



Website Terms & Conditions

v13 October 2022

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## 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 Registration as having full capacity and authority to enter into this Agreement on behalf of the Client;

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

**"Authorised Users"**: those of your employees, agents and independent contractors who are authorised by you to use the Services, as further described in Clause 3.2.4;

**"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;

**"Buyer"**: an Authorised User who attends the Event on behalf of a Client who can browse Event Exhibitor Companies and their products and benefit from Matchmaking Mechanisms as a buyer or potential buyer, and which Authorised User has passed our relevant validation procedures for access to such Event;

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

**"Commencement Date"**: the date on which we send to you the 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 or through the provision of the Services 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; for the avoidance of doubt, your "Confidential Information" includes commercially sensitive information that you provide to us, such as designs, pricing information and your selections through the Services;

**"Controller"**: has the meaning set out in DPA18;

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

**"Customer Activity"**: the meta-data associated by your customer(s) to your data in the Services in the form of "Approved Design Status" and/or "Customer Reference" (also known as a SKU);

**"Customer Data"**: the data inputted by you, Authorised Users, or us on your behalf, for the purpose of using the Services, and your activity in your use of the Services including where applicable Customer Personal Data;

**"Customer Personal Data"**: Personal Data, or any part of such Personal Data, of which you are the Controller and in relation to which we are the Processor and providing services under this Agreement;

**"Data Protection Legislation"**: in relation to any Personal Data which is processed in the performance of this Agreement, the Data Protection Act 2018 ("DPA18") and the General Data Protection Regulation (EU 2016/679) to the extent applicable in English law ("GDPR"), 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 regulator;

**"Data Subject"**: has the meaning set out in DPA18;

**"Demand-Side Company"**: any company using the Services to manage its own SKU-base or place orders with any "Vendor-Side Company(s)" being any company that is using the Services to generate "Demand-Side Company" interest in its products and/or sales orders);

**"Event Exhibitor Company"**: a Client that attends an Event in the capacity of an exhibitor;

**"Event Attendee"**: a Client who attends an Event in the capacity of a Buyer;

**"Event Data"**: the data provided by an Event Exhibitor Company for the purposes of participation in an Event, including products data, products images, business data and other content;

**"Event"**: a virtual trade event that we host and make available to you for sign-up and attendance, to access within your Account;

**"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);

**“Matchmaking Mechanisms”**: features that automatically generate recommendations for Seller products to Buyers based on information uploaded to the Event by the Buyer that sets out their buying requirements;

**“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 DPA18;

**“Personal Data Breach”**: has the meaning set out in DPA18;

**“Processing”**: has the meaning set out in DPA18, and **“Process”** shall be interpreted accordingly;

**“Processor”**: has the meaning set out in DPA18;

**“Registration”**: the online form, at the Website, or email in the format that we require from time to time, that you submit to us (or that we complete and submit on your behalf, on your instruction) containing specific information relating to the particular services supplied or to be arranged to be supplied by us to you;

**“Seller”**: an Authorised User who attends an Event on behalf of an Event Exhibitor Company who only has access to that Event Exhibitor Company’s Event Data and has no access to and no benefit from other Event Data from any other party participating in that Event, or Matchmaking Mechanisms;

**“Services”**: the services provided by us to you under this Agreement including the ability to attend Events, as a potential seller or potential buyer;

**“Software”**: the online software applications provided by us as part of the Services;

**“Special Categories of Personal Data”** those categories of data listed in Article 9(1) GDPR;

**“Specification”**: the specification of the functionality available through the Services, as we make available to you from time to time;

**“Supervisory Authority”**: has the meaning set out in DPA18;

**“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 we provide to you (and update) from time to time, and/or as may be made available to you in the Administrator’s Account

**“Vendor-Side Company”**: any company that is using the services to generate Demand-Side Company interest in its products and/or sales orders;

**“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;

**“we”, “us” and “our”**: Atelier Technology Limited, trading as Loupe, registered in England and Wales under number 08959344 and with registered office at 46 Cecile Park, London, England, N8 9AS; 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) or [Loupe.atelier.technology](http://Loupe.atelier.technology) or [loupe.work](http://loupe.work) or [loupe.com](http://loupe.com);

- 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 23).

## 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 Confirmation. Your submission to us of a Registration shall be deemed to be an offer by you to us to gain access to the Services (as specified in the Registration), subject to the provisions of the Registration and these Terms and Conditions, and our sending to you of the 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 When you submit your Registration, the Administrator will be sent an email asking the Administrator to verify that 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:

3.2.1 each Authorised User shall keep a secure password for use of the Services, and that each Authorised User shall keep his/her password confidential;

3.2.2 each Authorised User shall use a corporate email account allocated to them by you when creating an Authorised User account;

3.2.3 only one Authorised User may access the Services using an Authorised User account at any one time;

3.2.4 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;

3.2.5 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;

3.2.6 if any of the audits referred to in Clause 3.2.5 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

3.2.7 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.

3.3 You shall not access, store, distribute or transmit any Viruses, or any material during the course of your use of the Services that:

3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.3.6 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 14.2) 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 3.3.

3.4 You shall not, except as may be required by any applicable law which is incapable of exclusion by agreement between the Parties:

3.4.1 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

3.4.2 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

3.4.3 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

3.4.4 use the Services to provide services to third parties; or

3.4.5 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

3.4.6 attempt to obtain, or assist third parties in obtaining, access to the Services, except as expressly provided for by this Agreement.

3.5 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.

3.6 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 14.2, 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 15.2.1, or suspend access to the Services for that Authorised User.

## 5. Events

- 5.1 As part of the Services we may choose to work with third parties to host Events. Events will be visible in your Account where you may opt-in to attend.
- 5.2 If you opt in to an Event and become an Event Exhibitor Company, you must make available within the Services such Event Data as we may require in advance of the Event. If you fail to provide us with such Event Data, we reserve the right to prevent you from accessing the relevant Event.
- 5.3 All such Event Data you provide to us in respect of an Event will be subject to our Matchmaking Mechanisms and made available to relevant Buyers at the Event; you retain all ownership rights in such Event Data, and you grant to us a royalty free, non-transferable licence to use, store and copy such Event Data for purposes of the Event and otherwise in accordance with this Agreement.
- 5.4 If you attend an Event as a Buyer, you acknowledge that your Customer Data will only be made available to any Seller where you access areas within the Services specific to that Seller or proceed with recommendations for products of that Seller made by the Matchmaking Mechanisms.
- 5.5 We make no representations, warranties or guarantees, whether express or implied, that the Event Data is accurate, complete or up to date, or that any such Event Data will not infringe the IPR (or any other rights) of any third party; we do not review or moderate Event Data. You acknowledge that Event Data might be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. Subject to Clause 14.2, we are not responsible, and have no Liability, for Event Data. Availability of Event Data at an Event must not be interpreted as our approval or recommendation of Event Data or any particular Event Exhibitor Company.
- 5.6 We do not take steps to verify Event Exhibitor Companies or their Sellers, or the credentials they provide when signing up to receive the benefit of the Services, where that sign up is only for access to the Events section of the Services; an Event Exhibitor Company's sign up status in this regard will be made clear to you in the "My Company Suppliers" section of your Account once you have connected with them during an Event. In the event that you choose to communicate or transact with any such Event Exhibitor Company or its Sellers, it is your responsibility to perform such verification as is necessary to ensure any such communication or transaction you undertake is appropriate for, and beneficial to, your business. Subject to Clause 14.2, we accept no Liability for the consequences that result from you relying on the information or actions communicated to you by such Event Exhibitor Companies or their Sellers.
- 5.7 Subject to Clause 14.2 and without prejudice to the rest of Clause 14, we will not have any Liability for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with an Event or reliance on Event Data.
- 5.8 As an attendee at an Event, you acknowledge that in accessing the Event you will be able to access and view the confidential information and IPR of other participants in that Event (both on a corporate and an individual level). 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 Event and in the way that such information and IPR is intended to be used. You agree to indemnify, and keep indemnified and defend at your own expense, us, against all costs, claims, damages or expenses incurred by us or for which we may become liable, due to any failure by you or your employees or agents to comply with this Clause 5.8.
- 5.9 It is your responsibility to ensure that:
- 5.9.1 any decision or implementation made by you and your employees, agents and other contractors at or in respect of an Event or any Event Data is in your best interests, whether as a result of any advice, recommendation or otherwise; and
  - 5.9.2 the process of making such decision or implementation by you and your employees, agents and other contractors is made in compliance with your relevant risk strategy;
- and you bear absolute responsibility for the consequences of any such decision or implementation.

## 6. Customer Data

- 6.1 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.
- 6.2 Subject to Clause 12 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 within the ordinary course of our business as we consider appropriate from time to time. Where we provide Events as part of the Services, this will include us sharing anonymised aggregated Customer Data with the third parties who engage us to provide Events for their commercial use in the ordinary course of their business.

- 6.3 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 14.2, 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).
- 6.4 We shall, in providing the Services, comply with the InfoSec Policy for the privacy and security of the Customer Data.
- 6.5 You acknowledge that:
- 6.5.1 your personnel that access and use the Services may have their Personal Data processed in the course of their use of the Services, either by us (in which case our privacy policy available within the Services will apply if we act as Controller, or Clauses 6.6 to 6.13 will apply if we act as Processor) or by other users of the Services with whom your personnel communicate during such Services usage;
  - 6.5.2 other users of the Services with whom your personnel share their Personal Data during use of the Services may be located outside of the European Economic Area and therefore such Personal Data may be processed outside of the European Economic Area by such users;
  - 6.5.3 you have made such personnel aware that their Personal Data may be processed by us in accordance with our privacy policy, and by other users of the Services both inside and outside of the European Economic Area;
  - 6.5.4 whilst we have asked other users of the Services to comply with Data Protection Legislation in their use of the Services and their processing of any Personal Data during their use of the Services, we are not responsible for such compliance, and shall have no Liability (subject to Clause 14.2) for any breach by such users of Data Protection Legislation, and you are responsible for ensuring the compliance of any such other users with Data Protection Legislation before authorising your personnel to share Personal Data with such users;
  - 6.5.5 you may process the Personal Data of personnel of other users of the Services in your own use of the Services and, in doing so, and otherwise in connection with your use of the Services, performance of this Agreement and processing of any Personal Data accessed through your use of the Services, you warrant that you will comply with Data Protection Legislation; and
  - 6.5.6 in accordance with our privacy policy, which is available through the Services to Authorised Users, we may use the Personal Data of Authorised Users for various purposes, including:
    - (a) for research and analytics;
    - (b) to improve the functionality of the Services;
    - (c) to administer and manage Authorised Users' accounts;
    - (d) to allow Authorised Users to upload, store and access Customer Data;
    - (e) for the publication of industry statistics and market trends;
    - (f) for reporting on benchmarking to third parties;
    - (g) to provide user support;
    - (h) to moderate Authorised Users' accounts;
    - (i) for security purposes;
    - (j) to comply with applicable laws;
    - (k) to communicate information about the Services;
    - (l) to fulfil our obligations under this Agreement;
    - (m) to provide Authorised Users with notification about any changes to the Services;
    - (n) to administer and protect our business and the Services; and
    - (o) to use data analytics to improve the Services.
- 6.6 The Parties acknowledge that, for the purposes of Data Protection Legislation, you are the Controller and we are the Processor of any Customer Personal Data. The scope, nature and purpose of Processing is as set out below:

<b>Scope, nature and purpose of Processing</b>	The provision by us of the Services.
<b>Duration of Processing</b>	The duration of this Agreement.
<b>Types of Personal Data being Processed</b>	Personal Data relating to Authorised Users, your customers and suppliers, including name, email address, telephone number, and any other Personal Data shared by such persons in the use of the Services.
<b>Categories of Data Subject in respect of whom Personal Data is being Processed</b>	Authorised Users, your customers and suppliers.
<b>Subprocessors</b>	Amazon Web Services LLC, Cloud Services Provider Google LLC, Cloud Services Provider Hubspot Inc Cloud Customer Support Services, Zuora Inc, Cloud Financial Services Provider

- 6.7 Each Party confirms that it holds, and during the term of this Agreement will maintain, all registrations and notifications required in terms of the Data Protection Legislation which are appropriate to the performance of its obligations under this Agreement.
- 6.8 Each Party confirms that, in the performance of this Agreement, it will comply with the Data Protection Legislation.
- 6.9 We will:
- 6.9.1 Process Customer Personal Data only on documented instructions from you, unless required to do so by Data Protection Legislation or any other applicable law to which we are subject; in such a case, we shall inform you of that legal requirement before Processing, unless that law prohibits us to so inform the you;

- 6.9.2 ensure that persons authorised to Process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 6.9.3 ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);
  - 6.9.4 notify you as soon as reasonably practicable before appointing any subcontractor in respect of Processing of Customer Personal Data, and ensure that any such subcontractor complies with the provisions of this Clauses 6.6 to 6.13 as if it was a Party; if you (acting reasonably) disagree with the appointment of the subcontractor for reasons relating to the Processing of Customer Personal Data, you shall have the right to terminate this Agreement on 90 days' written notice; a list of pre-approved subprocessors for such purposes are set out in Clause 6.6;
  - 6.9.5 taking into account the nature of the Processing, assist you by putting in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Legislation, to the extent that such requests relate to this Agreement and our obligations under it;
  - 6.9.6 assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 6.9.7 at your option, delete (to the extent practicable) or return all the Customer Personal Data to you after termination of this Agreement or otherwise on your request, and delete existing copies (to the extent practicable) unless applicable law requires our ongoing storage of the Customer Personal Data;
  - 6.9.8 make available to you all information necessary to demonstrate our compliance with this Clause 6.9, and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you; and
  - 6.9.9 inform you immediately if, in our opinion, an instruction from you infringes (or, if acted upon, might cause an infringement of) Data Protection Legislation.
- 6.10 Each Party will notify the other Party without undue delay if it becomes aware of a Customer Personal Data Breach relating to either Party's obligations under this Agreement.
- 6.11 You shall undertake appropriate data protection impact assessments to ensure that Processing of Customer Personal Data complies with Data Protection Legislation. We will provide you with reasonable assistance, where necessary and upon your request, in carrying out any data protection impact assessment and undertaking any necessary prior consultation of the Supervisory Authority.
- 6.12 It is your responsibility to ensure that Customer Personal Data is dealt with in a way that is compliant with the "data protection principles" (as defined in DPA18).
- 6.13 It is your responsibility to ensure that:
- 6.13.1 you are able to justify the Processing of Customer Personal Data as lawful in accordance with Data Protection Legislation (including, where applicable, obtaining any and all consents of Data Subjects required in order to commence the Processing), and that you have recorded or documented this in accordance with the record keeping requirements of Data Protection Legislation;
  - 6.13.2 where Customer Personal Data falls within the Special Categories of Personal Data, the Processing of such Special Categories of Personal Data is justified as lawful under Data Protection Legislation before Processing takes place;
  - 6.13.3 where the Processing of Special Categories of Personal Data is not justified as lawful under Data Protection Legislation, no such data will be sent to us; and
  - 6.13.4 you have all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to us for the duration and purposes of this Agreement.
- 6.14 Each Party agrees to indemnify, and keep indemnified and defend at its own expense, the other Party, against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable, due to any failure by the first Party or its employees or agents to comply with this Clauses 6.6 to 6.13.

## **7. 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 14.2, 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.

## **8. Our obligations**

- 8.1 We undertake that the Services will be made available to you and performed with reasonable skill and care.
- 8.2 Subject to Clause 14.2, we shall not have any Liability for:
  - 8.2.1 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
  - 8.2.2 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.
- 8.3 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements.

- 8.4 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 14.2, 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.
- 8.5 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.
- 8.6 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.

## 9. Your obligations

You shall:

- 9.1.1 only submit to us or the Website information and data which is accurate and not misleading;
- 9.1.2 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 14.2) for infringement of any IPR of any third party in respect of the Customer Content;
- 9.1.3 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;
- 9.1.4 comply with all applicable laws and regulations with respect to your activities under this Agreement;
- 9.1.5 comply with the trial obligations set out in Appendix 3;
- 9.1.6 carry out all other of your responsibilities set out in this Agreement in a timely and efficient manner;
- 9.1.7 report any faults or suspected faults with or in the Services to us immediately upon discovery;
- 9.1.8 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;
- 9.1.9 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;
- 9.1.10 ensure that any specification or instructions you provide to us for the Services are complete and accurate;
- 9.1.11 ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
- 9.1.12 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.
- 9.2 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.

## 10. Fees

- 10.1 We make the Services available to you in accordance with the relevant Tier, as we communicate to you from time to time, and we shall calculate the Fees in accordance with the Tier Summary then in force.
- 10.2 Demand-Side Companies:
- 10.2.1 cannot downgrade from a higher Tier to a lower Tier;
  - 10.2.2 on Confirmation, will automatically be on the free Tier with the lowest available functionality;
  - 10.2.3 can upgrade to a paid Tier by using the functionality available within the Services and providing relevant payment details, following which you will receive an automatic payment confirmation and immediate access to the Services applicable to that Tier; and
  - 10.2.4 to upgrade your access to the enterprise Tier, you must use the functionality available within the Services to arrange for us to contact you in order that we can agree appropriate terms with you on which we can provide such access to you.
- 10.3 Vendor-Side Companies:
- 10.3.1 on Confirmation, will automatically be on the free Tier with unlimited access to all available features; and
  - 10.3.2 will have their Tier downgraded or upgraded automatically as a function of their aggregate Customer Activity in respect of the Services.
- 10.4 We will invoice you for the Fees in advance and as per your billing cycle (defined by the date you upgrade Tier for Demand-Side Companies, or the date on which your aggregate Customer Activity crosses the first paid Tier threshold for Vendor-Side Companies), and you will pay the Fees to us either on demand (required for Demand-Side Companies) and, in all other instances unless we agree otherwise with you in writing, 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. Unless you terminate under Clause 15.2 (in which case you may request a refund on a pro rata basis for Fees paid in advance relating to the period after termination), all Fees are non-refundable.
- 10.5 All amounts payable by you under this Agreement:
- 10.5.1 must be paid in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law); and
  - 10.5.2 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.



- 10.6 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.
- 10.7 Unless otherwise agreed between us and you (or your relevant customer) in writing, we reserve the right to increase the Fees at our absolute discretion from time to time; in the event that you object to such increase, Clause 19 shall apply.
- 10.8 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:
- 10.8.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
- 10.8.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
- 10.8.3 suspend performance of this Agreement until payment in full has been made.

## **11. Proprietary rights**

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 Save for Customer Data provided in respect of an Event (in respect of which Clause 6 applies), you acknowledge that the information and media (including Customer Data, IPR and any bill of materials) that you make available through the Services is available to third-party validated members of our network and users of our Services (who have been authorised by you through the Services, once you have ensured that you have been appropriately trained in the use of the Services, to access such information and media), who may use that information and media for such purposes as they consider appropriate, at their absolute discretion, from time to time (subject to any restrictions defined by you in sharing the information and media with us, any written contract between you and such third-party validated members, and compliance with applicable laws, including in respect of registration and protection of IPR). You provide such information and media to us to make available through the Services at your own risk, and, subject to Clause 14.2, we shall have no Liability for any use, misuse, action or omission of any third party (whether a user of the Services or otherwise) in respect of such information and media.

## **12. Confidentiality**

- 12.1 Each Party shall keep the other Party’s Confidential Information confidential and shall not:
- 12.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
- 12.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.
- 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.
- 12.2 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:
- 12.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
- 12.2.2 it does so subject to obligations equivalent to those set out in this Clause 12.
- 12.3 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 12.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 12.4 The obligations of confidentiality in this Clause 12 shall not extend to any matter which either Party can show:
- 12.4.1 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
- 12.4.2 was independently developed by it; or
- 12.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
- 12.4.4 was in its written records prior to receipt.
- 12.5 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.
- 12.6 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).
- 12.7 On termination of this Agreement, we shall continue to store Customer Data and your Confidential Information to the extent required for the continued provision of access to services (and associated functionality and analysis) similar to the Services to other users, including communication and transaction history between you and another such user.
- 12.8 The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

## **13. Indemnity**

- 13.1 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:
- 13.1.1 any breach of Clauses 3.3, 3.4, and 9;
  - 13.1.2 any claim in respect of your obligations under or in relation to Clause 11.3; and
  - 13.1.3 any claim that the Customer Content and/or Customer Data infringes any IPR of any third party.
- 13.2 Subject to the limits and exclusions on our Liability set out in Clause 14, 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:
- 13.2.1 we are given prompt notice of any such claim;
  - 13.2.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
  - 13.2.3 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 14.2.
- 13.3 In no event shall we, our employees, agents and sub-contractors have any Liability to you (subject to Clause 14.2) to the extent that any alleged infringement set out in Clause 13.2 is based on:
- 13.3.1 a modification of the Services by anyone other than us; or
  - 13.3.2 your use of the Services in a manner contrary to this Agreement or the instructions given to you by us; or
  - 13.3.3 your use of the Services after notice of the alleged or actual infringement from us or any third party.
- 13.4 This Clause 13 states your sole and exclusive rights and remedies, and our (and our employees', agents' and sub-contractors') entire obligations and Liability (subject to Clause 14.2), for infringement of any IPR of any third party by the Services.
- 14. Limitation of Liability**
- 14.1 This Clause 14 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 14.1.1 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
  - 14.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 14.2 Neither Party excludes or limits its Liability for:
- 14.2.1 its fraud; or
  - 14.2.2 death or personal injury caused by its Breach of Duty; or
  - 14.2.3 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
  - 14.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 14.3 Subject to Clause 14.2, 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.
- 14.4 Subject to Clause 14.2, we shall not have any Liability in respect of any:
- 14.4.1 indirect or consequential losses, damages, costs or expenses;
  - 14.4.2 loss of actual or anticipated profits;
  - 14.4.3 loss of contracts;
  - 14.4.4 loss of use of money;
  - 14.4.5 loss of anticipated savings;
  - 14.4.6 loss of revenue;
  - 14.4.7 loss of goodwill;
  - 14.4.8 loss of reputation;
  - 14.4.9 loss of business;
  - 14.4.10 ex gratia payments;
  - 14.4.11 loss of operation time;
  - 14.4.12 loss of opportunity;
  - 14.4.13 loss caused by the diminution in value of any asset; or
  - 14.4.14 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 14.4.2 to 14.4.14 (inclusive) of this Clause 14.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 14.5 Subject to Clause 14.2, our total aggregate Liability arising out of or in connection with all claims in aggregate shall be £500,000.
- 14.6 The limitation of Liability under Clause 14 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 14.7 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 14.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.
- 14.8 Except as expressly and specifically provided in this Agreement:
- 14.8.1 you assume sole responsibility for results obtained from your use of the Services, and for conclusions drawn from such use. Subject to Clause 14.2, 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;
  - 14.8.2 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

- 14.8.3 the Services are provided to you on an "as is" basis.
- 14.9 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.
- 15. Term and termination**
- 15.1 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 for 12 months from the Commencement Date ("**Initial Term**"), and shall automatically extend for 12 months ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term, unless and until either Party gives to the other Party not less than 30 days' prior written notice to terminate to take effect at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 15.2 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:
- 15.2.1 the other Party commits a material breach of this Agreement which breach is irremediable 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
- 15.2.2 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
- 15.2.3 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.3 Without affecting any other right or remedy available to us, we may terminate this Agreement without Liability (subject to Clause 14.2), with immediate effect by giving written notice to you, if:
- 15.3.1 (or such other notice period as we see fit at our absolute direction) you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than 14 days after being notified to make such payment;
- 15.3.2 you challenge or dispute the validity of any of our IPR; or
- 15.3.3 you purport to assign any of your rights or obligations under this Agreement.
- 15.4 On termination of this Agreement for any reason:
- 15.4.1 all licences and rights granted under this Agreement shall immediately terminate;
- 15.4.2 you shall pay to us all amounts owing under this Agreement, whether invoiced or not;
- 15.4.3 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; and
- 15.4.4 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.
- 16. 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 14.2, 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.
- 17. Waiver and remedies**
- 17.1 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.
- 17.2 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.
- 18. Severance**
- 18.1 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 18 shall not affect the validity and enforceability of the rest of this Agreement.
- 18.2 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.
- 19. Variation**
- We may vary this Agreement at our absolute discretion from time to time; in the event that you object to such variation, you may terminate this Agreement on 60 days' prior written notice.
- 20. 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).
- 21. No partnership or agency**

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

**22. Third party rights**

22.1 Except as expressly provided in Clause 22.2, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22.2 Clause 5.7 and 5.8 are also made for the benefit of users of the Services whose rights you infringe in the event you breach Clause 5.7, and the undertakings in Clause 5.7 and indemnity in Clause 5.8 exclusively shall also be enforceable by each such user against you to the fullest extent permitted by law as if they were a Party.

**23. Notices**

23.1 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.

23.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 23.1; 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.

23.3 The provisions of this Clause 23 shall not apply to the service of any proceedings or other documents in any legal action.

**24. Governing law and jurisdiction**

24.1 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.

24.2 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.