

## Background

All services supplied by **Inclusive Media Solutions Limited** (Supplier) trading as AutonoMe are supplied on these standard terms and conditions unless specifically agreed in writing by the Company.

The Supplier shall send to the Customer (by email or in writing) a Proposal for the services to be provided. By accepting the Proposal, or by submitting an official order, or by making a payment, or by providing materials to enable the Company to provide the services, the Customer agrees to be legally bound by the contents of the Proposal and by these terms and conditions.

- (A) The Supplier has developed an application which it makes available to subscribers via the App on a pay-per-use basis for the purpose of enabling individuals with learning difficulties who are in the care of a Customer to live independent lives.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

## Agreed terms

### 1 Interpretation

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

**App:** a mobile application support system that helps to support the user's independence by giving users access to a wide variety of videos designed to assist users in the completion of everyday tasks.

**Authorised Users:** those individuals (being individuals who are in the care of the Customer) who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.3.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England 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 13, or which a reasonable person would regard as being of a confidential nature.

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

**Data Protection Legislation:** means the Data Protection Act 1998 and the Data Protection Directive (95/46/EC) until 25th May 2018 and from the 25th May 2018 the General Data Protection Regulation (**GDPR**) and any legislation made under or in relation to it.

**Documentation:** the documents made available to the Customer by the Supplier which sets out a description of the Services and the user instructions for the Services, and any other documentation provided to the Customer in physical form for the purposes of the use of the Services (including, stickers with QR Codes, 'how-to' posters, and other ancillary materials).

**Effective Date:** the date of this agreement.

**Initial Subscription Term:** the initial term of this agreement, being a period of one year from the date of this agreement.

**Personal Data:** means data which relate to an Authorised User or other living individual who can be identified:

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the Customer,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

**Renewal Period:** the period described in clause 16.1.

**Services:** the subscription services provided by the Supplier to the Customer under this agreement via the App, and in particular the access to the video library of the Supplier which is made available to the Customer and to Authorised User through the use of the App in combination with the Documentation.

**Software:** the online software applications (including the App) provided by the Supplier as part of the Services.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 1 of Schedule 1.

**Subscription Term:** has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 11.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.

- 1.10 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 User subscriptions**

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 11.1, 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, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term.

- 2.2 In relation to the Authorised Users, the Customer undertakes that:

- 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- 2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- 2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request;
- 2.2.4 it will ensure that each Authorised User is made aware of the user name and password which is allocated to that Authorised User, and shall ensure that only that individual Authorised User uses that user name and password to access the Services, and the Customer agrees that the Supplier may carry out such checks as are reasonably necessary to ensure that only that Authorised User is accessing the Services through that user name and password;
- 2.2.5 if any of the checks referred to in clause 2.2.4 reveal that the individuals other than the Authorised Users have accessed the Services (and as a result the Customer has underpaid Subscription Fees to the Supplier) then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of Schedule 1 within 10 Business Days of the date of the relevant check.

- 2.3 The Customer shall not:

- 2.3.1 except to the extent expressly permitted under this agreement:
- (a) 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
  - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.3.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 2.3.3 use the Services and/or Documentation to provide services to third parties (other than to the extent that the Customer provides services to the Authorised Users); or

- 2.3.4 subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.
- 2.5 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3 Additional user subscriptions**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing or by email. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld), together with confirmation of the Subscription Fee for that additional Authorised User. Where the Supplier approves the request, and the Customer has confirmed its acceptance of the Subscription Fee for that additional Authorised User, the Supplier shall activate the additional User Subscriptions within 5 Business Days of its receipt of the Customer's acceptance of the Subscription Fee.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the Subscription Fees for such additional User Subscriptions. If such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

### **4 Services**

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
  - 4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am UK time; and
  - 4.2.2 unscheduled maintenance, provided that the Supplier has used reasonable endeavours to give the Customer at least 24 hours' notice in advance.

### **5 Customer data**

- 5.1 In relation to any Customer Data that is not Personal Data and as between the Customer and the Supplier, the Customer shall own all right, title and interest in and to all of the Customer

Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

## **6 Data Protection**

- 6.1 All defined terms in this Clause 6 have the meanings ascribed to them in the Data Protection Act 1998 (DPA).
- 6.2 The Supplier and Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor of any Personal Data.

### **Customer's controller obligations**

- 6.3 The Authorised Users are individuals with learning difficulties and the Customer has the specialist knowledge and expertise of working with such individuals.
- 6.4 The Customer shall be responsible for obtaining freely-given, specific, informed and unambiguous consent from or on behalf of the Authorised Users prior to supplying any Authorised Users' Personal Data to the Supplier.
- 6.5 If the Customer is not able to establish consent in accordance with clause 6.4 or it chooses to rely on a different basis to make the processing of Personal Data fair and lawful in relation to the provision of the Services, it shall notify the Supplier in writing or email of the basis upon which that processing is lawful before it send any Personal Data to the Supplier.

### **Supplier's processor obligations**

- 6.6 The Supplier shall process the Personal Data only to the extent, and in such a manner, as is necessary for the performance of this agreement and in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any other purpose.
- 6.7 The Supplier will maintain a record of all processing of personal data it carries out on behalf of the Customer and shall make that record available to the Customer promptly upon request.
- 6.8 The Supplier shall provide the Customer with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
- 6.8.1 providing the Customer with full details of any complaint or request received directly by the Supplier; and
  - 6.8.2 providing the Customer promptly with the Personal Data requested by the Customer to enable the Customer to comply with any subject access request within the relevant timescales set out in the Data Protection Legislation.
- 6.9 The Supplier shall not transfer any Personal Data outside the European Economic Area (EEA), including by storing on servers located outside the EEA, without the prior written consent of the Customer.
- 6.10 The Supplier shall notify the Customer within [two] Business Days if it receives:
- 6.10.1 a request from or on behalf of an Authorised User to have access to that Authorised User's Personal Data; or
  - 6.10.2 a complaint or request relating to the Supplier or Customer's obligation under the Data Protection Legislation; or

- 6.10.3 any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement.
- 6.11 The Supplier shall permit the Customer or its external advisors (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Supplier's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and procure that the Supplier is in compliance with its obligations under this Agreement.
- 6.12 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

## **7 Data Protection Warranties**

- 7.1 Each party warrants to the other that it will process the Personal Data in compliance with the Data Protection Legislation.
- 7.2 The Supplier warrants and represents that it will:
  - 7.2.1 only process any Personal Data in accordance with the Customer's instructions;
  - 7.2.2 having regard to the state of technological development and the cost of implementing any measures, take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (b) the nature of the Data to be protected,
  - 7.2.3 take reasonable steps to ensure compliance with those measures; and
  - 7.2.4 discharge its obligations under this agreement with reasonable skill, care and diligence.
- 7.3 The Customer warrants and represents that:
  - 7.3.1 it has the right to license the processing of the Personal Data for the provision of the Services;
  - 7.3.2 the Supplier is entitled to process the Personal Data to implement the Services;
  - 7.3.3 all Authorised Users have given their valid freely-given, specific, informed and unambiguous consent and, where required under the Data Protection Legislation, their explicit consent to the transfer of their personal data by the Customer to the Supplier and to the processing of their personal data by the Supplier for the Services within the European Economic Area;
  - 7.3.4 it will maintain a record of all Authorised Users' consents; and
  - 7.3.5 it has notified its processing to the Information Commissioner's Office in terms which include the processing of the Personal Data for purpose of providing the Services.

## **8 App Licence**

- 8.1 In order that the Customer is able to access the Services, the Customer may:

- 8.1.1 download a copy of the App onto one or more mobile telephones or handheld devices and view, use and display the App on such devices for the sole purposes of the use by an Authorised User of the Services; and
  - 8.1.2 receive and use any free supplementary software code or update of the App incorporating "patches" and corrections of errors as the Supplier may provide to the Customer.
- 8.2 From time to time the Supplier may automatically update the App and change the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively the Supplier may require the Customer to (and the Customer shall) update the App for these reasons. If the Customer chooses not to install such updates or opts out of automatic updates the Customer acknowledges that it may not be able to continue using the App and the Services.
- 8.3 The Customer shall:
- 8.3.1 except in relation to Authorised Users, not rent, lease, sub-license, loan, provide, or otherwise make available, the App or the Services in any form, in whole or in part to any person without prior written consent from the Supplier;
  - 8.3.2 not copy the App, Documentation or Services, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security; and
  - 8.3.3 not translate, merge, adapt, vary, alter or modify, the whole or any part of the App, Documentation or Services nor permit the App or the Services or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App and the Services on devices as permitted in these terms.

## **9 Supplier's obligations**

- 9.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.
- 9.2 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing, the Supplier:
- 9.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free, or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's (or any Authorised User's) requirements; and
  - 9.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 9.3 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.

## **10 Customer's obligations**

10.1 The Customer shall:

- 10.1.1 provide the Supplier with all necessary co-operation in relation to this agreement, and all necessary access to such information as may be required by the Supplier, in order to provide the Services;
- 10.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 10.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner;
- 10.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement;
- 10.1.5 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 Services;
- 10.1.6 be responsible for ensuring that the use by an Authorised User of the Service through the App is appropriate for the particular needs of that Authorised User, and the Customer recognises that the Supplier has not carried out any assessment of the appropriateness of the Service for any Authorised User and that the Supplier bears no responsibility for the use of the Service by any Authorised User.

## **11 Charges and payment**

11.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 11 and Schedule 1.

11.2 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:

- 11.2.1 its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
  - (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (b) subject to clause 16.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- 11.2.2 its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
  - (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (b) subject to clause 16.1, 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.



- 11.3 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:
- 11.3.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 11.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% per annum above Barclays Bank Plc's base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 11.4 All amounts and fees stated or referred to in this agreement:
- 11.4.1 are, subject to clause 15.3.2, non-cancellable and non-refundable;
- 11.4.2 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 11.5 The Supplier shall be entitled to increase the Subscription Fees and/or the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 at the start of each Renewal Period upon 30 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly. Any such increase shall not exceed the increase in the Consumer Prices Index since the date of this Agreement (or, if later, since the date of the previous increase in fees payable).

## **12 Proprietary rights**

- 12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, 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 Services or the Documentation.
- 12.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **13 Confidentiality**

- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 13.1.2 was in the other party's lawful possession before the disclosure;
- 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 13.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information

available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.7 The above provisions of this clause 13 shall survive termination of this agreement, however arising.

## **14 Indemnity**

- 14.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's (or any Authorised User's) use of the Services and/or Documentation, provided that:
  - 14.1.1 the Customer is given prompt notice of any such claim;
  - 14.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 14.1.3 the Customer is given sole authority to defend or settle the claim.
- 14.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - 14.2.1 the Supplier is given prompt notice of any such claim;
  - 14.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 14.2.3 the Supplier is given sole authority to defend or settle the claim.
- 14.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate 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.

- 14.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 14.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
  - 14.4.2 the Customer's (or an Authorised User's) use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 14.4.3 the Customer's (or an Authorised User's) use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 14.5 The foregoing and clause 15.3.2 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.

## **15 Limitation of liability**

- 15.1 Except as expressly and specifically provided in this agreement:
- 15.1.1 the Customer assumes sole responsibility for the use of the Services by the Authorised Users, and is solely responsible for verifying the appropriateness of the Services for the Authorised Users to whom the Customer will make the Services available;
  - 15.1.2 the Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 15.1.3 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
  - 15.1.4 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 15.2 Nothing in this agreement excludes the liability of the Supplier:
- 15.2.1 for death or personal injury caused by the Supplier's negligence
  - 15.2.2 breach of Data Protection Legislation; or
  - 15.2.3 for fraud or fraudulent misrepresentation.
- 15.3 Subject to clause 6, 7, 15.1 and clause 15.2:
- 15.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

15.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), 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.

## 16 Term and termination

16.1 This agreement shall, unless otherwise terminated as provided in this clause 16, 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:

16.1.1 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

16.1.2 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**.

16.2 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:

16.2.1 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;

16.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

16.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

16.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

- 16.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 16.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 16.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 16.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.4 to clause 16.2.10 (inclusive); or
  - 16.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.3 On termination of this agreement for any reason:
- 16.3.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of (and shall ensure that all Authorised Users cease use of) the Services and/or the Documentation;
  - 16.3.2 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; and
  - 16.3.3 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.

## **17 Force majeure**

- 17.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **18 Conflict**

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

## **19 Variation**

- 19.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **20 Waiver**

- 20.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **21 Rights and remedies**

- 21.1 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.

## **22 Severance**

- 22.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **23 Entire agreement**

- 23.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## **24 Assignment**

- 24.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 24.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **25 No partnership or agency**

- 25.1 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).

## **26 Third party rights**

- 26.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns), and in particular this agreement does not confer any rights on any Authorised User, pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **27 Notices**

- 27.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
- 27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **28 Governing law**

- 28.1 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 construed in accordance with the law of England and Wales.

## **29 Jurisdiction**

- 29.1 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 agreement has been entered into on the date stated on the customer invoice.**

## **Schedule 1**

### **Subscription Fees**

- 1 Subscription Fees
- 1.1 The Subscription Fees for the Initial Subscription Term shall amount to the total clearly stated in the invoice provided to the Customer by writing or email. The Subscription Fees shall be paid to the Supplier in accordance with Clause 11. The Subscription Fees for any Renewal Period shall be set by the Supplier in accordance with Clause 11.
- 1.2 Additional User Subscriptions may be purchased by the Customer in accordance with clause 3. The Subscription Fee for any Additional User Subscriptions shall be agreed between the Customer and the Supplier prior to the commencement of that User Subscription.

**Please print and save this agreement for your records**