

Terms and Conditions

G-Cloud 15

Last updated : Jan 26



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CLAUSE

Introduction

The terms and conditions document for g-cloud 14 for the use of dbRotas rostering system (**Service**) incorporated and registered in England and Wales with company number 13646138 (**Supplier**) to the **Customer**.

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of creation and management of medical personnel rotas.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier's service subject to agreement of these terms and conditions.

Agreed terms:

1. Interpretation

- 1.1.** The definitions and rules of interpretation in this clause apply in these terms and conditions and are referred to as the terms and conditions.
- 1. Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).
- 2. Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 3. Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

4. **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.
5. **Customer Data:** the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
6. **Documentation:** the document made available to the Customer by the Supplier online via www.dbrotas.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
7. **Effective Date:** the date of start the agreement to the terms and conditions.
8. **Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies), international and national standards and sanctions, which are applicable to either the Customer or an Authorised User 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), all as amended or updated from time to time.
9. **Initial Subscription Term:** the initial term of the agreement as set out in Schedule 2.
10. **Mandatory Policies:** the Supplier's business policies in Schedule 3, as amended by notification to the Customer from time to time.
11. **Normal Business Hours:** 8.00 am to 5.00 pm local UK time, each Business Day.
12. **Renewal Period:** the period described in clause 14.1.
13. **Services:** the subscription services provided by the Supplier to the Customer under the terms and conditions via www.dbrotas.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
14. **Software:** the online software applications provided by the Supplier as part of the Services.

- 15. Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 1 of Schedule 1.
- 16. Subscription Term:** has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
- 17. Support Services Policy:** the Supplier's policy for providing support in relation to the Services as made available at www.dbrotas.com or such other website address as may be notified to the Customer from time to time.
- 18. User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with the terms and conditions.
- 19. Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 20. 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 interpreted accordingly.
- 21. Agreement:** The signed contractual agreement for the subscription term.
- 1.2.** Clause, schedule and paragraph headings shall not affect the interpretation of the terms and conditions.
- 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.** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6.** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7.** A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the agreement.
- 1.8.** A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the agreement under that statute or statutory provision.
- 1.9.** A reference to **writing** or **written** excludes fax but not email.
- 1.10.** References to clauses and schedules are to the clauses and schedules of the terms and conditions; references to paragraphs are to paragraphs of the relevant schedule to the terms and conditions.

2. User subscriptions

- 2.1.** Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1. The restrictions set out in this clause 2, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and license without the right to grant sub-licenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2.** In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

- (b) it 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 Documentation;
- (c) each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than every 6 months and that each Authorised User shall keep their password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it 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 and the Customer's data processing facilities to audit compliance with the terms and conditions document. 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 the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) 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, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

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

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these terms and conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or

- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

2.5. The Customer shall use all reasonable endeavors 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.

2.6. The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

3.1. Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these terms and conditions.

3.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 days of its approval of the Customer's request.

3.3. If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's

invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

- 4.1.** The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to these terms and conditions.
- 4.2.** The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10 pm to 2 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 12 Normal Business Hours' notice in advance.
- 4.3.** The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. Data Protection

- 5.1.** The Supplier shall comply with the UK General Data Protection Regulation (GDPR), the Data Protection Act 2018 in the processing of the Customer's data.
- 5.2.** The Supplier will take appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including measures to prevent unauthorised access, alteration or disclosure of Customer data.
- 5.3.** The Supplier will not disclose the Customer's data to any third party without the prior written consent of the Customer in either documented letter format or email, except where required by law or as otherwise authorised by the Customer.
- 5.4.** The Supplier shall promptly (within one business day) notify the Customer and other legally required third parties in the event of any unauthorised access, alteration, or disclosure of Customer data including but not limited to the Information Commissioner's Office, government agencies.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content for correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.

Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website.

7. Supplier's obligations

- 7.1.** The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2.** The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which 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 with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3.** The Supplier 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 the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4.** The terms and conditions shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the agreement.
- 7.5.** The Supplier warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under the terms and conditions.
- 7.6.** The Supplier shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavors to restore the lost or damaged Customer Data from the

latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its backup policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier) to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.

8. Customer's obligations

8.1. The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the terms and conditions; and
 - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under the agreement, comply with all applicable laws and regulations with respect to its activities under the terms and conditions;
- (c) carry out all other Customer responsibilities set out in the terms and conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions and shall be responsible for any Authorised User's breach of the terms and conditions;
- (e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the terms and conditions, including without limitation the Services;

- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the terms and conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its 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 the Customer's network connections or telecommunications links or caused by the internet.

8.2. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. Charges and payment

9.1. The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and Schedule 1.

9.2. The Customer shall on the Effective Date provide to the Supplier an approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3. 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:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of 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
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5 % over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4. All amounts and fees stated or referred to in the agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5. The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and the support fees payable pursuant to clause 4.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

10. Proprietary rights

10.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2. 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 terms and conditions.

11. Confidentiality and compliance with policies

11.1. Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of the terms and conditions in connection with dbRotas software use including, but not limited to:

- (a) the existence and terms of the terms and conditions or any agreement entered into in connection with the terms and conditions;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (c) any information developed by the parties in the course of carrying out the terms and conditions and the parties agree that:
 - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

11.2. The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed.

11.3. Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the terms and conditions.
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

11.4. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

11.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. Provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of

disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.6. A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

11.7. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the agreement is granted to the other party, or to be implied from the terms and conditions.

11.8. On termination or expiry of the agreement, each party shall:

- (a) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable) by 180 calendar days; and
- (b) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 11.8.

11.9. No party shall make, or permit any person to make, any public announcement concerning the agreement 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, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.10. Except as expressly stated in the agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.11. The above provisions of this clause 11 shall survive for a period of five years from termination or expiry of the agreement.

12. Indemnity

12.1. The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

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

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

12.3. In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so

that they become non-infringing or, if such remedies are not reasonably available, terminate the agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

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

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5. The foregoing and clause 13.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

13.1. Except as expressly and specifically provided in the agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the terms and conditions; and

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

13.2. Nothing in the terms and conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3. Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the terms and conditions; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 6 months immediately preceding the date on which the claim arose.

13.4. Nothing in the terms and conditions excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

14.1. The agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of the terms and conditions;

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

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

- (a) the other party fails to pay any amount due under the terms and conditions on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other terms 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;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to *clause 14.2(j)* (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (k) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms is in jeopardy.

14.3. On termination of the agreement for any reason:

- (a) all licences granted under the agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 14 days after the effective date of the termination of the agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

Neither party shall be in breach of the terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations under the terms and conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the agreement by giving 7 days' written notice to the affected party.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of the agreement and the Schedules, the provisions in the main body of agreement shall prevail.

17. Variation

No variation of the terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

18.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.2. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in the agreement, the rights and remedies provided under the terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1. If any provision or part-provision of the terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the agreement.

20.2. If any provision or part-provision of the terms and conditions is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

21.1. The terms and conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

21.2. Each party acknowledges that in entering into the terms and conditions 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 terms and conditions.

21.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the terms and conditions.

21.4. Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

22.1. The Customer shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the terms and conditions.

22.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the terms and conditions.

23. No partnership or agency

Nothing in the terms and conditions 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, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

The terms and conditions does not confer any rights on any person or party (other than the parties in the agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Counterparts

- 25.1.** The terms and conditions may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.2.** Transmission of an executed counterpart of the terms and conditions (but for the avoidance of doubt not just a signature page) or the executed signature page of a counterpart of the agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of the terms and conditions. If either method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy originals of their counterpart.
- 25.3.** No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

26. Notices

- 26.1.** Any notice given to a party under or in connection with the agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) Party 1: help@dbrotas.com
 - (ii) Party 2: contact@dbrotas.com
- 26.2.** Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post, the next working day delivery service, at 1 pm on the second Business Day after posting; or

if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

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

27. Governing law

The terms and conditions 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 interpreted in accordance with the law of England and Wales.

28. Jurisdiction

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 agreement or its subject matter or formation (including non-contractual disputes or claims).