

STERLING DCS SME SaaS Conditions

1. DEFINITIONS AND INTERPRETATION

1.1. The following definitions shall apply in these Conditions:

Affiliate in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time;

Applicable Data Protection Laws all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications);

Authorised Purpose is the receipt and use of the Software, Services and Documentation solely for the internal business operations/purpose of the Customer in relation to cost & carbon estimating; centralised data libraries and take-off.

Authorised Users means those employees, agents, independent contractors and other persons who are authorised by you to use the Software, the Services and the Documentation;

Benchmark Data reference data or analytics (including peer group analysis) that are calculated by the Supplier and anonymised that may be licensed under a separate agreement to you or any third party for the purposes of performance and metrics only;

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

Commencement Date has the meaning given to it in clause 3.4;

Conditions these terms and conditions as amended from time to time in accordance with clause 22.7;

Contract the contract between you and the Supplier including the order by you and the supply of the Services by the Supplier in accordance with these Conditions (together with any document referred to in these Conditions);

Contract Year a 12 month period commencing on the Commencement Date or any anniversary of it;

Documentation the functionality listing and requirements of the Software set out and the documents made available to you by the Supplier online at <https://support.sterling-dcs.io/> (or such other web address notified by the Supplier to you from time to time) which sets out the user instructions for the Services;

End User means an Authorised User or Sub-Contractor User;

End User Licence Agreement means the Supplier's click through end user licence agreement as from time to time updated, replaced or amended;

Heightened Cybersecurity Requirements any laws, regulations, codes, guidance (from regulatory and advisory bodies (whether mandatory or not)), international and national standards, industry schemes and sanctions, which are applicable to either you or an End User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018);

Initial Period has the meaning given to it in your order and confirmed in the Order Confirmation;

Intellectual Property Rights patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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;

Liabilities all claims or proceedings made or brought or threatened against a party by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses a party does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings;

Losses all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that a party does or will incur or suffer;

Normal Business Hours 08:00 to 18:00 local UK time, each Business Day;

Order Confirmation has the meaning given to it in clause 3.4;

Renewal Period has the meaning given to it in your order and confirmed in the Order Confirmation;

Service Level Agreement the terms on which the Supplier will provide support services pursuant to this agreement as set at <https://www.sterling-dcs.com/agreements/service-level-agreement/> (or such other web address notified by the Supplier to you from time to time) as may be amended, updated or replaced from time to time;

Services the subscription services provided by the Supplier to you under the Contract via the Website, the Support Portal or any other website notified to you by the Supplier from time to time, as more particularly described in the Documentation;

Software the online software applications provided by the Supplier as part of the Services;

Specification the set of functional characteristics of the Software as described in these Conditions and/or the Documentation;

Sub-Contractor means your sub-contractors (and where relevant, your Affiliates if and to the extent acting as sub-contractors) as agreed from time to time;

Sub-Contractor SaaS means the Sub-Contractor SaaS available at <https://www.sterling-dcs.com/agreements/subcontractor-saas/> (or such other web address notified by the Supplier to you from time to time) in a similar form to this agreement (as may be updated, amended or replaced from time to time);

Sub-Contractor User means the employees, agents, independent contractors and other persons who are authorised by Sub-Contractors to use the Software, the Services and the Documentation;

Subscription Fees the subscription fees for the User Subscriptions are the prices quoted on the Supplier's Website at the time you submit your order;

Subscription Term has the meaning given in clause 4.1 (being the Initial Period together with any subsequent Renewal Periods);

Supplier Sterling DCS Limited incorporated and registered in England and Wales with company number 10425509 whose registered office is at Kenmore House, Navigation Road, Chelmsford, Essex CM2 6HX;

Supplier Data any data owned by the Supplier used in the provision of the Services, including Benchmark Data, but for the avoidance of doubt, excluding Your Data;

Support Portal the Supplier online support centre that can be found at <https://support.sterling-dcs.io/>, or such other location as the Supplier may notify you of from time to time and as may be amended, updated or replaced from time to time;

User Subscriptions the user subscriptions purchased by you pursuant to clause 12.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract;

Virus. Any thing or device (including any software, code, file or programme) which may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (iii) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

Vulnerability a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability and the term Vulnerabilities shall be construed accordingly;

Website [https://sterling-dcs.com](https://sterling-dcs.com;);

Your Data the data inputted by you or any End Users for the purpose of using the Software or the Services or facilitating your use of the Software or the Services;

Your Personal Data any personal data which the Supplier processes in connection with the Contract, in the capacity of a processor on behalf of you.

1.2. Clause headings shall not affect the interpretation of the Contract.

1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6. Any phrase introduced by the terms **including**, **include**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7. Words in the singular shall include the plural and in the plural shall include the singular.

1.8. In these Conditions, **termination** shall mean **termination** or **expiry** as appropriate.

1.9. A reference to **writing** or **written** includes email but not fax.

1.10. In these Conditions, **month** means a calendar month.

2. OUR CONTRACT WITH YOU

2.1. These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. Any demos, descriptive matter or advertising issued by the Supplier are issued or published for the sole purpose of giving an approximate idea of the Services. They shall not form part of the Contract or have any contractual force.

2.3. The Website and the Services are for use by businesses, not consumers. You warrant and represent that you are accessing the Website for the purposes of a business and are not dealing as a consumer.

2.4. These Conditions and the Contract are made only in the English language.

2.5. You should print a copy of these Conditions or save them to your computer for future reference.

3. PLACING AN ORDER AND ITS ACCEPTANCE

3.1. To place your order, follow the on screen prompts. You may only submit an order using the method set out on the Website. Each order is an offer by you to buy the Services subject to these Conditions.

3.2. The Supplier's order process allows you to check and amend any errors before submitting your order to the Supplier. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.

3.3. After you place your order, you will receive an email from the Supplier acknowledging that the Supplier has received it but please note that this does not mean that your order has been accepted. The Supplier's acceptance of your order will take place as described in clause 3.4.

3.4. The Supplier's acceptance of your order takes place when the Supplier sends an email to you to accept it (**Order Confirmation**), at which point and on which date (**Commencement Date**) the Contract between you and the Supplier will come into existence.

3.5. The Contract will relate to those Services confirmed in the Order Confirmation together with any other Services that the Supplier may from time to time supply.

3.6. If the Supplier is unable to supply you with the Services for any reason, the Supplier will inform you of this by email and the Supplier will not process your order. If you have already paid for the Services, the Supplier will provide you with a refund.

4. COMMENCEMENT AND TERM

4.1. Unless terminated earlier in accordance with clause 20 or this clause 4, the Contract shall continue for the Initial Period and thereafter, the Contract shall be automatically renewed for successive Renewal Periods, subject to:

4.1.1. either party notifying the other party of termination, at least 60 days before the end of the Initial Period or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Period or Renewal Period; or

4.1.2. or as otherwise terminated in accordance with the provisions of the Contract;

and the Initial Period together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

5. USER SUBSCRIPTIONS

5.1. Subject to you purchasing the User Subscriptions in accordance with clause 6.5, the restrictions set out in this clause 5 and the other Conditions, the Supplier hereby grants to you a non-exclusive, non-transferable right, without the right to grant sublicences (except as expressly permitted by these Conditions), to permit such number of Authorised Users (or other such number of Authorised Users as from time to time agreed) including in accordance with clause 6 to use the Services and the Documentation during the Subscription Term solely for the Authorised Purpose in connection with your internal business operations.

5.2. You undertake that:

5.2.1. the maximum number of Authorised Users that you authorise to access and use the Software, the Services and the Documentation shall not exceed the number of User Subscriptions you have purchased from time to time as set out in the order;

5.2.2. you will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or the Documentation;

5.2.3. each Authorised User shall keep a secure password for their use of the Services and the Documentation (in accordance with the Supplier's security requirements and policies as updated, amended or replaced from time to time and notified to you);

5.2.4. you shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five Business Days of the Supplier's written request at any time;

5.2.5. you shall verify in writing that each Authorised User complies with the criteria set out in clause 5.7 or 7.1 (as the case may be) within 10 Business Days of the Supplier's written request at any time or times;

5.2.6. you shall immediately inform the Supplier in the event that any Authorised User no longer complies with the criteria set out in clause 5.7 or 7.1 (as the case may be) and shall use your reasonable endeavours to ensure that any such individual is not afforded any further access to the Software, the Services or the Documentation;

5.2.7. you shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User, the nature of the relationship between you and each Authorised User and the Supplier's data processing facilities to audit compliance with the Contract and each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business;

5.2.8. if any of the audits referred to in clause 5.2.7 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, you will promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

5.2.9. if any of the audits referred to in clause 5.2.7 reveal that you have underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, you will pay to the Supplier an amount equal to such underpayment within ten Business Days of the date of the relevant audit.

5.3. If any of the audits referred to in clause 5.2.7 reveal that any undertaking in clause 5.7 and/or clause 7.1 has been breached, the Supplier may, without liability to you, disable the passwords, accounts and

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access to any part of the Software or the Services or all or any of the Authorised Users and the Supplier shall not be under any obligation to provide any or all of the Services until such breach has been rectified to the reasonable satisfaction of the Supplier.

5.4. It is acknowledged and agreed that Authorised Users shall be required to click to accept the End User Licence Agreement.

5.5. You shall not, and shall procure that Authorised Users shall not access, store, distribute or transmit any Viruses, Vulnerabilities or any material during the course of your use of the Services that:

5.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

5.5.2. facilitates illegal activity;

5.5.3. depicts sexually explicit images;

5.5.4. promotes unlawful violence;

5.5.5. is discriminatory based on a protected characteristic under the Equality Act 2010; or

5.5.6. is otherwise illegal or causes damage or injury to any person or property, and the Supplier reserves the right, without liability or prejudice to its other rights to you, to disable your access (or that of an Authorised User) to any material that breaches the provisions of this clause.

5.6. You shall ensure that the Authorised Users use the Services and the Documentation in accordance with these Conditions and shall be responsible for any Authorised User's action that would constitute a breach by you of the Contract.

5.7. You undertake that each Authorised User shall, save with the express prior written consent of the Supplier (acting in its absolute discretion) be an employee, agent or independent contractor of yours working exclusively in your business operations and shall use a valid email address within the domain that is owned/operated by you.

6. ADDITIONAL USER SUBSCRIPTIONS

6.1. Subject to the remainder of this clause 6, you may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in your order and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract.

6.2. If you wish to purchase additional User Subscriptions, you will:

6.2.1. notify the Supplier in writing; or

6.2.2. if and to the extent that the option is available, add additional User Subscriptions using the process set out on the Website.

6.3. If the Supplier receives notification from you in accordance with clause 6.2.1, it shall evaluate such request for additional User Subscriptions and respond to you with approval or rejection of the request (such approval not to be unreasonably withheld).

6.4. Where the Supplier approves your request for additional User Subscriptions in accordance with clause 6.2, the Supplier shall activate the additional User Subscriptions:

6.4.1. within five Business Days of its approval in accordance with clause 6.3; or

6.4.2. immediately if your request is made in accordance with clause 6.2.2

6.5. If the Supplier approves your request to purchase additional User Subscriptions, you will, within 30 days of the date of the Supplier's invoice, pay to the Supplier the Subscription Fees in respect of such additional User Subscriptions, if such additional User Subscriptions are purchased by you part way through the Initial Period or any Renewal Period (as applicable), the Subscription Fees in respect of such additional User Subscriptions shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Period or then current Renewal Period (as applicable).

7. SUB-CONTRACTOR USERS

7.1. You hereby agree and accept that in order to receive the benefit of the bid enquiry receipt and cost and carbon tender return functionality of the Software, Sub-Contractors must be authorised to access Your Data via the Software and that as a result of such authorisation, Sub-Contractor Users will have access to Your Data.

7.2. It is acknowledged and agreed that:

7.2.1. the Sub-Contractors shall be required to enter into the Sub-Contractor SaaS;

7.2.2. under the Sub-Contractor SaaS:

7.2.2.1. Sub-Contractors shall be responsible for the acts and omissions of their Sub-Contractor Users;

7.2.2.2. no Subscription Fees or other payment shall be due or payable to the Supplier for a Sub-Contractor's use of the Software, the Services or the Documentation;

7.2.2.3. the number of Sub-Contractors shall be unlimited in number;

7.2.2.4. Sub-Contractor Users shall be required to click to accept the Supplier's End User Licence Agreement; and

7.2.2.5. it is acknowledged and agreed that you are responsible for each Sub-Contractor's compliance with the Sub-Contractor SaaS.

7.3. Each Sub-Contractor User shall, save with the express written consent of the Supplier (which consent may be withheld or made subject to any condition that the Supplier, in its sole opinion, considers appropriate) be an employee, agent or independent contractor of the relevant Sub-Contractor and shall use a valid email address within the domain that is owned/operated by the relevant Sub-Contractor and, in accessing and using the Software and the Services shall only provide services to you for an Authorised Purpose in connection with your internal business operations.

8. SERVICES

8.1. The Supplier shall, during the Subscription Term, provide the Services and make the Documentation available to you on and subject to these Conditions.

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

8.2.1. planned maintenance carried out during the maintenance window of 22:00 to 02:00 UK time; and

8.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give you at least six Normal Business Hours' notice in advance.

8.3. The Supplier shall be entitled to amend the Documentation and/or alter the Software or the Services from time to time, save that no such amendment shall intentionally serve to materially reduce, damage or otherwise diminish the Services or the servicelevel to be provided by the Supplier to you pursuant to the Contract.

8.4. The Supplier will, as part of the Services and at no additional cost to you, provide you with the Supplier's standard support services during Normal Business Hours in accordance with the Service Level Agreement.

8.5. The Supplier may amend the Support Portal and/or the Service Level Agreement in its sole and absolute discretion from time to time.

8.6. The Supplier shall provide details of any changes on the Support Portal and/or the Service Level Agreement after any change has been made.

8.7. It is acknowledged and agreed that any support provided by the Supplier in accordance with this clause 8 is provided on an "as is" and "as available" basis.

9. YOUR DATA

9.1. You will own all rights, title and interest in and to all of Your Data that is not personal data.

9.2. You and the Authorised Users shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all of Your Data.

9.3. The Supplier shall follow its archiving procedures for Your Data as set out in the Back-up / Failover Process available at <https://www.sterling-dcs.com/agreements/back-up-failover-process/> or such other

website address as may be notified to you from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Your Data, your sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable endeavours to restore Your Data that is lost or damaged from the latest back-up of Your Data maintained by the Supplier in accordance with the archiving procedure described in its back up policy <https://www.sterling-dcs.com/agreements/back-up-failover-process/>. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to maintenance and back up of Your Data for which it shall remain fully liable).

10. DATA PROTECTION

10.1. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

10.2. By entering into the Contract, you consent to (and shall procure all required consents, from your personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Your Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.sterling-dcs.com/privacy-policy/> as may be amended, updated or replaced from time to time (**Privacy Policy**).

10.3. Without prejudice to the generality of clause 10.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of Your Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of the Contract.

11. THIRD PARTY PROVIDERS

11.1. You acknowledge that the Website may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third party websites and that you do so solely at your own risk.

11.2. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party.

11.3. Any contract entered into and any transaction completed via any third party website is between you and the relevant third party, and not the Supplier. The Supplier recommends that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third party website. The Supplier does not endorse or approve any third party website nor the content of any third party website made available via the Services.

12. SUPPLIER'S OBLIGATIONS

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

12.2. The undertaking at clause 12.1 shall not apply if and to the extent that any non-conformance is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, the Supplier will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 12.1.

12.3. Notwithstanding the foregoing, the Supplier:

12.3.1. does not warrant that that the Website, the Services, the Documentation and/or the information obtained by you through the Services will meet your requirements;

12.3.2. does not warrant that the Website, the Software and/or the Services will be free from Vulnerabilities or Viruses;

12.3.3. does not warrant that the Website, the Software, the Documentation and/or the Services will comply with any Heightened Cybersecurity Requirements; and

12.3.4. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Website, the Services and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

13. YOUR OBLIGATIONS

13.1. You will and you will procure that each Authorised User will:

13.1.1. provide the Supplier with:

13.1.1.1. all necessary co-operation in relation to the Contract;

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

13.1.2. ensure that the terms of your order are complete and accurate;

13.1.3. comply with all applicable laws and regulations with respect to your activities under the Contract (including all applicable technology control or export laws and regulations);

13.1.4. carry out all of your other responsibilities set out in the Contract in a timely and efficient manner and in the event of any delays in your provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

13.1.5. obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including the Services;

13.1.6. ensure that your network and systems comply with the relevant specifications provided by the Supplier from time to time; and

13.1.7. be, if and to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing your network connections and telecommunications links from your systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

13.2. You will not and you will procure that the Authorised Users will not:

13.2.1. except as may be allowed by any applicable law which is incapable of exclusion by contract between the parties and except to the extent expressly permitted under the Contract:

13.2.1.1. 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 the Documentation (as applicable) in any form or media or by any means;

13.2.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

13.2.2. access all or any part of the Services and the Documentation in order to build a product or service which competes with the Services and/or the Documentation;

13.2.3. use the Services and/or the Documentation to provide services to third parties;

13.2.4. except as expressly permitted by the Contract, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or the Documentation available to any third party; and/or

13.2.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or the Documentation, other than as provided under clause 5, clause 6, clause 7, clause 8 and clause 13.2.

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

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13.4. It is acknowledged and agreed that you may use the results of the Services in your ordinary course of business as part of a providing a packaged service to your customers. For the avoidance of doubt, this shall not include reselling the Services and/or except as expressly set out in the Contract, giving any third party access to the Services.

14. CHARGES AND PAYMENT

14.1. You will pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 14.

14.2. The Supplier takes reasonable care to ensure that the prices stated for the Services are correct at the time when the relevant information was entered on the Website. However, please see clause 14.3 for what happens if the Supplier discovers an error in the price of the Services you ordered.

14.3. It is always possible that, despite the Supplier's reasonable efforts, some of the Services on the Website may be incorrectly priced. Where the correct price for the Services is less than the price stated on the Website, the Supplier will charge the lower amount. If the correct price for the Services is higher than the price stated on the Website, the Supplier will contact you as soon as possible to inform you of this error and the Supplier will give you the option of continuing to purchase the Services at the correct price or cancelling your order. The Supplier will not process your order until the Supplier has your instructions. If the Supplier is unable to contact you using the contact details you provided during the order process, the Supplier will treat the order as cancelled and notify you in writing. However, if the Supplier mistakenly accepts and processes your order where a pricing error is obvious and unmistakeable and could reasonably have been recognised by you as mispricing, the Supplier may cancel supply of the Services and refund you any sums you have paid.

14.4. You will on the Commencement Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if you provide:

14.4.1. your credit card details to the Supplier, you hereby authorise the Supplier to bill such credit card:

14.4.1.1. on the Commencement Date for the Subscription Fees payable in respect of the Initial Period;

14.4.1.2. subject to clause 4.1, on each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period;

14.4.2. your approved purchase order information to the Supplier, the Supplier shall invoice you:

14.4.2.1. on the Commencement Date for the Subscription Fees payable in respect of the Initial Period; and

14.4.2.2. subject to clause 4.1, at least 30 days prior to each anniversary of the Commencement Date for the Subscription Fees payable in respect of the next Renewal Period, and you will pay the invoice in respect of the Initial Period by return and each renewal invoice within 30 days after the date of such invoice.

If you were offered Subscription Fees including a discount from the list price, the discount is only valid if you pay the invoice by the due date as stated on the invoice. If payment has not been received by the Supplier by the due date any previously agreed discounts will be invalidated and the Subscription Fees will revert to the full list price.

14.5. For any failed or cancelled payments of the Subscription Fees, the Supplier may charge you on administration fee of £20.00.

14.6. If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

14.6.1. the Supplier may, without liability to you, disable your passwords, accounts and access to all or part of the Services (including any Sub- Contractor's access to the Services) and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

14.6.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and

14.6.3. the Supplier will be entitled to claim any costs incurred relating to the recovery of such due amounts and any accrued interest.

14.7. If you wish for purchase order numbers to be used it is your obligation to provide such purchase order numbers in time for invoices to be issued (no later than five Business Days in advance of the invoice being issued), otherwise they will be issued without purchase order numbers and payment will still be expected in accordance with these Conditions.

14.8. All amounts and fees stated or referred to in the Contract:

14.8.1. shall be payable in pounds sterling;

14.8.2. are, subject to clause 14.3 and clause 19.4, non-cancellable and non-refundable; and

14.8.3. are exclusive of value added tax (unless expressly stated otherwise), which shall be added to the Supplier's invoice(s) at the appropriate rate.

14.9. The Supplier shall be entitled to increase the Subscription Fees, and any other fees payable by you pursuant to this agreement by any positive variation in the UK Retail Price Index (RPI) (or equivalent local government inflation index) calculated over the period of 12 months ended on the date of last publication of RPI at the start of each Renewal Period upon at least 60 days' prior notice to you pursuant to Clause 4.1.

15. INTELLECTUAL PROPERTY RIGHTS

15.1. You acknowledge and agree that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant you any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services and/or the Documentation.

15.2. You hereby grant to the Supplier a non-exclusive, irrevocable and royalty-free licence to use Your Data for:

15.2.1. providing the Services (including the provision of Software and Documentation);

15.2.2. the purposes set out in the Privacy Policy; and

15.2.3. all other purposes relevant to the proper exercise of the Supplier's rights and obligations under the Contract.

15.3. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

15.4. The Supplier may from time to time include open source software (as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>)) in the Software so long as it ensures that it complies with the relevant licence terms for the open source software. Any licence granted to you is subject to such terms.

16. CONFIDENTIALITY

16.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information and all information of a confidential or proprietary nature, concerning the business, affairs, other customers, clients or suppliers of the other party except as permitted by clause 16.2 and/or clause 16.3.

16.2. Each party may disclose the other party's confidential information:

16.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract and each party shall procure that your employees, officers, representatives or advisers to whom it discloses the other party's confidential information materially comply with this clause 16; and

16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3. Each party shall be entitled (without the prior written consent of the other party but always subject to the proviso in this clause 16.3) to disclose the terms of the Contract and the confidential information of the other party to an auditor, its legal or other professional advisers (including insurance brokers and financial advisers), if and to the extent that the party (acting reasonably) considers that they each need to know the confidential information in relation to the Contract provided that the receiving party:

16.3.1. informs the individual or entity of the confidential or proprietary nature of the confidential information; and

16.3.2. ensures that the individual or entity is bound by appropriate obligations of confidentiality.

16.4. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

16.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.

16.6. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any Sub-Contractors or Sub-Contractor Users.

16.7. You acknowledge that the details of:

16.7.1. the Software (including screen design, work flows and/or permissions settings), the Specification, the Documentation and the Services under the terms of the Contract, particularly in relation to any fees payable to the Supplier in connection herewith;

16.7.2. the Services including the results of any performance tests of the Services;

16.7.3. any security policies or procedures or the results of any security audits in, carried out by or on behalf of, the Supplier, whether in relation to the Supplier, you or any other third party;

16.7.4. the Supplier's development methodology and/or implementation plans (including future product roadmaps) and any requests for support raised by you with the Supplier;

16.7.5. any third party data used in the Software to provide the Services; and

16.7.6. any Supplier Data,

shall constitute confidential information of the Supplier.

16.8. The Supplier acknowledges that Your Data constitutes your confidential information.

16.9. No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), or any court or other authority of competent jurisdiction.

17. INDEMNITY

17.1. You will indemnify the Supplier against an amount equal to all Losses and Liabilities in each case arising out of or in connection with a breach of the Contract.

17.2. The Supplier will indemnify you against an amount equal to all Losses and Liabilities in each case arising out of or in connection with any claim that your use of the Services, the Software, and the Documentation in accordance with the Contract infringes a third party's Intellectual Property Rights.

17.3. If any third party makes a claim, or notifies an intention to make a claim against you which may reasonably give rise to a liability under the indemnity in clause 17.2 (a Claim), you will:

17.3.1. as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

17.3.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent to be unreasonably conditioned, withheld or delayed); and

17.3.3. take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

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

17.4.1. a modification of the Services or the Documentation by anyone other than the Supplier; or

17.4.2. your use of the Services or the Documentation in a manner contrary to the instructions given to you by the Supplier; or

17.4.3. your use of the Services or the Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

17.5. Clause 17.2 constitutes your sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for infringement of any third party Intellectual Property Rights.

18. DISCLAIMERS

18.1. The Supplier does not warrant that the use of the Website and/or the Services will be uninterrupted or error-free or that the Website and/or the Services will meet any Heightened Cybersecurity Requirements.

18.2. You acknowledge that the Services are provided to you by the Supplier on an "as is" basis.

18.3. You accept responsibility for the selection of the Services to achieve your intended results and acknowledge that the Services have not been developed to meet your individual requirements.

18.4. You accept sole responsibility for results obtained from the use of the Services and the Documentation by you, and for conclusions drawn from such use.

18.5. You acknowledge and agree that the Supplier:

18.5.1. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

18.5.2. shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by you in connection with the Services, by any third party or any actions taken by the Supplier at your direction; and

18.5.3. shall not be prevented from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to the Services provided under the Contract.

18.6. Except as prohibited by law, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

18.7. The Supplier has the right to amend the specification of the Services at any time.

19. LIMITATION OF LIABILITY

19.1. References to liability in this clause 19 include every kind of liability arising under or in connection with the Contract (and any documents referred to in it, including the Sub-Contractor SaaS and any End User Licence Agreement) including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

19.2. Nothing in the Contract excludes the liability of the Supplier for:

19.2.1. death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;

19.2.2. fraud or fraudulent misrepresentation; and/or

19.2.3. any other liability which cannot be limited or excluded by applicable law.

19.3. Except as expressly set out in clause 19.2, the Supplier shall not be liable to you whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising under or in connection with the Contract for:

19.3.1. loss of anticipated savings (including the costs of an alternative provider or an in-house supply);

19.3.2. loss of profits or revenue;

19.3.3. loss of sales or business;

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- 19.3.4. loss of agreements or contracts;
- 19.3.5. loss of business opportunity;
- 19.3.6. loss of or damage to goodwill or reputation;
- 19.3.7. loss or corruption of data, software or information; and/or
- 19.3.8. any indirect or consequential loss.
- 19.4. Subject to clause 19.2 and clause 19.3, the Supplier's total aggregate liability in each Contract Year shall not exceed a sum equal to the total Subscriptions Fees paid for the User Subscriptions in any Contract Year.
- 19.5. Nothing in the Contract shall restrict or limit the general obligation at law to mitigate a loss or liability that may be suffered or incurred under the Contract.
- 19.6. For the avoidance of doubt, the Supplier does not owe you or any End User any duty of care.

20. TERMINATION

- 20.1. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract on the due date for payment and you remain in default not less than 30 days after being notified in writing to make such payment.
- 20.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 20.2.1. the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 20.2.2. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 20.2.3. the other party takes any step or action in connection with regard to entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 20.2.4. the other party takes any step or action in connection with it applying to court for, or, obtaining a moratorium under Part A1 of the Insolvency Act 1986;
- 20.2.5. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 20.2.6. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 20.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract on giving you not less than 14 days' written notice.
- 20.4. On termination of the Contract for any reason:
- 20.4.1. all licences granted under the Contract shall immediately terminate;
- 20.4.2. you will (and you will procure that the Sub-Contractors) immediately cease all use of the Services and/or the Documentation;
- 20.4.3. each party shall make no further use of any equipment, property, Software, Documentation and other items (and all copies of them) belonging to the other party;
- 20.4.4. the Supplier may destroy or otherwise dispose of any of Your Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to you of the then most recent back-up of Your Data and in such case, the Supplier shall use reasonable endeavours to deliver the back-up to you within 30 days of its receipt of such a written request, provided that:
- 20.4.4.1. at that time you have paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination);
- 20.4.4.2. you pay all reasonable expenses incurred by the Supplier in returning or disposing of Your Data;
- 20.4.5. any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect;
- 20.4.6. you shall immediately pay to the Supplier any sums due to the Supplier under the Contract; and
- 20.4.7. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

21. FORCE MAJEURE

- 21.1. Force Majeure Event means any circumstance not within the Supplier's reasonable control including:
- 21.1.1. acts of God, flood, drought, earthquake or other natural disaster;
- 21.1.2. epidemic or pandemic (including COVID-19);
- 21.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 21.1.4. malicious damage to the Services (including distributed denial of service attacks, hacking or any other unauthorised access);
- 21.1.5. nuclear, chemical or biological contamination or sonic boom;
- 21.1.6. any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- 21.1.7. collapse of buildings, fire, explosion or accident;
- 21.1.8. any labour or trade dispute, strikes, industrial action or lockouts;
- 21.1.9. general unavailability of the internet;
- 21.1.10. non-performance by suppliers or subcontractors; and
- 21.1.11. interruption or failure of utility service (including any hosting services provided to the Supplier by a third party from time to time) or transport or telecommunications network or data centre.
- 21.2. If and to the extent that the Supplier is prevented, impeded, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 21.3. The provisions of this clause 21 shall apply whether or not a Force Majeure Event was foreseeable.

22. GENERAL

- 22.1. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 22.2. Except as set out in this Contract, you shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract without the prior written consent of the Supplier.
- 22.3. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous contracts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.4. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 22.5. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 22.6. Nothing in the Contract shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

- 22.7. The Supplier may update these Conditions at any time on notice to you in accordance with this clause 22.7. Your continued use of the Services following the deemed receipt and service of the notice under clause 22.14 to clause 22.16 (inclusive) shall constitute your acceptance to the terms of these Conditions, as varied. If you do not wish to accept the terms of the Conditions (as varied) you must immediately stop using and accessing the Services on the deemed receipt and service of the notice.
- 22.8. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 22.9. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22.9 shall not affect the validity and enforceability of the rest of the Contract.
- 22.10. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 22.11. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 22.12. Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 22.13. Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 22.14. Notice given under the Contract shall be in writing, sent to such addresses as may be notified by the parties from time to time and shall be delivered personally, sent by email or sent by pre-paid, first-class post or recorded delivery.
- 22.15. A notice is deemed to have been received:
- 22.15.1. if delivered personally, at the time of the delivery;
- 22.15.2. in the case of email, 09:00 the Business Day following transmission; or
- 22.15.3. in the case of pre-paid first class post or recorded delivery two Business Days from the date of posting.
- 22.16. To prove service, it is sufficient to prove that the notice was transmitted by email, to the email address of the party or, in the case of post, that the envelope containing the notice was properly addressed.
- 22.17. The provisions of clause 22.14 to clause 22.16 (inclusive) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

23. GOVERNING LAW AND JURISDICTION

- 23.1. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 23.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

END