

TERMS & CONDITIONS

IT IS AGREED BETWEEN THE PARTIES THAT:

A. GENERAL

1. Definitions

In this Agreement, the following terms shall have the following meanings:

“Affiliate”	means any entity that directly or indirectly controls, is controlled by, or is under common control of the Customer. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of a party;
“Agreement”	means these Terms and Conditions together with the SLA, DPA each Order Form and any applicable Statement of Work;
“Authorised Users”	means Affiliates and employees, students, consultants or independent contractors of the Customer and its Affiliates who have been expressly authorised by the Customer or Affiliate to receive a password in order to access the Solution or Services online;
“Bug”	means an unwanted or unintended property of the Solution that can be reproduced and causes the Solution to malfunction but does not affect the availability of the Solution;
“Business Day”	means Monday to Friday excluding Easter (Good Friday and Easter Monday), Christmas (Christmas Day and the Boxing Day public holiday) and the New Year’s Day public holiday;
“Business Hours”	means 09:00 – 17:00, UK local time on a Business Day;
“Client”	means any entity or persons to whom the Customer provides its services;
“Company”	means UNLwise Education Solutions Ltd.
“Confidential Information”	means any and all information in any form whatsoever relating to the Company or the Customer, or the business, prospective business, finances, technical process, computer software (both source code and object code), IPR or finances of the Company or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession as a result of this Agreement or provision of the Solution or Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;
“Consequential Loss”	means pure economic loss, losses incurred by any Client or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time;
“Consultancy Fees”	means the fee set out in the Order Form for Consultancy Services;
“Consultancy Services”	means the consultancy services set out in a Statement of Work;
“Current Version”	means the version of the Solution available to the Customer on the Effective Date or subsequently any new version which replaces it during the Term;

“Customer Data”	means all data imported or entered into the Solution or Services by the Customer or Authorised Users for the purpose of using the Solution and Services or facilitating the Customer’s use of the Solution and Services;
“Customer”	means the university, institution, school, company or person who completes each Order Form and who purchases access to Solution and Services;
“Disaster”	means the data centre where the Solution is hosted becomes unusable, with little chance of a short term recovery;
“Documentation”	means the training materials and user manuals relating to the use of the Services, as well as any additional documentation that the Company specifically creates for the Customer or otherwise provides to the Customer to assist in the correction of any issue with the Services;
“DPA”	means the data processing agreement set out in Schedule 1 of this Agreement;
“Effective Date”	means the date on which this Agreement starts which shall be the Service Commencement Date set out in the first Order Form;
“Emergency Maintenance”	means maintenance, upgrades, Updates, repairs to hardware and software related to resolving immediate problems causing instability in the Solution or Services;
“Feedback”	means feedback, innovations or suggestions created by Authorised Users or Clients regarding the attributes, performance or features of the Services;
“Fees”	means the fees set out in each Order Form payable by the Customer during the term of each Order Form;
“Force Majeure”	means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where the Company ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;
“Functional Description”	means the description of the Solution set out the Order Form;
“Hosting Services”	means the hosting services set out in section 1 of the SLA for the Company hosting the Solution;
“Illegal Content”	means any data or content which is defamatory, or constitutes a breach of the IPR or legal rights of any third party;
“Incident”	means a malfunction of the Solution which can be reproduced, is not a Bug and whose root cause is found in the hosting service, network, hardware or third party software components;
“Initial Term”	means the initial term set out in each Order Form;
“IPR”	means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;

“Maintenance and Support Services”	means the maintenance and support services set out in the SLA for the company maintaining and supporting the Solution;
“Order Form”	means each order form completed by the Customer and the Company in relation to using the Solution and Services;
“Other Services”	means any additional services to be provided to the Customer during the Term of this Agreement set out in any subsequent order form signed by the parties and added to this Agreement after the Effective Date;
“Planned Maintenance”	means maintenance, upgrades, Updates, installation of new versions and repairs which are non-critical and not urgent, to hardware and software;
“Release”	means a modification in the functionality of the Solution which results in a change in the version number of the Solution;
“Renewal Term”	means any renewal term set out in an Order Form;
“Services”	means the Consultancy Services, the Hosting Services, Maintenance and Support Services plus any Other Services added to this Agreement during the Term;
“SLA”	means the service level agreement set out in Schedule 2 of this Agreement;
“Solution”	means the software application(s) described in more detail in each Order Form;
“Statement of Work”	means each statement of work setting out Consultancy Services to be provided to the Customer in Schedule 3 of this Agreement;
“Subscription Fee”	means the user subscription fees set out in each Order Form payable for using the Solution and Services during the Term;
“Term and Conditions”	means these terms and conditions, excluding all Order Forms, SLAs and Statements of Work;
“Term”	means the term of this Agreement which commences on the Effective Date and continues until all Order Forms are terminated or expire as set out in clause 6 of these Terms and Conditions;
“Time and Materials Basis”	means the Company’s standard daily consultancy rates;
“Travel Fees”	means all reasonable costs associated with any travel and subsistence expenses incurred by the Company (or its employees, permitted subcontractors or agents) in performing its obligations under this Agreement;
“Updates”	means any new or updated applications services or tools (including any software programmes) made available by the Company as part of the Solution or Services during the Term.

2 Services and Solution

- 2.1 From the Effective Date, the Customer shall purchase the Solution and Services from the Company by completing Order Forms setting out the specific Solutions and Services ordered and the Fees applicable to the Solutions and Services ordered. Each Service Order will be subject to the terms of this Agreement and shall be incorporated into the terms of this Agreement upon completion by both parties.

3 Licence to use the Solution and Services

- 3.1 Subject to the Customer’s payment of the Fees, the Customer is granted a non-exclusive, non-transferable licence to permit Authorised Users to use the Solution and Services (including any associated IPR and Confidential Information) from the Effective Date for the Term. Such licence permits

the Customer to make copies of software or other information necessary for the Customer to receive the Solution and Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.

- 3.2 Notwithstanding the Customer's statutory rights, no right to modify, adapt, or translate the Solution or Services or create derivative works from the Solution or Services is granted to the Customer.
- 3.3 Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Solution or Services. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Solution or Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Solution or Services interoperable with other software the Company will provide access to any relevant source code or information provided that the Customer makes a written request identifying the relevant details of the Solution or Services with which operability is sought and the nature of the information needed. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.
- 3.4 Unless otherwise specified in this Agreement, the Solution and Services are provided and may only be used in conjunction with:
 - 3.4.1. The Customer's existing systems and applications in order to facilitate the Customer's transactions with Clients;
 - 3.4.2. Providing access to the Solution and Services solely to Authorised Users; and
 - 3.4.3. Accessing and using the Documentation as necessary to enable use of the Solution and Services.
- 3.5 The Customer may not:
 - 3.5.1 Lease, loan, resell, assign, licence, distribute or otherwise permit access to the Solution and Services; or
 - 3.5.2 Use the Solution or Services to provide ancillary services related to the Solution or Services; or
 - 3.5.3 Permit access to or use of the Solution or Services by or on behalf of any third party;except as permitted in this Agreement.
- 3.6 The Company reserves the right to electronically monitor the Customer's use of the Solution and Services in compliance with applicable data protection and privacy laws and confidentiality obligations.

4 Intellectual Property Rights

- 4.1 All IPR and title to the Solution, Services and Documentation (save to the extent these incorporate any Customer Data, Customer IPR or third party owned item) shall remain with the Company and/or its licensors and subcontractors and no interest or ownership in the Solution, Services, Documentation, IPR or otherwise is transferred to the Customer under this Agreement.
- 4.2 The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants the Company a non-exclusive, licence to use Customer Data, Customer IPR and any third party owned item from the Effective Date for the Term to the extent required for the provision of the Solution and Services.
- 4.3 The Customer is not allowed to remove any proprietary marks or copyright notices from the Solution or Services.
- 4.4 The Customer grants the Company a non-exclusive, non-transferable, revocable licence to display the Customer's name, logo and trademarks, as designated and/or amended by the Customer from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of the Solution and Services.
- 4.5 The Customer assigns all rights, title and interest in any Feedback to the Company. If for any reason such assignment is ineffective, the Customer shall grant the Company a non-exclusive, perpetual,

irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.

- 4.6 The Company may take and maintain technical precautions to protect the Solution and Services from improper or unauthorised use, distribution or copying.

5 Authorised Users

- 5.1 The Services and Solutions are provided on a user subscription basis and may only be used by the number of Authorised Users stated in each Order Form.
- 5.2 The number of Authorised Users may be increased during the Term and further Subscription Fees will be charged for each additional user for the remainder for the Term.
- 5.3 The number of Authorised Users may only be reduced during the Term on the first day of a Renewal Term.
- 5.4 User subscriptions cannot be shared or used by more than one Authorised User but Authorised Users can be replaced by a new user if an Authorised User ceases to use the Solution and Services.
- 5.5 The Customer is responsible for all Authorised User use of the Solution and Services.

6 Term and Termination

- 6.1 This Agreement commences on the Effective Date. This Agreement shall continue until all Order Forms are terminated or expire. Neither party may terminate the Agreement without cause prior to the expiry of the Initial Term of each Order Form.
- 6.2 After expiry of the Initial Term of each Order Form, either party may terminate an Order Form without cause, by giving the other at least 90 days notice in writing prior to the start of a Renewal Term.
- 6.3 Termination of any individual Order Form, in whole, or in part shall not effect the Term of the Agreement which shall continue unaffected until all Order Forms are terminated or expire.
- 6.4 The Company may terminate the Agreement or any Order Form, in whole, or in part or the provision of any Services or Solution with cause, with immediate effect if:
- 6.4.1 The Customer, or an Authorised User has used or permitted use of the Services or Solution other than in accordance with the terms of this Agreement; or
- 6.4.2 The Company is prohibited under applicable law, or otherwise from providing the Services or Solution.
- 6.5 Either party may terminate this Agreement and all Order Forms immediately, with cause, if the other party:
- 6.5.1 Ceases or threatens to cease or carry on business; or
- 6.5.2 Is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or
- 6.5.3 Convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or
- 6.5.4 Has an administrator, receiver, manager or similar official appointed; or
- 6.5.5 Is affected by a similar event under the law of any other jurisdiction; or
- 6.5.6 A Force Majeure event lasts for more than 28 days.
- 6.6 Either party may terminate this Agreement or any Order Form, in whole, or in part for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice shall only be effective if the breaching party fails to remedy the breach within 10 days of receipt of the notice.
- 6.7 Termination of the Agreement or any Order Form for any reason shall not affect the accrued rights of the parties arising under the Agreement and in particular without limitation the right to recover damages against the other.

- 6.8 Upon termination of the Agreement all Order Forms shall automatically terminate.
- 6.9 Termination or expiry of any individual Order Form(s) shall not effect the Term of the Agreement or any other Order Forms which have not expired or terminated and the Agreement and remaining Order Forms shall continue unaffected.
- 6.10 Following termination of the Agreement, the Customer shall remain liable to pay all Fees set out in all Order Forms for the remainder of the remaining current term of each Order Form regardless of any early termination, unless the Agreement has been terminated due to the Company's material breach or in the circumstances set out at clause 6.5 above. All licences granted under the Agreement shall terminate on the effective date of termination and the Company shall:
 - 6.10.1 Cease providing the Solution and Services to the Customer and immediately deactivate all Customer accounts;
 - 6.10.2 Within 30 days return all Customer Data stored in the Company's database in its then current format, free of charge, if requested to do so by Customer. If Customer requires any Customer Data to be returned in a different format, Company reserves the right to charge for this additional service on a Time and Materials Basis; and
 - 6.10.3 Be entitled to delete all Customer Data from its live systems as set out in the DPA.

7 Fees and Invoicing

- 7.1 The Company shall invoice the Customer the Fees set out in the Order Form.
- 7.2 All invoices shall be issued in the currency set out in the Order Form. All Fees exclude any Value Added Tax legally payable on the date of the invoice, which shall be paid by the Customer in addition, where applicable.
- 7.3 Consultancy Fees shall be invoiced as set out in the Order Form(s).
- 7.4 Subscription Fees shall be invoiced during the Term as set out in the Order Form(s).
- 7.5 Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise, subject to the Customer's prior approval.
- 7.6 All Other Fees shall be invoiced as set out in the Order Form(s). These shall include any training provided by the Company, which is not included in the Statement of Work. Such training fees shall be calculated on a Time and Materials Basis plus Travel Fees.
- 7.7 Unless agreed otherwise and set out in the Order Form(s), the Subscription Fee is subject to annual adjustment upon prior notice and, unless UNIwise Education Solutions is subject to exceptional increases in the costs of providing the Service which shall be fully disclosed to the Customer, this adjustment shall not exceed RPI plus 2%, with RPI being calculated as the annual increase in the UK Retail Prices Index as most recently published by the UK Office of National Statistics at least 30 days prior to the Annual Subscription Date.
- 7.8 On expiry of the Initial Term of any Order Form, the Company may increase Fees at the start of each Renewal Term upon giving the Customer at least 90 days prior written notice.

8 Payment Terms

- 8.1 The Customer shall pay the Company the Fees set out in the Order Form(s) for the provision of the Solution and Services under this Agreement.
- 8.2 Unless stated otherwise in an Order Form, payment of all Fees is due within 30 days of the invoice date and shall be without prejudice to any claims or rights which the Customer may have against the Company. If the Customer believes that any invoice is incorrect, it must notify the Company in writing within 30 days of the invoice date.
- 8.3 Where payment of Fees is not received within 10 days of the due payment date, upon giving the Customer 7 days prior written notice the Company reserves the right to suspend the provision of the Solution and Services until payment is received in full.

- 8.4 The Company reserves the right to charge interest on overdue Fees at the applicable statutory rate and may also recover all costs and reasonable legal fees incurred in recovering overdue payments.

9 Confidential Information

- 9.1 Each party may use the Confidential Information of the other only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.
- 9.2 Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- 9.3 Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to a disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.
- 9.4 The obligations of confidentiality under this Agreement do not extend to information that:
- 9.4.1 Was in the other party's lawful possession before the negotiations leading to this Agreement; or
 - 9.4.2 Is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
 - 9.4.3 Is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 9.4.4 Is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 9.4.5 Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.5 If either party is required to disclose any Confidential Information pursuant to clause 9.4.5 such party shall, where lawfully permitted to do so:
- 9.5.1 Promptly consult with and take into account any comments from the other party prior to making any disclosure; and
 - 9.5.2 Work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 9.6 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 9 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is:
- 9.6.1 Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or
 - 9.6.2 A trade secret of the disclosing party; and
 - 9.6.3 Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

10 Data Protection

- 10.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements and in accordance with the DPA set out in Schedule 1.
- 10.2 To the extent that personal data is processed using the Solution and Services, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply with their respective statutory data protection obligations.
- 10.3 If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

11 Representations and Warranties

- 11.1 Each party warrants and represents that:
 - 11.1.1 It has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;
 - 11.1.2 Its execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
 - 11.1.3 It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.
- 11.2 The Company warrants to the Customer that it has the right to licence the Solution and Services.
- 11.3 The Company warrants and represents that the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice and that the Services will be provided in accordance with the SLA.
- 11.4 The Company warrants to the Customer that the Solution will operate to provide in all material respects the facilities and functions implemented by the Company as set out in the Statement of Work. If there is a breach of this warranty, the Company shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Solution. Notwithstanding the aforesaid, the Company shall only be obliged to remedy any material defect if:
 - 11.4.1 The Customer notifies the Company in writing immediately upon discovering the defect; and
 - 11.4.2 Following the Company's examination of the Solution, it is established that such a defect exists.
- 11.5 The warranties in clauses 11.2 to 11.4 inclusive shall not cover deficiencies or damages relating to:
 - 11.5.1 Any third party components not provided by the Company; or
 - 11.5.2 Any third party provided connectivity necessary for the provision or use of the Solution and Services; or
 - 11.5.3 Compliance with third party software or products, non-Company programmes or data used in combination with the Solution or Services except as set out in the Statement of Work; or
 - 11.5.4 A failure of the Solution to conform with the Statement of Work caused by the use or operation of the Solution by the Customer with an application or in an environment other than that set out in the Statement of Work; or
 - 11.5.5 Modifications made to the Solution not carried out by the Company.
- 11.6 No warranty is made regarding the results the Customer can achieve from using the Solution and Services or that the Solution and Services will operate uninterrupted or error free.
- 11.7 The Customer warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.
- 11.8 The Customer warrants and represents that it and Authorised Users shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Solution and Services granted under this Agreement is limited as set out under this Agreement. In particular the Customer and Authorised Users shall treat any identification, password or username or other security device for use of the Solution and Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing. The Customer shall be liable for any breach of this Agreement by an Authorised User.
- 11.9 The Customer warrants and represents that it shall ensure that its network and systems comply with the relevant specification provided by the Company from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's systems to all data centres and all problems, conditions, delays, delivery failures and all other loss or

damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

- 11.10 All third party content or information provided by the Company via the Solution or Services, for example prices is provided "as is". The Company provides no warranties in relation to such content or information and shall have no liability whatsoever to the Customer for its use or reliance upon such content or information.
- 11.11 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

12 Liability

- 12.1 Neither party excludes or limits its liability to the other for fraud, death or personal injury caused by its negligent act or omission or wilful misconduct.
- 12.2 Neither party shall be liable for any Consequential Loss arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.
- 12.3 Neither party shall be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 12.4 Subject to clauses 12.1 to 12.3 inclusive, the total liability of each party to the other in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under this Agreement or based upon any claim for indemnity or contribution shall be limited to:
 - 12.4.1 The sum of 1 million GBP for any breach of: (i) applicable data protection laws (including without limitation the Data Protection Act 1998 and the EU General Data Protection Regulation) or its contractual data protection obligations; (ii) applicable confidentiality laws or its contractual confidentiality obligations; (iii) applicable intellectual property laws or its contractual intellectual property obligations; (iv) applicable anti-bribery laws (including the Bribery Act 2010); (v) applicable anti-slavery laws (including the Modern Slavery Act 2015); or (vi) applicable employment laws or its employment obligations, under the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or equivalent implementing legislation under the Acquired Rights Directive.
 - 12.4.2 For all other claims, the sum of the total Fees (excluding all taxes) paid by the Customer to the Company during the 12 month period prior to the date on which any such claim arose. If the duration of the Agreement has been less than 12 months, such shorter period shall apply.
- 12.5 The Customer shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Authorised Users who access the Services and Solutions as if such acts, omissions or negligence had been committed by the Customer itself.
- 12.6 The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

13 Indemnities

- 13.1 The Company shall at its own expense defend or at its own option settle any claim brought against the Customer by a third party on the basis of an infringement of any IPR by the Solution or Services (excluding any claim deriving from any Customer provided item) and pay any final judgment entered against the Customer on such issue or any settlement thereof, provided that:
 - 13.1.1 The Customer notifies the Company promptly of each such claim;
 - 13.1.2 The Company is given sole control of the defence and/or settlement; and
 - 13.1.3 The Customer fully co-operates and provides all reasonable assistance to the Company in the defence or settlement.

- 13.2 If all or part of the Solution or Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company shall at its own expense and sole discretion:
- 13.2.1 Procure for the Customer the right to continue to use the Solution or Service or the affected part thereof;
 - 13.2.2 Replace the Solution or Service or affected part with another suitable non-infringing service or software;
 - 13.2.3 Modify the Solution or Services or affected part to make the same non-infringing.
- 13.3 The Company shall have no obligations under clauses 13.1 and 13.2 above to the extent that a claim is based on:
- 13.3.1 A modification of the Solution or Services by anyone other than the Company;
 - 13.3.2 The combination, operation or use of the Solution or Services with other services or software not provided by the Company if such infringement would have been avoided in the absence of such combination, operation or use; or
 - 13.3.3 Use of the Solution or Services in any manner inconsistent with this Agreement; or
 - 13.3.4 The negligence or wilful misconduct of the Customer.
- 13.4 Clauses 13.1 to 13.3 state the Customer's sole and exclusive rights and remedies and the Company's entire obligations and liability for any claims made under these clauses.
- 13.5 The Company shall defend, indemnify and hold the Customer and its employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from the Company breaching:
- 13.5.1 Clauses 16 (Anti-slavery), 17 (Anti-bribery) or 18 (TUPE) of this Agreement; or
 - 13.5.2 Its obligations as a data processor under applicable data protection law or regulations or the terms of the DPA resulting from the Company processing personal data on behalf of the Customer.
- 13.6 The Customer shall defend, indemnify and hold the Company and its employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:
- 13.6.1 Any claimed infringement or violation by the Customer, an Authorised User or a Client of any IPR with respect to use of the Solution or Services outside of the scope of this Agreement; or
 - 13.6.2 Use by the Company of any Customer Data or Customer or Client provided item, in particular storage or publication on the Internet of any Illegal Content; or
 - 13.6.3 Any access to or use of the Solution or Services by an Authorised User, a Client or a third party;
 - 13.6.4 Breaches of data protection law or regulations resulting from the Company processing data on behalf of and in accordance with the instructions of the Customer or an Authorised User; and
 - 13.6.5 Any breach of this Agreement by an Authorised User or a Client.
- and, the Company shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet and breaches of third party rights from continuing.
- 13.7 Subject to clauses 13.1 to 13.6 inclusive, each party ("the first party") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("the second party") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceedings or demand that may be brought, made or prosecuted against the second party under any indemnity contained in clause 13. Such indemnity extends to and includes all costs, damages and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demands.

14 Security

- 14.1 The Company shall permit the Customer to specify which Authorised Users may access the Services and Solution through its standard application security options.
- 14.2 The Customer and Authorised Users must ensure that each password is only used by the user to which it has been assigned. The Customer is responsible for any and all activities that occur under the Customer's account and via the Customer's passwords. The Customer will immediately notify the Company if the Customer becomes aware of any unauthorised use of the Customer's account, the Customer's passwords or breach of security known to the Customer. The Company shall have no liability for any loss or damage arising from the Customer's failure to comply with these requirements.
- 14.3 The Company may suspend access to the Solution and Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the Services or Solution is in danger of being compromised by acts of the Customer or an Authorised User. The Company shall where possible give the Customer 24 hours prior written notice, before suspending access to the Services and Solution, giving specific details of its reasons.

15 Insurance

- 15.1 The Company will maintain insurance at a level adequate to cover all of its potential liabilities under this Agreement throughout the Term of the Agreement and shall provide evidence of such insurance at the request of the Customer.

16 Anti-Slavery

- 16.1 In performing its obligations under the Agreement, the Company shall and shall ensure that each of its subcontractors shall comply with all applicable anti-slavery laws, statutes, regulations in force from time to time, (including the Modern Slavery Act 2015) and take reasonable steps to ensure that there is no modern slavery or human trafficking in the Company's or its subcontractor's supply chains or in any part of their business.

17 Anti-Bribery

- 17.1 Each party shall comply with, and the Services will be supplied in accordance with, the Bribery Act 2010 and all applicable anti-bribery laws. Neither party shall do, or omit to do, any act that will lead to the other being in breach of the Bribery Act 2010 or any applicable anti-bribery laws.

18 TUPE

- 18.1 The Company agrees that if the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") or equivalent implementing legislation under the Acquired Rights Directive applies to this Agreement then it must comply with its obligations under TUPE.

19 Assignment

- 19.1 No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however the Company shall be entitled to assign the Agreement to:
 - 19.1.1 Any company in the Company's group of companies; or
 - 19.1.2 Any entity that purchases the shares or assets of the Company as the result of a merger, takeover or similar event.

20 Relationship between Parties

- 20.1 The Company and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

21 Contacts

- 21.1 The Customer shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions.

- 21.2 The Customer shall provide a designated contract contact and/or billing contact with all relevant contact information to respond to ordering, billing and payment questions regarding the Services.

22 Miscellaneous

- 22.1 Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.
- 22.2 Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.
- 22.3 In the event of any inconsistency between the contents of the Terms and Conditions, an Order Form, the SLA, the DPA and a Statement of Work, the Order Form shall prevail followed by the Statement of Work, the Terms and Conditions, the DPA and then the SLA. If after the Effective Date any subsequent Order Form is signed by the parties and added to this Agreement during the Term and there is a conflict between the terms of such subsequent Order Form, its attachments and the other terms of the Agreement, the terms of the last Order Form shall prevail over the terms of any previous order form(s) and their attachments, unless specifically stated otherwise in the Order Form.
- 22.4 This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.
- 22.5 Amendments to, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post or acknowledged fax to a party at the address given for that party in the Order Form. Notwithstanding the aforesaid, the Company may change or modify the terms of this Agreement upon giving the Customer 30 days notice via email. All changes shall be deemed to have been accepted by the Customer unless the Customer terminates the Agreement prior to the expiry of the 30 day period.
- 22.6 Neither party shall make any public statement, press release or other announcement relating to the terms or existence of this Agreement, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Company may use the Customer's name and trade marks (logo only) to list the Customer as a client of the Company on its website and in other marketing materials and information.
- 22.7 Nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or by any third party pursuant to rights that a third party may have under any applicable law.

23 Dispute Resolution

- 23.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.
- 23.2 If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to the chief technology officer of the Company and the chief financial officer of the Customer who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 24 below.

24 Governing Law and Jurisdiction

- 24.1 This Agreement shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.

B. CONSULTANCY SERVICES

25 Provision of Consultancy Services

- 25.1 The Company shall provide Consultancy Services in accordance with the terms of the Statement of Work.

C. INTEGRATION SERVICES**26 Interfaces**

- 26.1 If the Order Form or Statement of Work includes the provision of interfaces or integrations to any third party provider or system to the Customer, the Company shall make all reasonable efforts to ensure the successful operation of the interface or integration. However, the successful operation of any interface or integration is dependent upon the technical set up of the third party systems, and the Customer accepts that:
- 26.1.1 The Company cannot be held liable for any failures in the operation of the interface or integration; or
 - 26.1.2 That the services offered on the third party system will be complete or available on the same terms as those set out in these Terms and Conditions.
- 26.2 In the event of an issue arising with the effective operation of an interface or integration the Company will use all reasonable efforts, in line with the business impact on the Customer, to resolve the issue at the earliest opportunity.
- 26.3 The Customer acknowledges that:
- 26.3.1 It is responsible for ensuring that it has paid and instructed the third party to co-operate with the Company; and
 - 26.3.2 The Company has no liability whatsoever to the Customer for any problems with any interface or integration resulting from actions or omissions of the Customer or the third party.