

SpiderGroup is the trading name of 13Spiders Limited (company number: 05154859) whose registered office address is HERE, Bath Road, Bristol, BS4 3AP ('the Company')

## 1 Definitions

1.1 In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings:

'Authorised Representative' the person so named in Annex A, being the person within the Client's organisation authorised to instruct the Company in relation to the Services and to be the main point of contact in relation to the Services

'Client' the person with whom SpiderGroup enters into a contract on these terms

'Client IT' any components of the Client's current IT infrastructure (including but not limited to cabling, hardware and software)

'Client Material' means any Documents or other materials and any data or other information provided by the Client relating to the Service

'Company Material' means any Documents or other materials (including but not limited to instruction and training manuals and user guides in any format), and any data or other information provided by the Company relating to the Service

'Dispute Resolution Procedure' the procedure set out in clause 25

'Document' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc or other device embodying any other data

'Effective Date' the date on the signed order form

'Intellectual Property' property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, service marks, design rights, database rights, know-how rights, goodwill, reputation, get-up, logos, devices, plans, models, data, diagrams, specifications, source and object code materials, data and processes, design rights, trade or business name rights, rights in confidential information, present contingent and future copyright, rights to sue for passing-off, plus applications or rights to apply for any of the foregoing) subsist

'month' a calendar month and 'monthly' shall be construed accordingly

'Premises' the premises occupied by the Client

'Required Service Level' in respect of any Service in any period means the standard of performance referred to in clause 2.2 in the provision of that Service in the period in question

'Services' the services to be provided by the Company to the Client as set out in Annex A

'Service Charges' the charges levied by the Company for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in Annex A

'Third Party Provider' the provider of any of the third party products

'Third Party Material' any Document or other item belonging to a third party and used by the Company, under licence or as otherwise agreed by that third party, in the provision of the Services.

'VAT' value added tax as defined in the Value Added Taxes Act 1994

1.2 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Annex, the provision in the body of this Agreement shall take precedence.

## 2 Supply of Services

2.1 The Company will provide the Services to the Client with effect from the Effective Date for the duration of this Agreement in accordance with the provisions of this Agreement.

2.2 The service levels to be given by the Company when supplying the Services to the Client shall be in accordance with the Required Service Level statement set out in Annex A and otherwise in accordance with the Company's current brochure or other published literature relating to the Services from time to time, subject to this Agreement.

2.3 The Client shall ensure that adequate virus protection software shall prior to the Effective Date be installed upon all computer systems to which the Company requires access for the purpose of performing any Service.

2.4 The Client shall at its own expense supply the Company with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable the Company to provide the Service in accordance with the Agreement. The Client shall ensure the accuracy of all Client Material.

2.5 The Client shall at its own expense retain duplicate copies of all Client Material and insure against its accidental loss or damage. The Company shall

have no liability for any such loss or damage, however caused. All Company Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.

2.6 The Company may correct any typographical or other errors or omissions in any of its brochures, promotional literature, quotations or other document relating to the provision of the Service without any liability to the Client.

2.7 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

2.8 If the Client submits an instruction containing terms inconsistent with or purporting to override this Agreement, the Company's acknowledgement or acceptance of such instruction shall constitute a counter-offer on the terms of this Agreement. The Company gives no warranty that it will be able to meet any request or instruction from the Client which differs from the Services as set out in Annex A.

2.9 The Company's employees, agents or sub-contractors are not authorised to make any representations concerning the Services unless confirmed by the Company in writing. In entering into this Agreement, the Client acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in this Agreement affects the liability of either party for fraudulent misrepresentation.

2.10 Any advice or recommendation given by the Company or its employees, agents or sub-contractors to the Client or its employees or agents as to the Services (whether under clause 2.9 above or generally) which is not confirmed in writing by the Company is followed or acted on entirely at the Client's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed.

2.11 Should the Client fail to meet any of its obligations under this Agreement and such failure means that the Company cannot provide any element of the Services at the time assigned for it, the Company shall have the right to charge the Client at its then standard rates for the whole of the period which was so assigned in addition to the Fee.

2.12 The Company's employees, agents and sub-contractors are under contract with the Company to provide the Services. The Client should not therefore during the term of this Agreement or within a period of 6 months thereafter directly or indirectly entice away or endeavour to entice away from the Company or seek to make private arrangements with such persons for the further provision of services as any such arrangement will be in contravention of their contractual obligations to the Company.

2.13 The Company shall be entitled to change the means or method of providing the Services from time to time provided that the altered Services shall meet the Required Service Level.

2.14 The Client acknowledges that the terms of the Company's own arrangements with Third Party Providers may prohibit the Company from installing certain Third Party Materials on devices which are not owned by the Company. In such circumstances, and if the provision of the Services by the Company to the Client under this Agreement requires the Company to install any of those Third Party Materials on the Client's devices, the Client hereby agrees to transfer the legal ownership of those devices to the Company for the duration of this Agreement. Notwithstanding any such transfer, the Client shall continue to have responsibility for the transferred devices (including their maintenance) and shall immediately, on termination of this Agreement or otherwise at the Company's request, make all such devices available to the Company for the purpose of removing and/or uninstalling the relevant Third Party Materials from them (whether or not such removal and/or uninstallation is required by the relevant Third Party Provider), whereupon legal ownership of the relevant devices shall revert to the Client.

## 3 Company's obligations

3.1 The Company will provide the Services with reasonable skill and care in accordance with relevant industry best practice and, as far as reasonably possible, in accordance with Annex A. Where the Company supplies in connection with the provision of the Service any Third Party Material or other items or services supplied by a third party, the Company does not give any warranty, guarantee or other term as to their accuracy, quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying such items or services to the Company.

3.2 In the provision of the Services, the Company shall use personnel who possess the relevant skill and experience which is appropriate to the tasks to

which they are allotted and who shall perform those tasks in a workmanlike and professional manner.

#### **4 Client's obligations and warranties**

4.1 The Client undertakes throughout the term of this Agreement to:

4.1.1 enter into and maintain contracts directly with such Third Party Providers as may be necessary and ensure that such contracts permit the Company to request resources directly from each Third Party Provider on behalf of the Client when required in order that the Company may effectively carry out the Services;

4.1.2 keep in place current software maintenance agreements with the providers of all supported software applications used by the Client to ensure adequate assistance from such vendors if required;

4.1.3 grant to the Company such access to and such facilities at the Premises as the Company may require from time to time in order to discharge its obligations under this Agreement (including without limit access to heating, lighting, sufficient power points, washroom and refreshment facilities);

4.1.4 take all reasonable precautions to protect the health and safety of the Company's personnel, agents and sub-contractors whilst at the Premises;

4.1.5 ensure that all personnel assigned by it to provide assistance to the Company shall have the requisite skill, qualification and experience to perform the tasks assigned to them;

4.1.6 provide the Company with remote access to the Client IT;

4.1.7 comply with the Company's acceptable use policy for the time being in force.

4.2 Subject to clause 2.14, the Client warrants that it is the owner of all the Client IT (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment which is the subject of Services to be provided by the Company), or is authorised by the owner thereof to make them available to the Company if necessary

4.3 The Client warrants that the details of the existing hardware and software it uses and all current licences it holds for software are complete and accurate.

4.4 The Client warrants that all Client Information and any other data or information provided by it shall not be obscene, defamatory or likely to result in any claim being made against the Company by any third party.

4.5 The Client warrants that it will not use the Services for any immoral, unlawful or illegal purpose in particular, but not limited to, any use that breaches the Privacy and Electronic Communications (EC Directive) Regulations 2003,

4.6 In relation to any Third Party Provider's contract which the Client shall enter pursuant to clause 4.1 above, the Client acknowledges that:

a) such contracts shall be governed by the terms and conditions of business of those third parties and the Client agrees to be bound by those terms and conditions; and

b) the Company, its employees, agents or sub-contractors shall not be party to such contracts and shall not be liable to the Client in any way for any act or omission of a Third Party Provider (or their servants, agents or employees) whether as a result of misrepresentation, negligence, contractual or tortious loss or otherwise howsoever arising.

#### **5 Service charges and payments**

5.1 In consideration of the provision of the Services by the Company the Client shall pay to the Company the Service Charges and any additional sums which are agreed between the Company and the Client for the provision of the Services or which, in the Company's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Client Material or any other cause attributable to the Client without any set-off, counterclaim or other deduction whatsoever.

5.2 Clients operating a subscription-based service shall be invoiced 28 days in advance and must pay by direct debit on the first of the month.

5.3 Any additional Service Charges and sums due under the terms of this Agreement shall be invoiced by the Company to the Client monthly in arrears accompanied by any substantiating documentation which may be reasonably required by the Client.

5.4 Payment for any project work will be agreed on a case by case basis.

5.5 All Service Charges and payments to be made by the Client under this Agreement are stated exclusive of VAT which shall additionally be paid by the Client where relevant at the rate and from time to time in the manner prescribed by law.

5.6 All Service Charges are exclusive of travel, accommodation, subsistence expenses and any other out of pocket expenses and disbursements incurred

by the Company or its employees or other representatives in providing the Services and which shall be invoiced separately by the Company. The Company agrees that the payment of such expenses is subject to such limits and other conditions as may be agreed in writing between the Company and the Client from time to time.

5.7 Time for payment is of the essence. If the Client fails to make any payment due to the Company in full within 5 days of the due date then, without prejudice to any other right or remedy, the Company shall be entitled to:

5.7.1 suspend performance of any Services whether under this or any other agreement until all sums due to the Company have been paid in full without liability in respect of any or loss or damage sustained by the Client as a result PROVIDED THAT in any such event the Client shall not in any respect be released from its obligations to the Company;

5.7.2 charge the Client interest (both before and after any judgment) according to The Late Payment Of Commercial Debts Act 1998 from the due date until the actual date of receipt of such amount by the Company; and

5.7.3 charge the Client for costs in accordance with The Late Payment Of Commercial Debts Act 1998. This may include without limitation, reasonable legal fees, bank charges and reconnection fees.

5.8 The Company reserves the right, by giving notice to the Client at any time before performance of the relevant Services to increase the price of such Services to reflect any increase in the cost to the Company which is due to an act or omission of the Client including but not limited to any change in the date for the performance of Services or any delay caused by any instructions of the Client or failure by the Client to give the Company adequate information or instructions or which is due to an increase in any third party costs.

#### **6 Failure to meet Required Service Level on Specific Projects**

6.1 The Company shall provide monthly service level reports to the Client on specific projects in accordance with the Service Level statement set out in Annex A

6.2 If the Company fails to provide the Services in accordance with the Required Service Levels measured over any 3-monthly period, the Client shall be entitled to terminate this Agreement upon giving at least 10 days' notice to the Company expiring not later than the end of the month following the relevant 3-month period.

6.3 The Company shall not be liable for any failure to achieve the Required Service Levels to the extent that such failure results from:

6.3.1 a breach by the Client of any of its obligations under this Agreement;

6.3.2 a failure, non-compatibility or inefficiency of the Client's IT

6.3.3 an event falling within the scope of clause 13 below of otherwise being outside of the reasonable control of the Company (including any act or omission by any third party).

6.4 In the event that the parties are unable to agree upon the cause of the failure to reach the Required Service Level or the extent to which the Required Service Levels may be adjusted, the matter shall be reverted to an expert for determination in accordance with the Dispute Resolution Procedure.

6.5 In the event the Company is providing a service which has an uptime objective, this will be stated in Annex A.

#### **7 Authorised Representative**

The Client shall not change its Authorised Representative without prior consultation with the Company.

#### **8 Term of this Agreement**

This Agreement shall commence on the Effective Date and shall, subject to prior termination provided for under this Agreement, continue for an initial period set out in the Service Level Agreement in Annex A and thereafter indefinitely, unless terminated by either party upon giving written notice to terminate, as per the relevant period set out in the Service Level Agreement in Annex A or 1 month, whichever is the longer, such notice to expire on, or at any time after, the expiration of the initial period.

#### **9 Assignments and successors**

9.1 This Agreement is personal to the parties and, subject to clause 9.2 below, neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party

9.2 Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's assets or business relating to the subject matter of this Agreement or to any entity controlled

by, that controls, or is under common control with a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.

9.3 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

## 10 Intellectual Property rights

10.1 In the absence of prior written agreement to the contrary, all Company Material and all Intellectual Property created by the Company or any employee, agent or sub-contractor of the Company in the course of performing the Services shall vest in the Company.

10.2 Where, in connection with the provision of the Services, the Client uses any Company Material or Intellectual Property which is owned by the Company, the Company shall grant to the Client, or shall procure that the Client is granted (without charge to the Client and for the benefit of the Client) an indefinite non-exclusive, royalty-free licence to use, adapt, maintain and support such Company Material and Intellectual Property, which licence shall include the right for any person providing services to the Client to use, adapt, maintain and support the same for the benefit of the Client.

10.3 In the absence of prior written agreement to the contrary, all Intellectual Property in the Client IT, Client Material and any other information, materials or assets supplied to the Company by the Client shall remain vested in the Client or its third party licensors. The Client shall grant or shall procure the grant of a licence to the Company to utilise the Client IT, Client Material or such other information, materials or assets to the extent required for the provision of the Services.

10.4 Unless stated expressly in writing in this Agreement, neither party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement.

10.5 All Intellectual Property in any Third Party Material shall belong to the relevant third party.

10.6 The Client hereby agrees and undertakes that it will not copy or distribute (whether electronically or in hardcopy format) any Company Material or any Third Party Material. The Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement or alleged infringement.

10.7 The Client warrants that any Client IT and Client Material and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party including those arising under Data Protection legislation, and the Client shall defend any claim (at the Client's expense) brought against the Company alleging that the use of Client IT or Client Material infringes such rights including infringement of rights which arise as a result of storage or processing of any Client IT or Client Material on the Company's systems and/or the provision of any information, materials or other assets to the Company by the Client ('IPR Claim'). The Client shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that the Company:

10.7.1 furnishes the Client with prompt written notice of the IPR Claim;

10.7.2 provides the Client with reasonable assistance (at the Client's expense) in respect of the IPR Claim;

10.7.3 gives the Client the sole authority to defend or settle the IPR Claim.

10.8 The Company shall defend any claim (at the Company's expense) brought against the Client alleging that the provision of the Services or the use of any Company Material or deliverables provided by the Company infringes the Intellectual Property of a third party ('IPR Claim'). The Company shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that the Client:

10.8.1 furnishes the Company with prompt written notice of the IPR Claim;

10.8.2 provides the Company with reasonable assistance in respect of the IPR Claim;

10.8.3 gives the Company the sole authority to defend or settle the IPR Claim.

## 11 Confidentiality

11.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential supplied by the other party (in this Agreement collectively referred to as 'the Information') with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to

any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

11.2 Neither party shall without the prior written consent of the other party divulge any part of the other party's Information to any person except:

11.2.1 to their own employees, consultants or sub-contractors and then only to those employees, consultants or sub-contractors who need to know the Information for the purposes of this Agreement; and

11.2.2 to either party's accountants, HM Revenue & Customs, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation.

11.3 Both parties undertake to ensure that persons and bodies referred to in clause 11.2 are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the other party.

11.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

11.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

11.6 Provided that it is not in breach of the confidentiality obligations set out above, the Company may refer to and publicise its involvement with the Client, but only with the Client's prior written approval in relation to each publication, which shall not be unreasonably withheld or delayed.

## 12 Security

12.1 If any of the information required by the Company to provide the Services changes, including any changes to the Client's payment and contact details, the Client shall inform the Company immediately, in writing

12.2 The usernames and passwords provided for secure use of the service band are essential and must be kept confidential and secure by the Client and used strictly in accordance with any instructions issued by the Company.

12.3 If the Client requests the Company to re-issue usernames and passwords, they will be issued to the Authorised Person at the address given by the Client either by post, fax or e-mail, but not verbally over the telephone unless the Client is given a security code.

12.4 If there is a breach of security or misuse of the service band, the Company may change or suspend the Client's password. If this occurs, the Company will notify the Client of this change

## 13 Force majeure

Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party or by any act of God). Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law) any costs arising from such delay shall be borne by the party incurring the same.

## 14 Compliance with relevant law

Both parties will comply with all applicable laws, rules and regulations in respect of all activities conducted under this Agreement

## 15 Company's exclusion of liability

15.1 The Company shall not be liable to the Client or be deemed to be in breach of its warranties or obligations under any provision in this Agreement:

15.1.1 for any delay in performing or failure to perform the Company's obligations to the extent that such delay or failure was due to a failure by the Client to perform its obligations under this Agreement or if such delay results from a failure by the Client to comply with reasonable requests by the 15.1.2 Company for instructions information or action required by it to perform its obligations within a reasonable time limit; or



15.1.2 for the consequences of any acts or omissions of the Client, its employees or agents or any Third Party Provider or other third party suppliers or manufacturers engaged by or on behalf of the Client; or

15.1.3 if the delay in performing or failure to perform the Company's obligations is due to a failure or lack of performance by the Client's IT of any error, omission or inaccuracy in the Client Material; or

15.1.4 if the Client is in default of any of its payment obligations under this Agreement; or

15.1.5 for the lapse of the Client's domain name if that lapse is due to a fault, act or omission of the Client, such as (but not exclusively) a failure of the Client to maintain payment for the domain name; or

15.1.6 for any claims, damages, penalties and expenses arising from any third party allegations that the registered domain name infringes any rights owned by such third parties; or

15.1.7 for any breach whatsoever relating to data protection and privacy laws and the Client acknowledges that the Company only acts as an agent for the Client as certificate authority and has no control or influence over e-mail content processed by the ISP service or the Client. The Client shall hold the Company harmless from and indemnify the Company against any claims by any party relating thereto; or

15.1.8 if the Company is required by any Third Party Provider to remove and/or uninstall any Third Party Materials from any devices being used by the Client (whether such devices are owned by the Client or the Company).

15.2 If the Company reasonably forms the view that the content of any website may be pornographic, defamatory, misleading or deceptive or otherwise in breach of any third party's rights or in contravention of applicable law, the Company may without prior notice or any liability remove that content from the website and shall within twenty-four (24) hours thereafter notify the Client of its removal. The Company shall have no liability to the Client for any loss whatsoever (including any alleged loss of reputation) arising directly or indirectly as a result of any action taken by it under the provisions of this clause.

15.3 The Client shall indemnify and hold harmless the Company and its affiliates, employees, agents, contractors, directors, officers and third party providers from all liabilities, demands, costs and expenses (including legal expenses) arising in connection with any content including but not limited to the posting and/or transmission of content on the website.

## **16 Indemnity, limitation of liability and insurance**

16.1 The Company shall, during the term of this Agreement, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement, such cover to be to a minimum value of £1,000,000 and with an insurance company of repute. The Company shall on request supply copies of the relevant certificates of insurance to the Client as evidence that such policies are in force. The Company undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.

16.2 Except in respect of claims for death or personal injury arising from the Company's negligence, in no event will the Company be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Company whether such damages were reasonably foreseeable or actually foreseen.

16.3 Except in the case of personal injury, death, and damage to tangible property, the Company's maximum liability to the Client under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to a sum equivalent to the price paid per annum to the Company under this Agreement for the Services that are the subject of the Client's claim.

16.4 The parties acknowledge and agree that the limitations contained in this clause 16 are reasonable in the light of all the circumstances.

16.5 The Client hereby agrees to afford the Company not less than 28 days in which to remedy any default hereunder which is capable of remedy.

16.6 Nothing in this Clause 16 shall confer any right or remedy upon the Client to which it would not otherwise be legally entitled.

16.7 The Company will use its reasonable endeavours to comply with any agreed date or dates for the supply of the Services but, unless otherwise expressly agreed, such date or dates shall constitute only statements of expectation and shall not be binding. Accordingly, the time of the supply of the Services shall not be of the essence and if the Company fails to supply

the Services by any specified date, such failure shall not constitute a breach of this Agreement and the Client shall not be entitled to treat it as thereby repudiated or to rescind it or any related agreement in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.

16.8 The Client's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, 'Company' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

## **17 Termination for cause**

Subject to the Dispute Resolution Procedure, this Agreement may be terminated for cause in the following circumstances:

17.1 by either the Client or the Company with immediate effect from service on the other party of written notice if the other party is in breach of any material obligation under this Agreement and, if the breach is capable of remedy, that party has failed to remedy such breach within 30 days of receipt of notice so to do (or within 5 days of receipt of such notice in respect of breach of payment obligations by the Client)

17.2 by either party with immediate effect from the date of service on the other of written notice if

a) (in the case of a corporate party) a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the other's property; or  
b) (in the case of an individual) dies or suffers an interim order (within the meaning of the Insolvency Act 1986) to be made against him or enter into a voluntary arrangement or suffer the making of a statutory demand or the presentation of a petition for a bankruptcy order or make any arrangement or composition with its creditors.

17.3 by either party with immediate effect from the date of service on the other of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom;

## **18 Consequences of termination**

18.1 If this Agreement is terminated in whole or in part for any reason the Company shall, subject to payment of its reasonable fees, co-operate fully with the Client to ensure an orderly migration of the Services or replacement services to the Client or, at the Client's request, a new service provider.

18.2 Forthwith on termination of this Agreement, the Company shall return to the Client all Client IT and Client Materials together with all other materials, assets and other information provided to the Company, or if requested by the Client, the Company shall destroy the same (in the case of any software erasing it from the magnetic media on which it is stored) and shred any documents certifying in writing to the Client that the same has been destroyed.

18.3 The Client acknowledges that Company may require access to some Client data for a reasonable period after termination as the Client may require the Company to access the data and recover it and the Client hereby consents to the Company having such access to data.

18.4 If the Company supplies Microsoft software to the Client then the Client only has the right to use it under licence held by the Company. Any Microsoft software, discs etc must be returned to the Company after termination.

18.5 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.

## **19 Data protection**

19.1 The Company undertakes to the Client that it will comply with obligations equivalent to the obligations of a 'data processor' under the provisions of the General Data Protection Regulation (GDPR). In addition, the Company:

a) warrants that it has appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by it and that it has taken reasonable steps to ensure

the reliability of any of its staff who have access to personal data processed in connected with this Agreement;

b) undertakes that it will act only on the instructions of the Client (defined as the Data Controller under GDPR) in relation to the processing of any personal data in connection with this Agreement; and

c) undertakes to allow the Client access to any relevant premises on reasonable notice to inspect its procedures described above.

d) shall not engage with another processor without prior written authorisation from the controller. Controller shall have a right to object to any changes regarding sub-processors. The sub-processor will be subject to the same contractual data protection obligations as between the first processor and controller

e) assists the data controller, where possible, with implementing measures to comply with the rights of data subjects

f) at the data controller's request, either returns or destroys the personal data at the end of the agreement

g) fully cooperate with the data controller in the case of a data breach (for example by providing details about the breach to the data controller or to the supervisory authority).

h) to maintain written records of processing activities

i) to assist the Client to comply with data subjects' rights

19.2 The Client likewise warrants and undertakes in terms sets out in the General Data Protection Regulation (mutatis mutandis) to the Company in relation to all data which it shall transmit to the Company as part of the Client Materials or otherwise.

In addition, the Client:

a) undertakes that it will inform the Company of any Sensitive Personal Data (as defined by GRPR) held or processed on behalf of the Client so that the Company can review and make recommendations regarding the security of the data

b) has the proper legal basis (as defined under GDPR) for us to process the natural person/s personal data

19.3 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.

## 20 Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

## 21 Cumulation of remedies

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity by statute or otherwise.

## 22 Severability

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## 23 Partnership or agency

This Agreement shall not constitute or imply any partnership, joint venture, agency, employment, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

## 24 Notices

24.1 All notices under this Agreement shall be in writing.

24.2 Notices shall be deemed to have been duly given:

a) when delivered, if delivered by courier or other messenger

(including registered mail) during normal business hours of the recipient; or

b) on the fifth business day following mailing, if mailed by national

ordinary mail, postage prepaid; or

c) on the tenth business day following mailing, if mailed by airmail,

postage prepaid in each case addressed to the most recent address notified to the other party.

## 25 Dispute resolution procedure and governing

25.1 This Agreement and all matters arising from it and any dispute resolution referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

25.1.1 either party shall have the right to sue to recover its fees in any jurisdiction in which the other party is operating or has assets; and

25.1.2 either party shall have the right to sue for breach of its Intellectual Property and other proprietary information and trade secrets (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property might be taking place.

For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England and Wales.

25.2 Each party recognises that the other party's business relies upon the protection of its Intellectual Property and that in the event of a breach or threatened breach of its Intellectual Property, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property.

25.3 With respect to all other disputes which are not Intellectual Property related pursuant to clauses 25.1 and 25.2 above and its special rules the following provisions of this clause 25 shall apply.

25.4 Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. If no agreement is reached on corrective action by the representatives, then (where the Client is a corporate entity) the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

25.5 If the parties cannot resolve a dispute in accordance with the procedure in clause 25.4 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.

## 26 Third party rights

Subject to clause 9 above, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

## 27 Interpretation

In this Agreement unless the context otherwise requires:

27.1 words importing any gender include every gender;

27.2 words importing the singular number include the plural number and vice versa;

27.3 words importing persons include firms, companies and corporations and vice versa;

27.4 references to numbered clauses and annexures are references to the relevant clause in or annex to this Agreement;

27.5 reference in any annex to this Agreement to numbered paragraphs relate to the numbered paragraphs of that annex;

27.6 the headings to the clauses, annexes and paragraphs of this Agreement will not affect the interpretation;

27.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

27.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

27.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

## **28 Amendments**

Any changes or additions to the Services or this Agreement must be agreed in writing and signed by the Company and the Authorised Representative

## **29 Entire agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the terms of such an agreement and this Agreement (in which case the terms of this Agreement shall take precedence).

## **30 Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.