

MASTER SERVICES AGREEMENT

This Master Services Agreement is dated [Date] (the “**Effective Date**”) and made between:

Cardinus, Risk Management Limited, a limited company incorporated in the United Kingdom under registration number 03127254 whose registered office address is 22 Bishopsgate, London, EC2N 4BQ (“**Cardinus**”); and

[Customer Name], a limited company incorporated in the United Kingdom under registration number [number] whose registered office address is [Customer address] (the “**Customer**”)

(each a “**party**” and together the “**parties**”).

BACKGROUND

- (A) Cardinus has developed certain online software solutions relating to ergonomics and safety. Cardinus also provides a range of related services to its customers, such as hosting services, support services, and training in the use of Cardinus’s solutions.
- (B) The Customer wishes to use Cardinus’s online software solutions and purchase certain related services. This Agreement sets out the terms on which Cardinus shall provide its software and services.

AGREED TERMS

1. DEFINITIONS

1.1 In this Agreement, the following words and expressions shall have the following meanings:

“**Affiliate**” means, in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company.

“**Agreement**” means this Master Services Agreement, together with its Appendices and all Authorisations and Statements of Work agreed in accordance with its provisions.

“**Authorisation**” means a written communication (such as an invoice) from Cardinus to the Customer which confirms the purchase of User Subscriptions to access the Software Services and details the Courses/Assessments to be provided, or which refers to other documentation which does so (such as a quotation or order). A standard form of Authorisation is set out at Appendix A to this Agreement.

“**Authorised Users**” means those employees, agents, officers and contractors of the Customer who are authorised by the Customer to use the Software Services.

“**Authoring Tool**” means Cardinus browser-based solution that enables the customer to make modifications and enhancements to the software.

“**Confidential Information**” means any information directly or indirectly received by one party (the “**receiving party**”) in relation to the subject matter of this Agreement relating to the business activities, products, services, technology, finances, Affiliates, customers or commercial partners of the other party (the “**disclosing party**”) which is identified by the disclosing party as confidential or which a reasonable person would understand to be confidential under the circumstances, including the terms of this Agreement.

“**Courses/Assessments**” means individual online courses or risk assessments forming part of the Software.

“**Customer Data**” means: i) all the data inputted by the Customer, Authorised Users, or Cardinus on the Customer's behalf for the purposes of using the Software Services or facilitating the Customer's use of the Services; ii) performance and assessment data relating to the Authorised Users generated as a result of their use of the Software Services; and iii) any other data which Cardinus may receive from the Customer in connection with the provision of the Services (which shall in each case be the Confidential Information of the Customer).

"Customer Personal Data" means any Personal Data that is processed by Cardinus on behalf of the Customer in relation to this Agreement, but excluding Personal Data with respect to which Cardinus is a data controller;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the Data Protection Act 2018.

"Documentation" means the documentation made available by Cardinus to the Customer from time to time setting out a description of the Software and/or Software Services and the user instructions for the Software and/or Software Services.

"Fees" means the fees payable by the Customer for the Software Services, Professional Services, and/or Hosting and Support Services, as set out in the relevant Authorisation and/or Statement of Work.

"Hosting and Support Services" means the services described in Appendix C of this Agreement.

"Hosting and Support Term" has the meaning given in Section 5.2, and includes the Initial Hosting and Support Term together with each Hosting and Support Renewal Term.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information 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.

"Initial Software Services Term" This Agreement will commence on the Commencement Date and continue for a fixed term of [one (1)] / [three (3)] / [five (5)] years (the "Term"), unless terminated earlier in accordance with the express provisions of this Agreement. The Client acknowledges that the Term is a fixed commitment and cannot be cancelled for convenience.

"Input Materials" means any materials, files, documents or content entered by the customer into the authoring tool or provided by or on behalf of the Customer for the purposes of the provision of the Services (including any "white-labelling" of the Software Services).

"Minimum Initial Period" is defined as the minimum period of time contracting parties have agreed to be legal bound by the contract and is detailed in Appendix A, and (or) Appendix B.

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Production Environment" means the computer systems and IT infrastructure (including servers) located at Cardinus's or its hosting service providers' premises on which the Software is installed, or Customer Data is stored. The production specifications are available in the Cardinus Technical overview (which may change from time to time).

"Professional Services" means professional services to be provided by Cardinus such as the configuration or customisation of the Software or of any Course/Assessment, on-site training, consultancy, or the provision of user, technical or management support not included within the Hosting and Support Services, in each case as described in the applicable Statement of Work.

"Services" shall mean the Software Services, Professional Services, and/or Hosting and Support Services.

"Software" means Cardinus's browser-based health, safety and risk management software solutions, as more particularly described in the Documentation (and including all updates, enhancements, modifications and new versions to and of such software which Cardinus may make available to the Customer from time to time).

“Software Services” means the provision to the Customer’s Authorised Users of access to the Software hosted in the Production Environment as a browser-based subscription service, as more particularly described in the Documentation.

“Software Services Term” has the meaning given in Section 3.2, and includes the Initial Software Services Term together with each Software Services Renewal Term.

“Start Date” means the start date for the Hosting and Support Term set out in the Authorisation (or, where such start date is contingent on the completion of other work such as customisation or the release of customised Software, such date as the parties may agree in writing at the relevant time).

“Statement of Work” means a written statement of work describing any Professional Services agreed to be provided by Cardinus under this Agreement, in such form as the parties may agree. A standard form of Statement of Work is set out at Appendix B to this Agreement.

“User Subscription” means user subscriptions purchased by the Customer, entitling Authorised Users to access and use the Software Services in accordance with this Agreement.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 a reference to any “person” is to any individual, company, partnership or other body corporate;
- 1.2.2 a reference to any law is a reference to it and any subordinate legislation made under it, in each case as amended or re-enacted from time to time;
- 1.2.3 phrases beginning with the words “includes”, “including”, “in particular”, “for example”, “such as” and similar words shall be construed as illustrative and not exhaustive;
- 1.2.4 the singular includes the plural and vice versa; and
- 1.2.5 a reference to any document or agreement, including this Agreement, includes a reference to that document or agreement as amended, notated, supplemented, varied or replaced from time to time.

2. OVERVIEW

2.1 This Agreement provides a framework under which the Parties may from time to time agree:

- 2.1.1 Authorisations, setting out the scope, duration, financial model and Fees payable in relation to the licence granted to the Customer to access and use the Software Services and in relation to the accompanying Hosting and Support Services; and
- 2.1.2 Statements of Work to govern any Professional Services to be provided by Cardinus to the Customer.

2.2 No Authorisation or Statement of Work shall be binding until signed by the authorised representatives of both parties.

2.3 In the event of any conflict between:

- 2.3.1 the provisions in the main body of this Agreement and the provisions of any Statement of Work or Authorisation entered into between the Parties then the provisions of the Statement of Work or Authorisation shall prevail; and
- 2.3.2 the provisions of two or more Authorisations or Statements of Work, then the provisions of the most recent document shall prevail.

3. LICENSED RIGHTS AND RESTRICTIONS

3.1 Subject to the terms and conditions of this Agreement and payment by Customer of all applicable Fees (including for the applicable Hosting and Support Services), Cardinus grants to the Customer a non-

exclusive, non-transferable right to permit the Authorised Users to access and use the Software Services and the Documentation during the Software Services Term solely for the Customer's internal business operations.

- 3.2 The Software Services Term shall begin on the date when the software is released to the customer (including any customisation work specified with the authorisation). The Software Services Term will be subject to an **"Initial Software Services Term"** as defined in Appendix A.
- 3.3 If the Software Services Term is expressed in the Authorisation to be subject to an Initial Software Services Term, then it shall continue for the Initial Software Services Term described in the Authorisation and thereafter shall be automatically renewed for successive periods of the same duration of the Initial Software Services Term (each a **"Software Services Renewal Term"**), unless:
 - 3.3.1 either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Software Services Term or any Software Services Renewal Term, in which case the Software Services Term shall terminate upon the expiry of the applicable Initial Software Services Term or Software Services Renewal Term; or
 - 3.3.2 otherwise terminated in accordance with the provisions of this Agreement.
- 3.4 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement:
 - 3.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
 - 3.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - 3.4.3 access all or any part of the Software Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
 - 3.4.4 use the Software Services and/or Documentation to provide services to third parties such as external or commercial training;
 - 3.4.5 broadcast any Course/Assessment or use it in any form of presentation for training multiple individuals concurrently;
 - 3.4.6 broadcast any license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Services and/or Documentation available to any third party except the Authorised Users, or
 - 3.4.7 attempt to obtain, or assist third parties in obtaining, access to the Software Services and/or Documentation.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Cardinus.

4. PROFESSIONAL SERVICES

- 4.1 If the Customer requests and Cardinus agrees to perform any Professional Services, the parties shall set forth the details of such Professional Services in a Statement of Work which should address, at a minimum, the following:
 - 4.1.1 the description, scope, and estimated times for performance of the Professional Services;

- 4.1.2 the Parties' respective obligations and responsibilities in relation to the Professional Services to be provided (and in particular any dependencies to be provided by the Customer, such as access to its premises, systems or personnel);
 - 4.1.3 the Fees payable by the Customer for the Professional Services, together with a schedule of invoicing and payment;
 - 4.1.4 any specific provisions which will be applicable to the Statement of Work and which deviate from the standard position set out in the main body of this Agreement (for example, any particular treatment of the ownership and exploitation of Intellectual Property Rights).
- 4.2 Unless otherwise specified in the Statement of Work, the Professional Services shall be performed for the following Fees:
- 4.2.1 Cardinus will charge the Customer for Professional Services on a time-and-materials basis, based on Cardinus's current price list; and
 - 4.2.2 the Customer shall pay all reasonable travel, subsistence, accommodation and other expenses of Cardinus associated with providing such Professional Services. Such expenses shall be recharged without mark-up and Cardinus shall, where applicable and if requested, provide the Customer with receipts.
- 4.3 If the Customer requests additional Professional Services or Customer requests changes that are outside the scope of the original Professional Services or will require additional time and/or materials, the parties will agree new Statements of Work to be added to this Agreement from time to time to address such changes and/or additional work and the costs and expenses related thereto (and unless and until such Statements of Work are agreed Cardinus shall have no obligation to perform such additional work nor implement such changes).
- 4.4 In performing the Professional Services, Cardinus will:
- 4.4.1 perform the Professional Services with reasonable skill and care using suitably skilled personnel;
 - 4.4.2 comply with the Customer's internal policies and procedures relating to activities conducted at the Customer's premises, provided such policies and procedures have been provided to Cardinus in advance and are referred to in the relevant Statement of Work; and
 - 4.4.3 take reasonable steps to keep the Customer apprised of the progress of the Professional Services and of any delays which are reasonably anticipated by Cardinus.

5. HOSTING AND SUPPORT SERVICES

- 5.1 Cardinus shall provide the Hosting and Support Services during the Hosting and Support Term in accordance with Appendix C.
- 5.2 The Hosting and Support Term shall begin on the Start Date and continue for the Initial Hosting and Support Term and, thereafter, shall automatically renew for successive periods of twelve (12) months (each a "Hosting and Support Renewal Term"), unless the parties agree in writing to a new defined period for the Hosting and Support Term prior to the commencement of any renewal, or unless:
 - 5.2.1 either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Software Services Term or any Renewal Term, in which case the Software Services Term shall terminate upon the expiry of the applicable Initial Software Services Term or Hosting and Support Renewal Term; or
 - 5.2.2 otherwise terminated in accordance with the provisions of this Agreement.

6. FEES

- 6.1 The Customer shall pay the Fees against Cardinus' invoice (which shall be raised at the times specified in the relevant Authorisation or Statement of Work (as applicable)) and within Sixty (60) days end of month after the date of the invoice.
- 6.2 Cardinus may revise the Fees to be charged for the Software Services and Hosting and Support Services, in each case by providing the Customer with no less than thirty (30) days' written notice, provided that:
- 6.2.1 no such revision shall take place more than once during each contract year (i.e., the twelve (12) month period beginning on the date of the relevant Authorisation and successive twelve (12) month periods); and
- 6.2.2 if the Customer is unwilling to accept the revision to the Fees it may terminate this Agreement by written notice to Cardinus, such notice to be served before the end of the thirty (30) day period of notice served by Cardinus in relation to the proposed revision.
- 6.3 If the Customer fails to make any payment when due, and fails to make the overdue payment within five (5) days after receiving notice from Cardinus that it is overdue, then without limiting Cardinus's other rights and remedies:
- 6.3.1 Cardinus may suspend performance of any or all of the Services without liability to the Customer until such payment is made (which may include disabling the Customer's or any Authorised User's password, account and access to all or part of the Services); and
- 6.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to four per cent (4%) over the then current base lending rate of National Westminster Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.4 All amounts and Fees stated or referred to in this Agreement:
- 6.4.1 shall be payable in GB pounds sterling;
- 6.4.2 are non-cancellable and non-refundable (other than under Section 12.4); and
- 6.4.3 are exclusive of value added tax, which shall be added to Cardinus's invoice at the appropriate rate.

7. CUSTOMER'S RESPONSIBILITIES

- 7.1 The Customer shall:
- 7.1.1 co-operate with Cardinus in all matters relating to the Services;
- 7.1.2 provide Cardinus and its personnel with access to the Customer's premises and facilities as is reasonably required for the provision of the Services (and in particular the Professional Services);
- 7.1.3 provide Cardinus with such information and materials as Cardinus may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 7.1.4 ensure that it has all necessary rights, licences and consents to provide the Input Materials and Customer Data to Cardinus and to authorise Cardinus to use the Input Materials and Customer Data for the purposes of this Agreement;
- 7.1.5 perform any other specific obligations identified in the relevant Statement of Work or Authorisation; and
- 7.1.6 ensure that its use of the Software Services and the performance of its obligations under this Agreement are in all ways lawful.

- 7.2 Without limiting Section 7.1.6, the Customer shall not in its use of the Software Services (and in particular any authoring tool made available by Cardinus) access, store, distribute or transmit any viruses or other harmful code, or any material that:
- 7.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or discriminatory;
 - 7.2.2 facilitates illegal activity;
 - 7.2.3 depicts sexually explicit images; or
 - 7.2.4 otherwise causes damage or injury to any person or property,
- and Cardinus reserves the right, without limiting its other rights and remedies, to disable the Customer's access to any related material or to temporarily suspend the Customer's access to the Software Services in the event of any breach of the provisions of this Section 7.2.
- 7.3 If the performance of any of Cardinus's obligations under the Agreement is prevented or delayed by any act or omission on the part of the Customer, or any failure by the Customer to perform any relevant obligation:
- 7.3.1 Cardinus will be relieved from the performance of its obligations to the extent they are prevented or delayed as a result; and
 - 7.3.2 if as a result Cardinus incurs additional time or costs in performing the Services, Cardinus may invoice the Customer for the additional time at its standard rates and/or for the relevant costs at the same time as Cardinus next invoices the Customer for any Fees payable under the Agreement.
- 7.4 The Customer shall:
- 7.4.1 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - 7.4.2 obtain and maintain all necessary licences, consents, and permissions necessary for Cardinus, its contractors and agents to perform their obligations under this Agreement, including the Services;
 - 7.4.3 ensure that its network and systems comply with the relevant specifications provided by Cardinus from time to time; and
 - 7.4.4 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Cardinus's or its supplier's data centres, and for all problems, delays, delivery failures and other loss or damage arising from or relating to the Customer's network connections or telecommunications links.
- 7.5 In relation to the Authorised Users, the Customer undertakes that:
- 7.5.1 the maximum number of Authorised Users that it authorises to access and use the Software Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 7.5.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User;
 - 7.5.3 each Authorised User shall keep a secure password for his use of the Software Services and Documentation and that each Authorised User shall keep his password confidential. Cardinus may change or remove passwords or user account logins if the relevant passwords are deemed by Cardinus (acting reasonably) to be unsafe;
 - 7.5.4 it shall notify Cardinus immediately if it becomes aware of any unauthorised access to or use of the Software Services;

- 7.5.5 it shall permit Cardinus to audit the Customer's use of the Software Services during working hours on reasonable notice (and in such a manner as to minimise disruption to the Customer's business and operations) to verify the Customer's compliance with its obligations under this Agreement. Such audit may be conducted no more than once per quarter, at Cardinus's expense (unless such audit discovers any material breach of this Agreement by the Customer, in which case the Customer shall reimburse Cardinus's reasonable costs of audit).
- 7.6 Subject to Sections 7.7 and 7.8, the Customer may from time to time during any Software Services Term purchase additional User Subscriptions in excess of the number set out in the applicable Authorisation and Cardinus shall grant access to the Software Services and the Documentation to the relevant additional Authorised Users in accordance with the provisions of this Agreement.
- 7.7 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Cardinus in writing. Cardinus shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld) together with a quotation for the additional User Subscriptions.
- 7.8 If Cardinus approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within the period specified on Cardinus's invoice, pay to Cardinus the relevant fees for such additional User Subscriptions as set out in the relevant quotation and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Software Services Term or any Software Services Renewal Term (as applicable), such fees shall be pro-rated for the remainder of the Initial Software Services Term or then current Software Services Renewal Term (as applicable).
- 7.9 The Courses / Assessments are provided as a learning tool and without any warranty that completion of them or adherence to any advice contained in them will lead to any particular academic or professional qualification or to the achievement of any particular health & safety, compliance or business objectives. The Customer is responsible for verifying the suitability, relevance and accuracy of the Courses/Assessments and any advice contained in them before making them available to its Authorised Users.
- 7.10 Without limiting Section 7.9, if the Customer uses any authoring tool comprised in the Software Services to create any courses, assessments or other content or materials, then the Customer shall be solely responsible for ensuring the suitability, relevance, accuracy and safety of such content or materials and any advice contained in them before making them available to its Authorised Users.
- 8. CUSTOMER DATA**
- 8.1 The Customer shall own all right, title and interest in and to all the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants to Cardinus the non-exclusive, royalty-free right (which shall be capable of sub-licence) to store the Customer Data in the Production Environment for the purposes of providing the Hosting and Support Services and Software Services.
- 8.2 During the Hosting and Support Term Cardinus shall follow its standard back-up and archiving procedures for Customer Data as set out in Appendix C. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Cardinus to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data. Cardinus shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (other than Cardinus's sub-contractors).
- 8.3 Unless agreed in any authorisation, it is the Customer's sole responsibility to monitor data, including Customer Data, accumulated through the Customer's use of the Software Services, including accessing and reviewing the results of Courses/Assessments performed by Authorised Users. Cardinus is not obliged to notify the Customer that any of its Authorised Users have completed any Courses/Assessments nor to collate or export such data for or to the Customer.
- 8.4 Upon termination of the Hosting and Support Services for any reason Cardinus will, to the extent Cardinus holds and/or controls any Customer Data on behalf of the Customer:

8.4.1 provide a copy of such Customer Data to the Customer in an industry standard format; and

8.4.2 cease to make such Customer Data accessible to the Customer through the Production Environment.

8.5 The provision by Cardinus of Customer Data under Section 8.4.1 shall be free of charge, provided that if the Customer requires any additional work (such as formatting or manipulation of the Customer Data) in order to make use of it, Cardinus may charge for any such work as may be agreed in the same manner as for Professional Services provided under this Agreement.

9. PERSONAL DATA AND DATA PROTECTION

9.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

9.2 The Customer warrants to Cardinus that it has the legal right to disclose all Personal Data that it does in fact disclose to Cardinus under or in connection with this Agreement.

9.3 The Customer shall only supply to Cardinus, and Cardinus shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Appendix D (Data processing information) and of the types specified in Part 2 of Appendix D (Data processing information); and Cardinus shall only process the Customer Personal Data for the purposes specified in Part 3 of Appendix D (Data processing information).

9.4 Cardinus shall only process the Customer Personal Data during the Hosting and Support Term and for not more than 30 days following the end of the Hosting and Support Term, subject to the other provisions of this Clause 9.

9.5 Cardinus shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in this Agreement or any other document agreed by the parties in writing.

9.6 Cardinus shall promptly inform the Customer if, in the opinion of Cardinus, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

9.7 Notwithstanding any other provision of this Agreement, Cardinus may process the Customer Personal Data if and to the extent that Cardinus is required to do so by applicable law. In such a case, Cardinus shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

9.8 Cardinus shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

9.9 Cardinus and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Appendix D (Data processing information).

9.10 Cardinus must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, Cardinus shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third-party processor.

9.11 As at the Effective Date, Cardinus is authorised by the Customer to engage a sub-processor(s) with respect to Customer Personal Data.

9.12 Cardinus shall, insofar as possible and considering the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

- 9.13 Cardinus shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. Cardinus shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following Cardinus becoming aware of the breach.
- 9.14 In the event of a data breach caused by the customers authorised users, Cardinus may charge the Customer at its standard time-based rates for any work performed by Cardinus in relation to the data breach.
- 9.15 Cardinus shall make available to the Customer all information necessary to demonstrate the compliance of Cardinus with its obligations under this Clause 9 and the Data Protection Laws.
- 9.16 Cardinus shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 9.17 Cardinus shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Cardinus's processing of Customer Personal Data with the Data Protection Laws and this Clause 9. Cardinus may charge the Customer at its standard time-based charging rates for any work performed by Cardinus at the request of the Customer pursuant to this Clause 9.17.
- 9.18 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges and agrees that Cardinus and/or its licensors owns all Intellectual Property Rights in the Software, Software Services and Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, any such Intellectual Property Rights.
- 10.2 Unless Cardinus expressly agrees otherwise in the relevant Statement of Work, as between the parties Cardinus will remain owner of any Intellectual Property Rights in any materials or documents (including software code) provided by Cardinus to the Customer or developed by Cardinus for the Customer in the course of any agreed Professional Services ("**Deliverables**"). Cardinus hereby grants to the Customer a non-exclusive, royalty-free, worldwide licence to use and copy the Deliverables solely for the Customer's internal business purposes to the extent necessary to receive the benefit of the Services provided and to exercise the other rights granted under this Agreement. The Customer may not publish the Deliverables without Cardinus's prior written consent and you may not use the Deliverables to provide any services to any other person.
- 10.3 Cardinus may, in providing the Software Services, make images and content available to the Customer through any authoring tool and file manager functions comprised in the Software Services ("**Cardinus Content**"). The Customer may only use the Cardinus Content for the purposes of authoring online courses, assessment and other content and materials for use by Authorised Users in the course of their use of the Software Services. The Customer may not use the Cardinus Content for any other purpose, and in particular may not use the Cardinus Content in or in connection with any form of publication or any form of offline training, assessment, content or materials.
- 10.4 The Customer hereby grants to Cardinus a non-exclusive, royalty-free, irrevocable licence to use the Customer Data and Input Materials to the extent necessary to provide the Services and to exercise Cardinus's rights under this Agreement. The Customer warrants that it is the owner or licensor of all Intellectual Property Rights in the Customer Data and Input Materials and is authorised to grant the licence set out in this Section 10.4.

11. WARRANTIES

11.1 Each party represents, warrants and covenants to the other party that:

- 11.1.1 it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it under this Agreement;
- 11.1.2 the execution of this Agreement and performance of its obligations under this Agreement do not and shall not violate any other agreement to which it is a party; and
- 11.1.3 it shall perform its obligations under this Agreement in accordance with applicable law.

11.2 Cardinus warrants that the Software and Software Services will be fit for purpose, conform in all material respects to the Documentation and that the Services performed under this Agreement will be performed with reasonable skill and care. All other conditions, warranties or other terms which might have effect between the parties or which might otherwise be implied or incorporated into this Agreement are hereby excluded to the fullest extent permitted by law. In particular, Cardinus does not warrant that the Software or Services will be uninterrupted or free from error.

12. INDEMNITIES

12.1 Cardinus shall indemnify the Customer and keep the Customer indemnified from and against any and all damages awarded against the Customer or paid out by the Customer in settlement of any claim by a third party that the Customer's use of the Software, Services or Documentation in accordance with the provisions of this Agreement infringes the Intellectual Property Rights of that third party (together with any reasonable legal expenses incurred in relation to the relevant claim), provided that Cardinus shall not be obliged to indemnify the Customer against any infringement claim which is attributable to:

- 12.1.1 the inclusion or incorporation in the Software, Services or Documentation of any Customer Data or Input Materials;
- 12.1.2 any modification by the Customer (or any person other than Cardinus or its appointed contractors) of the Software or Documentation;
- 12.1.3 any breach of this Agreement by the Customer; or
- 12.1.4 if Cardinus provides or offers to provide any patch, upgrade, amendment, workaround or replacement materials, software or services to avoid such infringement, any failure by the Customer to adopt such solution or proposed solution.

12.2 The Customer shall indemnify Cardinus and its Affiliates and keep Cardinus and its Affiliates indemnified from and against any and all damages, costs, expenses, losses or liabilities suffered or incurred by Cardinus in connection with:

- 12.2.1 any claim brought or threatened against Cardinus by any third party:
 - 12.2.1.1 alleging that the receipt, storage or use by Cardinus of any Customer Data or Input Materials in accordance with this Agreement infringes the Intellectual Property Rights of that third party; and
 - 12.2.1.2 attributable to any breach by Customer or its authorised users of its security and confidentiality obligations under this Agreement; or
 - 12.2.1.3 for personal injury or otherwise in connection with any course authored by the Customer; or
- 12.2.2 any breach by the Customer of its obligations under Section 7.3

(in each case as applicable together with any reasonable legal expenses incurred in relation to the relevant claim).

- 12.3 The indemnity obligations of each party (the “**indemnifying party**”) in Sections 12.1 and 12.2 shall be subject to and conditional upon the indemnified party:
- 12.3.1 promptly notifying the indemnifying party in writing of any relevant claim, providing reasonable details;
 - 12.3.2 not making any admission or settlement in relation to the relevant claim without the indemnifying’s party’s consent;
 - 12.3.3 allowing the indemnifying party to have the conduct of the defence or settlement of any relevant claim; and
 - 12.3.4 giving the indemnifying party all reasonable assistance (at the indemnifying party’s expense) in dealing with the claim.
- 12.4 In connection with the defence or settlement of any claim, Cardinus may procure the right for the Customer to continue to use the Software or Services, or replace or modify the Software or Services so that they are no longer infringing or, if such remedies are not reasonably available, terminate this Agreement on no less than one week’s written notice to the Customer and provide to the Customer a pro rata refund of any Fees for any Services which were not provided to the Customer, and such refund shall be the Customer’s sole and exclusive remedy for such termination (without limiting Cardinus’s indemnity obligations under Section 12.1).
- 13. LIMITATION OF LIABILITY**
- 13.1 Nothing in this Agreement shall operate to limit or exclude either party’s liability for:
- 13.1.1 death or personal injury caused by its negligence;
 - 13.1.2 fraud or fraudulent misrepresentation; or
 - 13.1.3 any other matter for which its liability cannot be limited or excluded by law.
- 13.2 Subject to Section 13.1, Neither party shall not in any circumstances be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, under or in connection with the Agreement for any:
- 13.2.1 indirect or consequential loss or damage;
 - 13.2.2 loss of profits, business, sales or revenue;
 - 13.2.3 loss of business opportunity, goodwill or reputation;
 - 13.2.4 loss of anticipated savings;
 - 13.2.5 loss or corruption of data;
 - 13.2.6 business interruption; or
 - 13.2.7 loss or damage caused by the actions of any third party (other than Cardinus’s personnel and sub-contractors).
- 13.3 Other than for the losses set out in Section 13.2, and subject to Section 13.1, Cardinus’s maximum aggregate liability under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall in no circumstances exceed a sum equal to one hundred per cent (100%) of the fees paid by the Customer to Cardinus under this Agreement during the twelve (12) months preceding the date of the first event or occurrence giving rise to Cardinus’s liability.

14. TERMINATION

- 14.1 Without limiting its other rights and remedies, either party may terminate this Agreement with immediate effect by written notice to the other party if:
- 14.1.1 If either party commits any material breach of this Agreement and fails to remedy such breach (if capable of remedy) within thirty (30) days after receiving written notice requiring it so to do (or, if such breach consists of a failure to make any payment due under this Agreement, within ten (10) days after receiving written notice requiring it to do so);
- 14.1.2 either party:
- 14.1.2.1 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;
 - 14.1.2.2 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 any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction of the Customer;
 - 14.1.2.3 is the subject of a petition, notice, order or resolution in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction of the Customer;
 - 14.1.2.4 is the subject of a court application or order for the appointment of an administrator, or gives notice of its intention to appoint an administrator;
 - 14.1.2.5 goes into receivership, or if a person becomes entitled to appoint a receiver over all or any of the assets of the Customer;
 - 14.1.2.6 is the subject of any event or proceedings of equivalent effect to any of the events or proceedings described in this Section 14.1.2; or
 - 14.1.2.7 suspends or ceases, or threatens to suspend or cease, carrying on that part of its business to which this Agreement relates.
- 14.2 The Customer acknowledges that the Fees payable under this Agreement have been calculated based on the Customer's commitment to the full Term. Accordingly, the Customer may not terminate this Agreement for convenience prior to the expiry of the Term. The Agreement may only be terminated earlier in accordance with the express termination rights set out in this Agreement (for example, for material breach or insolvency).

15. POST-TERMINATION

- 15.1 Termination of this Agreement will not limit accrued the rights or remedies of either party.
- 15.2 On termination of this Agreement:
- 15.2.1 the Customer may request and Cardinus shall deliver to the Customer a copy of all Customer Data's in Cardinus's possession or control, in accordance with Section 8.4;
 - 15.2.2 the Customer shall immediately pay to Cardinus any outstanding Fees that have accrued under the Agreement prior to the date of termination;
 - 15.2.3 all rights or licences granted or agreed to be granted under this Agreement shall cease with immediate effect, and Customer shall promptly cease all use of the Software Services and delete any Documentation under its possession or control (except to the extent the Software Services continue to be provided under Section **Error! Reference source not found.**); and

- 15.2.4 any provision which is expressed or implied to survive termination, and in particular the provisions of Sections 1, 3.4, 9 (to the extent any personal data continues to be processed) 10, 12, 13, 15, 16 and 17 shall continue in full force and effect.

16. CONFIDENTIALITY

16.1 The receiving party agrees:

- 16.1.1 not to make use of the Confidential Information for any purpose other than the performance of its obligations or the exercise of its rights under this Agreement;
- 16.1.2 not to copy or reproduce the Confidential Information except as expressly permitted under this Agreement or as reasonably necessary to perform its obligations or exercise its rights under this Agreement;
- 16.1.3 not to disclose the Confidential Information to any person except its Affiliates, employees, officers, agents and contractors (in each case to the extent necessary for the performance of its obligations or the exercise of its rights under this Agreement) or to its legal and professional advisors, in each case subject to obligations of confidence and non-use equivalent in all material respects to those set out in this Section 16 and provided that the receiving party shall be liable for any subsequent disclosure or misuse by such persons of the Confidential Information;
- 16.1.4 to protect the Confidential Information and keep it secure from unauthorised access and disclosure in the same manner that it protects its own similar confidential information, but in any event using a reasonable standard of care.

16.2 The obligations in Section 16.1 shall not apply with respect to Confidential Information which the receiving party can demonstrate:

- 16.2.1 is or has become publicly known through no breach of Section 16.1;
- 16.2.2 is lawfully received by the receiving party from an independent third party without restriction and without breach of any duty of nondisclosure by any such third party;
- 16.2.3 is or was already known to the receiving party without any obligations of confidence at the date it was disclosed by or obtained from the disclosing party;
- 16.2.4 is disclosed without restriction by the disclosing party to any third party;
- 16.2.5 was independently developed by the receiving party without use of the Confidential Information; or
- 16.2.6 which is required to be disclosed by operation of law or by order of a court or administrative body of competent jurisdiction (provided that at as early a stage as possible the receiving party shall, to the extent it is permitted to do so by law, notify the disclosing party to allow it the opportunity to contest such order or requirement of disclosure or seek appropriate protective order).

17. GENERAL

17.1 Insurance. Cardinus will maintain throughout the term of this Agreement and for a period of one (1) year after its termination:

- 17.1.1 public liability insurance with cover of ten million pounds sterling (£10,000,000) per claim;
- 17.1.2 professional indemnity insurance with cover of five million pounds sterling (£5,000,000) per claim; and
- 17.1.3 employer's liability insurance with cover of ten million pounds sterling (£10,000,000) per claim.

- 17.2 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter (without limiting any separate non-disclosure or confidentiality agreement which they may have entered into). Each party acknowledges that in entering into this Agreement it does not rely on any representation or warranty not set out in this Agreement.
- 17.3 **Severability.** If any provision or part-provision of this Agreement is found by a court to be unlawful, unenforceable or void, that provision or part-provision shall be severed, and the remainder of this Agreement shall remain in force. If any provision or part-provision is severed the parties shall seek in good faith to agree an amendment to this Agreement which best achieves the intention of the severed provision or part-provisions.
- 17.4 **Publicity.** Cardinus may refer to the Customer as a customer of Cardinus (including by describing the Customer's business, and by using the Customer's name and trade mark(s)) in Cardinus's marketing materials (in any media) and on Cardinus's web sites.
- 17.5 **Relationship of the Parties.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.6 **Variation.** The Agreement may only be amended by an agreement in writing signed by the parties' authorised signatories.
- 17.7 **Waiver.** Any waiver of any right or remedy under this Agreement will not be effective unless in writing and signed by the waiving party's authorised signatory, and any such waiver will not be deemed effective in relation to any subsequent breach or default.
- 17.8 **Assignment.** Except as expressly permitted under this Agreement, neither party shall assign, transfer, mortgage, or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Cardinus may freely assign this Agreement to any Affiliate of Cardinus or otherwise to any person in connection with the sale to that person of that part of Cardinus's business to which this Agreement relates and may perform any of its obligations under this Agreement through sub-contractors.
- 17.9 **Force Majeure.** Except as to the payment of any sums due, neither party to this Agreement will be liable to the other for any failure to perform, or delay in the performance of, any if its obligation under this Agreement caused by circumstances beyond its reasonable control, including: acts of God, fire, strikes, lock-outs or other industrial disputes (whether involving Cardinus's or any other person's workforce), failure of a utility service or transport, failures or fluctuations in electrical power or telecommunications services, networks or equipment, war, civil commotion, epidemic, pandemic, acts of third parties (including Cardinus's suppliers or contractors) or governmental action ("**Force Majeure**"). The time for performance of any obligation so delayed or prevented will be extended by the period of such Force Majeure. If a party's performance is delayed for more than ninety (90) days from the date the Force Majeure arose, the party whose performance is not affected may terminate this Agreement by written notice to the affected party if such event of Force Majeure is continuing.
- 17.10 **Equitable Relief.** The Customer acknowledges and agrees that damages shall not be an adequate remedy in the event of any unauthorised use, reproduction, distribution or disclosure of the Software by or attributable to the Customer, and accordingly that Cardinus shall have the right to injunctive or other equitable relief in any such event.
- 17.11 **Notices.** Any notice under this Agreement shall be in writing and shall be:
- 17.11.1 delivered by hand or recorded or special delivery post at the recipient's registered office or such other address for service as may be agreed from time to time; or
- 17.11.2 sent by email to such address for service as may be agreed from time to time (and notices to the Customer shall be validly served if sent to [ADDRESS] and to the Cardinus shall be validly served if sent to Cardinus Risk Management, 2nd Floor, Windsor Court, Wood Street, East Grinstead, West Sussex, RH19 1UZ

17.11.3 . Any notice shall be deemed to have been received on delivery (in the case of notice by hand or post) or on sending (in the case of email, provided that the sender has not received any server error, bounce-back, inbox-full or other error message indicating non-delivery).

- 17.12 **Third Party Rights.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, except that Cardinus's Affiliates may enforce Section 12.2. The parties may terminate or amend this Agreement in accordance with its terms without the consent of any third party.
- 17.13 **Counterparts.** This Agreement may be executed in one or more counterparts, including, electronic copies, each of which will be deemed an original, but all of which together will constitute the same agreement.
- 17.14 **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of England and Wales. Any dispute or claim arising out of this Agreement or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales, provided that Cardinus may seek urgent injunctive relief in any jurisdiction.

SIGNED BY THE PARTIES' AUTHORISED REPRESENTATIVES:

By: _____
Duly authorised by [Customer]
Print Name:
Print Title:

By: _____
Duly authorised by Cardinus Risk Management Limited
Print Name:
Print Title:

APPENDIX A

FORM OF AUTHORISATION

This Authorisation is dated [date] and made under the Master Services Agreement dated [date] made between Cardinus and the Customer (the “**Agreement**”). Unless otherwise provided, capitalised words and phrases in this Authorisation have the meanings given in the Agreement.

1. Software Services

The following Software Services (as further described in the Documentation) are included in the Customer’s subscription:

PACE Software

Cardinus’s PACE platform allows those of the Customer’s Authorised Users who have been granted administrative access (“**PACE Users**”) to administer and manage Course/Assessment Software during the Software Services Term.

Course/Assessment Software

The Customer’s Authorised Users may access and use the following Courses/Assessments during the Software Services Term:

[LIST COURSE/ASSESSMENT SOFTWARE / REFER TO DOCUMENT WHICH SETS OUT LIST]

Authoring tool / programme engine– e-learning and risk assessment

Allows the Customer’s PACE Users with specific rights, to add, modify or delete training and risk assessment content during the Software Services Term.

File Manager

Allows the Customer’s PACE users with specific rights to:

- access Cardinus’s image library; and
- ability to upload and store images and files for use within course content.

2. Initial Software Services Term and Hosting and Support Term

[The Software Services Term is Rental / Software as a Service] [The Initial Software Services Term is [DURATION].

In relation to Hosting and Support Services, the Start Date is [date] and the Initial Hosting and Support Term is [12 months based on a minimum 36-month contract]. For the purposes of the Hosting and Support Services, Cardinus shall make its [UK/US] service desk available to the Customer in accordance with the Agreement.

3. Fees

The Fees for the Software Services, Configuration, Training Hosting and Support Services are as follows:

[INSERT DETAILS OF FEES (including when they will be invoiced and any specific payment terms: n.b. if no payment terms are specified the Agreement provides for 30 days from date of invoice)]

4. User Subscriptions

The number of User Subscriptions available to the Customer for the Fees set out above are [DETAILS].

The Software Services are made available for a maximum number of User Subscriptions per Course/Assessment. The number of User Subscriptions will be determined by whichever of the following is highest:

- the number of Authorised Users having access to the training section of the Course/Assessment.
- the number of Authorised Users having access to the risk assessment section of the Course/Assessment.

Using PACE, individual Authorised Users may be archived in which case they will not be counted as part of the maximum number of User Subscriptions provided that they have left the Customer's employment or are no longer engaged by the Customer.

SIGNED BY THE PARTIES' AUTHORISED REPRESENTATIVES:

By: _____
Duly authorised by [Customer]
Print Name:
Print Title:

By: _____
Duly authorised by Cardinus Risk Management Limited
Print Name:
Print Title:

APPENDIX B

STATEMENT OF WORK

This Statement of Work is dated [date] and made under the Master Services Agreement dated [date] made between Cardinus and the Customer (the “**Agreement**”). Unless otherwise provided, capitalised words and phrases in this Statement of Work have the meanings given in the Agreement.

Customer: [Customer]

Professional Services: The Professional Services shall comprise: [[insert description, referring to external / agreed documentation as appropriate.]

Timetable: TBC

Deliverables / Schedule of Milestones:

Customer policies: those referred to in the Customer’s Supplier Code of Conduct and Cardinus acknowledges receipt of a copy thereof

Cardinus Customer Services executive will engage with [xxxxxxxxxx] to fully review the courses and configure the system to meet [xxxxxxxxxx] requirements.

This will include, but is not limited to adding in task codes, agreeing communications to users, and schedules for roll out and user chaser rules

Assumptions and Dependencies: [Set out any specific assumptions on which this Statement of Work (and in particular timing and pricing) is based / any obligations of the Customer which need to be fulfilled in order for Cardinus to perform its obligations.]

Professional Services Fees: Identify applicable Fees, by reference to a rate card if applicable, together with an invoicing schedule and timings for payment (e.g. x days from invoice)]

Key Personnel: [Identify key personal to deliver this Agreement]

Special Provisions: [Identify any deviations from the standard positions set out in the Agreement]

SIGNED BY THE PARTIES’ AUTHORISED REPRESENTATIVES:

By: _____
Duly authorised by [Customer]
Print Name:
Print Title:

By: _____
Duly authorised by Cardinus Risk Management Limited
Print Name:
Print Title:

APPENDIX C

HOSTING AND SUPPORT SERVICES

Subject to payment of all applicable Fees, Cardinus shall provide the Customer with the Hosting and Support Services set out in this Appendix.

Key Contacts

In providing the Hosting and Support Services Cardinus will liaise only with the Customer's IT staff and one nominated PACE User (who unless otherwise specified will be Cardinus' main Customer contact to whom Cardinus will report matters governed by this Appendix). The Customer shall ensure such persons been suitably trained to: i) report Errors (as defined below) to Cardinus's service desk; and ii) make themselves available to assist with data gathering and testing Fixes on a 24/7 basis for Errors which have been classified as Severity 1. The Customer shall ensure that only its IT staff and/or nominated PACE User contact Cardinus in connection with any matter governed by this Appendix.

Hosting

Subject to the payment by the Customer of all applicable Fees, Cardinus will host the Software on the Production Environment and make the Software Services available for access by the Customer from the Start Date.

Any setting up or configuration of the Production Environment or Software beyond Cardinus's standard setup (such as modifying assessment questions, course content or any other customisation) must be agreed as a Professional Service and will be subject to the payment of additional Fees.

Cardinus's Production Environment is designed for high security including protection by twenty-four (24) hour monitored alarms and fire detection with further access restrictions to the server rooms via logged card access doors. Full security details are available on request (and will for the avoidance of doubt be the Confidential Information of Cardinus for the purposes of this Agreement).

Availability

Cardinus will use reasonable endeavours to ensure that the Software Services will be available for not less than 99.5% of each calendar month. Availability will be calculated and reported in accordance with the rules set out below.

If in any calendar month, Cardinus does not meet the availability target of 99.5%, the Customer will be entitled to a service credit against the next payable instalment of the Hosting and Support Services Fee, which shall be calculated as set out below. Service credits shall be shown as a deduction from the amount due from the Customer to Cardinus in the next invoice then due to be issued. Cardinus shall not in any circumstances be obliged to pay any money or make any refund to the Customer. The deduction of service credits will be the Customer's sole and exclusive remedy for Cardinus's failure to meet the relevant availability target.

Availability is calculated at the end of each calendar month in accordance with the following formula:

$$A \text{ (expressed as a percentage)} = (X - Y) \div (X - \text{planned outages}) \times 100$$

where:

"A" = the availability of the Software Services (expressed as a percentage);

"Y" = the number of minutes of downtime in the relevant calendar month which is attributable to any breach of contract or failure on the part of Cardinus or its service providers; and

"X" = total minutes in the calendar month (or in the case of the first calendar month during which the Software Services are provided, the total minutes from the Start Date until the end of the month).

If at the end of any calendar month availability is less than 99.5% the following service credits shall be payable (each service credit being expressed as a percentage of the monthly Fee for the Hosting and Support Services (calculated where applicable on a pro rata basis)).

Availability	Service Credit
99.00-99.49%	2.5%
97.00-98.99%	5%
95.00-96.99%	7.5%
90.00-94.99%	10%
under 89.99%	12.5%

Production Environment Maintenance

From time to time, it may be necessary to bring down the Production Environment for maintenance. Cardinus will notify the Customer by email, wherever possible, at least twenty-four (24) hours prior to any outage for the purposes of planned maintenance and will ensure that any such planned maintenance takes place outside of working hours. It may also be necessary to bring down the Production Environment for unplanned maintenance in the event of any emergency or for the purposes of security (for example, in response to any attempted security breach of the Production Environment which could endanger the Customer's or Cardinus's other customers' data). Cardinus will attempt to notify the Customer of any unplanned maintenance as soon as is reasonably possible. Cardinus shall have no liability to the Customer for any unavailability of the Software Services during any period of maintenance (and any such period shall not be counted for the purposes of calculating availability as described in the previous section).

Backup and Restore

The Production Environment, together with all Customer Data hosted in the Production Environment is backed up daily. In the event of any total failure of the Production Environment, Cardinus will notify the Customer as soon as possible and will restore the most recent back-up into a new Production Environment within four (4) working hours after such notification.

Support Service Desk - Core Service Hours:

The “**Core Service Hours**” during which Cardinus's service desk will be manned are as follows:

- UK service desk: Between 09.00 – 17.30 (GMT/BST) Monday to Friday, excluding bank and public holidays in the UK;
- US service desk: Between 03.30 – 17.00 (EST) Monday to Friday excluding public holidays in the USA.

The relevant Authorisation will set out which service desk will be available to the Customer, based on the Customer's geographic location.

Support Service Desk - Contact methods and response times:

The Customer may contact Cardinus's service desk by email (support@cardinus.com) at any time or by telephone during Core Service Hours ((UK) 0207 469 0201 or (US) 323 337 9016).

If Cardinus support personnel are unavailable to answer the telephone during Core Service Hours, Cardinus will respond to telephone calls during the next Core Service Hour after receipt of the relevant call. Cardinus will respond to emails during the next day falling within Core Service Hours.

Software Services Error Correction:

In this Appendix, an “**Error**” means any material failure by the Software Services to operate in accordance with the Documentation that applies to them, or any other defect in the Software Services which has a material adverse effect on its use or operation.

If an apparent Error in the Software Services occurs, the Customer shall notify Cardinus's service desk as soon as possible.

Cardinus will use reasonable endeavours to resolve the Error within the target times set out below (whether by providing a permanent correction of the Error (a “**Fix**”) or by providing a work-around or temporary fix of the Error which allows the Customer to use the Software Services without a material degradation in functionality until such

time as a Fix is provided (a "**Work-Around**"). Cardinus will be responsible for determining the severity of any Error reported to Cardinus's service desk.

Severity of Error	Target time for resolution
Severity 1. An Error making the software totally inoperable or unavailable.	Four (4) hours during Core Service Hours
Severity 2. A Software error causing substantial problems in use of the Software. No Work-Around available.	Eight (8) hours during Core Service Hours
Severity 3. Error causing substantial problems in use of the Software. Work-Around available.	Thirty-two (32) hours during Core Service Hours
Severity 4. Any other Error.	When Cardinus next upgrades the Software.

If, in the course of investigating an Error, a Work-Around is identified Cardinus will implement the Work-Around as soon as is reasonably possible. Once a Work-Around is identified and advised Cardinus may reallocate the relevant Error to another severity category as set out in the above table.

Without limiting the Customer's other obligations under the Agreement, the Customer shall follow Cardinus's reasonable instructions in implementing any Work-Around or otherwise for the purposes of mitigating the effects of any Error or avoiding future Errors.

Upgrades

Cardinus may patch, maintain and upgrade the Software from time to time in order to improve its technical performance or functionality, or to address changes in law or best practice. The Customer acknowledges that such patches, maintenance or upgrades may result in changes in the Software Services such as changes to its interface or its means of use (without material degradation to its performance or functionality).

If any Course/Assessment has been customised, developed or configured for the Customer (rather than comprising Cardinus's standard offering) then Cardinus may charge for any additional work involved in transferring that Course/Assessment to an upgraded version (which the parties shall agree as Professional Services to be provided under this Agreement).

Exclusions and Out of Scope:

The Hosting and Support Services do not include:

- on-site visits or on-site work;
- customisation or alteration of the Software;
- migration of the data to the Customer's own servers;
- work carried out by Cardinus on the Customer's data (other than as a result of any breach of contract by Cardinus or in connection with any restoration from backup) or the Customer's software; or
- any other work not detailed in this Appendix C,

and any such work will only be performed by Cardinus if agreed as Professional Services to be provided under this Agreement.

Cardinus will not be liable to remedy Errors, nor liable in relation to any non-availability of the Software or Software Services, which are/is attributable (in Cardinus's reasonable opinion) to:

- misuse or incorrect use of the Software or Software Services or damage to the Software or Software Services or any other software from any cause other than any act or omission of Cardinus;
- modifications to the Software or Software Services SaaS Services by any person other than Cardinus or its personnel or contractors;

- any defect, bug, compatibility or interface issue with any software provided by any third party;
- any breach of the Customer's obligations under this Agreement;
- any failure or defect in the Customer's IT systems or telecommunications networks.

APPENDIX D

DATA PROCESSING INFORMATION

1. The categories of Personal Data being Processed	• First name • Last name • Location • Department • Other organisational information relating to employees as needed such as department or location • Email address • Phone number • Unique identifier such as employee number or payroll number • Progress through e-learning course • Self-assessment DSE risk assessment answers • Details of actions to resolve the DSE risk identified in the risk assessment • System generated email dates and information • Other data and notes relating to DSE management None of the above will fall within the definition of “special categories” of data except in relation to: • the ergonomic risk associated with use of computer equipment as is required by the DSE regulations
2. Types of personal data	• First name • Last name • Location • Department • Other organisational information relating to employees as needed such as department or location • Email address • Phone number • Unique identifier such as employee number or payroll number • Progress through eLearning course • Self-assessment DSE risk assessment answers • Details of actions to resolve the DSE risk identified in the risk assessment • System generated email dates and information • Other data and notes relating to DSE management

3. The nature and purpose of the Processing	To comply with the UK's DSE regulations or in relation to UK health and safety laws as they apply to Customer The Customer will provide Cardinus with a database of employees who need to complete the risk assessments and e learning modules. He Customer will be trained as administrators of the Software to invite employees to complete the required courses and risk assessments. At all times the control of the database will be with The Customer's agreed administrators who can add, delete or archive all users. Only authorised Cardinus staff will have access to the database for the purposes of the IT support contractual agreement The purpose of the processing is to identify employees who are exposed to DSE or driving risk and to provide solutions and control measures to manage the risks identified. Employees will complete an online self-assessment. The results will be viewed and managed via the Cardinus Software in the PACE database system.
4. Security Measures for Personal Data and period data is held	Data is processed via secure online systems in either a UK or US data centre, depending on client requirements. Administrator access to servers requires a password and secondary authentication. Data is encrypted at rest and whilst in transit. Cardinus will adhere to the overriding jurisdictional legal requirements of the region and will fulfil its obligations as stated in this agreement. Where there is not an explicit data retention policy, Cardinus will continue to hold all data until instructed otherwise or until the contract expires.

Notes: The Customer will have all administrator rights to add/delete/archive users from the system and where a user is deleted or archived a record is created for evidentiary purposes.

Where the Customer requests that Cardinus deletes or archives user records on behalf of the Customer, this request will need to be in writing from an authorised Customer representative.

The data that is recorded as a result of the risk assessment will be in accordance with the requirements as set out in the DSE regulations and Health and Safety at Work Act in relation to discomfort, pain eyesight and other conditions that may exist as a result of working with computers or electronic devices as set out in the regulations. This data is stored on the servers for the sole use of the Customer administrators and will not be reviewed or accessed by Cardinus staff unless authorised to do so for the purposes of mitigating the risk.

Should the DSE or Health and Safety at Work Act change, Cardinus will review the data requirements with Customer and will mutually agree any changes including any fee.

At all times Cardinus will respond to any needs to change the data processing information in accordance with the prevailing data protection laws and in accordance with Clause 9.17.