arose.

7. Anti-bribery

7.1 Mobyssoft shall:

- 15.1.1 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
- 15.1.2 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 15.1.3 promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by Mobyssoft in connection with the performance of this Agreement; and
- 15.1.4 immediately notify the Client (in writing) if a foreign public official acquires a direct or indirect interest in Mobyssoft (and Mobyssoft warrants that it has no foreign public officials as direct or indirect owners at the date of this Agreement).

7.2 Without prejudice to Clause 11, Mobyssoft shall ensure that any person associated with Mobyssoft who is involved in the provision of the Services does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Mobyssoft in this Clause 7 ("**Relevant Terms**"). Mobyssoft shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to the Client for any breach by such persons of any of the Relevant Terms.

7.3 Breach of this Clause 7 shall be deemed a material breach, which is irremediable, under Clause 11.3.1.

7.4 For the purpose of this Clause 7, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

8. Force majeure

Neither Party shall be in breach of this Agreement, nor (subject to Clause 6.2) liable for delay in performing, or failure to perform, any of its obligations under this Agreement, if such delay or failure results from events, circumstances or causes beyond its reasonable control, provided always that the Party seeking to rely on such event could not reasonably have foreseen, or mitigated, the occurrence of such event. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

9. Entire agreement

9.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

9.2 Each Party agrees that it 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. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

10. Notices

10.1 Any notice given to either Party under or in connection with this Agreement must be in writing, addressed to the relevant Party at its registered office or such other address as that Party may have specified to the other

Party in writing, and must be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, or email, to the email address set out for such purposes in the Order Form.

10.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 10.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if by email, on transmission.

10.3 The provisions of this Clause 10 shall not apply to the service of any proceedings or other documents in any legal action.

11. Assignment

The Client must not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of its obligations under it, without the prior written consent of Mobyssoft (such consent not to be unreasonably withheld or delayed).

12. Severance

12.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

12.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13. Waiver

13.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.2 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.

14. Third party rights

A person who is not a Party shall not have any rights under or in connection with this Agreement.

15. No partnership

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

16. Governing law and jurisdiction

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

16.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.