

Income Nexus Terms and Conditions

Parties

- (1) **BROADLEAF PROFESSIONAL LIMITED**, incorporated and registered in England and Wales with company number 14440897 whose registered office address is at The Hart Shaw Building, Europa Link, Sheffield, S9 1XU (**Supplier**);
- (2) The customer

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Subscription Services and the Documentation.

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.1.

Customer Data: the data inputted by the Customer, Authorised Users or the Supplier on the Customer's behalf for the purpose of using the Subscription Services or facilitating the Customer's use of the Subscription Services.

Documentation: the documents made available to the Customer by the Supplier which sets out a description of the Subscription Services and the user instructions for the Subscription Services.

Effective Date:

Fees: the subscription fees and any other fees payable by the Customer to the Supplier for the Subscription Services as set out in **Error! Reference source not found.**

Initial Subscription Term: a period of 15 Months running from the Effective Date.

Normal Business Hours: 8.00 am to 5.30 pm local UK time, each Business Day.

Renewal Period: the period described in clause 12.1.

Software: the online software applications provided by the Supplier as part of the Subscription Services.

Subscription Services: the subscription services provided by the Supplier to the Customer under this Agreement via the supplier's web portal address or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Subscription Term: has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Subscription Services Policy: the Supplier's policy for providing support in relation to the Subscription Services as made available in documentation supplied to the Customer

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and shall include all subordinate legislation made under that statute or statutory provision from time to time.
- 1.5 A reference to **writing** or **written** includes email.
- 1.6 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. Licence and restrictions

- 2.1 In consideration for the Customer purchasing the Subscription Services, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without

the right to grant sublicences, to permit the Authorised Users to use the Subscription Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer shall procure that each Authorised User keeps a secure password for their use of the Subscription Services and Documentation and keeps that password confidential.

2.3 The Customer and the Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of their use of the Subscription Services that:

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

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

2.4 The Customer and the Authorised Users shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation; or
 - (c) subject to clause 15.6, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or Documentation available to any third party except the Authorised Users, or
 - (d) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 2; or
 - (e) introduce or permit the introduction of, any Virus into the Supplier's network and information systems.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.

3. Subscription Services

- 3.1 The Supplier shall, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 7.00 pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3 The Supplier will, as part of the Subscription Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Subscription Services Policy in effect at the time that the Subscription Services are provided. The Supplier may amend the Support Subscription Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

4. Data protection

- 4.1 For the purposes of this clause 4, the terms **controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR.
- 4.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. The obligations set out in this clause 4 are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 4.3 The parties acknowledge that, for the purposes of the Data Protection Legislation, in so far as the processing of personal data is concerned, the Customer is the controller and the Supplier is the processor.
- 4.4 Without prejudice to clause 4.2, the Customer shall ensure that it has all necessary consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Agreement.
- 4.5 Without prejudice to clause 4.2, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that personal data only on the documented written instructions of the Customer provided to the Supplier from time to time. The Customer acknowledges that the scope, nature, purpose and duration of the processing and the Customer personal data categories and data subject types are described at Schedule 2;
 - (b) ensure that it has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss, damage to or destruction of, the personal data which are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all Supplier personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
 - (d) not transfer personal data outside the UK unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

- (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier secures written consent from the Customer and complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any data subject access request and in ensuring the Customer's compliance its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or other regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written request of the Customer, delete or return to the Customer all Customer personal data on termination of the Agreement, unless the Supplier is required by Applicable Law to continue to store that Customer personal data (and for these purposes the term "delete" shall mean to put such data beyond use);
- (h) maintain complete and accurate records and information to demonstrate its compliance with the Data Protection Legislation and the obligations set out in this clause 4; and
- (i) immediately inform the Customer if, in the Supplier's opinion, an instruction infringes the Data Protection Legislation.

4.6 The Customer acknowledges and consents generally to the Supplier appointing third party processors of personal data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.

5. Supplier's obligations

- 5.1 The Supplier undertakes that the Subscription Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Supplier's instructions, or modification or alteration of the Subscription Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Subscription Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.
- 5.3 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Subscription Services will be uninterrupted or error-free; or
 - (ii) that the Subscription Services, Documentation and/or the information obtained by the Customer through the Subscription Services will meet the Customer's requirements; or
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Subscription Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 5.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 5.6 The Supplier shall follow its archiving procedures for Customer Data as set out in its [Back-Up Policy] which may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial

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

6. Customer's obligations

6.1 The Customer shall:

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

in order to provide the Subscription Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Subscription Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Subscription Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the

Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

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

7. Charges and payment

- 7.1 The Customer shall pay the Subscription Fees to the Supplier in accordance with this clause 7 and **Error! Reference source not found..**

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

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 12.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 12.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

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

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

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Subscription Services and the Supplier shall be under no obligation to provide any or all of the Subscription Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.4 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 11.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

7.5 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer and **Error! Reference source not found.** shall be deemed to have been amended accordingly.

8. Proprietary rights

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

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

9. Confidentiality

9.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Subscription Services, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
 - (i) details of the Subscription Services, and the results of any performance tests of the Subscription Services, shall constitute Supplier Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information.

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

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

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

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

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or

- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 9.
- 9.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 9.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 9.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause are granted to the other party, or to be implied from this Agreement.
- 9.7 On termination of this Agreement, each party shall:
 - (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
 - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 12 (Termination).
- 9.8 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

9.9 The above provisions of this clause 9 shall continue to apply after termination of this Agreement.

10. Indemnity

10.1 The Supplier shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of any claim by a third party that the Customer's use of the Subscription Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark or database right, provided that:

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

10.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

10.3 In no event shall the Supplier be liable to the Customer to the extent that the alleged infringement is based on:

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

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

11. Limitation of liability

11.1 Except as expressly and specifically provided in this Agreement:

- (a) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Subscription Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Subscription Services and the Documentation are provided to the Customer on an "as is" basis.

11.2 Nothing in this Agreement excludes the liability of the Supplier:

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

11.3 Subject to clause 11.1 and clause 11.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 10.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to [the total Subscription Fees paid for the User Subscriptions during the [12] months immediately preceding the date on which the claim arose]].

11.4 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

12. Term and termination

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

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

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

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

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed the above; or
- (d) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Subscription Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

12.4 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

12.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

13. Term and Termination

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

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which

case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- (b) otherwise terminated in accordance with the provisions of this Agreement;

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

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

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed the above; or
- (d) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Subscription Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective

date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13.4 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

13.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

14. Force majeure

Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

15. General

15.1 **Variation:** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.2 **Waiver:** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 15.3 **Rights and remedies:** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.4 **Severance:** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 15.5 **Entire agreement:** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 15.6 **Assignment:** The Customer shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 15.7 **No partnership or agency:** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.8 **Third party rights:** This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 15.9 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has provided to the other at least one executed counterpart.
- 15.10 **Notices:**

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (A) Supplier: The Hart Shaw Building, Europa Link, Sheffield, S9 1XU.
 - Customer:
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.11 **Governing law:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

15.12 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This has been entered into on the date stated at the beginning of it.