



## Website Terms & Conditions

**ATELIER TECHNOLOGY LIMITED: TERMS AND CONDITIONS (these "Terms and Conditions")**

**1. Definitions**

In this Agreement:

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

**"Account"**: an account that we allocate to you in order that you are able to access, manage and use, the Services;

**"Administrator"**: the individual identified in the Order as having full capacity and authority to enter into this Agreement on behalf of the Client;

**"Agreement"**: these Terms and Conditions together with the Order and any document referred to in these Terms and Conditions or the Order;

**"Authorised Users"**: those of your employees, agents and independent contractors who are authorised by you to use the Services, as further described in Clause 3.3.4;

**"Breach of Duty"**: the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

**"Business Day"**: any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;

**"Business Hours"** 9.00 am to 5.00 pm local UK time, each Business Day;

**"Client", "you" or "your"**: the recipient of services from us under this Agreement, as stipulated in the Order Confirmation;

**"Commencement Date"**: the date on which we send to you the Order Confirmation;

**"Confidential Information"**: any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;

**"Customer Data"**: the data inputted by you, Authorised Users, or us on your behalf, for the purpose of using the Services;

**"Data Protection Legislation"**: in relation to any Personal Data which is Processed in the performance of this Agreement, the Data Protection Act 1998 and EU Data Protection Directive 95 / 46 / EC (prior to 25 May 2018), the General Data Protection Regulation (EU 2016/679) ("**GDPR**") (on and after 25 May 2018), the Investigatory Powers Act 2016, Telecommunications (Lawful Business Practice), the Privacy and Electronic Communications Directive 2002 / 58 / EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003 / 2426), in each case together with all laws implementing or supplementing the same and any other applicable or equivalent data protection or privacy laws, and all other applicable law, regulations and codes of conduct relating to the processing of personal data and privacy, including the guidance and codes of practice issued by a relevant Supervisory Authority;

**"Fees"**: the fees that we charge to you from time to time in consideration for our provision to you of the Services, as set out in the Tier Summary;

**"InfoSec Policy"**: the information security document that we make available within the Administrator's Account;

**"IPR"**: copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Liability"**: liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "**this Agreement**" shall be deemed to include any collateral contract);

**"New Release"**: a release of the Software that corrects faults, adds minor functionality or otherwise amends or upgrades the Software but which does not constitute a New Version;

**"New Version"**: any new version of the Software which from time to time is publicly marketed and offered for purchase by us in the course of our normal business, being a version, which contains such significant differences from the previous versions as to be generally accepted as constituting a new product;

**"Party"**: us or you, and "**Parties**" means both of us and you;

**"Personal Data"**: has the meaning set out in GDPR;

**"Order"**: the online form, on [www.enterprise.atelier.technology](http://www.enterprise.atelier.technology), that you submit to us containing specific information relating to the particular services supplied or to be arranged to be supplied by us to you;

**"Order Confirmation"**: the email that we send to you accepting your Order and asking you to verify the email address that you included in your Order;

**"Services"**: the services provided by us to you under this Agreement;

**"Software"**: the online software applications provided by us as part of the Services.

**"Specification"**: the package for your access to the Services, as displayed in the Administrator's Account;

**"Term"**: the term for which this Agreement continues in full force and effect;

**"Tier"**: one of the various tier service structures offered by us in respect of access to the Services, details of which are outlined in the Tier Summary;

**"Tier Summary"**: the summary of each Tier available as part of the Services, as displayed in the Administrator's Account;

**"Virus"**: anything 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; and

**"Website"**: the website on which the Services are available for use by you, available at [enterprise.atelier.technology](http://enterprise.atelier.technology) or [atelier.technology](http://atelier.technology);

- 1.2 references to **"Clauses"** are to clauses of these Terms and Conditions;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words **"without limitation"** unless the context requires otherwise; and
- 1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 22).

## **2. Agreement**

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to the Services and the Software.
- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 This Agreement shall be legally formed and the Parties shall be legally bound when we have sent to you the Order Confirmation. Your submission to us of an Order shall be deemed to be an offer by you to us to gain access to the Services (as specified in the Order), subject to the provisions of the Order and these Terms and Conditions, and our sending to you of the Order Confirmation shall be considered our acceptance of such offer.

### 3. Access licence

- 3.1 We hereby grant to you a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Term solely for your internal business operations.
- 3.2 By submitting your Order, you warrant that the turnover of your business in the current financial year relevant to your business is less than, or is properly and diligently expected to be, less than \$100 million.
- 3.3 When you submit your Order, you will be sent an email asking you to verify your email address; once verified, that email address will be granted free access to our basic user account, as the Administrator. The Administrator will be able to add individual user accounts, for Authorised Users to access the Services, by using functionality available through the Administrator's Account. In relation to the Authorised Users, you undertake that:
  - 3.3.1 each Authorised User shall keep a secure password for use of the Services, and that each Authorised User shall keep his/her password confidential;
  - 3.3.2 each Authorised User shall use a corporate email account allocated to them by you when creating an Authorised User account;
  - 3.3.3 only one Authorised User may access the Services using an Authorised User account at any one time;
  - 3.3.4 you shall maintain a written, up to date list of current Authorised Users and provide such list to us within five Business Days of our written request at any time or times;
  - 3.3.5 you shall permit us to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business;
  - 3.3.6 if any of the audits referred to in Clause 3.3.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to our other rights (whether under this Agreement or at law), you shall promptly disable such passwords and we shall not issue any new passwords to any such individual; and
  - 3.3.7 any act or omission of any Authorised User shall be considered as if it was your act or omission; you must promptly notify us if you become aware of any or any suspected breaches of this Agreement by any Authorised User.
- 3.4 You shall not access, store, distribute or transmit any Viruses, or any material during the course of your use of the Services that:
  - 3.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.4.2 facilitates illegal activity;
  - 3.4.3 depicts sexually explicit images;
  - 3.4.4 promotes unlawful violence;
  - 3.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 3.4.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;and we reserve the right, without Liability (subject to Clause 13.2) and without prejudice to our other rights and remedies whether under this Agreement or at law, to disable your access to the Services if you are in breach of this Clause 3.4.
- 3.5 You shall not, except as may be required by any applicable law which is incapable of exclusion by agreement between the Parties:
  - 3.5.1 and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Software in any form or media or by any means; or
  - 3.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services and/or Software; or
  - 3.5.3 access all or any part of the Services in order to build a product or service which competes with the Services and/or Software; or
  - 3.5.4 use the Services to provide services to third parties; or
  - 3.5.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Software available to any third party except the Authorised Users, or
  - 3.5.6 attempt to obtain, or assist third parties in obtaining, access to the Services, except as expressly provided for by this Agreement.
- 3.6 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and the Software and, in the event of any such unauthorised access or use, promptly notify us.
- 3.7 The rights provided under this Clause 3 are granted to you only, and shall not be considered granted to any subsidiary or holding company of you.

#### **4. Services**

- 4.1 We shall, during the Term, make the Services available to you on and subject to the terms of this Agreement.
- 4.2 The hosting providers that we use in respect of the Services are set out in the InfoSec Policy. We shall provide you with reasonable notice if we are going to change those providers.
- 4.3 Subject always to the business continuity policy set out in the InfoSec Policy, you acknowledge that we cannot guarantee uninterrupted, timely or error-free access to the Services due to events beyond our control (including operation of public and private networks by Internet service providers, telecoms providers and third parties), and we may also need to carry out maintenance (whether planned or unplanned, and routine or not) from time to time on the Services; however, we shall use our reasonable endeavours to minimise downtime of the Services. Subject to us having used such reasonable endeavours, we do not warrant that the provision of the Services to you will be uninterrupted or error-free,
- 4.4 We will provide you with New Releases that we generally make available to our customers, and we reserve the right at our absolute discretion to make changes to the Services at any time and to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Services provided that such New Releases and changes shall not decrease the existing functionality of the Services. We will revise the Specification from time to time to reflect such New Releases and changes where necessary, share the new Specification with you and highlight the changes made.
- 4.5 We do not guarantee that the Services will be free from faults. We shall use our reasonable endeavours to:
- 4.5.1 correct any errors or omissions in the Services as soon as practicable during Business Hours after receiving full and clear information on them ("**Support Services**"); and
- 4.5.2 respond to a request for Support Services within a reasonable time, but we cannot guarantee any particular result or outcome nor within any particular time. In particular, without limitation, we may need to obtain support in turn from a third party that assists us with the provision of the Support Services.
- The Support Services exclude the resolution of faults or defects that arise as a result of your failure to comply with this Agreement or any other agreement between you and us. We may provide those excluded services as part of the Support Services at our absolute discretion; subject to Clause 13.2, we will not have any Liability for our provision of any of those excluded services to you.
- 4.6 We may from time to time add, modify, suspend or cease (temporarily or permanently) the provision of any element of the Services upon notice to you or any Authorised User.
- 4.7 We reserve the right to conduct verification and security procedures in respect of all information provided by you to us. If we have reason to believe that the information provided by you or any Authorised User to register for and/or use any of the Services breaches or is likely to breach any of the provision in this Agreement, we may, at our absolute discretion, take any action that we deem appropriate including terminating this Agreement under Clause 14.2.1, or suspend access to the Services for that Authorised User.

#### **5. Customer Data**

- 5.1 You shall have absolute and exclusive responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. You warrant that you have all necessary third-party consents necessary for you to disclose the Customer Data to us.
- 5.2 Subject to Clause 11 and our obligations not to disclose your Confidential Information, you acknowledge that we may use any Customer Data, and any data provided by third parties using the Services, for such use as we consider appropriate from time to time.
- 5.3 We shall follow our standard archiving procedure for Customer Data as we may have in place from time to time. In the event of any loss or damage to Customer Data during use of the Services, your sole and exclusive remedy shall be for us to use our reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us in accordance with our standard archiving procedure. We shall not be responsible, nor shall we have any Liability, subject to Clause 13.2, for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by us to perform services related to Customer Data maintenance and back-up).
- 5.4 We shall, in providing the Services, comply with the InfoSec Policy for the privacy and security of the Customer Data.
- 5.5 The Parties agree that Customer Data does not include Personal Data, and Data Protection Legislation does not apply to this Agreement; and the Parties obligations under it.

#### **6. Third party providers**

You acknowledge that the Services may enable or assist you to have access to a network of, access the website content of, correspond with, and purchase and sell products and services from and to, third parties (whether via third-party websites or otherwise) and that you do so solely at your own risk. We make no representation or commitment and, subject to Clause 13.2, shall have no Liability or obligation whatsoever in relation to

the content or use of, or correspondence with, any such third-party, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third party is between you and the relevant third party, and not us. We recommend that you refer to the third party's terms and conditions and privacy policy prior to contracting with the relevant third party. We do not endorse or approve any third party or its products, nor the content of any of the third-party website.

## **7. Our obligations**

- 7.1 We undertake that the Services will be made available to you and performed with reasonable skill and care.
- 7.2 Subject to Clause 13.2, we shall not have any Liability for:
- 7.2.1 your use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than us or our duly authorised contractors or agents; and/or
- 7.2.2 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 you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements.
- 7.4 We shall use our reasonable endeavours to ensure that the Services will meet your requirements in performing any calculations, analysis or report production in respect of which you use the Services. However, due to the nature of our industry and the fluctuation in any raw material prices, we do not warrant that the Services and/or the information obtained by you through the Services will meet your requirements. You acknowledge that our obligations in respect of the Services are subject to you (and other third-party users of the Services) entering such information and data into the Services as is correct for the Services to complete the calculation, analysis or report that you require. You must ensure that the information and data that you enter into the Services is correct and up-to-date at the time of entry and is updated as and when necessary thereafter, and we will contract with third-party users to obligate them to do the same, but we do not guarantee that they will do so, and, subject to Clause 13.2, we shall have no Liability for any failure by them to do so. We recommend that you check third-party data directly with those third parties for certainty when required.
- 7.5 This Agreement shall not prevent us 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.
- 7.6 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.

## **8. Your obligations**

You shall:

- 8.1.1 only submit to us or the Website information and data which is accurate and not misleading;
- 8.1.2 only submit to us or the Website content, information or imagery ("**Customer Content**") which does not infringe any IPR of any third party. You acknowledge in no event, shall we, our employees, agents and sub-contractors have any Liability to you (subject to Clause 13.2) for infringement of any IPR of any third party in respect of the Customer Content;
- 8.1.3 provide us with:
- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as we may require;
- in order to provide the Services, including Customer Data;
- 8.1.4 comply with all applicable laws and regulations with respect to your activities under this Agreement;
- 8.1.5 comply with the trial obligations set out in Appendix 3;
- 8.1.6 carry out all other of your responsibilities set out in this Agreement in a timely and efficient manner.
- 8.1.7 report any faults or suspected faults with or in the Services to us immediately upon discovery;
- 8.1.8 ensure that the Authorised Users use the Services in accordance with this Agreement and be responsible for any Authorised User's breach of this Agreement;
- 8.1.9 obtain and maintain all necessary licences, consents, and permissions necessary for us, our contractors and agents to perform our and their obligations under this Agreement, including the Services;
- 8.1.10 ensure that any specification or instructions you provide to us for the Services are complete and accurate;
- 8.1.11 ensure that your network and systems comply with the relevant specifications provided by us from time to time; and

8.1.12 be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the Internet.

8.2 You undertake to use your reasonable endeavours to migrate each member of your supply chain in respect of jewellery in order that they should subscribe or otherwise contract with us for access to the Services as an independent subscriber.

#### **9. Fees**

9.1 We make the Services available to you in accordance with the relevant Tier as outlined in the Order Confirmation. You may change your Tier by accessing the functionality available within your Account and providing certain information to us.

9.2 We will invoice you for the Fees on a monthly basis in advance, and you will pay the Fees to us within 30 days of the date of each relevant invoice, by such payment method as we may reasonably require. We will not consider any payment to be paid until we have received it in cleared funds in full.

9.3 All amounts payable by you under this Agreement:

9.3.1 must be paid in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law); and

9.3.2 are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.

9.4 We may increase the Fees not more than once in any calendar year in line with any percentage increase in the Consumer Prices Index in the preceding 12-month period. Any such increase shall be based on the latest available figure for the percentage increase in the Consumer Prices Index over the previous 12-month period. For such purposes, "Consumer Prices Index" means the Consumer Prices Index (including owner occupier's housing costs) as published by the Office for National Statistics from time to time, or failing such publication, such other index as may replace it from time to time.

9.5 If, in future, you require access to the order system and quality control system functionality, such access will be subject to an agreement between us and you in respect of charges.

9.6 You acknowledge and agree that, in the event you require access to any additional services or functionality that are contained within a higher Tier, you shall pay to us the relevant additional fees for such access as outlined in the Tier Summary, in accordance with such agreement as the Parties may enter into in such circumstance.

#### **10. Proprietary rights**

10.1 You acknowledge and agree that we and/or our licensors own all IPR in the Services. Except as expressly stated herein, this Agreement does not grant you any IPR in respect of the Services.

10.2 We confirm that we have all the rights in relation to the Services that are necessary to grant all the rights we purport to grant under, and in accordance with, this Agreement.

10.3 You acknowledge that in accessing the Services you will be able to access and view the confidential information and IPR of third party users of the Services. You undertake not to misuse or otherwise infringe any such information or IPR, and you shall be entitled to use it only for the purpose of accessing the Services and in the way that such information and IPR is intended to be used.

#### **11. Confidentiality**

11.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:

11.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

11.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 11.

11.1.3 Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

11.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

11.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

11.2.2 it does so subject to obligations equivalent to those set out in this Clause 11.

11.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited

and is given in accordance with this Clause 11.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

11.4 The obligations of confidentiality in this Clause 11 shall not extend to any matter which either Party can show:

11.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

11.4.2 was independently developed by it; or

11.4.3 was independently disclosed to it by a third party entitled to disclose the same; or

11.4.4 was in its written records prior to receipt.

11.5 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 Agreement are granted to the other Party, or to be implied from this Agreement.

11.6 We may identify you as our client and the type of Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

11.7 On termination of this Agreement, we shall continue to store Customer Data and your Confidential Information to facilitate any future onboarding process in the event that the Parties agree on the provision of any future services relating to the Services.

11.8 The provisions of this Clause 11 shall continue to apply after termination of this Agreement.

## **12. Indemnity**

12.1 You shall defend us, indemnify us and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with:

12.1.1 any breach of Clauses 3.4, 3.5, and 8;

12.1.2 any claim in respect of your obligations under or in relation to Clause 10.3; and

12.1.3 any claim that the Customer Content infringes any IPR of any third party.

12.2 Subject to the limits and exclusions on our Liability set out in Clause 13, we shall defend you, your officers, directors and employees against any claim that the Services infringes any IPR of any third party, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:

12.2.1 we are given prompt notice of any such claim;

12.2.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and

12.2.3 we are given sole authority to defend or settle the claim.

In the defence or settlement of any such claim, we may procure the right for you 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 20 Business Days' notice to you without any additional Liability or obligation to you, subject to Clause 13.2.

12.3 In no event shall we, our employees, agents and sub-contractors have any Liability to you (subject to Clause 13.2) to the extent that any alleged infringement set out in Clause 12.2 is based on:

12.3.1 a modification of the Services by anyone other than us; or

12.3.2 your use of the Services in a manner contrary to this Agreement or the instructions given to you by us; or

12.3.3 your use of the Services after notice of the alleged or actual infringement from us or any third party.

12.4 This Clause 12 states your sole and exclusive rights and remedies, and our (and our employees', agents' and sub-contractors') entire obligations and Liability (subject to Clause 13.2), for infringement of any IPR of any third party by the Services.

## **13. Limitation of Liability**

13.1 This Clause 13 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

13.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any goods, services or deliverables in connection with this Agreement; or

13.1.2 otherwise in relation to this Agreement or entering into this Agreement.

13.2 Neither Party excludes or limits its Liability for:

13.2.1 its fraud; or

13.2.2 death or personal injury caused by its Breach of Duty; or

13.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

13.2.4 any other Liability which cannot be excluded or limited by applicable law.

13.3 Subject to Clause 13.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.



- 13.4 Subject to Clause 13.2, we shall not have any Liability in respect of any:
- 13.4.1 indirect or consequential losses, damages, costs or expenses;
  - 13.4.2 loss of actual or anticipated profits;
  - 13.4.3 loss of contracts;
  - 13.4.4 loss of use of money;
  - 13.4.5 loss of anticipated savings;
  - 13.4.6 loss of revenue;
  - 13.4.7 loss of goodwill;
  - 13.4.8 loss of reputation;
  - 13.4.9 loss of business;
  - 13.4.10 ex gratia payments;
  - 13.4.11 loss of operation time;
  - 13.4.12 loss of opportunity;
  - 13.4.13 loss caused by the diminution in value of any asset; or
  - 13.4.14 loss of, damage to, or corruption of, data;
- whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 13.4.2 to 13.4.14 (inclusive) of this Clause 13.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 13.5 Subject to Clause 13.2, our total aggregate Liability arising out of or in connection with all claims in aggregate shall be £500,000.
- 13.6 The limitation of Liability under Clause 13 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 13.7 You acknowledge and accept that we only grant to you access to the Services on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 13.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.
- 13.8 Except as expressly and specifically provided in this Agreement:
- 13.8.1 you assume sole responsibility for results obtained from your use of the Services, and for conclusions drawn from such use. Subject to Clause 13.2, we shall have no Liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by us at your direction;
  - 13.8.2 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
  - 13.8.3 the Services are provided to you on an "as is" basis.
- 13.9 Nothing in this Agreement shall restrict or limit your general obligation at law to mitigate any loss you may suffer or incur as a result of an event that may give rise to a claim under this Agreement.
- 14. Term and termination**
- 14.1 This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect until either Party gives to the other Party not less than 30 days' written notice to terminate.
- 14.2 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:
- 14.2.1 the other Party commits a material breach of this Agreement which breach is irreparable or (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so; or
  - 14.2.2 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order, or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; and/or
  - 14.2.3 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3 Without affecting any other right or remedy available to us, we may terminate this Agreement without Liability (subject to Clause 13.2), with immediate effect by giving written notice to you, if:
- 14.3.1 you challenge or dispute the validity of any of our IPR; or
  - 14.3.2 you purport to assign any of your rights or obligations under this Agreement.

14.4 On termination of this Agreement for any reason:

14.4.1 all licences and rights granted under this Agreement shall immediately terminate;

14.4.2 you shall pay to us all amounts owing under this Agreement, whether invoiced or not;

14.4.3 each Party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other Party;

14.4.4 we may destroy or otherwise dispose of any of the Customer Data in our possession unless we receive, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to you of the then most recent back-up of the Customer Data. We shall use our reasonable endeavours to deliver the back-up to you within 30 days of our receipt of such a written request, provided that pay all reasonable expenses incurred by us in returning or disposing of Customer Data; and

14.4.5 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 this Agreement which existed at or before the date of termination, shall not be affected or prejudiced.

#### **15. Force majeure**

Subject always to the business continuity policy set out in the InfoSec Policy, neither Party shall in any circumstances be in breach of this Agreement, nor, subject to Clause 13.2, have any Liability for delay in performing, or failure to perform, any of its obligations under this Agreement, if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of a Party or any third 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. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month, the Party not affected may terminate this Agreement by giving 28 days written notice to the other Party.

#### **16. Waiver and remedies**

16.1 No failure or delay by either 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.

16.2 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.

#### **17. Severance**

17.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 17 shall not affect the validity and enforceability of the rest of this Agreement.

17.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **18. Variation**

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

#### **19. Assignment**

You shall not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

#### **20. No partnership or agency**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

#### **21. Third party rights**

A person who is not a Party shall not have any rights under or in connection with this Agreement.

#### **22. Notices**

22.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office or such other address

as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or commercial courier.

22.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 22.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

22.3 The provisions of this Clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

**23. Governing law and jurisdiction**

23.1 This Agreement and any disputes or claims 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 laws of England.

23.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation.