

Glider Technology | SaaS Agreement

Commercial Terms

Supplier:	GLIDER TECHNOLOGY LIMITED incorporated and registered in England and Wales with company number 08248127 whose registered office is at Mentor House, Ainsworth Street, Blackburn, Lancashire BB1 6AY. Contact email address: info@glidertech.com
Customer:	[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] Contact email address:
Licence Type:	Glider Nexus Project Licence [delete as applicable] Glider Nexus Enterprise Licence [delete as applicable] Glider Nexus Portfolio Licence [delete as applicable]
Effective Date:	DD/MM/YYYY
Initial Term:	Thirty six months
Renewal Period:	Twelve months
Notice Period:	180 days
Termination Date:	[Insert date on which agreement is to expire, if any]
Project(s):	[Insert project name(s)]
Subscription Fee:	£[AMOUNT] (plus VAT), for the number of User Subscriptions specified below.
Setup Fee:	£[AMOUNT] (plus VAT).
Additional Fees:	£[AMOUNT] (plus VAT) per additional Module/User Subscription.
Excess Storage Fees:	Payable if the Customer exceeds the amount of disk storage space specified in the Documentation. The Supplier's excess storage fees from time to time, those current as at the Commencement Date are: [INSERT IF APPLICABLE].
Payment Terms:	Payment in advance [insert details including the following: SaaS terms: on the Effective Date for the Subscription Fees payable in respect of the Initial Term; and on the first day of any Renewal Period, for the Subscription Fees payable in respect of the next Renewal Period.]
User Subscriptions:	[NUMBER], being the total number of users.
Customer Personal Data:	[insert details of 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]
Special Terms:	[INSERT ANY SPECIAL TERMS AGREED]
Signed on behalf of the Supplier:	_____
Date of signature:	_____
Signed on behalf of the Customer:	_____
Date of signature:	_____

By signing above, each party agrees to the Commercial Terms above and the terms and conditions below.

SaaS Terms and Conditions

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.

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

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Commercial Terms: the commercial terms agreed by the parties in writing.

Confidential Information: information that is proprietary or confidential and is clearly labelled as such.

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: as set out in the Commercial Terms.

Documentation: the document made available to the Customer by the Supplier online via the Website or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: as set out in the Commercial Terms.

Fees: each of the fees set out in the Commercial Terms

Initial Term: the initial term of this agreement as set out in the Commercial Terms.

Normal Business Hours: 8.30 am to 5.30 pm local UK time, each Business Day.

Payment Terms: as set out in the Commercial Terms.

Privacy Policy: the Supplier's privacy as amended from time to time and available via the Website.

Project: the project or projects more particularly described in the Commercial Terms.

Renewal Period: the period described in the Commercial Terms.

Services: the subscription services 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, as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services, as described in the Commercial Terms.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Commercial Terms.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available at the Website or such other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to this agreement which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

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.

Website: <https://app.gliderbim.com>, or such other website as set out in the Commercial Terms or as otherwise notified to the Customer from time to time.

- 1.2. Clause 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 shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include 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 shall include 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 includes faxes but not e-mail.
- 1.10. References to clauses are to the clauses of this agreement.
- 1.11. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. USER SUBSCRIPTIONS

- 2.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 12, 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 to permit the Authorised Users to use the Services and the Documentation during the term of this agreement solely for the Customer's internal business operations in relation to the Project.
- 2.2. In relation to the Authorised Users, the Customer undertakes that:
 - 2.2.1. the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.2.2. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 2.2.3. each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;
 - 2.2.4. it shall permit the Supplier to audit the Services in order to establish the name and company of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 2.2.5. if any of the audits referred to in clause 2.2.4 reveal that any user account has been provided to any individual who is not an Authorised User, then without prejudice to the

Supplier's other rights, the Customer shall promptly disable such user accounts and the Supplier shall not issue any user account to any such individual; and

- 2.2.6. if any of the audits referred to in clause 2.2.4 reveal that the Customer has underpaid Subscription 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 Commercial Terms 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 the course of its use of the Services that:
 - 2.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.3.2. facilitates illegal activity;
 - 2.3.3. depicts sexually explicit images;
 - 2.3.4. promotes unlawful violence;
 - 2.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.3.6. in a manner that is otherwise illegal or causes damage or injury to any person or property;
 - 2.3.7. 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, in the Supplier's reasonable opinion, breaches the provisions of this clause.
- 2.4. The Customer shall not:
 - 2.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 2.4.1.1. and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.4.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 2.4.2. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 2.4.3. use the Services and/or Documentation to provide services to third parties; or
 - 2.4.4. subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 2.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation 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 USER SUBSCRIPTIONS

- 3.1. Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during the term of this agreement, purchase additional User Subscriptions in excess of the number set out in the

Commercial Terms and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

- 3.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.
- 3.3. 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall on request pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Commercial Terms.

4. SERVICES

- 4.1. The Supplier shall, during the term of this agreement, provide the Services and make available the Documentation 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:
 - 4.2.1. planned maintenance carried out during the maintenance window of 8.00 pm to midnight UK time; and
 - 4.2.2. unscheduled maintenance as required by the Supplier.
- 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 Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend
- 4.4. the Support Services Policy in its sole and absolute discretion from time to time.

5. CUSTOMER DATA

- 5.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. The Supplier retains primary responsibility for taking at least every twenty four hours and maintaining backups (for seven days) of the Customer Data and shall take regular backups to protect against data loss, corruption or other damage.
- 5.3. The Supplier shall follow its archiving procedures for Customer Data as set out in its Privacy Policy, as 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 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 Privacy 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).
- 5.4. On termination of this agreement, the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten 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 archive of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the archive to the Customer within 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.
- 5.5. The Customer hereby grants to the Supplier a non-exclusive licence to use the Customer Data for the purposes of internal software improvements, including for the purpose of optimising the Services provided by the Supplier by way of comparisons across any and all Customer projects.

The Supplier undertakes not to release details of the Customer projects arising from such improvements.

6. THIRD PARTY PROVIDERS

- 6.1. 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 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 into by the Customer, with any such third party. Any contract entered into 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 undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2. The undertaking 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 foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
- 7.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 7.2.2. 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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3. Except as expressly and specifically provided in this agreement:
- 7.3.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any 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;
- 7.3.2. the Services and the Documentation are provided to the Customer on an "as is" basis.
- 7.4. 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.

8. CUSTOMER'S OBLIGATIONS

- 8.1. The Customer shall:
- 8.1.1. provide the Supplier with:
- 8.1.1.1. all necessary co-operation in relation to this agreement; and

8.1.1.2. all necessary access to such information as may be required by the Supplier; in order to provide the Services, including Customer Data, security access information and configuration services;

- 8.1.2. comply with all applicable laws and regulations with respect to its activities under this agreement;
- 8.1.3. 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;
- 8.1.4. ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- 8.1.5. 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 the Services;
- 8.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 8.1.7. be solely responsible for procuring and maintaining 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.

9. PROPRIETARY RIGHTS

- 9.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, 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 or the Documentation.
- 9.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. INDEMNITY

- 10.1. Save to the extent that it is the subject of the indemnity given by the Supplier in clause 10.2, the Customer shall defend, indemnify and hold harmless the Supplier against third party claims, actions, proceedings, losses, damages, expenses and costs (including court costs and legal and other professional fees, and a reasonable charge in relation to management time) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
 - 10.1.1. the Customer is given prompt notice of any such claim;
 - 10.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 10.1.3. the Customer is given sole authority to defend or settle the claim.
- 10.2. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation 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:
 - 10.2.1. the Supplier is given prompt notice of any such claim;

- 10.2.2. the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- 10.2.3. the Supplier is given sole authority to defend or settle the claim.
- 10.3. 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 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4. 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:
 - 10.4.1. modification of the Services or Documentation by anyone other than the Supplier; or
 - 10.4.2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - 10.4.3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 10.5. The foregoing and clause 10.4.2 state 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.

11. PERSONAL DATA

- 11.1. For the purposes of this clause, the following terms will have the meanings set against them below:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation:

 - 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.
 - 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 Customer or Supplier is subject, which relates to the protection of personal data.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

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

EU Law: the law of the European Union or any member state of the European Union.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 11.2. Each party will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of Customer Personal Data.
- 11.4. Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier and/or lawful collection of the Customer Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this agreement.

- 11.5. Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Customer Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- 11.5.1. process that Customer Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law or EU Law to otherwise process that Customer Personal Data. Where the Supplier is relying on Domestic Law or EU Law as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits the Supplier from so notifying the Customer;
 - 11.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer 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 Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer 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 it);
 - 11.5.3. ensure that all personnel who have access to and/or process Customer Personal Data are obliged to keep the Customer Personal Data confidential; and
 - 11.5.4. not transfer any Customer Personal Data outside the UK or EEA unless the following conditions are fulfilled:
 - 11.5.4.1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 11.5.4.2. the data subject has enforceable rights and effective legal remedies;
 - 11.5.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Customer Personal Data that is transferred; and
 - 11.5.4.4. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Personal Data;
 - 11.5.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 11.5.6. notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - 11.5.7. 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 required by Domestic Law or EU Law to store the Customer Personal Data; and
 - 11.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 11.6. The Customer consents to the Supplier appointing Amazon Web Services as a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially

on that third party's standard terms of business which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

12. CHARGES AND PAYMENT

- 12.1. The Customer shall pay the Fees to the Supplier in accordance with this clause 12 and the Payment Terms.
- 12.2. If the Supplier has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - 12.2.1. the Supplier may, 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
 - 12.2.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% 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.
- 12.3. All amounts and fees stated or referred to in this agreement:
 - 12.3.1. shall be payable in pounds sterling;
 - 12.3.2. are non-cancellable and non-refundable;
 - 12.3.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 12.4. The Supplier shall be entitled to increase the Fees at the start of each Renewal Period and the Commercial Terms shall be deemed to have been amended accordingly.

13. CONFIDENTIALITY

- 13.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
 - 13.1.1. Is or becomes publicly known other than through any act or omission of the receiving party;
 - 13.1.2. was in the other party's lawful possession before the disclosure;
 - 13.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 13.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 13.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 13.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 13.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 13.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 13.6. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.7. The Customer consents to the Supplier using the Customer's name and logo for the purposes of marketing and similar purposes.
- 13.8. The above provisions of this clause 13 shall survive termination of this agreement, however arising.

14. LIMITATION OF LIABILITY

- 14.1. This clause 14 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - 14.1.1. arising under or in connection with this agreement;
 - 14.1.2. in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - 14.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 14.2. Nothing in this agreement excludes the liability of the Supplier:
 - 14.2.1. for death or personal injury caused by the Supplier's negligence; or
 - 14.2.2. for fraud or fraudulent misrepresentation.
- 14.3. Except as expressly and specifically provided in this agreement, 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.
- 14.4. Subject to clause 14.2:
 - 14.4.1. the Supplier 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
 - 14.4.2. the Supplier'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 the total Fees paid under this agreement during the 12 months immediately preceding the date on which the claim arose.

15. TERM AND TERMINATION

- 15.1. This agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall either:
 - 15.1.1. continue for the Initial Term and thereafter for successive Renewal Periods, unless either party gives the other party notice of termination, in writing, at equal in length to the Notice Period before the end of the Initial Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - 15.1.2. where there is a Termination Date, expire automatically on that date.
- 15.2. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- 15.2.1. the Customer fails to pay any amount due under this agreement on the due date for payment;
- 15.2.2. the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
- 15.2.3. there is a change of control of the Customer.
- 15.3. 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:
 - 15.3.1. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;
 - 15.3.2. 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;
 - 15.3.3. 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;
 - 15.3.4. 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;
 - 15.3.5. 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;
 - 15.3.6. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 15.3.7. 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;
 - 15.3.8. 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 14 days;
 - 15.3.9. 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 15.3.1 to clause 15.3.8 (inclusive); or
 - 15.3.10. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.4. On termination of this agreement for any reason:
 - 15.4.1. all licences granted under this agreement shall immediately terminate;
 - 15.4.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
 - 15.4.3. 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.

16. FORCE MAJEURE

- 16.1. The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. VARIATION

- 17.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

- 18.1. 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. RIGHTS AND REMEDIES

- 19.1. 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 of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. ENTIRE AGREEMENT

- 21.1. This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 21.2. Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

22. ASSIGNMENT

- 22.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

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

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. NOTICES

- 25.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the applicable email address set out in the Commercial Terms.
- 25.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission or, if sent outside Normal Business Hours, at 9am on the next Business Day.

26. 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 construed in accordance with the law of England and Wales.

27. 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).