

Appendix 2 -VITS LIMITED GENERAL TERMS AND CONDITIONS FOR MANAGED SERVICES

1. DEFINITIONS

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Additional Services"	any Services provided or requested to be provided by VITS under this Agreement which are not defined as part of the Hosting Services or Support Services which VITS is obliged to provide, including Service Request Services;
"Additional Services Fee"	the fees chargeable by VITS for its provision of Additional Services in the sum agreed between the Parties or, if none, at the Rates;
this "Agreement"	these Terms and Conditions for Services together with the Schedule, the relevant Commercial Details Document and any other documents identified in the relevant Commercial Details Document;
"Business Day"	any day other than (i) a Saturday, (ii) a Sunday, (iii) a day when the clearing banks are not physically open for business in the City of London, England, or (iv) any day on which VITS is not open for business as specified to the Customer by VITS in writing;
"Change Request Form"	the template form attached to the Commercial Details Document, which template must be used by the Parties if they wish to amend this Agreement;
"Commencement Date"	the date stipulated as such in the Commercial Details Document;
"Commercial Details Document"	the document containing the specific information relating to the particular third party software, services or deliverables supplied or to be supplied by VITS to the Customer;
"Confidential Information"	any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential whether disclosed or obtained before, on or after the date of this Agreement together with any reproductions of such information or any part of this information (and VITS's "Confidential Information" shall include the Deliverables; and the Customer's "Confidential Information" shall include the Data; and for each Party any information relating to the other Party's employees, agents, contractors, franchisees or customers, and the contents of this Agreement, shall also constitute "Confidential Information");
"Customer"	the customer whose details are set out in the Commercial Details Document;
"Customer Equipment"	the Customer's or Users' or its or their supplier's (excluding VITS or its suppliers) computer hardware and equipment and software including the Customer's or its supplier's operating platform and browser;
"Customer Hosted Data"	any of the Customer's Data which is to be stored, hosted or processed pursuant to VITS's delivery of Hosting Services under this Agreement;
"Customer Minimum Equipment Requirements"	the minimum level of specification for the Customer Equipment needed in order to use and access the Hosting Services satisfactorily, as may be detailed in the Commercial Details Document (or otherwise reasonably stipulated by VITS in writing);
"Customer Support Contact"	the individual or individuals designated as such in the Commercial Details Document;

"Data"	any data used in relation to the Customer's business, including any data supplied or inputted by a User as well as all Customer images, diagrams, drawings, descriptions, concepts, photographs, plans, sketches, flowcharts, price lists, databases, designs, concepts and models;
"Data Protection Laws"	means (a) the Data Protection Act 2018, the GDPR, the Privacy and Electronic Communications (EC Directive) Regulations 2003, any other applicable laws concerning data protection, privacy or confidentiality which may come into force from time to time in the UK and any subordinate or related legislation in force from time to time in the UK; and (b) any replacement to, addition to, or amendment of, any of the foregoing including any national laws or regulations constituting a replacement or successor data protection regime to that governed by the GDPR;
"Deliverables"	any deliverables, materials or documents (which may include Documents) provided or to be provided or made available by VITS to the Customer (excluding, for the avoidance of doubt, Third Party Parts) in relation to this Agreement, as may be more particularly described as being required to be delivered in or pursuant to the Commercial Details Document;
"Delivered Third Party Software"	such Third Party Software as VITS may agree to make available to the Customer under this Agreement and as may be specified in the Commercial Details Document;
"Delivery Date"	the date(s) (if any) stipulated for the delivery of Third Party Parts as such in the Commercial Details Document;
"Documents"	any documents provided or to be provided (or in respect of which Services are to be provided) by VITS to the Customer pursuant to this Agreement, as may be more particularly described in the Commercial Details Document (including covering any specifications, reports, manuals, user documentation, notes, records, research, results, processes, descriptions, systems, methodologies, flowcharts, tools, ideas, concepts, know-how, information, data, diagrams, designs, sketches, photographs, drawings, plans, lists and databases);
"End User Licence Agreement Terms"	any end user licence agreement terms (whether with (a) a third party licensor directly; or (b) with VITS as reseller on terms that reflect the terms permitted by the third party licensor), in relation to Delivered Third Party Software;
"GDPR"	Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016, otherwise known as the General Data Protection Regulation;
"Hosting Services"	the Services provided or to be provided by VITS under this Agreement as described in this Agreement and the Commercial Details Document, for the provision of a platform of hardware and software that enables access to Customer Hosted Data and Delivered Third Party Software;
"Hosting Services Parameters"	the parameters as described in the Commercial Details Document;
"Hosting Support Services"	the Services for dealing with Incidents concerning access to the Hosting Services, as described in the Commercial Details Document;
"Incident"	an unplanned interruption to any software or an IT service, or reduction in the quality of an IT service, in respect of which VITS has agreed to provide Support Services (which may include Hosting Support Services) pursuant to this Agreement;
"Initial Term"	the initial term of the Agreement set out in the

	Commercial Details Document;		with the Services which does not involve Hosting Services or Support Services which VITS is required to provide under this Agreement;
"Intellectual Property Rights"	copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;	"Service Window Hours"	unless stated otherwise in the Commercial Details Document, the service window hours for Support Services and the service window hours for Hosting Support Services shall be the Normal Working Hours;
"Liability"	has the meaning given to it in Clause 14.9.1;	"Special Rates"	VITS's charge our rates for work done outside of Normal Working Hours as set out in the Commercial Details Document or if amended as notified by VITS to the Customer from time to time;
"Licence Fee for Delivered Third Party Software"	any licence Fee that the Customer is obliged to pay to VITS in respect of the use of or access to the Delivered Third Party Software, specified in the Commercial Details Document;	"Support Services"	any support services, including any Hosting Support Services, to be provided by VITS to the Customer as set out in the Commercial Details Document;
"Negligence"	has the meaning given to it in Clause 14.9.2;	"Term"	the term of this Agreement referred to in Clause 16;
"Normal Rates"	VITS's charge out rates for Services provided during Normal Working Hours as set out in the Commercial Details Document or if amended as notified by VITS to the Customer from time to time;	these "Terms and Conditions"	means these VITS Limited General Terms and Conditions for Managed Services;
"Normal Working Hours"	9am to 6pm local time in London during Business Days;	"Territory"	the United Kingdom of England, Wales, Scotland and Northern Ireland, together with the Isle of Man and the Channel Islands;
"Party"	either VITS or the Customer;	"Third Party Parts"	hardware and other materials (if any) which VITS buys from third parties for re-sale to the Customer as set out in the Commercial Details Document;
"Priorities"	the priorities of the severity of Incidents, as set out in the Service Level Appendix;	"Third Party Parts Price"	the fee payable by the Customer to VITS for the supply of Third Party Parts as stipulated in the Commercial Details Document;
"Rates"	VITS's time and materials rates for providing services, being initially at either: the Normal Rates and Special Rates set out in the Commercial Details Document as uplifted in accordance with this Agreement;	"Third Party Software"	any software used or to be used by the Customer in which the Intellectual Property Rights are not owned by VITS (including Delivered Third Party Software);
"Release"	any addition, alteration, change, modification, enhancement, patch, full and point release, update and upgrade to Third Party Software which VITS may provide to the Customer in accordance with its obligations under this Agreement;	"User"	the Customer or its Affiliate or its or their employee, officer or agent, and any of the following identified or described in the Commercial Details Document: the Customer's or its Affiliate's contractor, franchisee, customer or third party service provider;
"Schedule"	the schedule to these Terms and Conditions;	"VAT"	United Kingdom sales or turnover tax known as value added tax, as chargeable at the current rate from time to time in accordance with legislation in England;
"Server"	VITS's (or its subcontractor's) server from which it provides the Hosting Services;	"VITS"	VITS Limited, a company registered in England and Wales with registered number 05210578 and registered office at Hurlingham Studios, Ranelagh Gardens, London, United Kingdom SW6 3PA;
"Service Level Appendix"	the service level appendix appended to the Commercial Details Document;	"VITS's Standard Rates"	VITS's standard rates as set out in the Commercial Details Document;
"Services"	any Hosting Services, Support Services, or other services provided or to be provided by VITS to the Customer pursuant to this Agreement (and which may include VITS's provision or supply of Deliverables to the Customer), as may be more particularly described in or pursuant to the Commercial Details Document;	"Work"	any work undertaken or to be undertaken by VITS pursuant to this Agreement;
"Services Fee"	the fee payable by the Customer to VITS for the provision of the Services as stipulated in the Commercial Details Document;	"Workaround"	a technical or manual workaround that does not require any addition or adjustment to any software programming code; and
Service Performance Period	the period for performance of the Services (if any) by VITS as set out in the Commercial Details Document;	"Year"	a period of 12 months commencing on the Commencement Date, or each subsequent period of 12 months commencing on an anniversary of the Commencement Date;
"Service Request Services"	any query, question, request for information or help, service, amendment, addition, installation, configuration, customisation, consultancy, testing, implementation or enhancement submitted or requested by the Customer to VITS in connection	1.2	references to "Clauses" and "Paragraphs" are to clauses of these Terms and Conditions and paragraphs of the Schedule;
		1.3	the headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;
		1.4	words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership or limited liability partnership;

- 1.5 references to "written" or in "writing" (except in respect of sending a notice in accordance with Clause 18) includes in electronic form;
- 1.6 references to "includes" or "including" or like words or expressions shall mean without limitation; and
- 1.7 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. AGREEMENT

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to all Deliverables and Services.
- 2.2 Except to the extent that this Agreement provides to the contrary, this Agreement (and any other document referred to in it) operates to the entire exclusion of:
 - 2.2.1 any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement; and
 - 2.2.2 any representations, statements, warranties or promises not expressly stated in this Agreement.
- 2.3 Each Party acknowledges that it has not entered into this Agreement based on any representation, statement, warranty or promise that is not expressly incorporated into this Agreement.
- 2.4 Nothing excludes or limits a Party's Liability for any fraudulent misrepresentations, and nothing excludes a Party's Liability for any misrepresentation as to a fundamental matter.
- 2.5 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.6 In the event of any conflict between the provisions of any of the documents within this Agreement, then the following order of precedence shall apply:
 - 2.6.1 the Commercial Details Document, which prevails over
 - 2.6.2 these Terms and Conditions.
- 2.7 If the Customer provides VITS with a purchase order for the Deliverables, Third Party Parts, Delivered Third Party Software or Services, the purchase order shall be purely for the Customer's administrative purposes only and shall not form part of this Agreement.
- 2.8 This Agreement shall be formed and the Parties shall be legally bound at the earlier of: when both Parties have signed the Commercial Details Document; or, at the commencement of the Services.
- 2.9 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 2.10 Each Commercial Details Document, constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

3. MANAGED SERVICES

- 3.1 In consideration of payment by the Customer of the Services Fee, VITS shall provide the Services for the Term until this Agreement terminates or expires in accordance with this Agreement. VITS shall endeavour to perform the Services during any applicable Service Performance Period, or such other time as is stipulated in the Commercial Details Document, but time for performance of the Services shall not be of the essence.
- 3.2 VITS warrants that:
 - 3.2.1 it shall use its reasonable skill and care in providing any Services;
 - 3.2.2 its employees, agents and subcontractors have the necessary skill and qualifications to provide any Services;
 - 3.2.3 any Services will be provided in a professional, competent and workmanlike manner;
 - 3.2.4 it has all necessary rights, permissions, consents and licences to enter into and perform this Agreement;
 - 3.2.5 it shall ensure that VITS's employees, agents and contractors fully co-operate with, and are open and courteous and honest and transparent to, and make themselves available at all reasonable

times for discussion and meetings with, the Customer and the Customer's employees, agents and contractors; and

- 3.2.6 it shall comply with all applicable laws in the course of its provision of any Services.
- 3.3 VITS does not warrant that the Services or Deliverables will be uninterrupted, error-free, or that they will meet any individual requirements of the Customer (other than any requirements specifically set out in this Agreement). VITS is not responsible for any equipment, hardware, deliverables, software or services not expressly stipulated in this Agreement that VITS will provide. The Customer is responsible for any equipment, hardware, deliverables, software and services that it is required to obtain from someone other than VITS. Except for any matter upon which VITS specifically agrees in writing with the Customer to advise or do, VITS shall not be responsible or have any Liability for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).
- 3.4 In providing the Services and Deliverables, VITS shall use the same level of security as VITS provides for its other systems but VITS does not warrant that the Services or Deliverables will be totally secure from unauthorised third party access.
- 3.5 VITS shall use all reasonable endeavours to perform its obligations within any timescales set out in this Agreement, but VITS shall not have any Liability for any delays or failure to accurately perform its obligations:
 - 3.5.1 if it has used those endeavours; or
 - 3.5.2 to the extent caused by any failure or delay on the part of the Customer or any User or by any breach by the Customer of this Agreement or of any other agreement.If there is any slippage in time, VITS shall use its reasonable endeavours to reschedule delayed tasks to a mutually convenient time.
- 3.6 If VITS is delayed or hindered in providing any Services as a result of any security, data breach, delay or failure by the Customer to perform any of its obligations under this Agreement or of any other agreement, then VITS may charge the Customer at the Rates for its actual time spent providing the relevant Services in addition to any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which VITS had anticipated that its personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of the Customer's act or omission).
- 3.7 Except where expressly provided for within this Agreement, VITS excludes all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Deliverables and Services.

4. HOSTING SERVICES

- 4.1 The Customer acknowledges that VITS cannot guarantee uninterrupted, timely or error-free access to the Servers due to events beyond the control of VITS, and VITS or its suppliers may also need to carry out maintenance from time to time on the Servers, but VITS shall use its reasonable endeavours to:
 - 4.1.1 minimise the amount of downtime for access to the Servers (although VITS does not warrant that access to the Servers will be uninterrupted, timely or error-free);
 - 4.1.2 keep any planned maintenance to times other than during Service Window Hours and other than during any other period that VITS expressly agrees in writing that it will not conduct planned maintenance;
 - 4.1.3 give the Customer as much warning as possible of planned maintenance or downtime;
 - 4.1.4 ensure that there is sufficient amount of connection to and from the Servers and space on the Servers for use by the Customer that VITS anticipates is needed, but VITS may suspend the Hosting Services if the anticipated bandwidth or space is exceeded until any outstanding Services Fee and costs and relevant reinstatement Services Fee is paid;
 - 4.1.5 use industry recognised standards to create restricted access and provide sufficient security mechanisms with the aim of ensuring that only authorised persons can access and/or amend the Customer Hosted Data used or processed by VITS under this Agreement, but the Customer acknowledges that VITS cannot guarantee 100% security and to the extent permitted by law, VITS shall not have any Liability for actions or omissions of third parties in breaching any security measures; and
 - 4.1.6 institute and operate regular back-up procedures and disaster recovery procedures (as described in the Commercial Details Document) with the aim of ensuring that the integrity of the

Customer Hosted Data can be maintained as at the timing of the last back-up in the event of loss, damage, theft, corruption, deletion or misuse of Customer Hosted Data, but the Customer is responsible for taking or paying for any further back-ups to ensure that it has sufficient back-ups with the frequency that it requires.

4.2 The Customer shall inform VITS in writing as soon as it is aware of any issue that may arise or has arisen in relation to Clause 4.1.

4.3 VITS shall:

- 4.3.1 take reasonable precautions to preserve the integrity of the Customer Hosted Data (as VITS does for any client and its own data) or other data which it processes and to prevent any corruption or loss of such Customer Hosted Data;
- 4.3.2 follow its normal archiving procedures for the Customer Hosted Data or as agreed in writing with the Customer;
- 4.3.3 make a backup copy of such Customer Hosted Data in accordance with Clause 4.1.6 and record the copy on media from which the Data can be reloaded if there is any corruption or loss of the Customer Hosted Data, and in such event, promptly restore the Customer Hosted Data at its own expense;
- 4.3.4 at the written request of the Customer at any time or times up until three months after termination of this Agreement howsoever arising, return to the Customer (in the format reasonably required by the Customer) a copy of all Customer Hosted Data residing on the Server. VITS shall charge the Customer a fee at the Rates for the time taken to prepare and provide the Customer Hosted Data for return to the Customer; and
- 4.3.5 if during the three months following the termination of this Agreement howsoever arising, the Customer has not exercised its right to receive a copy of all Customer Hosted Data residing on the Server pursuant to Clause 4.3.4, then VITS shall be entitled in its sole discretion to either:
 - (a) return to the Customer a copy of all Customer Hosted Data residing on the Server and to charge the Customer a fee calculated at the Rates in force on the date of termination for the time taken to prepare and provide the Customer Hosted Data for return to the Customer; or
 - (b) carry out the secure deletion of all or part of the Customer Hosted Data residing on the Server. VITS may charge a fee to the Customer for carrying out the deletion of Customer Hosted Data on the basis of the Rates in force at the date of termination.

5. SUPPORT SERVICES

- 5.1 VITS shall supply the Support Services in accordance with the Commercial Details Document and the Service Level Appendix.
- 5.2 The Support Services shall comprise second level support by VITS to the Customer Support Contact for Incidents which the Customer Support Contact (who is reasonably competent and has received all the training in the Customer's IT equipment and software) is unable to deal with itself as part of first level support, in accordance with the Priorities .
- 5.3 VITS shall provide the Support Services through its service desk whose details shall be as set out in the Commercial Details Document or as otherwise made known by VITS from time to time and will constitute the single point of contact for the Customer to report Incidents.
- 5.4 The Customer shall ensure that all acts or omissions in relation to any operational or live Data are conducted by Customer Support Contacts or that any instructions relating to operational or live Data are provided to VITS by the Customer Support Contacts. VITS shall not be responsible or have any Liability for acting in accordance with the instruction or direction given by a Customer Support Contact, but VITS shall act sensibly in how it performs its obligations (including how VITS chooses to follow the instruction or direction).
- 5.5 Any Incident reported by the Customer shall include full details of the Incident, including all error messages and relevant screen prints and relevant screen shots and such other information as VITS may reasonably require in order to deal with the Incident.
- 5.6 Incidents may be reported outside of Service Window Hours in accordance with the Commercial Details Document, in which event the response time for such messages will be deemed to commence at the start of the next Service Window Hours.
- 5.7 VITS shall not be obliged to provide any Support Services in relation to Incidents resulting from:

- 5.7.1 the improper use or access or operation by the Customer of any Third Party Software (including any operating system software) or Customer Equipment;
- 5.7.2 (except to the extent otherwise specifically set out in this Agreement) any fault in the Customer Equipment, cables, cable connectors or any computer programs used by the Customer or any third party other than VITS or VITS's subcontractor providing the Server for use in the Hosting Services;
- 5.7.3 the interoperability of any Third Party Software with any Customer Equipment, telecommunications equipment or other Third Party Software or firmware or any peripherals (but not the Server or the environment surrounding the Server within VITS's firewall) except to the extent that VITS expressly agrees in writing to be responsible for their interoperability;
- 5.7.4 the Customer's failure to configure or conduct sufficient testing and provide sufficient authorisation to enable the installation, configuration or use of a Release or permanent Incident fix within a reasonable time which VITS had previously made available for the Customer but not used by the Customer where use of such Release or permanent fix would have prevented the Incident;
- 5.7.5 the Incident has been caused by the incorrect configuration by or on behalf of the Customer or a User of Data or Customer Equipment; or
- 5.7.6 any material breach of this Agreement by the Customer.

5.8 The Customer shall:

- 5.8.1 through the Customer Support Contacts, fully co-operate with VITS's staff in the diagnosis and resolution of any Incident and make the relevant personnel available at all times reasonably required by VITS; and
- 5.8.2 comply with such reasonable recommendations and instructions of VITS from time to time in relation to the Services including in relation to the efficient use and operation of Third Party Software or Customer Equipment.
- 5.9 Except to the extent that VITS otherwise expressly agrees in writing, the Support Services do not include the supply of Support Services outside of Service Window Hours. Any such requirement will be subject to the Parties' prior agreement, and chargeable in accordance with the terms of this Agreement.
- 5.10 The Customer shall be responsible for reporting any Incidents to VITS as soon as possible following discovery.
- 5.11 VITS may, in its sole discretion following request of the Customer, provide Additional Services, notwithstanding that the Incident results from any of the circumstances described in Clause 5.7 or that the Customer is in breach of Clause 5.8. VITS shall in those circumstances be entitled to charge Additional Services Fees (with a minimum charge of one hour per request).
- 5.12 In the event that VITS provides Services which are subsequently found not be due to Incidents then, unless VITS is already obliged to provide those Services pursuant to this Agreement, VITS may charge an Additional Services Fee to the Customer (with a minimum charge of one hour per request).
- 5.13 The Customer shall provide access to all relevant staff and resources of the Customer to assist VITS in reproducing and understanding Incidents, including provision of memory dump, core dumps, computer runs, session logs, trace files, printouts, data preparation, diagnostic data and additional data in whatever form reasonably required by VITS. Where reasonably required by VITS, the Customer may be required to demonstrate the Incident in the relevant operating environment.
- 5.14 VITS shall use its reasonable endeavours not to disrupt the Customer's business during its provision of Services, but the Customer acknowledges that such disruption may be inevitable in order to deal with any Incident and VITS reserve the right to restrict system access with no prior notice to the Customer.
- 5.15 VITS shall use its reasonable endeavours to provide the Support Services in accordance with any timeframes agreed pursuant to this Agreement, having regard always to the availability of personnel, necessary supplies and facilities, and other commitments.

6. PROVISION OF DELIVERED THIRD PARTY SOFTWARE

- 6.1 VITS shall be responsible for the relationship with the supplier of the Delivered Third Party Software.
- 6.2 The Customer acknowledges that the choice of the Delivered Third Party Software is the Customer's.

- 6.3 The Customer may be required to enter into separate End User Licence Agreement Terms (whether with (a) a Delivered Third Party Software supplier directly; or (b) with VITS as sublicensor in terms that reflect the terms permitted by the Delivered Third Party Software supplier) in relation to Delivered Third Party Software before being able to access such Delivered Third Party Software, and the Customer shall fully comply with the End User Licence Agreement Terms.
- 6.4 Except to the extent otherwise provided in any End User Licence Agreement Terms with VITS as reseller, any act, omission, non-performance or delay or any decision by the Delivered Third Party Software supplier shall not be the responsibility of VITS, but VITS shall use its reasonable endeavours to facilitate the use of and support for such Delivered Third Party Software supplier solution or a replacement to such Delivered Third Party Software supplier solution. The Customer acknowledges that VITS merely acts as reseller in order to facilitate a solution for the Customer, and the End User Licence Agreement Terms (including as to price and payment, warranty, indemnity, representation and liability) shall be on the basis of terms no less favourable to VITS than those set out in VITS's agreement with the Delivered Third Party Software supplier.
- 6.5 The Customer further acknowledges that VITS's ability to provide Support Services and Hosting Services, and to provide such Support and Hosting Services within any particular timeframe, may be affected by the Delivered Third Party Software supplier, and subject to VITS using its reasonable endeavours to continue to obtain a resolution as promptly as it is able to in the circumstances, VITS shall not have any Liability to the extent caused by any act, omission, non-performance or delay on the part of the Delivered Third Party Software supplier.
- 6.6 VITS may recommend a change away from a Delivered Third Party Software supplier and this shall be subject to the Customer's prior written agreement (such agreement not to be unreasonably withheld or delayed). If the Customer does not agree to a replacement Delivered Third Party Software supplier recommended by VITS, VITS shall not be responsible for any consequences of the Customer's decision not to agree if VITS has decided no longer to use the existing Delivered Third Party Software supplier on the current basis.
- 6.7 Unless otherwise agreed between the Parties in writing, VITS shall be under no obligation to provide any support or maintenance in respect of Delivered Third Party Software. If VITS does provide any support or maintenance in respect of Delivered Third Party Software, VITS shall be entitled to charge the Customer for its time in the provision of such support or maintenance at the Rates.

7. SUPPLY OF THIRD PARTY PARTS

- 7.1 VITS may supply the Third Party Parts to the Customer whether as expressly stipulated in the Commercial Details Document or while providing the Services.
- 7.2 VITS shall endeavour to supply the Third Party Parts by the Delivery Date or such other time as stipulated in the Commercial Details Document, but time for delivery of the Third Party Parts shall not be of the essence.
- 7.3 The Customer shall pay the Third Party Parts Price to VITS before VITS delivers the Third Party Parts. VITS shall not be under any obligation to supply the Third party Parts to the Customer until the Customer has paid the Third Party Parts Price to VITS.
- 7.4 VITS shall, if reasonably requested by the Customer and where possible, pass to the Customer the benefit of any warranty, guarantee or indemnity given by the supplier of the Third Party Parts to VITS in relation to those Third Party Parts. Subject to that, VITS makes no warranty whatsoever to the Customer in relation to the Third Party Parts and, to the extent possibly by law, excludes all other conditions, warranties, terms and obligations whether express or implied by statute, common law or otherwise in relation to the Third Party Parts.

8. TITLE TO AND RISK IN ANY GOODS SUPPLIED

- 8.1 This Clause 8 only applies if VITS is supplying any goods (including Third Party Parts) to the Customer under this Agreement (in this Clause 8 referred to as "**the Goods**").
- 8.2 Risk in the Goods shall pass to the Customer on delivery of the Goods to the Customer's premises.
- 8.3 Notwithstanding delivery, title to and ownership of the Goods shall not pass to the Customer until VITS has received in full (in cash or cleared funds) all sums due to it in respect of:
- 8.3.1 the Goods;

- 8.3.2 all other sums which are or which become due to VITS from the Customer on any account; ("**Payment**").

8.4 Until Payment, the Customer shall:

- 8.4.1 hold the Goods on a fiduciary basis as VITS's bailee;
- 8.4.2 store the Goods (at no cost to VITS) in good condition and separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as VITS's property;
- 8.4.3 not mix the Goods with any other goods, products, materials or substances of any kind whatsoever or use the Goods in any manufacturing process or otherwise until Payment; and
- 8.4.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.

8.5 The Customer may resell the Goods before Payment solely on the following conditions:

- 8.5.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;
- 8.5.2 any such sale shall be a sale of VITS's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
- 8.5.3 the Customer shall still be responsible for paying to the full value of the Payment. If VITS requires, the Customer shall authorise and direct such third party buyer to pay to VITS a like part of the sum due to the Customer in respect of the Goods sold and assign to VITS such part of the debt owed to the Customer by the third party.

8.6 If the Customer attaches the Goods to or incorporates them into or mixes them with any other goods, products, materials or substances or uses them in any manufacturing process, the property in the new goods, product, material or substance shall vest until Payment in VITS in the proportion of the value of the Goods to the other constituent elements.

8.7 VITS may at any time until Payment without notice recover possession of the Goods which are the property of VITS. The Customer hereby grants to VITS for VITS and its employees, agents and representatives an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of the Customer. The Customer shall indemnify VITS against all claims, losses, damages, liabilities, costs and expenses so arising.

8.8 The Customer shall not attach the Goods to buildings, structures or land so as to become a fixture without the prior written consent of VITS.

8.9 VITS shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from VITS.

8.10 After delivery and until Payment, the Customer shall keep the Goods fully insured on VITS's behalf with a reputable insurance company to the reasonable satisfaction of VITS for their full price against all risks of loss or damage from the time when the risk passes to the Customer until ownership passes in accordance with this Clause 8. On request, the Customer shall produce the policy of insurance to VITS. If the Goods are lost, damaged or destroyed, the Customer shall hold the proceeds of insurance for and to the order of VITS pending Payment.

8.11 On termination of this Agreement, howsoever arising, VITS's rights contained in this Clause 8 shall remain in effect.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall (and shall procure that the Users shall):

- 9.1.1 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if VITS undertakes any work at the Customer's (or its Users') premises;
- 9.1.2 to the extent that this is relevant under this Agreement, provide reasonable access at all reasonable times on the Customer's (or its Users') premises to adequate space, office accommodation, equipment, hardware, telecommunications, systems, third party software and any facilities to enable VITS to perform its obligations and exercise its rights under this Agreement. The Customer may restrict access to certain areas of premises or systems on security grounds;
- 9.1.3 inform VITS in writing within a reasonable time before the commencement of any Services of any regulations relevant to VITS's representatives when working at any premises under the control of the Customer including site regulations;

- 9.1.4 be present and available at any of its premises at the required times to enable VITS to perform its obligations at the times reasonably required by VITS under this Agreement;
- 9.1.5 provide such remote access to VITS to use and access the Customer's or Users' systems as and when VITS reasonably requires in order to enable VITS to perform its obligations under this Agreement;
- 9.1.6 fully, frequently and promptly update VITS as to progress with use of the Services and Deliverables generally and the Customer's activities and developments, including reporting on any concerns, issues, queries or comments that need to be resolved or discussed;
- 9.1.7 ensure that the Customer's and its employees, agents and contractors fully co-operate with, and are open and courteous and honest and transparent to, and make themselves available at all reasonable times for discussion and meetings with, VITS and its employees, agents and contractors and to enable VITS to promptly perform its obligations under this Agreement;
- 9.1.8 promptly provide to VITS such Data, information and assistance (including anything identified in the Commercial Details Document to be provided to VITS or as reasonably required by VITS) that will enable VITS to carry out fully, accurately and promptly its obligations under this Agreement to the best of its ability;
- 9.1.9 be responsible for the security of the Data whilst it is stored on the Customer's (or its Users') systems, and shall take all care and assume all responsibility with using, sending and receiving any Data. Except to the extent that this Agreement provides for VITS to have responsibility in respect of the Data, the risk of and responsibility for using, securing, copying and preserving Data is with the Customer;
- 9.1.10 promptly comply with all reasonable requests of VITS in connection with this Agreement; and
- 9.1.11 be responsible for ensuring that, and hereby warrants and undertakes to VITS that, the Data and the use and sending and receipt of it by or on behalf of the Customer or its Users and VITS, and the use and processing of Data by VITS to perform the Services in accordance with this Agreement or by or on behalf of the Customer or its Users, and the manner of the Users' use of the Services and Deliverables:
 - (a) conforms in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice;
 - (b) does not infringe the privacy rights or Intellectual Property Rights of any third party;
 - (c) is not defamatory, malicious, abusive, obscene, indecent, discriminatory or harassing; and
 - (d) does not contain any material detrimental to VITS, including any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- 9.2 It is the Customer's responsibility to ensure that the Services and Deliverables as described in this Agreement (provided that they are properly delivered by VITS) are sufficient and suitable for its purposes and will meet its individual requirements.
- 9.3 It is the Customer's responsibility to ensure that the Users have in place and have the right and licence to use any hardware, communications links, equipment and software to enable VITS to provide the Services and Deliverables in accordance with this Agreement and to the maximum performance level possible. The Customer is also responsible for ensuring that the Users provide VITS with the data (including the Data) required to enable VITS to properly provide the Services and Deliverables. VITS shall not be responsible or have any Liability for any failure to provide the Services or Deliverables to the extent caused by the Customer's failure to properly ensure the provision of the relevant Data or fully and lawfully procure that it has in place and the right and licence to use all relevant hardware, communications links, equipment and software obtained from a third party other than by or under the direction of VITS.
- 9.4 The Customer warrants to VITS that the Customer is authorised to receive the Services and Deliverables.
- 9.5 The Customer agrees during the Term and for a period of two years following termination or expiry of this Agreement, not to solicit or induce

any officer, employee or agent of VITS who was involved with the provision of Services or Deliverables to the Customer (a "**Restricted Person**") to terminate their employment or engagement with VITS without the prior written consent of VITS. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of the Customer shall not be deemed to be solicitation for the purposes of this Clause 9.5. VITS shall not have any Liability for delay, breach, mis-performance or non-performance of this Agreement to the extent caused by the Customer's or the Customer's engagement or employment of any person engaged or employed by VITS.

- 9.6 If the Customer commits any breach of Clause 9.5, the Customer shall, on demand, pay to VITS a sum equal to one year's basic salary or the annual fee that was payable by VITS to the Restricted Person plus the recruitment costs incurred by VITS in replacing such person. The Parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of VITS in performance.
- 9.7 The Customer shall ensure that any use of or access to the Delivered Third Party Software by Users is on terms such that the restrictions on the Customer under this Agreement apply to the Users.
- 9.8 The Customer is responsible for performing its responsibilities within the timescales and in the manner, frequency and format required in accordance with this Agreement from time to time, in order to fully, effectively and efficiently enable VITS to perform its obligations under this Agreement.
- 9.9 The Customer shall be responsible for obtaining, maintaining in good working order, paying for and having in place and having the right and licence to use any Customer Equipment and Customer Minimum Equipment Requirements and any other software.
- 9.10 The Customer shall comply with any usage instructions (including environmental and operating conditions) supplied by VITS or any supplier of Customer Equipment or Third Party Software.
- 9.11 The Customer shall be responsible for ensuring that all Users of Third Party Software (including Delivered Third Party Software) have received adequate training and are reasonably competent so as to be able to use that Third Party Software sufficiently for its purpose and not damage or adversely affect its performance.
- 9.12 The Customer shall carry out full testing and acceptance of any error corrections and Releases before using them in a live environment in order to ensure it is entirely happy with them and minimise or eliminate any Incidents from occurring in a live environment. The Customer shall be deemed to have accepted the error corrections and Releases as soon as it uses them, or authorises their use, in a live environment.
- 9.13 The Customer shall comply with any restrictions and parameters on use of and access to the Servers in accordance with the terms of this Agreement.
- 9.14 The Customer shall comply with all reasonable and proper instructions of VITS from time to time as to the way in which the Customer accesses and uses the Servers.
- 9.15 The Customer shall be responsible for obtaining and configuring any Customer Equipment necessary for it to remotely access and use the Servers, including anything reasonably stipulated by VITS from time to time.
- 9.16 Unless explicitly agreed otherwise under this Agreement, or in a separate agreement between VITS and the Customer:
 - 9.16.1 the Customer shall be responsible for maintaining access to the Servers through its telecoms or internet service providers; and
 - 9.16.2 VITS is not responsible for any connections from the Customer's or its agents', contractors' or customers' systems to the Servers.
- 9.17 The Customer shall ensure that its use of and access to the Servers from time to time (including any Data provided, created or supplied) by or on behalf of the Customer or its officers, employees, agents, contractors or customers at all times:
 - 9.17.1 complies with all applicable laws, regulations, bye-laws and codes of practice;
 - 9.17.2 does not infringe or interfere with the rights or data of or used by any third party;
 - 9.17.3 does not involve the supply or use of any material detrimental to VITS or its agents or customers or contractors or suppliers, including any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; and

- 9.17.4 does not harm VITS or its agents, customers, contractors or suppliers.
- 9.18 The Customer shall (and shall procure that its Users shall) take all reasonable steps to comply with any reasonable security requirements of VITS, including only issuing user names and passwords to Users and taking all reasonable steps to protect user names and passwords and prohibit unauthorised access to the Servers or parts of the Data or Third Party Software on the Servers. All access made using the Customer's account (except for any access made using the Customer's account by VITS or its representatives) shall be deemed to have been made by or on behalf of the Customer.
- 9.19 The Customer shall immediately inform VITS in writing on becoming aware of any unauthorised use of all or any of the Services or the Servers.
- 9.20 The Customer shall indemnify and keep fully indemnified VITS against any and all liabilities, losses, penalties, damages, charges, claims, demands, actions, proceedings, judgments, costs and expenses which VITS or its agents or customers or contractors or suppliers may incur or suffer resulting from any breach by the Customer of this Clause 9 or VITS making use of any information or specifications supplied by or on behalf of the Customer, provided that:
- 9.20.1 VITS gives notice to the Customer of any claims or proceedings without undue delay following receipt of them;
- 9.20.2 VITS makes no admission of liability and gives the Customer sole authority to defend or settle the claims or proceedings at the Customer's cost and expense; and
- 9.20.3 VITS gives the Customer all reasonable help in connection with the claims or proceedings, VITS's reasonable cost and expense to be borne by the Customer.
- 9.21 The exclusion and limitation of Liability provisions in this Agreement shall not apply to this Clause 9.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Subject to Clause 10.2, the Customer acknowledges that, as between VITS and the Customer, VITS and its licensors own all Intellectual Property Rights in the Deliverables, whether or not any of the Deliverables are created by VITS at the specific request of the Customer. The Customer shall not have any rights over or to use the Deliverables other than as expressly provided under this Agreement. To the extent that Intellectual Property Rights in the Deliverables may not originally vest in VITS as contemplated under this Agreement, the Customer hereby irrevocably assigns, transfers and conveys, and shall procure that its Users irrevocably assign, transfer and convey, to VITS all Intellectual Property Rights, title and interest therein. The Customer shall give VITS all reasonable assistance and execute all documents necessary to assist or enable VITS to perfect, preserve, register and record its rights in such Intellectual Property Rights.
- 10.2 VITS acknowledges that, as between VITS and the Customer, the Customer and its licensors own all Intellectual Property Rights in the Data. To the extent that Intellectual Property Rights in the Data may vest in VITS, VITS hereby irrevocably assigns, transfers and conveys to the Customer all Intellectual Property Rights, title and interest therein. VITS shall give the Customer all reasonable assistance and execute all documents necessary to assist or enable the Customer to perfect, preserve, register and record its rights in such Intellectual Property Rights.
- 10.3 The Customer shall be responsible:
- 10.3.1 for having all rights in the Data;
- 10.3.2 for ensuring that all Users have all rights to use and process the Data; and
- 10.3.3 for enabling VITS to have the right to use and process the Data; so that VITS can lawfully perform its obligations under this Agreement.
- 10.4 The Customer hereby grants to VITS a royalty-free, worldwide, non-exclusive, sub-licensable licence to use the Data for the purposes of performing this Agreement during the term of this Agreement. Subject to anything else to the contrary in this Agreement, VITS shall not use the Data for any other purpose without the Customer's express prior written consent.
- 10.5 Except to the extent expressly provided in this Agreement, the Customer shall only use the Services and Deliverables for its own usual business purposes and shall not, without VITS's prior written consent, allow any third party to use or access the Services or Deliverables or supply the Services or Deliverables to any third party; and then only as contemplated by this Agreement.

- 10.6 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights owned or used by the other Party, that Party shall forthwith inform the other of such use. Each Party shall if requested assist the other Party (at the other Party's cost) in taking any steps in connection with the protection or defence of the Intellectual Property Rights owned or licensed by the other Party as the other Party may determine.

11. CONFIDENTIALITY

- 11.1 Neither Party shall use or disclose the Confidential Information of the other Party save:
- 11.1.1 for the purposes of the proper performance of this Agreement; or
- 11.1.2 as otherwise permitted by this Agreement; or
- 11.1.3 with the prior written consent of the other Party.
- 11.2 A Party may disclose Confidential Information of the other Party to its employee, consultant, subcontractor, franchisee, supplier, customer, agent, professional adviser, insurer or third party service provider, where necessary to exercise its rights or properly perform its obligations under this Agreement, provided that it shall do so subject to obligations equivalent to those set out in this Clause 11. Each Party shall use all reasonable endeavours to ensure that any such employee, consultant, subcontractor, franchisee, supplier, customer, agent, professional adviser, insurer or third party service provider complies with such obligations.
- 11.3 Each Party shall at all times:
- 11.3.1 adopt, retain and keep updated adequate procedures and physical security measures which protect the Confidential Information of the other Party from inadvertent disclosure or release to unauthorised persons; and
- 11.3.2 hold the Confidential Information of the other Party in strict confidence and in any event with no less standard of confidentiality than that which it applies to its own confidential information.
- 11.4 The obligations of confidentiality in this Clause 11 shall not extend to any matter which either Party can show:
- 11.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
- 11.4.2 was in its written records prior to receipt; or
- 11.4.3 was independently developed by it; or
- 11.4.4 was independently disclosed to it by a third party entitled to disclose the same and not subject to a confidentiality obligation.
- 11.5 If either Party is required to disclose the Confidential Information of the other Party under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable, give the other Party as much warning thereof as practicable and inform in writing and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.
- 11.6 Neither Party shall make any announcement of any kind in respect of the subject matter of this Agreement except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) or as is required by law.
- 11.7 Notwithstanding Clause 11.6, VITS may identify the Customer as its customer and the type of Services or Deliverables provided by VITS to the Customer, provided that in doing so VITS shall not (without the Customer's prior written consent) reveal any Confidential Information of the Customer.
- 11.8 The obligations of this Clause 11 shall continue after termination of this Agreement for whatever reason.

12. THIRD PARTY SERVER SUPPLIERS

- 12.1 VITS may in its discretion from time to time either host the Customer Hosted Data and Delivered Third Party Software on its Servers or use third party suppliers to do so in whole or in part.
- 12.2 The Customer acknowledges that VITS may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on the Customer or reasonably restrict rights of the Customer, due to the requirements of the third party suppliers. Where reasonably practicable, VITS will endeavour

to give the Customer reasonable warning of any such additional obligations, requirements or restrictions of rights.

- 12.3 If a third party supplier of the Servers suspends provision of access to the Servers at any time, the provision of the Services by VITS may be suspended.
- 12.4 VITS shall not have any Liability for failure by a third party supplier to take reasonable care and skill unless the Customer informs VITS in writing of such failure within 10 Business Days of the Customer becoming aware of the failure.
- 12.5 To the extent permitted by law, VITS shall not have any Liability as a result of any act or omission of a third party Server supplier beyond the liability of the third party supplier to VITS.
- 12.6 The Customer shall indemnify and keep fully indemnified VITS against any and all liabilities, losses, penalties, damages, charges, claims, demands, actions, proceedings, judgments, costs and expenses which VITS or its Server suppliers may incur or suffer resulting from any breach by VITS of its agreement with its third party Server supplier, due to the misuse of the Hosting Services by or on behalf of the Customer.

13. DATA PROTECTION

- 13.1 Both Parties shall comply with the applicable requirements of Data Protection Laws at all times during the term of this Agreement.
- 13.2 VITS shall in relation to any Protected Data (as defined in the Schedule) process the Protected Data in accordance with the provisions of the Schedule.
- 13.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to VITS for the duration and purposes of this Agreement.

14. LIMITATION OF LIABILITY

- 14.1 This Clause 14 prevails over all other Clauses and sets forth the entire Liability of each Party, and the sole and exclusive remedies of the other, in respect of:
- 14.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or of any goods, services, deliverables or software in connection with this Agreement; or
- 14.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 14.2 Neither Party excludes or limits its Liability for:
- 14.2.1 its fraud; or
- 14.2.2 death or personal injury caused by its Negligence; or
- 14.2.3 any breach of the non-excludable obligations implied by law as to having title to supply goods; or
- 14.2.4 any infringement of the other Party's Intellectual Property Rights; or
- 14.2.5 any other Liability which cannot be excluded or limited by applicable law.
- 14.3 Subject to Clause 14.2, neither Party accepts, and each Party hereby excludes, any Liability for Negligence other than any Liability arising pursuant to the terms of this Agreement.
- 14.4 Subject to Clause 14.2, neither Party shall have Liability in respect of any:
- 14.4.1 indirect or consequential losses, damages, costs or expenses;
- 14.4.2 loss of actual or anticipated profits;
- 14.4.3 loss of contracts;
- 14.4.4 loss of use of money;
- 14.4.5 loss of anticipated savings;
- 14.4.6 loss of revenue;
- 14.4.7 loss of goodwill;
- 14.4.8 loss of reputation;
- 14.4.9 ex gratia payments;
- 14.4.10 loss of business;
- 14.4.11 loss of operation time;
- 14.4.12 loss of opportunity; or
- 14.4.13 loss of, damage to or corruption of, data (except to the extent that that Party specifically has a responsibility to prevent loss of, damage to or corruption of, data under this Agreement);

whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other

incurring such losses. For the avoidance of doubt, Clauses 14.4.2 to 14.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

- 14.5 Subject to Clause 14.2, and subject to any specific right or remedy expressly set out in this Agreement that explicitly provides that the following cap may be exceeded, the total aggregate Liability of each Party for all causes of action arising in each Year shall be limited to the greater of: (a) £250,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Customer to VITS under this Agreement, in that Year.
- 14.6 The limitation of Liability under Clause 14.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 14.7 Notwithstanding Clause 14.5, the Customer shall not limit:
- 14.7.1 its Liability for any failure to pay the Services Fee; or
- 14.7.2 its Liability for any matters in respect of which it has agreed to indemnify VITS under the provisions set out in the Schedule and pursuant to Clauses 8.7, 9.20 and 12.6 of this Agreement.
- 14.8 The Customer acknowledges and accepts that VITS only provides Services to it on the express condition that VITS will not be responsible for nor shall it have any Liability directly or indirectly for:
- 14.8.1 inaccuracies or errors in or omissions from any Data provided by the Customer or any User; or
- 14.8.2 any act or omission of the Customer or any User or any third party.
- 14.9 In this Agreement:
- 14.9.1 "Liability" means liability in or for breach of contract, tort, Negligence, misrepresentation, breach of statutory duty, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including, without limitation, liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract, but each Commercial Details Document shall constitute a separate "Agreement"); and
- 14.9.2 "Negligence" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

15. FEES AND EXPENSES

- 15.1 In consideration for obtaining the Services provided by VITS pursuant to this Agreement, the Customer shall:
- 15.1.1 pay to VITS the Services Fees for the Services element;
- 15.1.2 pay VITS a further price for any Third Party Parts supplied in conjunction with the Services.
- 15.2 In consideration for obtaining the Third Party Parts provided by VITS pursuant to this Agreement, the Customer shall pay to VITS the Third Party Parts Price.
- 15.3 VITS reserves the right to obtain a credit check on the Customer prior to providing any Services, Third Party Parts and/or Deliverables under this Agreement.
- 15.4 Where an advanced Services Fee is payable, performance of the Services and the provision of Deliverables is conditional on VITS first receiving the advanced Services Fee in cleared funds in full from the Customer.
- 15.5 Unless provided otherwise in the Commercial Details Document, the Licence Fee for Delivered Third Party Software shall be due on an annual basis in advance in respect of the relevant Year.
- 15.6 VITS may charge the Customer for its reasonable expenses in accordance with VITS's normal expenses policies and procedures incurred in the course of performing its obligations under this Agreement, including for the reasonable accommodation, travel (including reasonable air travel, train travel, taxis, own car use and vehicle rental), telephone, food, subsistence, out-of-pocket and other expenses reasonably incurred in the course of performing this Agreement outside of the relevant person's normal place of work.

- 15.7 Unless set out otherwise in this Agreement, VITS may issue invoices to the Customer for the Services Fees and for the Third Party Parts Price or other sums owing to it under this Agreement on a monthly basis.
- 15.8 VITS may require payment for Third Party Parts before it has carried out the Work and before it has bought the Third Party Parts from the relevant third party.
- 15.9 VITS may issue invoices to the Customer for any expenses incurred by it or its subcontractors in the course of performing this Agreement as and when such expenses arise.
- 15.10 Unless otherwise provided in the Commercial Details Document, the Customer shall pay to VITS all Services Fees, expenses chargeable to the Customer in accordance with Clause 15.6 and Licence Fees for Delivered Third Party Software within 14 Business Days after receipt of VITS's proper invoice for the same.
- 15.11 Unless provided otherwise in this Agreement, VITS may during the Initial Term, increase the Services Fees and the Rates in respect of any Services Fees not yet incurred by no less than 30 calendar days' prior written warning subject to the increase:
- 15.11.1 not taking effect in the same Year as any preceding increase for the same Services Fees or Rates; and
- 15.11.2 not being at more than 10% or (if higher) the previous annual all-items percentage increase figure in the retail prices index (or, if that index ceases to exist, its closest replacement index) announced by the UK government before VITS's announced increase.
- 15.12 Following the expiry of the Initial Term, unless otherwise agreed in writing:
- 15.12.1 VITS's Standard Rates shall apply for as long as VITS continues to provide the Services; and
- 15.12.2 VITS shall be entitled in its sole discretion to increase the Services Fee for Hosting Services in order to pass on to the Customer VITS's increased costs of obtaining electricity and other utilities from its suppliers in order to provide those Hosting Services.
- 15.13 Unless otherwise stated within this Agreement, all Services Fees shall be chargeable on a time basis at the Rates for the time actually spent by VITS (and not for the time estimated to be provided). Unless otherwise stipulated in writing between the Parties, a "man day" shall be seven and a half hours. Time spent includes reasonable travel to and from VITS's place of business or home to any other site. VITS shall maintain records of time spent in providing the Services and of expenses incurred, and shall furnish such records to the Customer on request.
- 15.14 VITS shall provide details with its invoice to detail when, where and how much time was spent and (where reasonably possible) vouchers and receipts for the expenses incurred, and such other information as the Customer may reasonably require in order to ascertain the Services Fees and expenses due in accordance with this Agreement.
- 15.15 All sums due to VITS are exclusive of VAT and other sales or import or export duties or taxes (if applicable) which the Customer shall pay to VITS in addition at the same time as payment of the Services Fees and expenses.
- 15.16 The Customer shall pay VITS by any payment method reasonably stipulated by VITS. No payment shall be considered paid until it is received by VITS in cleared funds in full.
- 15.17 Payment shall be in the lawful currency in force in England from time to time or in such other currency as is stipulated in the Commercial Details Document for the Services Fees or Rates.
- 15.18 Payment of all sums due to VITS under this Agreement shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.
- 15.19 If the laws of any part of the territory where the Customer is based requires the Customer to withhold tax on any payment which the Customer is obliged to make to VITS under this Agreement, the Customer shall:
- 15.19.1 obtain a proper receipt and discharge for the tax so deducted and forward it without delay to VITS;
- 15.19.2 do all such other things and take such other steps as may be reasonably required to enable VITS to obtain any tax credit which may be available to it; and
- 15.19.3 in the event that any taxes deducted cannot be reclaimed, make up to VITS any shortfalls in payment attributable to such tax deductions.

- 15.20 If the Customer is late in paying any part of any monies due to VITS under this Agreement or any other agreement between VITS and the Customer, VITS may (without prejudice to any other right or remedy available to it whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:

- 15.20.1 charge interest and other charges on the amount due but unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and
- 15.20.2 subject to the Customer being at least 10 Business Days late in paying and VITS having then given to the Customer no less than a further 10 Business Days' written warning that it may exercise its rights under this Clause 15.20, and the Customer having not paid in full during such further 10 Business Days period, suspend the performance of this Agreement and any other agreement between VITS and the Customer until payment in full has been made; and
- 15.20.3 subject to the Customer being at least 10 Business Days late in paying and VITS having then given to the Customer no less than a further 10 Business Days' written warning that it may exercise its rights under this Clause 15.20, and the Customer having not paid in full during such further 10 Business Days period, suspend any right of the Customer to use the Deliverables.

- 15.21 The Licence Fee for Delivered Third Party Software may be increased by VITS informing the Customer in writing of the change without delay after being advised by the third party supplier of the change. Clause 15.11 shall not apply to the Licence Fee for Delivered Third Party Software.

- 15.22 The Services Fee for Hosting Services is based on the Hosting Services Parameters. Any Additional Services or changes or upgrades to the hosting platform may result in Additional Services Fees. Where the parameters as described in the Hosting Services Parameters are exceeded, VITS reserves the right to recommend an increase to the capabilities of the hosting platform which would require an increase in the Services Fee. Any such increase in capabilities and increased Services Fee is subject to agreement of both Parties in writing. The Customer acknowledges that it may suffer degradation of performance in the Hosting Services, and VITS shall not have any Liability for such degradation of performance in the Hosting Services, if the Customer exceeds the Hosting Services Parameters or does not follow VITS's reasonable recommendations for use. Any change in the Services Fee under this Clause 15.22 will be recorded in writing in advance and signed by an authorised representative of each Party. Any Additional Services Fees that are accrued part Year will be pro-rated and invoiced by VITS and payable by the Customer in advance.

16. TERM AND TERMINATION

- 16.1 Where VITS provides on-going Services this Agreement shall commence on the Commencement Date and continue for the Initial Term and (subject to Clause 15.12) thereafter for rolling twelve month periods provided that either Party may terminate this Agreement by serving not less than six months' written notice on the other Party, such notice to take effect on the date of the expiry of the Initial Term or any anniversary of that date.
- 16.2 This Agreement shall be presumed to be for the provision of on-going Services except if this Agreement expressly provides to the contrary.
- 16.3 If this Agreement does not consist of the provision of any on-going Services, this Agreement shall commence on the Commencement Date and, subject to either Party terminating this Agreement pursuant to its termination rights under this Agreement, shall continue in force until the latest of:
- 16.3.1 the completion of the performance of the Services by VITS;
- 16.3.2 the supply of the Third Party Parts to the Customer by VITS; and
- 16.3.3 payment in full by the Customer to VITS for the Services, Third Party Parts and all Licence Fees for Delivered Third Party Software.
- 16.4 Either Party may terminate this Agreement immediately by notice to the other Party if:
- 16.4.1 the other Party is in material breach of any of its obligations under this Agreement or any other agreement between the Parties which is incapable of remedy; or
- 16.4.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement or any other agreement between the Parties after having been

required in writing to remedy such breach within a period of no less than 14 days; or

- 16.4.3 the other Party is in persistent breach of any of its obligations under this Agreement or any other agreement between the Parties; or
- 16.4.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts as they come due, or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party), or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 16.5 For the purposes of Clause 16.4, 16.4 a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to time to the reasonable satisfaction of the other Party. Without prejudice to the status of any breach of any other provision of this Agreement, the Parties agree that any breach or infringement of the other Party's Intellectual Property Rights (including use of the Deliverables other than strictly in accordance with the provisions of this Agreement) or Confidential Information shall be considered a material breach which is not capable of remedy.
- 16.6 VITS may terminate this Agreement immediately by notice to the Customer if the Customer is at least 10 Business Days late in paying any undisputed sums due under this Agreement or any other agreement between the Parties and VITS has then given to the Customer at least a further 10 Business Days' notice requiring the Customer to pay in full such sums within such 10 Business Day (or, if VITS desires, longer) period failing which VITS may exercise its right to terminate under this Clause 16.6.
- 16.7 Termination or expiry of this Agreement shall be without prejudice to any accrued rights or remedies of either Party and shall be without prejudice to any right to claim damages that would have existed but for termination or expiry.
- 16.8 Termination of this Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 16.9 Upon termination or expiry of this Agreement for any reason:
- 16.9.1 VITS shall cease to perform this Agreement;
- 16.9.2 all outstanding fees for Services, Third Party Parts or Deliverables provided or in the process of being created for delivery shall become immediately payable, whether invoiced or not; and
- 16.9.3 the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information belonging to the Party requiring the action from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any such Confidential Information. The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 16.9.3.
- 16.9.4 Upon termination or expiry of this Agreement in circumstances in which Customer is seeking a refund of fees for Services or Deliverables, the Customer shall (at VITS's option) permanently erase from any computer disks, tapes or other material in its possession or under its control or promptly deliver up in good condition or destroy all Services benefits and/or Deliverables (as applicable) according to whatever relates to the fees being refunded.
- 16.9.5 VITS may require the Customer to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 16.9.

17. FORCE MAJEURE

- 17.1 Save for obligations in respect of payment of any fees and expenses, neither Party shall have any Liability for any breach, hindrance or delay in

performance of its obligations under this Agreement which is caused by circumstances beyond its reasonable control including any act of God, war or pandemic actions or omissions of third parties (other than the Party's employees, agents, contractors, franchisees, customers or third party service providers) (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.

- 17.2 Each Party agrees to inform the other upon becoming aware of an Event of Force Majeure, such written information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 17.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 17.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 17.5 If performance of any obligations are delayed under this Clause 17, each Party shall nevertheless accept performance as and when the other Party shall be able to perform.
- 17.6 If the Event of Force Majeure continues without a break for more than three months, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall be liable to the other Party by reason of such termination.
- 17.7 If VITS has contracted to provide identical or similar services or deliverables to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, VITS may decide at its absolute discretion which contracts it will perform and to what extent.

18. NOTICES

- 18.1 Any notice required or authorised to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid, signed for or other recorded delivery or by commercial courier to the relevant Party at its address stated in this Agreement or such other address as is notified by the relevant Party to the other Party for this purpose from time to time.
- 18.2 Any notice shall be deemed to have been delivered at the date and time evidenced on a signed delivery receipt if delivered before 5:00pm on a Business Day, or in any other case at 9:00am on the next Business Day after the date evidenced on the signed delivery receipt.

19. ASSIGNMENT

- 19.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Agreement, VITS may assign, transfer, novate or subcontract its rights, liabilities or obligations under this Agreement either in whole or in part to any other person, firm or company. VITS shall promptly give notice to the Customer of any such assignment.
- 19.2 The Customer shall not (and shall not purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Agreement or any of its rights, liabilities or obligations under this Agreement without the prior written consent of VITS (such consent not to be unreasonably withheld or delayed).
- 19.3 Each Party shall bear all responsibility for the acts and omissions of its employees, agents, contractors, franchisees, customers and third-party service providers as if carried out by that Party; and each Party shall procure that all obligations on it which it subcontracts shall be properly undertaken by the subcontractor.

20. CHANGES

- 20.1 Except as expressly provided otherwise in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing signed by each of VITS and the Customer and expressed to be for the purpose of such amendment and in the format described in the Commercial Details Document.
- 20.2 If the Customer would like to make any change to this Agreement, one of the Customer's authorised representatives may request that VITS makes a proposal for bringing about the change.
- 20.3 If VITS would like to make any change to this Agreement, VITS may recommend a proposal for the change.
- 20.4 To the extent the change is feasible, VITS shall state within a reasonable time what would be the effects of the change including without limitation on cost, Services Fees, timetable and any impact on the rest of the Services, Third Party Parts and Deliverables and this Agreement and any other agreement between the Parties.
- 20.5 Neither Party shall unreasonably withhold or delay agreement to a change reasonably requested by the other Party. Both Parties shall use their respective reasonable endeavours to agree to the change and in a timely manner.
- 20.6 To the extent the change affects any timescales, the timescales shall be automatically extended accordingly.
- 20.7 The final agreed change shall be noted in an agreed Change Request Form (in the form appended to the Commercial Details Document) and signed by VITS and the Customer. Change Request Forms will be numbered sequentially and a status log kept by both Parties. At the same time, the Parties shall also amend the Commercial Details Document if applicable and attach the amended Commercial Details Document to the Change Request Form.
- 20.8 Until a Change Request Form and, if applicable, the relevant amended Commercial Details Document are signed by both Parties, no change shall come into effect.
- 20.9 Where VITS in its reasonable opinion considers that investigating the effect of implementing a change and the preparation of a draft Change Request Form involves substantial work, VITS may, subject to the prior written consent of the Customer, charge the Customer for its reasonable and pre-agreed Services Fees and expenses incurred in respect of such investigating and preparation, whether or not the change is subsequently implemented. If the Customer does not provide its consent, then VITS may decide not to proceed further with considering the proposed change.

21. DISPUTE RESOLUTION

- 21.1 The Parties will attempt in good faith promptly to resolve any dispute or claim arising out of or in relation to this Agreement in accordance with the following procedure:
- 21.1.1 The Parties shall use their best endeavours to negotiate in good faith and settle amicably any dispute or claim that may arise out of or relate to this Agreement (or its construction, validity or termination) (a "**Dispute**"). For this purpose, a Dispute shall include a failure to agree any matter which in accordance with any provision of this Agreement is to be agreed between the Parties (except where such provision expressly provides to the contrary). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties having authority to settle the matter, either Party may give to the other a notice (a "**Dispute Notice**"). Within five Business Days of the Dispute Notice being given, the Parties shall each refer the Dispute to their senior representatives nominated by the managing director of each Party, who shall meet in order to attempt to resolve the Dispute.
- 21.1.2 If the Dispute is not settled by agreement in writing between the Parties within 10 Business Days of the Dispute Notice, either of the Parties may refer the Dispute to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

- 21.1.3 The mediation shall be conducted in London, England in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.
- 21.1.4 If the matter has not been resolved by a mediation procedure within 60 days following referral of the Parties to the CEDR procedure or if the Dispute cannot be resolved using the processes and procedures set out above, then it shall be resolved by reference to the courts in accordance with Clauses 22.7 to 22.9 inclusive (governing law and jurisdiction).
- 21.1.5 If the Dispute is substantially of a technical nature or financial, such dispute may be referred, with the written agreement of the Parties, to an expert, who shall be deemed to act as expert and not as arbitrator. The expert shall be selected by mutual agreement or, failing such agreement, within 10 Business Days of a request by one Party to the other, shall be chosen by the President for the time being of the British Computer Society (or his nominee) or if VITS reasonably determines that such matter relates primarily to financial matters, VITS may elect that such expert may be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his nominee). Decisions of the expert shall be final and binding and, except in the case of manifest error, not subject to appeal. The fees of the expert shall be borne by the Parties in such proportion as may be determined by the expert.
- 21.1.6 If either Party does not agree with any Dispute being referred for mediation or determination in accordance with this Clause 21, then the Dispute shall be determined by the courts under Clauses 22.7 to 22.9 inclusive (governing law and jurisdiction). For the avoidance of doubt, either Party may apply to the Court or initiate proceedings without recourse to the process in this Clause 21.

22. GENERAL

- 22.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Agreement or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Agreement or at law.
- 22.2 If any Clause or other provision in this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 22.3 Nothing in this Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.
- 22.4 A person who is not a Party to this Agreement has no rights under any law to enforce any term of this Agreement.
- 22.5 The Customer is responsible for complying with any applicable government export control laws and regulations.
- 22.6 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or its formation, shall be governed by, and construed in accordance with, the laws of England.
- 22.7 If both Parties are domiciled in the European Union or the United Kingdom, then subject to Clause 22.8, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Agreement or its subject matter or its formation (including non-contractual disputes or claims).
- 22.8 If both Parties are domiciled in the European Union or the United Kingdom, but as a consequence of any change in national or international law, judgments of the courts of England shall not be automatically enforceable in the jurisdiction in which the Customer is located, or such a change in law is planned or reasonably foreseeable, VITS shall have the right to commence and pursue arbitration proceedings against the Customer under the LCIA Rules to settle any claim, dispute or matter of difference which may arise out of or in connection with this Agreement or its formation (including non-contractual disputes or claims). The LCIA Rules are deemed to be incorporated by reference into this Clause 22.8. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 22.9 If one or more of the Parties is domiciled outside of the European Union and the United Kingdom, any claim, dispute or matter of difference which

may arise out of or in connection with this Agreement or its subject matter or its formation (including non-contractual disputes or claims) shall be exclusively referred to and finally resolved by arbitration under the LCIA Rules. Those Rules are deemed to be incorporated by reference into this Clause 22.9. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

22.10 All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

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