

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Agreement means these agreed terms and the Details, and includes any Schedules to this Agreement.

Authorised User means the persons who have been authorised by the Client to use and access the SaaS Services and who are specified at **Error! Reference source not found.** of the Details.

Business Day means a day which is not a Saturday, Sunday or public holiday in England.

Client Data means all data and information which the Client or an Authorised User creates, uploads, posts, processes, or stores in the course of using the SaaS Services.

Client System means the computing, information technology, data and data processing environment of Client and Authorised Users, whether operated, maintained or utilised by or on behalf of Client.

Commencement Date means the commencement date specified in the Details.

Confidential Information of a party means any information, including the terms of this Agreement which is by its nature confidential, which is designated as confidential by the party, or which the other party knows or ought to know is confidential, and in the case of Benchmark includes all information and data relating to:

- (a) all Services, including the SaaS Services, the Platform and Software, and related technology, systems, tools, methodologies, designs, code;
- (b) Benchmark's business affairs, financial affairs, documentation, business plans, price lists, strategies, technical operations, IT systems and operations, security, business processes, operations, internal management, structure, personnel, policies and strategies; and
- (c) Benchmark's personnel, contractors, clients or suppliers, including any personal or sensitive information of individuals.

CPI means the quarterly All Groups Consumer Price Index applicable to Sydney, published by the Australian Bureau of Statistics and, if that index ceases to be

published, an alternative consumer price index nominated by Benchmark.

Defect means a failure by the SaaS Service as customised or configured by Benchmark under a SOW to comply with the relevant Specification, or any failure of the SaaS Services to function properly and reliably, but does not include a failure caused by:

- (a) the modification of the SaaS Service without Benchmark's consent;
- (b) any defect, error or malfunction in any item of hardware or software not supplied or recommended by Benchmark;
- (c) any defect, error or malfunction in the Client System;
- (d) any defect, error or malfunction in any telecommunications carrier service;
- (e) Client's use of the SaaS Services other than in accordance this Agreement; or
- (f) any other problem, event or delay that is outside the reasonable control of Benchmark.

Deliverable means any goods or services to be supplied by Benchmark to Client pursuant to a SOW for Professional Services.

Details means the section of this document headed 'Details'.

Documentation means the instructions for the SaaS Service as described in the Details as provided to Client by Benchmark.

Fees means the fees payable under this Agreement as specified in the Details.

Force Majeure is defined in clause 23(a).

Initial Term means the initial term specified in **Error! Reference source not found.** of the Details.

Insolvency Event, in relation to a party (**Insolvent Party**), means any one or more of the following:

- (a) the Insolvent Party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the Insolvent Party is unable to pay its debts when they are due;
- (c) the Insolvent Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;

- (d) an administrator, liquidator or provisional liquidator is appointed to the Insolvent Party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Insolvent Party;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) an application or order is made or a resolution is passed for the winding up or dissolution of the Insolvent Party; or
- (g) any act or event analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (g) of this definition.

Intellectual Property Rights includes, without limitation, all present and future intellectual and industrial property rights whether conferred by statute, at common law or in equity and wherever existing, including patents, designs, copyright, protection of databases, trade marks, Moral Rights, know how, brand names, business and company names and get ups, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration, and any right to apply for registration of any of these rights.

International Transfer Requirements means the requirements of Chapter V of the GDPR (Transfers of personal data to third countries or international organisations) and/or analogous provisions of the Data Protection Act 2018 (as applicable).

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute or otherwise anywhere in the world that may exist or that may come to exist in the future.

Permitted Purpose means the permitted purpose specified at **Error! Reference source not found.** of the Details.

Personnel means, in relation to a party, that party's, directors, officers, employees, agents, contractors and subcontractors, and the employees of its agents, contractors and subcontractors.

Platform means Benchmark's online platform as set out in the Details, which it uses to provide the SaaS Service to the Client.

Privacy Laws means:

- (a) UK Data Protection Laws;

- (b) EC Regulation 2016/679 (the "GDPR") on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data;
- (c) all applicable laws affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- (d) any legally binding ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

Professional Services means any implementation or consulting services provided by Benchmark in respect of the SaaS Services, including analysis and design services, work to configure or customise the SaaS Services, data or database migration, integration, customising reports, or other related services to be provided by Benchmark, as described in an SOW established under this Agreement.

Renewal Term means the renewal term specified in **Error! Reference source not found.** of the Details.

Restricted Country means a country outside the United Kingdom which is not based on adequacy regulations pursuant to UK Data Protection Laws.

Restricted Transfer means a transfer of Personal Data from the United Kingdom to a Restricted Country.

SaaS Service means the SaaS Service described in **Error! Reference source not found.** of the Details, and includes any configurations or customisations of the SaaS Service delivered as part of any Professional Services provided by Benchmark.

SaaS Service Description means the service description attached at Schedule 1.

Schedule means a schedule to this Agreement.

Scheduled Outage means any outage of the SaaS Service which Benchmark notifies Client of at least 1 Business Day in advance.

Service Levels means the applicable service levels which are set out in Schedule 3 to this Agreement.

Services means any SaaS Services, Support Services and Professional Services provided under this Agreement.

Software means the software specified at **Error! Reference source not found.** of the Details.

Specifications means the SaaS Service Description and any specifications for customised or configured SaaS Services as agreed under an SOW.

Statement of Work or SOW means a statement of work for the provision by Benchmark to Client of Professional Services, as agreed under clause 9.1.

Support Services means the support services described in Schedule 2.

System Data means any data produced by the Software and/or Platform including any data exported or downloaded, by the Client via the SaaS Services.

Tax means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of any party) and any interest, penalty, fine or expense relating to any of them.

Term means the Initial Term and any Renewal Terms.

Third Party IP Claim means a claim or proceeding alleging that the whole or a part of the SaaS Services, or the Documentation, or both, or their use, infringes another person's Intellectual Property Rights.

UK Data Protection Laws means the UK Data Protection Act 2018 and UK GDPR (as defined in the UK Data Protection Act).

1.2 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) 'includes' means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives,

successors, assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) time is to local time in London;
- (vi) '£' or 'pounds' is a reference to British currency;
- (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (viii) this Agreement includes all schedules and annexures to it;
- (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Agreement;
- (x) the GDPR and/or an Article or Chapter of the GDPR shall, where the context so requires, be construed as a reference to the equivalent or corresponding provision of the UK Data Privacy Law(s); and
- (xi) References to "Processor", "Controller", "Personal Data", "Process", "Processing", "Personal Data Breach" "Data Subject" or "Supervisory Authority" shall have the same meanings as defined in the GDPR.
- (f) Headings do not affect the interpretation of this Agreement.

2

Term

- (a) Unless terminated earlier in accordance with its terms, this Agreement commences on the Commencement Date and continues for the Initial Term.
- (b) Unless one party notifies the other party 60 days prior to the end of the Initial Term that it will not renew this Agreement for a further period, this Agreement will automatically renew at the end of the Initial Term for the period of time indicated in **Error! Reference**

source not found. of the Details
(**Renewal Term**).

- (c) Unless one party notifies the other party 60 days prior to the end of any Renewal Term that it will not renew this Agreement for a further period, this Agreement will automatically renew at the end of the Renewal Term for a further Renewal Term.
- (d) The Fees for the SaaS Services specified in the Details will be adjusted annually by the greater of 5% or the percentage increase in the CPI between Quarter A and Quarter B. In this clause: **Quarter A** means the quarter which ended one year prior to the end of Quarter B; **Quarter B** means the quarter which ended immediately prior to the commencement of the Renewal Term; and **CPI** means the All Groups Consumer Price Index applicable to Sydney, published by the Australian Bureau of Statistics.

3 Provision of Services

- (a) Subject to the payment of all applicable Fees and Client's compliance with the terms of this Agreement, Benchmark will:
 - (i) if required under **Error! Reference source not found.** of the Details, provide the Professional Services in accordance with the terms of this Agreement and the relevant SOW;
 - (ii) make the SaaS Services available to Client online via the Platform and provide Client with usernames and passwords for online access by Authorised Users to use the Platform and the SaaS Services;
 - (iii) provide the Client with the Documentation;
 - (iv) permit the Client and its Authorised Users to access and use, the SaaS Services and the Documentation provided that the SaaS Services and Documentation may only be used solely for the Permitted Purpose;
 - (v) provide the Support Services in connection with the SaaS Services; and
 - (vi) make available to the Client, as part of the SaaS Service, any updates to the Software that are made generally available by Benchmark via the SaaS Services,

on the terms of this Agreement.

- (b) Unless otherwise stated, the Services are supplied to Client on a non-exclusive non-transferable, and non-sublicensable basis.
- (c) Benchmark will perform its obligations under this Agreement:
 - (i) in accordance with all applicable laws,
 - (ii) with due care and skill, and
 - (iii) so as to ensure that the SaaS Services conform in all material respects with the SaaS Service Description and any Specifications agreed under a SOW.

4 SaaS Services – access and use

4.1 Login, passwords and security

- (a) Benchmark will issue the Client with login details and passwords for use of the SaaS Services by Authorised Users. The Client must only provide password information and permit access to and use of the SaaS Services by the Authorised Users.
- (b) The Client must not disclose any login or password details to any person who is not the Client or an Authorised User. The Client must ensure that each Authorised User:
 - (i) maintains the security and secrecy of their login and password details;
 - (ii) does not disclose their login or password details to any other person; and
 - (iii) does not permit any other person to access or use the SaaS Services by using that Authorised User's password.
- (c) The Client acknowledges that Benchmark may monitor an Authorised User's use of the SaaS Services and may maintain user access logs.

4.2 Access by Authorised Users

- (a) Access to the SaaS Services is only available to the Authorised Users. The Client must:
 - (i) where the Details indicate a maximum number of Authorised Users, ensure that the number of Authorised Users that it authorises to access and use the SaaS Services does not exceed that

- maximum number (or as increased pursuant to clause 4.2(b));
- (ii) ensure that each Authorised User does not share access to the Services with any other person, including the sharing of login and password information; and
 - (iii) maintain a written, up to date list of current Authorised Users and provide such list to Benchmark within 5 Business Days of Benchmark's written request.
- (b) Unless specified in the Details, the Client may replace an existing Authorised User with another person, subject to the terms of this Agreement, including 4.2(a)(i).
- (c) Where the Details indicate a maximum number of Authorised Users, and the Client requires an increase to the number of Authorised Users permitted to access the SaaS Services, it must first procure Benchmark's consent to the increase and pay any additional Fees nominated by Benchmark for the increase to the number of Authorised Users.
- (d) The Client must allow Benchmark to audit the Client's and Authorised Users' use of the SaaS Services in order to establish that the Client is in compliance with the requirements of clauses 4.1 and 4.2 and to determine whether the Fees have been correctly determined. Such audit may be conducted no more than once per quarter, at Benchmark's expense, and this right will only be exercised after giving the Client reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business. If any such audits reveal:
- (i) that any password has been provided to any individual who is not an Authorised User, then without prejudice to Benchmark's other rights, the Client must promptly disable that person's access to the SaaS Services; and
 - (ii) that the Client has underpaid any Fees to Benchmark, the Client must pay to Benchmark an amount equal to such underpayment as calculated in accordance with the amount set out in the Details within 5 Business Days of the date of receiving the results of the relevant audit.
- (e) The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the

SaaS Services. In the event of any unauthorised access or use, the Client must promptly notify Benchmark, and ensure that each Authorised User notifies Benchmark, as soon as the Client or the Authorised User becomes aware of, or suspects, any unauthorised access to or use of, or breach of security in relation to, the SaaS Services.

- (f) The Client shall be responsible for all use and misuse of the SaaS Services by its personnel and any Authorised Users. Any act or omission of its personnel or any Authorised User shall be deemed to constitute an act or omission of the Client.

4.3 Client System and facilities

The Client:

- (a) must ensure that the Client System complies with any relevant requirements notified by Benchmark from time to time;
- (b) is solely responsible for selecting, supplying and maintaining its own facilities and equipment (including hardware, software and access to the internet) for use in connection with the SaaS Services; and
- (c) must ensure that it and all Authorised Users are appropriately trained in the use of the Platform and only access the Platform from a computer system (including operating system and web browser) and in a manner approved by Benchmark in writing.

4.4 Restrictions on use of SaaS Service

Without limiting Client's other obligations under this Agreement, Client must, and must ensure that the Authorised Users:

- (a) use the SaaS Services solely for the Permitted Purpose;
- (b) comply with all applicable laws when accessing and using the SaaS Services;
- (c) obtain or procure all necessary rights to use the Client Data that will be used in connection with the SaaS Services;
- (d) do not use or allow the SaaS Services to be used;
 - (i) in any way that is fraudulent, illegal or in breach of confidence;
 - (ii) to infringe Benchmark's or any other person's rights, including Intellectual Property Rights;

- (iii) for, or in relation to, providing outsourcing or bureau services;
- (iv) in any way that may impair the ability of Benchmark's other Clients to use the SaaS Services;
- (v) to view, access or copy any material or data other than that which Client is expressly authorised to access;

(e) do not:

- (i) licence, sell, resell, resupply, lease, share or transfer the SaaS Service, and Client must not permit third parties to access or use the SaaS Service, except as authorised by Benchmark in writing;
- (ii) interfere with, disrupt or undermine the operation, security and integrity of the SaaS Service, including by introducing any virus, malicious code or other similar item into any software which is part of the SaaS Services;
- (iii) copy, duplicate, alter, modify or reproduce the Software by any means or in any form or attempt to do so;
- (iv) publish, disclose or otherwise transfer the Software to a third party;
- (v) merge all or any part of the Software with any other software;
- (vi) attempt to create derivative works from the Software;
- (vii) attempt to reverse engineer, disassemble, decompile, decipher or otherwise decrypt the Software; or
- (viii) attempt to access or use all or any part of the SaaS Services, Software, Platform and/or Documentation in order to build a product or service which competes with the Software, SaaS Services, Platform and/or Documentation.

4.5 System Data

The Client must not, and must not allow any Authorised User or other person to:

- (a) use or permit any System Data to be used contrary to applicable law;
- (b) use and/or reproduce System Data other than for the Permitted Use.

Notwithstanding the foregoing, the Client must not in any circumstances use any System Data to make a profit including by selling, copying, or reproducing any System Data;

- (c) disclose, distribute, sell or transfer any System Data to any third party or reverse engineer, convert or decompile any System Data without Benchmark's prior written consent.

5 SaaS Service – updates and maintenance

5.1 SaaS Service updates

- (a) Benchmark may modify or update the SaaS Service from time to time during the Term.
- (b) If a modification or update has a material and adverse impact on the features and functionalities of the SaaS Services or causes the SaaS Services to operate in a way that does not materially satisfy any Specifications as agreed under a SOW for Professional Services (**Service Reduction**), the Client may notify Benchmark that a Service Reduction has occurred and request Benchmark to make changes to the SaaS Service to remove the Service Reduction. If Benchmark declines to do so or fails to remove the Service reduction within 21 days of receiving the Client's notice, the Client may, as its sole remedy in respect of the Service Reduction, give Benchmark written notice of termination.

5.2 Maintenance of SaaS Service

- (a) Benchmark will perform scheduled maintenance of its relevant computer systems from time to time. The Client acknowledges that this may interfere with the ability of the Authorised Users to access the SaaS Services. Benchmark will advise the Client when such maintenance is scheduled and use best endeavours to perform all scheduled maintenance at times likely to minimise interference to the Client and the Authorised Users.
- (b) If Benchmark needs to perform unscheduled maintenance, which will result in the SaaS Services not being able to be accessed for more than 30 minutes, Benchmark will endeavour to provide email notice to the Client where reasonably possible.

6 SaaS Service – suspension

- (a) Benchmark may, after providing notice in writing, without liability to the Client, suspend or disable the supply of the

SaaS Services if Benchmark reasonably suspects that the Client or any Authorised User has used or is intending to use the SaaS Service in any way in breach of clause 4.4.

- (b) Benchmark may, after providing notice in writing, without liability to the Client, suspend or disable the supply SaaS Services:
 - (i) if any amount due to be paid by the Client to Benchmark under this Agreement is overdue, and Benchmark has given to the Client at least 10 Business Days written notice, following the amount becoming overdue, of its intention to suspend or disable the SaaS Services on this basis;
 - (ii) to carry out emergency maintenance;
 - (iii) to preserve data and integrity of the SaaS Services; or
 - (iv) in the event of a security breach.
- (c) Any suspension or disabling of the SaaS Service will continue until the problem or breach is rectified, the relevant invoice is paid, the emergency maintenance is carried out or until otherwise agreed in writing between the parties.

7 Support Services

- (a) Subject to the payment of all applicable Fees and Client's compliance with the terms of this Agreement, Benchmark will, during the Term and at no additional cost to Client, provide Client with the Support Services as described in Schedule 2.
- (b) Where Benchmark provides Support Services through a helpdesk, Benchmark will respond promptly to all requests for Support Services made by the Client through the helpdesk.

8 Service Levels

- (a) Benchmark will use all reasonable endeavours to provide the Services in accordance with the Service Levels.
- (b) Where Schedule 3 indicates that Service Credits will apply:
 - (i) if Benchmark fails to provide the Services in accordance with the Service Levels, any Service Credits set out in Schedule 3 will apply in the amounts and in the manner as set out in Schedule 3.

Client agrees that Benchmark's liability for a failure to meet the applicable Service Levels is limited to payment of the Service Credits and that the applicable Service Credits are Client's sole remedy in respect of such a failure;

- (ii) the parties acknowledge and agree that the amount of any Service Credits under clause 8(b)(i) represents a genuine pre-estimate of the loss or damage likely to be suffered by Client as a result of Benchmark failing to meet the relevant Service Level; and
 - (iii) the Service Credits are only payable if requested in writing by the Client within 30 days of the end of the period to which they relate.
- (c) Benchmark is not liable for any failure to meet the Service Levels to the extent that such failure is caused by:
- (i) faults in any part of the Client System;
 - (ii) a fault or failure of the internet or any public telecommunications network;
 - (iii) any outage or malfunction of any third party hosting environment which is used to host the Software;
 - (iv) a breach of this Agreement by the Client;
 - (v) a Force Majeure Event;
 - (vi) Client's negligent or fraudulent acts or omissions, or those of Authorised Users or Client's Personnel;
 - (vii) Client's, or Authorised Users' use of any of the Services in a manner that is contrary to the Documentation or Benchmark's directions (including any use not authorised by Client, including by any person who is not an Authorised User); or
 - (viii) the unavailability of the Services due to Scheduled Outages or maintenance performed in accordance with clause 5.2.

9 Professional Services

9.1 Provision under a SOW

- (a) Where the Details require Benchmark to provide Professional Services, the

parties will agree a SOW for the supply of the Professional Services, and Benchmark will provide the Professional Services on the terms of the SOW and this Agreement.

- (b) Fees for the Professional Services will be as set out in the Details.
- (c) The SOW will become binding only when signed by both parties.
- (d) A SOW has effect on and from the date indicated in the SOW and will end upon the completion of the Professional Services, unless terminated earlier in accordance with the provisions of the SOW or this Agreement.
- (e) Each SOW will form part of this Agreement. The parties agree that the terms and conditions of this Agreement will apply to the supply of Services under each SOW established by the parties, except to the extent that such terms are expressly amended in the SOW.
- (f) The termination or expiry of a SOW will not automatically terminate the Agreement.
- (g) The parties may only vary a SOW by mutual agreement in writing.

9.2 Assistance and access

- (a) Client must:
 - (i) promptly provide all assistance, Client Inputs, Personnel and facilities as Benchmark reasonably considers necessary to ensure the satisfactory provision of the Professional Services; and
 - (ii) ensure that Benchmark is granted all reasonable access to Client's facilities and Client System, including all necessary consents and security clearances, for the purposes of providing the Professional Services.
- (b) Additional Fees may apply if the Client Inputs are incomplete or inaccurate, or if any of Benchmark's assumptions in respect of the implementation of the SaaS Services (as set out in the SOW) are incorrect in any respect.

9.3 Delivery and delays

- (a) Benchmark will use its best endeavours to meet any delivery dates specified in the SOW but does not guarantee that it will do so.

- (b) Where a delay occurs, and that delay was not caused by Benchmark, the relevant delivery date(s) will automatically be extended by a period equal to the duration of the delay.
- (c) Where a delay occurs, and that delay was caused by the Client (including where the Client has failed to fulfil its obligations under the SOW in a timely manner), the Client must pay Benchmark:
 - (i) reasonable additional fees, at Benchmark's standard rates, for any additional work performed by Benchmark's Personnel; and
 - (ii) all additional out-of-pocket expenses incurred by Benchmark,
 resulting from the delay.

9.4 Professional Services Warranty

Benchmark warrants that:

- (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services, has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the Professional Services in accordance with this Agreement and the requirements of the SOW;
- (b) subject to the Client fulfilling its obligations under this Agreement and the SOW, the Professional Services will be performed in a professional manner and otherwise in accordance with the requirements of the SOW and this Agreement;
- (c) in performing the Professional Services, it will comply with all applicable laws, guidelines and codes; and
- (d) Benchmark has all licences and permissions necessary to perform its obligations in relation to the Professional Services under this Agreement and in accordance with the requirements of the SOW.

9.5 Defects

- (a) Benchmark does not represent or warrant that any Deliverable (including the SaaS Service as customised or configured under a SOW) will be free from Defects.
- (b) Subject to clause 15.5, if the SOW indicates that a warranty period applies, if a Deliverable has a Defect and if the

Client notifies Benchmark of the Defect during that warranty period, then the Client's sole remedy for that Defect is that Benchmark will, at no cost to the Client:

- (i) repair, replace, rectify or resupply the Deliverable or rectify the Defect; and
- (ii) supply the repaired, replaced or rectified Deliverable to the Client.

9.6 Intellectual Property Rights

All Intellectual Property Rights in the Professional Services and the Deliverables, including any configurations or customisations to the SaaS Services or Software, remain vested in Benchmark or its licensors.

10 Change Control

- (a) If either party wishes to change the scope of the Services (other than Professional Services provided under a SOW), it shall submit details of the requested change to the other party in writing and Benchmark shall, within a reasonable time, if it believes it can accommodate the requested change, provide a written quotation to the Client which includes:
 - (i) the likely time required to implement the change;
 - (ii) any variations to the Fees arising from the change; and
 - (iii) any other impact of the change on the terms of this Agreement.
- (b) If either party wishes to change the scope of Professional Services provided under a SOW, the parties must agree to the changes in writing and in accordance with any requirements as set out in the SOW.
- (c) If the Client wishes Benchmark to proceed with the change, Benchmark has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Fees, and any other relevant terms of this Agreement or relevant SOW to take account of the change. No change to the scope of the Services, including Professional Services, shall be effective unless agreed in writing by Benchmark and the Client.

11 Documentation

- (a) Benchmark will provide Client with copies the Documentation in the

number and format as indicated in the Details. Client may make such number of copies of the Documentation as Client reasonably considers necessary to enable Client to use the SaaS Services.

- (b) Client may only use the Documentation for the Permitted Purpose and permit the Authorised Users to access and use the Documentation for the Permitted Purpose.
- (c) Except as otherwise permitted under this Agreement, Client must not:
 - (i) resell, distribute or transfer all or any part of the Documentation;
 - (ii) provide access to the Documentation to any person other than Client's Personnel who reasonably require access to the Documentation;
 - (iii) copy, alter, customise, modify or create derivative works of the Documentation; or
 - (iv) remove, obliterate or alter any proprietary notice on the Documentation.

12 Client Data

12.1 Title to Client Data

Client Data will remain the property of Client, and subject to the rights granted by Client under this Agreement, Benchmark acquires no other right, title, or interest from Client in or to Client Data, including any Intellectual Property Rights in such data.

12.2 Client's responsibilities and warranty

- (a) Client is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data.
- (b) Client must obtain or procure all necessary rights and consents for the Client and Benchmark to hold, store, use or disclose the Client Data in connection with the SaaS Services. Client represents and warrants to Benchmark that Client has all necessary rights, consents and permissions to collect, share and use all Client Data as contemplated in this Agreement (including granting Benchmark the rights in clause 12.3(a)) and that no Client Data will violate or infringe any laws or any third party intellectual property, publicity, privacy or other rights.

12.3 Use by Benchmark of Client Data

- (a) Client grants Benchmark a worldwide, limited-term license to use, host, copy, transmit, store and display Client Data as necessary for Benchmark to provide the Services in accordance with this Agreement, including any provision of secure backups and in connection with any data recovery activities.
- (b) Benchmark may host the Client Data on Benchmark's servers or Benchmark's third party suppliers' servers (as applicable) which may be located at any location worldwide. At Client's request, Benchmark will notify Client of the location of the relevant servers.
- (c) Benchmark may disclose Client Data if it is compelled by law or court order to do so, provided that it gives Client prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Client's cost, if Client wishes to contest the disclosure.
- (d) Benchmark will not, subject to clause 12.3(c):
 - (i) use Client Data for any purpose other than directly in relation to the supply of the SaaS Services in accordance with this Agreement;
 - (ii) purport to sell, let for hire, or assign any rights in the Client Data;
 - (iii) make Client Data available to external parties without the prior approval of the Client and as agreed on a need-to-know and confidential basis; or
 - (iv) commercially exploit the Client Data.

12.4 Security, back ups and loss of Client Data

- (a) Benchmark will:
 - (i) establish and maintain reasonable security measures which are designed to protect the Client Data in Benchmark's possession or control against unauthorised or unlawful access or use or accidental loss or destruction; and
 - (ii) implement and operate up-to-date virus and security software consistent with industry practice;
- (b) Benchmark will perform daily backup of Client Data for disaster recovery purposes. Client allows Benchmark to

access and copy Client Data for that purpose.

- (c) Benchmark agrees that it will not intentionally delete any Client Data from the SaaS Service during the Term. In the event of any loss or damage to the Client Data, the Client's sole and exclusive remedy shall be for Benchmark to use reasonable endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Benchmark. Benchmark shall not be responsible for any loss, destruction, alteration or disclosure of the Client Data

12.5 Aggregated Anonymous Data

Benchmark may obtain and aggregate technical and other data about Client's use of the SaaS Services that is not personally identifiable with respect to Client (**Aggregated Anonymous Data**), and Benchmark may use the Aggregated Anonymous Data to analyse, improve, support and operate the SaaS Services and otherwise for any business purpose during and after the Term of this Agreement. This clause 12.5 does not give Benchmark the right to identify Client as the source of any Aggregated Anonymous Data.

13 Privacy

- (a) Each party must comply with all Privacy Laws applicable to it in relation to any Personal Data that is Processed under or in connection with this Agreement.
- (b) The Client must:
 - (i) obtain all applicable consents and authorisations or otherwise ensure that it has a lawful basis to allow Benchmark to perform its obligations under this Agreement in accordance with all Privacy Laws;
 - (ii) Process Personal Data for the purposes of complying with its obligations under this Agreement or as expressly permitted by applicable law;
 - (iii) not, and must warrant and represent to Benchmark that it will not Process or otherwise do or omit to do anything in relation to Personal Data that would cause Benchmark to contravene any Privacy Law;
 - (iv) cooperate with Benchmark to resolve any complaint or inquiry made under any Privacy Law, or in

relation to any request for access to Personal Data;

- (v) notify Benchmark immediately if the Client becomes aware of any breach or potential breach of its obligations under this clause 13, provide any details in relation to the failure that Benchmark requests, and without limiting any of Benchmark's rights under this Agreement, immediately comply with any reasonable direction from Benchmark with respect to remedying that breach; and
- (vi) comply with its obligations under Benchmark's Data Breach Policy, located here:
<https://www.benchmarkestimating.com/data-breach-policy/>.

- (c) For the purpose of UK Data Protection Laws, the parties acknowledge and agree that in relation to Benchmark's Processing of Personal Data in connection with the provision of the SaaS Service, Client shall be considered a Controller and Benchmark shall be considered a Processor.

Restricted Transfers

- (d) The parties acknowledge and agree that the transfer or making available of Personal Data from Client to Benchmark is considered a Restricted Transfer, the parties shall rely on the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses issued by the ICO under or pursuant to section 119A(1) of the Data Protection Act 2018 (as may be amended by the ICO from time to time pursuant to its terms) ("UK Addendum") to transfer the Personal Data from Client to Benchmark.
- (e) Accordingly, each party agrees that by entering into this Agreement, the UK Addendum shall be deemed agreed, incorporated by reference into the Agreement and executed by each of the parties without the need for any further signature from either party, with Client being the data exporter and Benchmark being the data importer.
- (f) For the purpose of the UK Addendum, the following provisions shall apply: (i) the Module Two terms are selected where Client is the Controller and Benchmark is the Processor; (ii) in Clause 7, the optional docking clause shall not apply; (iii) Clause 9 shall reflect the

General Authorisation option; (iv) in Clause 11, the optional language does not apply; (v) the information required for Table 1 of the UK Addendum (including relevant company and key contact details) shall be the information provided in the Agreement; (vi) The Appendix information required for Table 3 of the UK Addendum is set out in Schedule 4; and for the purpose of Table 4 of the UK Addendum, the parties agree that both the data exporter and the data importer may end the UK Addendum as set out in Section 19 of the UK Addendum.

Cessation of Restricted Transfer

- (g) The UK Addendum shall cease to apply to the processing of Personal Data under the Agreement if and to the extent that the relevant transfer of the Personal Data ceases to be a Restricted Transfer.

Inadequacy of UK Addendum

- (h) If the UK Addendum ceases to exist or is no longer considered by either party to be a lawful method of complying with the International Transfer Requirements for any reason, Benchmark shall cease (and procure that any the relevant third party ceases) all substantive processing of such Personal Data until such time as an alternative transfer mechanism and/or supplementary measures and/or safeguards to comply with the International Transfer Requirements are put in place. Benchmark shall have no liability for any failure to provide the SaaS Service as a result of its Processing of Personal Data being suspended due to the inadequacy of the UK Addendum.

No conflict

- (i) Where the parties rely on UK Addendum to transfer Personal Data from Client to Benchmark, to the extent a conflict arises in respect of the operative clauses of this Agreement and the UK Addendum, the UK Addendum shall prevail. For the avoidance of doubt, nothing in this Agreement is intended to contradict the provisions of the UK Addendum.

14 Fees and taxes

14.1 Fees

- (a) Client must pay to Benchmark the Fees for the SaaS Service at the rate and in

the manner set out in the Details, and as increased in accordance with clause 2(d).

- (b) Client must pay to Benchmark the Fees for the Professional Services and expenses (if any) at the rate and in the manner set out in the Details.
- (c) Benchmark may invoice the Fees for the SaaS Service and for any Professional Services in the manner and at the times set out in the Details.
- (d) Client must pay any undisputed invoices within 14 days after the date of receipt of that invoice.
- (e) If Client wishes to dispute the whole or any portion of the amount claimed in an invoice submitted by Benchmark, Client must:
 - (i) notify Benchmark of the dispute in writing within 7 days of receipt of the invoice and set out in that notice the reasons why the amount is disputed; and
 - (ii) pay the portion of the amount stated in the invoice which is not in dispute.

If the parties resolve that the amount in dispute ought properly to have been paid at the time of the first invoice, Client must pay the amount finally resolved.

- (f) All Fees are payable in Great British Pounds; and are, except as otherwise expressly agreed by Benchmark or set out in this Agreement, and unless contrary to non-excludable law, non-refundable.
- (g) All Fees shall be exclusive of any applicable VAT or other applicable sales tax which shall be payable by Client in addition to, and at the same time as, the underlying Fees.

14.2 Set-off, withholding and deduction

- (a) Client must make payments to Benchmark under this Agreement without set-off, counter claims, conditions, restrictions, withholdings or deductions unless required by law.
- (b) If any withholding or deduction for or on account of Tax is required by law to be made from any payment made under this Agreement Client must notify Benchmark of the requirement promptly after becoming aware of it and Client must:

- (i) pay that Tax to the relevant government agency before the date on which penalties may accrue; and
- (ii) give Benchmark an official receipt or other official document evidencing payment of the Tax.

- (c) If any withholding or deduction for Tax is required from any payment made under this Agreement under clause 14.2(b), Client must pay to Benchmark the additional amount required so that Benchmark receives the full amount which it would have received under this Agreement if the withholding or deduction for Tax had not been required.

15 Disclaimers

15.1 SaaS Services are provided 'as is'

- (a) The Client acknowledges and agree that the SaaS Services are dependent on a number of factors beyond Benchmark's control, including but not limited to, the operation of hardware and network services provided by third parties, and that there may be occasional communication failures or delays in the delivery of the SaaS Services which are beyond Benchmark's control.
- (b) Client acknowledges that, to the extent permitted by law, the SaaS Services are provided 'as is' without any warranty whatsoever (other than as provided in this Agreement), and, to the extent permitted by law, Benchmark makes no guarantees, representations or warranties of any kind, express or implied, with respect to the functioning of the SaaS Services.
- (c) The Client accepts full risk and responsibility for its and its Authorised Users' use of the SaaS Services (whether or not such use was authorised by the Client) and agrees that it uses the SaaS Services at its own sole risk.

15.2 No warranty that Software will perform error-free

Without limiting clause 15.1(b), Benchmark does not represent or warrant that:

- (a) the SaaS Services will perform error-free or uninterrupted, or that the SaaS Services will provide any functions not expressly stated in the Service Description, Specifications or Documentation; or

- (b) the SaaS Services are compatible or will inter-operate with any particular computer system or item of equipment, software (including operating systems) or data format.

15.3 Use of Services

- (a) Without limiting clause 15.1(b), Benchmark does not represent or warrant that the SaaS Services are suitable for any particular purpose. The Client acknowledges that it has relied on its own skill and judgment in deciding to acquire the Services and enter into this Agreement.
- (b) Except as expressly and specifically provided in this Agreement, the Client assumes sole responsibility for results obtained from the use of the Software and the Services by the Client and Users, and for conclusions drawn from such use.
- (c) Subject to clause 15.5, Benchmark specifically disclaims any warranties with respect to the accuracy and/or validity of any estimates or data produced by the Software or SaaS Services. The Client must verify that any estimates calculated by the Software are correct and free from error prior to relying on any such estimates or data.

15.4 Exclusion of warranties

To the extent permitted by law and other than as provided in this Agreement, all express and implied terms, conditions and warranties which otherwise might apply to, or arise out of, this Agreement are excluded.

15.5 Non-Excludable Guarantees

[Not used]

15.6 Third party tools

The Platform and SaaS Services can be used in connection with third party software, applications, products and platforms (**Third Party Tools**). In relation to any Third Party Tools:

- (a) Benchmark does not endorse, approve, recommend or accept responsibility for those Third Party Tools or their content or operators;
- (b) Benchmark does not make any representations or warranties with respect to any Third Party Tools (whether as to their accuracy, quality or correctness, performance, availability, compatibility with the Platform and/or otherwise). The Client's use of Third

Party Tools is at the Client's sole risk; and

- (c) To the maximum extent permitted by law, Benchmark excludes all responsibility and liability for those Third Party Tools and their content.

16 General warranties

Each party represents and warrants to each other party that:

- (a) it has capacity unconditionally to execute and deliver and comply with its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with its obligations under, this Agreement;
- (c) this Agreement constitutes its valid and legally binding obligations and is enforceable against it by any other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this Agreement, do not contravene:
 - (i) any law to which it or any of its property is subject or any order or directive from a government body binding on it or any of its property; or
 - (ii) its constituent documents, any agreement or instrument to which it is a party or any obligation to any other person.

17 Intellectual property rights

- (a) Client acknowledges that:
 - (i) as between Benchmark and the Client, Benchmark is the owner of all rights in respect of the Services (including the SaaS Services), Software, Platform and Documentation; and
 - (ii) this Agreement does not confer and Client does not acquire any right, title or interest in the Services (including the SaaS Services), Software, Platform or Documentation, except as expressly granted to Client under this Agreement.
- (b) The Client must not:
 - (i) contest or challenge the validity of any Intellectual Property Rights of Benchmark or its licensors;

- (ii) use any trade marks or other marks of Benchmark or its Related Bodies Corporate (**Marks**) except as agreed in writing by Benchmark; or
- (iii) contest any Mark, apply for registration of any Benchmark Mark or use or apply for registration of any trade mark, trade name, business name, company name or domain name which is or incorporates any element that is confusingly similar to any Marks; or
- (iv) attempt to remove or circumvent any technical protection measures implemented by Benchmark to protect its Intellectual Property Rights.

- (A) discloses only the minimum amount of Confidential Information required to satisfy the relevant law or stock exchange rules; and
- (B) prior to such a disclosure, the recipient provides a reasonable amount of written notice to the other party;
- (ii) to those Personnel who have a need to know the Confidential Information to enable the party to comply with its obligations under this Agreement; or
- (iii) with prior written consent of the other party, to enable the performance of obligations under this Agreement.

18 Confidentiality

- (a) Each party agrees to keep confidential, and not to use or disclose, other than as permitted in this Agreement, any Confidential Information of the other party.
- (b) Each party agrees to take all prudent steps, including maintaining effective security measures, to protect the Confidential Information of the other party from unauthorised access, use, copying or disclosure.
- (c) Notwithstanding the provisions of this clause 18, a party may disclose Confidential Information of the other party that is:
 - (i) in the public domain otherwise than as a result of a breach of this Agreement or any other obligation of confidence;
 - (ii) independently developed by the recipient; or
 - (iii) already known by the recipient, independently of its involvement in this Agreement or its interaction with the other party and free of any obligation of confidence.
- (d) Each party may disclose the Confidential Information of the other party only on a 'need-to-know' and confidential basis:
 - (i) if it is required to make such a disclosure by applicable law or the rules of any stock exchange upon which the recipient's securities are listed, provided that the recipient:

- (e) Each party who discloses Confidential Information of the other party under this clause must ensure that the information is kept confidential by the recipients.
- (f) In addition to other remedies, a party will be entitled to injunctive relief for any breach or threatened breach of the other party's obligations of confidentiality under this Agreement.
- (g) No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- (h) Each party must, at the other party's option, return, destroy or permanently de-identify all copies of the other party's Confidential Information in its possession or control within 10 Business Days of the expiry or termination of this Agreement.
- (i) This clause 18 survives expiration or termination of this Agreement.

19

IP Indemnity

- (a) Subject to clause 19(b), Benchmark indemnifies Client against any court awarded damages, settlement costs and reasonable and substantiated legal expenses suffered or incurred by Client in connection with a Third Party IP Claim, subject to Client allowing Benchmark to control and direct any defence and settlement of the Third

Party IP Claim. This indemnity does not apply to the extent that such Third Party IP Claim arises from:

- (i) Client's use of the SaaS Services contrary to the Documentation, other directions of Benchmark, or this Agreement;
 - (ii) any improper acts or omissions of Client or any other person;
 - (iii) use of the SaaS Services in combination with other software or equipment otherwise than as provided in the Documentation; or
 - (iv) modification or alteration of the SaaS Services without Benchmark's prior written consent.
- (b) The indemnity in clause 19(a) does not apply unless the Client:
- (i) promptly notifies Benchmark in writing of the Third Party IP Claim together with details of the Third Party IP Claim;
 - (ii) provides Benchmark with reasonable assistance and information in conducting the defence and settlement of the relevant Third Party IP Claim; and
 - (iii) uses reasonable efforts to mitigate the losses associated with the relevant Third Party IP Claim.
- (c) Subject to clause 19(d), if there is, or is likely to be, a Third Party IP Claim, Benchmark may either:
- (i) modify or replace the SaaS Services, at Benchmark's cost, to render the SaaS Services non-infringing;
 - (ii) at Benchmark's cost, procure for the benefit of Client the authority to continue to use the SaaS Services; or
 - (iii) if Benchmark cannot satisfy either clause 19(c)(i) or clause 19(c)(ii), terminate this Agreement, including the licences granted under it, and refund to Client an amount equal to any prepaid SaaS Service Fees (if any) that have been paid by the Client in respect of the supply of the SaaS Services for any period after the date of termination.
- (d) If such Third Party IP Claim arises from an event specified in clause 19(a):

- (i) clause 19(c) does not apply; and
- (ii) Benchmark may terminate this Agreement immediately by notice in writing without incurring any liability to Client.

20

Client indemnity

Client must at all times indemnify, hold harmless and defend Benchmark and its respective officers, employees and agents (in this clause 19 referred to as **those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising out of or in connection with:

- (a) any wilful act or omission of Client, its employees, agents or sub-contractors, or any Authorised User, in connection with this Agreement;
- (b) any infringement of Benchmark's Intellectual Property Rights committed by the Client;
- (c) any breach or alleged breach by Client of clause 12.2, or any claim that the transmission, storage, disclosure, access, transfer, processing or use of any Client Data by Benchmark or any Benchmark hosting provider or other contractor or agent infringes the Intellectual Property Rights or other rights of any person or breaches any law, regulation, code or standard. This indemnification obligation is subject to Client receiving:
 - (i) prompt written notice of such claim;
 - (ii) the exclusive right to control and direct the investigation, defence, or settlement of such claim (provided that Client may not settle any claim against Benchmark unless the settlement unconditionally releases Benchmark of all liability); and
 - (iii) all reasonable assistance at Client's expense; and
- (d) the Client's or any Authorised User's use of the SaaS Services or any other services provided by Benchmark Estimating Software under this Agreement.

21

Exclusion and limitation of liability

21.1

Consequential Loss

Neither party will be liable to the other party for any Consequential Loss suffered or

incurred by the other party in connection with this Agreement, whether arising from or in connection with any breach of contract, tort (including negligence) or any other cause of action. For the purpose of this clause, **Consequential Loss** means any direct or indirect loss of profits, loss of business, loss of revenue, depletion of goodwill and/or similar losses, loss or corruption of data or information, or pure economic loss, or any other indirect or consequential loss suffered or incurred by a person that does not arise naturally according to the usual course of things out of any breach of this Agreement or other event giving rise to the liability.

21.2 Limitation on liability

Subject to clauses 21.1, 15.5 and clause 21.3, and to the extent permitted by law, Benchmark's total aggregate liability to Client for all loss or damage suffered or incurred by Client under or in connection with this Agreement, whether for breach of contract (including fundamental breach), repudiation, in tort (including negligence), under statute or on any other basis, will be limited (in the aggregate) to the SaaS Services Fees which were paid by the Client to Benchmark during the 12 month period following the Commencement Date.

21.3 No limitation

Subject to clause 21.1, nothing in this Agreement limits or excludes liability for:

- (a) personal injury or death, or damage to or loss of real or personal property;
- (b) acts of fraud, wilful misconduct or wilful or fraudulent misrepresentation; and
- (c) acts in breach of an applicable law related to the provision or acquisition of the Services and the Documentation.

22 Termination on default

22.1 Termination

- (a) Either party may terminate this Agreement or a SOW immediately by giving the other party written notice, if:
 - (i) the other party commits a material breach of this Agreement (including the terms of a SOW), and the breach is incapable of remedy or the breach is capable of remedy but the other party fails to remedy the breach within 20 Business Days of receiving notice requiring it to do so; or
 - (ii) an Insolvency Event occurs in relation to the other party.

- (b) Benchmark may immediately terminate this Agreement or a SOW by written notice to Client if Client does not pay any money due for payment under this Agreement on the due date and Client does not pay that money within a further period of 20 Business Days after Benchmark serves written notice on Client requiring payment.

22.2 Consequences of termination or expiry

On expiry or termination of this Agreement:

- (a) all SOWs will terminate;
- (b) all rights and obligations of the parties will automatically terminate except for those set forth in this clause 22.2, obligations to indemnify and obligations under any terms relating to intellectual property, confidential information, privacy, liability, governing law and any other terms which expressly or which by their nature will survive termination of this Agreement;
- (c) the licences granted under this Agreement terminate;
- (d) the Client must:
 - (i) cease accessing and using the SaaS Services and the Documentation; and
 - (ii) deliver to Benchmark all copies of the Documentation in its possession, custody or control, or, at Benchmark's direction, destroy or erase such copies;
- (e) each party must promptly return, and must ensure that its Personnel promptly return, any Confidential Information of the other party in its possession, custody or control;
- (f) Client must pay to Benchmark all outstanding amounts owing to Benchmark; and
- (g) Benchmark will provide the Client with a copy of the Client Data if requested by the Client within 30 days of the date of termination. Benchmark may delete all Client Data after providing a copy to the Client. If the Client does not request a copy of the Client Data within 30 days, Benchmark may delete the Client Data.

22.3 Other rights not affected

The termination of this Agreement does not affect any of Benchmark's other rights or remedies.

23 Force Majeure

- (a) In this clause 23, **Force Majeure** means a circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the party claiming force majeure, including accident, fire, explosion, epidemic, pandemic, strike, lockout, labour conditions, civil disturbance, riot, any act of God, act of war, terrorist incident, cyclone, flood, storm or earthquake.
- (b) Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of this Agreement by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:
 - (i) gives notice to the other party within 7 days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect; and
 - (ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and gives notice to the other party with written notice within 7 days of the cessation of the Force Majeure.
- (c) If a delay caused by Force Majeure continues for more than 45 days, either party may terminate this Agreement by giving 15 days' notice to the other party.

24 Dispute resolution

- (a) The parties agree to use best endeavours to resolve in good faith any dispute concerning this Agreement.
- (b) Each party must follow the procedures in this clause 24 before commencing any legal proceedings (except for urgent injunctive or declaratory relief).
- (c) If a dispute arises between the parties and that dispute cannot be resolved promptly between their nominated contact persons, either party may notify the other party of a formal dispute. Each party must nominate a senior executive to meet within 5 Business Days of the notice (or another agreed period) to try and resolve the dispute.
- (d) (d) If the senior executives referred to in clause 24(c) cannot resolve the dispute, then the parties may refer the dispute to mediation to be resolved with the assistance of a mediator. The mediator shall either be agreed on by the parties or, in the absence of

agreement, appointed by the Centre for Effective Dispute Resolution.

- (e) If the parties cannot resolve the dispute with the assistance of a mediator, then the parties may pursue remedies available to them at law, including the commencement of proceedings.
- (f) Each party must pay its own internal and legal costs in relation to complying with this clause 24.
- (g) Despite the existence of a dispute, and except where otherwise provided, each party will continue to perform its obligations under this Agreement.

25 Notices

Any notice or other communication to or by a party under this Agreement or a SOW:

- (a) must be given in writing by personal service, post or email;
- (b) must be in writing, legible, signed by the relevant party's authorised representative and in English addressed (depending on the manner in which it is given) to the relevant contact and address or email specified in this Agreement or to any other address or email last notified by the party to the sender by notice given in accordance with this clause; and
- (c) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
 - (iii) if sent electronically by email, at the time of transmission (except where the sender receives an automated message indicating that the email was not successfully delivered);

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

26 General

- (a) A party may not assign its rights under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld),

except that Benchmark may assign its rights under this Agreement without the prior written consent of the Client in connection with the sale or merger of the assets, shares or business of Benchmark.

- (b) This Agreement and any non-contractual obligations arising in connection with it shall be governed by English and Welsh law. The English and Welsh courts shall have exclusive jurisdiction to determine any dispute arising in connection with this Agreement, including disputes relating to any non-contractual obligations.
- (c) This Agreement may only be varied or replaced by a document executed by the parties.
- (d) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (e) Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- (f) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (g) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.

Support Services

Benchmark will provide the following Support Services in respect of its provision of the SaaS Services:

as described at <https://www.benchmarkestimating.com/support-services-policy/>

Support Services under a SOW

Benchmark will provide any additional Support Services described in a SOW agreed under this Agreement which may relate to the configuration or customisation of the SaaS Services under that SOW.

Service Levels

1 Definitions

Available means:

- (a) the SaaS Services are available for use by Client's users in a live production environment; or
- (b) the SaaS Services are not available to Client's users in a live production environment and the reason for the non-availability is a failure of Benchmark's environments or networks or Force Majeure, or is due to planned maintenance.

Response Time means the elapsed time between the time Client reports the Defect and the time Benchmark provides a Support Services reference number for the Defect to Client.

2 Priority Levels

- (a) The following table defines priority levels (**Priority Levels**) for Defects reported by Client to Benchmark:

Priority	Classification
Critical	Supported Software/SaaS Service is not usable for any purpose.
Severe	Malfunction impacting critical piece of functionality.
Serious	Malfunction impacting non-critical piece of functionality.
Minor/Query	Routine advice and guidance request. Documentation deficiency of usability suggestion.

- (b) Client will attempt to agree on the Priority Level for a Defect with Benchmark when Client reports the Defect to Benchmark.
- (c) If Client and Benchmark are unable to agree on the Priority Level, then Benchmark will determine the Priority Level for the Defect acting in good faith and having regard to all the information then supplied to it by Client.

3 Service Levels

3.1 Target Response Times

- (a) Where Client reports a Defect, Benchmark must achieve a Response Time which is consistent with the following targets:

Priority	Target Response Time
Critical	30 minutes
Severe	45 minutes
Serious	120 minutes
Minor/Query	24 hours

3.2 Availability service level

- (a) Benchmark will use its reasonable endeavours to ensure the SaaS Services are Available for at least the following minimum Availability percentage:

Availability	Measurement Period
99.5%	monthly

- (b) The Availability of the SaaS Services will be calculated as the percentage of hours the SaaS Services were Available during the measurement period as compared to the total number of hours during the measurement period.

4 Service Credits

- (a) Service Credits will be available to Client for failure to meet the Service Levels as follows:

Availability	Service Credit (% of monthly SaaS Fees)
Availability of the SaaS Service is less than 99.5% per month	5%
Availability of the SaaS Service is less than 90% per month	10%

The total amount of Service Credits payable by Benchmark to the Client in respect of any month will not exceed 10% of the total monthly SaaS Fee.

Data Processing Schedule

Subject matter of processing	The context for the processing of Personal Data is the Benchmark's provision of the SaaS Service under the Agreement
Duration of the processing	The period for which Benchmark will be providing the SaaS Service to the Client.
Nature and purpose of the processing	Benchmark may be required to access, receive, generate, store or otherwise process Personal Data in order to provide the SaaS Service.
Categories of data subject	Users of the SaaS Service
Type of personal data	Login details, account usage data
Location of processing by Benchmark	Australia