



MetricsLed PROJECT

CUSTOMER TERMS AND CONDITIONS

These terms and conditions set out the standard terms on which MetricsLed provides software services to customers.



1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Authorised User: employees, agents, independent contractors and client representatives of the Customer (or the Customer's affiliate companies) who are authorised by the Customer to use the Software Services and the Documentation.

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

Bug: an error, flaw, failure or fault in a computer program or system that causes it to produce an incorrect or unexpected result, or to behave in unintended ways.

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

Commencement Date: the date on which the Customer first uses the software or the date on which the Customer pays the Licence Fees, whichever is earlier.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.4.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or could be reasonably regarded as confidential, or is identified as Confidential Information in clause 10.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases the Software Services from the Supplier.

Customer Data: data input by the Customer, Authorised Users or the Supplier on the Customer's behalf for the purpose of using the Software Services and Documentation, facilitating the Customer's use of the same, or information otherwise provided to the Supplier by the Customer in connection with the use of the Software Services and Documentation.

Data Collection Notice: the data collection notice maintained solely by the Customer in the Software.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation any regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). In these Conditions, the words "Personal Data", "Data Controller" and "Data Processor" have the meanings as defined in the Data Protection Legislation.

Documentation: the documents made available to the Customer by the Supplier and/or the Supplier's Licensor online at www.metricsled.com or such other website notified by the



Supplier to the Customer from time to time that describe the Software Services and give instructions for their use.

Initial Subscription Term: has the meaning given in clause 13.1.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and software marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Licence Fees: the fees payable by the Customer to the Supplier for the Software Services and Documentation, pursuant to Clause 8.1 of the Contract.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Order: the Customer's order for the Software Services as set out in the Customer's acceptance of a quotation by the Supplier.

Organisation: any organised group of people with a particular purpose, including but not limited to a business, a charity, a government or government department.

Primary Account: the primary Authorised User account assigned to the Customer by the Supplier, which may be used to add and administer Authorised Users.

Project: any piece of planned work or activity that is finished over a period and intended to achieve a particular purpose.

Promotional Materials: any and all names, signs, logos, banners, posters, and any other materials, in whatever form, owned and/or used by the Customer to publicly announce the products and/or activities concerning the Contract.

Renewal Period: the period described in clause 13.1.

Secure Login Details: secure login details (including passwords and (if enabled) the two-factor authentication process) as advised by the Supplier.

Software Services: the services provided by the Supplier and/or the Supplier's Licensor to the Customer under the Contract online at www.metricsled.com or any other website notified to the Customer by the Supplier from time to time, including access to and use of the Software.

Software: the application known as MetricsLed – PROJECT (formally known as Touchstone Review) and any other online software applications, including any mobile applications, provided by the Supplier as part of the Software Services.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).



Supplier: Skotkonung Limited (trading as MetricsLed), a company incorporated and registered in England and Wales with number 07893442 and whose registered offices are at C/O FLB Accountants LLP, 250 Wharfedale Road, Winnersh Triangle, Wokingham, RG41 5TP.

Supplier's Licensor: Touchstone Review Limited incorporated and registered in England and Wales with company number 11322664 whose registered office is at Merlin House, Brunel Road, Theale, Berkshire, RG7 4AB

Standard: anything used as a measure, norm, or model in comparative evaluations.

Standard Rates: the hourly rates charged by the Supplier for technical support and training as advised by the Supplier from time to time.

Virus: any software code 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.

1.2 Interpretation:

- (a) Clause and paragraph headings do not affect the interpretation of the Contract.
- (b) A person includes an individual, corporate or unincorporated body (whether having separate legal personality or not) and that person's legal and personal representatives, successors or permitted assigns.
- (c) A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular include the plural and, in the plural, include the singular.
- (e) Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- (f) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract. A reference to a statute or a statutory provision includes all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- (g) References to clauses are to the clauses of the Contract.
- (h) A reference to writing or written includes email.

2. Basis of contract

2.1 The Order constitutes a firm offer by the Customer to purchase Services in accordance with these Conditions.



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2.2 The Order shall only be deemed to be accepted when the Supplier receives the acceptance of a quotation through the Supplier's Xero financial system at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 Any drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Software Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue, unless otherwise stated in the quotation details.

3. User subscriptions

3.1 In consideration of the Customer paying the Licence Fees in accordance with clause 8.1, the restrictions set out in this clause 3 and the other Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Software Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will allow access to the Authorised Users at its sole responsibility through the Primary Account;
- (b) it will not allow or suffer any Authorised User account to be used by more than one individual;
- (c) each Authorised User will keep Secure Login Details for his use of the Software Services and Documentation and that each Authorised User will keep such details confidential; and
- (d) it will maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 2 Business Days of the Supplier's written request at any time.

3.3 The Customer will not, and will take reasonable steps to ensure that the Authorised Users will not, access, store, distribute or transmit any Viruses, or any material during its use of the Software Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- or



(f) is otherwise illegal or causes damage or injury to any person or property;

(g) and the Supplier and the Supplier's Licensor reserve the right, without liability or prejudice to its other rights, to disable the Customer's or any Authorised User's access to the Software Services or any material that breaches the provisions of this clause 3.3.

3.4 The Customer will not, and will procure that the Authorised Users will not, expect as may be allowed by any applicable law which is incapable of exclusion by agreement the parties and to the extent expressly permitted under the Contract:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except expressly permitted under the Contract, 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 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

(b) access all or any part of the Software Services and Documentation in order to build a product or service which competes with the Software Services and/or the Documentation;

(c) use the Software Services and/or Documentation to provide comparable or similar services to third parties;

(d) subject to clause 14.2, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Services and Documentation available to any third party except the Authorised Users; or

(e) attempt to obtain, or assist third parties in obtaining, access to the Software Services and Documentation, other than as provided under this clause 3.

3.5 The Customer will use all reasonable endeavours to prevent any unauthorised access to or use of the Software Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.6 The rights provided under this clause 3 are granted to the Customer only and will not be considered granted to any client or subsidiary or parent or holding company of the Customer.

4. Supply of Services

4.1 The Supplier shall, during the Subscription Term, provide the Software Services and make available the Documentation to the Customer subject to the terms of the Contract.

4.2 The Supplier shall use all reasonable endeavours to meet any performance dates agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 The Supplier shall correct any Bugs in the Software Service (either found by the Supplier or reported to it by the Customer) at no cost to the Customer.

4.4 The Supplier shall use commercially reasonable endeavours to make the Software Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out between of 9 pm to 6 am UK time on weekends;



(b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least two hours' notice in advance; and

(c) emergency maintenance work required at any time, provided that the Supplier has used reasonable endeavours to give the Customer as much notice as possible in advance of such works.

4.5 Subject to clause 4.6, the Supplier will, as part of the Software Services and at no additional cost to the Customer, provide the Customer with:

(a) up to 12 hours of technical support in the 60 days after the Commencement Date to include setup, training and on-boarding;

(b) up to two hours of technical support and/or training (call, email or remote connection-based support and training) per month during Normal Business Hours. The Customer understands and acknowledges that any time not used under this clause 4.5(b) is not bankable.

4.6 Any additional technical support or training that is required by the Customer outside the provisions of clause 4.5 as well as any request for specific configuration or customisation will be charged by the Supplier on top of the Licence Fees at Standard Rates.

4.7 Non-exclusivity. The Contract does 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 similar to those provided under the Contract.

5. Customer data

5.1 The Customer will own all rights, title and interest in all the Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such data.

5.2 The Supplier will use commercially reasonable endeavours to keep all Customer Data safe and secure and will use industry best practice to do so.

5.3 The Supplier will adhere to industry standard back-up procedures to ensure Customer Data is backed-up daily.

5.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier will 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. The Supplier will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer or their staff or Authorised Users or any third party accessing the Software through the Customer or Authorised User's credentials, where compromised through negligence, act or omission of the Customer or an Authorised User.

5.5 By entering into the Contract, the Customer consents to (and shall procure all required consents, from the Authorised Users, its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of their data (as set out in the Supplier's privacy policy available at <https://project.metricsled.com> (Privacy Policy). In the



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event of any inconsistency or conflict between the terms of the Privacy Policy and the Contract, the Privacy Policy will take precedence.

5.6 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

5.7 The parties acknowledge that:

(a) if the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under the Contract, the Customer is the Data Controller and the Supplier is the Data Processor for the purposes of the Data Protection Legislation.

(b) the Data Collection Notice, controlled by the Customer, may be used by the Customer to obtain any necessary consents for the collection of data.

(c) subject to clause 5.9, the Customer acknowledges and agrees that Personal Data may be transferred or stored outside the European Economic Area (EEA) or the country where the Customer and the Authorised Users are located to carry out the Software Services and the Supplier's other obligations under the Contract subject to the provisions of the Contract and the Data Protection Legislation.

5.8 Without prejudice to the generality of clause 5.5, the Customer will ensure that it has all necessary appropriate consents and notices in place (which may be undertaken using the Data Collection Notice made available on the Software), to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with the Contract on the Customer's behalf.

5.9 Without prejudice to the generality of clause 5.5, the Supplier will, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of the United Kingdom or any member state of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on laws of the United Kingdom or a member state of the European Union or European Union law as the basis for processing Personal Data, the Supplier will promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

(b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(c) not transfer any Personal Data outside of the EEA or appoint any sub-processors unless the following conditions are fulfilled and the requirements of this clause 5 are passed down:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective legal remedies;



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(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;

(d) assist the Customer 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. The costs of responding to such requests shall be borne by the Customer unless the Data Protection Legislation provides otherwise (for example, where no fee is applicable). Where the Supplier incurs costs of complying with a Subject Access Request from a Data Subject that is manifestly unfounded or excessive, or if a Data Subject requests further copies of their data, the Supplier reserves the right to charge the Customer and/or the Data Subject a reasonable administrative fee.

(e) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

5.10 Each party will 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 its 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 it).

5.11 Subject to clause 5.9(c), the Customer consents to the Supplier appointing third-party processors of Personal Data under the Contract to enable the supply, support and maintenance of the Software Services.

5.12 The Customer agrees that the Supplier is entitled to revise this clause 5 from time to time to bring it in line with current laws and regulations.

6. Supplier's obligations

6.1 The Supplier undertakes that the Software Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 does not apply to the extent of any non-conformance that is caused by use of the Software Services contrary to the Supplier's instructions, or modification



or alteration of the Software Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

6.3 If the Software Services do not conform with the undertaking in clause 6.1:

(a) the Supplier may, at its sole discretion, provide the Customer with alternative means of accomplishing the desired performance. In that event, such correction or substitution will constitute the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

(b) in the unlikely event that no alternative means of accomplishing the desired performance is proposed by the Supplier as per clause 6.3(a), then at the Supplier's sole discretion and subject to written notice to the Customer, the Supplier may terminate the Contract - and subject to all invoices being paid in full as set out in Clause 8, credit or refund a pro-rata proportion of the unused Licence Fee.

(c) The Supplier warrants that it:

(a) has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract; and

(b) will comply with all applicable laws and regulations in England and Wales with respect to its obligations under the Contract.

6.4 The Supplier:

(a) does not warrant that the Customer's use of the Software Services will be uninterrupted or error-free or that the Software Services and Documentation and the information obtained by the Customer through the Software Services and Documentation will meet the Customer's requirements at all or at any point in time; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet (save where any such issue is due to any negligent act or omission by or on behalf of the Supplier), and the Customer acknowledges that the Software Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7. Customer's obligations

7.1 The Customer shall:

(a) provide the Supplier with all necessary co-operation in relation to the Contract, and all necessary access to such information as may be required by the Supplier in order to provide the Software Services, including but not limited to Customer Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under the Contract;

(c) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance or



information as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

(a) ensure that the Authorised Users use the Software Services and the Documentation in accordance with the terms and conditions of the Contract and is responsible for any Authorised User's breach of the Contract;

(b) obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract;

(c) ensure that its network and systems comply with any reasonable specifications or instructions provided by the Supplier from time to time (acknowledging that they do comply as at the date of the Contract);

(d) be solely responsible for procuring and maintaining its network connections and telecommunications;

(e) without prejudice to clause 4.5, be solely responsible for providing adequate training to and oversight of its staff and Authorised Users using the Software Services and Documentation; and

(f) unless caused directly by the Supplier, be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising solely from or solely relating to the Customer's network connections or telecommunications links or caused by the internet.

8. Charges and payment

8.1 The Customer will pay the Licence Fees to the Supplier for the use of the Software Services and Documentation in accordance with this clause 8 plus any configuration, support or training fees (if applicable) in accordance with clause 4.6.

8.2 The Customer will pay for Licence Fees in advance and all other invoices submitted to it by the Supplier in accordance with the Contract within 30 days of the date of issue of an invoice.

8.3 The Supplier shall be under no obligation to provide any of the Software Services and Documentation while the invoice(s) concerned remain unpaid, If the Supplier has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies the Supplier may have, interest will accrue daily on the amounts due at an annual rate of 6 percent per annum above the Bank of England's current base rate, commencing on the due date and continuing until full payment.

8.4 All amounts and fees stated or referred to in the Contract will be payable in pounds sterling and are, subject to clause 3, non-cancellable and non-refundable and exclusive of Value Added Tax, which will be added to the Supplier's invoice(s) at the appropriate rate.

8.5 Subject to providing 90 days' notice to the Customer, the Supplier will be entitled to increase the Licence Fees and any other fees payable under this Contract (including training fees) to come into effect on the commencement of any Renewal Period.

9. Intellectual property rights

9.1 The Customer acknowledges and agrees that the Supplier and the Supplier's Licensors own all Intellectual Property Rights in the Software, the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any



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patents, copyright, know-how, rights in designs and inventions, database right, trade secrets, trade names, internet domain names, e-mail addresses, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.

9.2 The Supplier confirms that it has all the necessary rights in relation to the Software, the Software Services and the Documentation to grant the rights granted under the terms of the Contract.

9.3 The Supplier shall indemnify and keep indemnified the Customer for any losses suffered by the Customer should the Supplier be in breach of the confirmation given in clause 9.2 and, in any such case the Supplier shall with all reasonable speed either procure a difference service for the Customer to replace the existing Software Services or modify the Software, the Software Services and the Documentation so that they are no longer in breach of the confirmation given in clause 9.2.

10. Confidentiality and publicity

10.1 Each party may be given access to the Confidential Information of the other party in order to perform its obligations under the Contract. A party's Confidential Information will not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by a third party and then provided to the receiving party, and which independent development can be shown by written evidence.

10.2 Subject to clause 10.4, each party will hold the other's Confidential Information in confidence and 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 the Contract.

10.3 Each party will 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 the Contract.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority 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 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.5 Neither party will be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party save for where such loss, destruction,



alteration or disclosure is due in part or in whole to a failure on the part of either party to perform its obligations as set out in the Contract.

10.6 The Customer acknowledges that details of the Software Services, and the results of any performance tests of the Software Services, constitute the Supplier's Confidential Information.

10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.8 Neither party may make, or permit any person to make, any public announcement concerning the Contract, except to the extent required by law, by any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

10.9 The Customer will not, without prior written consent of the Supplier (consent not to be unreasonably withheld), make or issue any Promotional Material except to the extent required by law.

10.10 The Customer will submit the request for approval of Promotional Material at least 30 days prior to the intended publication or promotion. If the Supplier determines that any amendments are reasonably necessary to the Promotional Material, the Customer will make these amendments and submit amended Promotional Material to the Supplier for approval.

10.11 The Customer must ensure that all Promotional Material is accurate and not misleading in any way and complies with all laws and the requirements of the Contract.

10.12 Publicity. Unless the Customer otherwise notifies the Supplier in writing, the Supplier shall be entitled to name the Customer (and use the Customer's logo) as a Supplier's customer on the Supplier's website.

10.13 The above provisions of this clause 10 will survive termination of the Contract, however arising.

11. Indemnity

11.1 The Customer shall defend, indemnify and hold harmless the Supplier, its officers, directors, agents, sub-contractors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

- (a) the Customer and Authorised User's use of the Software Services or Documentation;
- (b) the Customer or Authorised User's breach of the Contract, including, and not limited to a breach of any of the provisions of clause 4.

provided that:

- (c) the Customer is given prompt notice of any such claim;
- (d) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and



(e) the Customer is given sole authority to defend or settle the claim.

11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with the Contract infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

(a) the Supplier is given prompt notice of any such claim;

(b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

(c) the Supplier is given sole authority to defend or settle the claim.

11.3 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 the Contract 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.

11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than the Supplier; or

(b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

(c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5 The foregoing and clause 12.3(b) 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.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 Except as expressly and specifically provided in the Contract:

(a) the Customer assumes sole responsibility for results obtained from the use of the Software Services and Documentation by the Customer, and for conclusions drawn from such use. The Supplier will 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 Software Services, or any actions taken by the Supplier at the Customer's direction;

(b) 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 the Contract; and



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(c) the Software Services and Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in the Contract excludes the liability of:

(a) either party for death or personal injury caused by its negligence;

(b) either party for fraud or fraudulent misrepresentation;

(c) the Customer for breaches of clauses 2.4 or clause 5.8.

12.3 Subject to clause 12.1 and clause 12.2:

(a) neither party shall 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 pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

(b) each party's total aggregate liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Licence Fees paid by the Customer to the Supplier under the Subscription Term up to a limit of twenty-five thousand pounds sterling.

13. Term and termination

13.1 The Contract shall, unless otherwise terminated as provided in this clause 13, commence on the Commencement Date and shall continue for the Initial Subscription Term and thereafter, the Contract shall be automatically renewed for successive periods of 12 months or any such other period as agreed between the parties (each a Renewal Period), unless either party gives written notice to terminate the Contract to the other party no later than three months before the end of the Initial Subscription Term or a Renewal Period.

13.2 A Renewal Period can be cancelled on 90 days' notice by the Customer if the reason for cancelling the renewal is that the Customer's agreement with a relevant funder or donor is terminated within a Renewal Period for any reason that does not relate to a Customer's default. In such events only, the Supplier may credit the Customer on a pro-rata basis for any Licence Fees paid on the remaining period of the Renewal Period.

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

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

(b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;



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- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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 13.3(c) to clause 13.3(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) there is a change of control of the other party;
- (m) the other party is or becomes listed on a UK, EU or US sanctions list, or US Terrorist Watchlist;
- (n) in the case of the Supplier, if the Customer has become involved in or becomes associated with (whether directly or indirectly) any situation or activity which tends, in the opinion of the Supplier, to have a negative effect on the reputation of the Supplier or any aspect of its business.

13.4 The Supplier retains the right to terminate the Contract pursuant to clause 6.3(b).

13.5 On termination of the Contract for any reason:

- (a) all licences granted under the Contract will immediately terminate and the Customer will immediately cease all use of the Software Services and the Documentation;
- (b) unless as otherwise set out in the Contract, each party will return and make no further use of any property, Documentation and other items (and all copies of them) belonging to the other party;



(c) the Supplier will:

(a) within 10 Business Days deliver to the Customer all Customer Data in its possession in flat-file format for data and a zip file for documents; and then or otherwise

(b) within 5 Business Days (at the written request of the Customer) destroy all the Customer Data in its possession.

(c) The Customer will pay all reasonable expenses incurred by the Supplier shipping or otherwise transmitting the Customer Data to the Customer;

(d) any provision in the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect; and

(e) 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 Contract which existed at or before the date of termination will not be affected or prejudiced.

14. General

14.1 Force majeure. Neither party will be considered to be in breach of the terms of the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, 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, terrorism 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, hacking or corruption of, or disruption to, any Software, or default of suppliers or sub-contractors, provided that the affected party notifies the other party of such an event and its expected duration.

14.2 Assignment and other dealings

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

14.3 Entire agreement

(a) The Contract 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.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made



innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

14.4 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of this Contract deleted under this clause 14.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.7 Notices

(a) Any notice required to be given under the Contract will be in writing and will be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office address, or such other address as may have been notified by that party for such purposes, or sent by email to the email address notified by the other party from time to time.

(b) A notice delivered by hand will be deemed to have been received when delivered on signature of a delivery receipt. A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at 9.00am on the third Business Day after posting if sent within the UK, or at 9.00am on the tenth Business Day after posting if sent by air-mail. If sent by email, upon the earlier of; receipt by the sending party of confirmation of successful delivery; or two Business Days after dispatch, provided that, the sending party does not receive any indication of failure, or delay, of delivery within two Business Days after dispatch.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.8 Third party rights

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.



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14.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

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

