

## SERVICES AGREEMENT

This Agreement set out the terms and conditions on which **Argand Solutions Limited**, a company incorporated and registered in England and Wales with company number 08205776 whose registered office is at 1 Belsham Court, South Street, Totnes, Devon, TQ9 5FZ ("**Supplier**") provides the Services to you ("**Customer**"). This Agreement shall take effect on the date you confirm acceptance of these terms and conditions on the Supplier's website or via the electronic execution service selected by the Supplier.

The Supplier has developed a platform through which it makes certain energy management software applications available to subscribers via the internet. The Customer wishes to use the Supplier's service in its business operations. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

### Agreed terms

#### 1 Interpretation

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

**Application(s):** any one of the online software applications provided by the Supplier as part of the Services as specified in the Order Form.

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

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

**Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Confidential Information:** information that is proprietary or confidential and is labelled as such, manifestly confidential or identified as Confidential Information in clause 10.6 or clause 10.7.

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

#### Data Protection Legislation:

- (a) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data commonly referred to as the General Data Protection Regulation ("**GDPR**"); and
- (b) Data Protection Act 2018 (in the UK).

**Documentation:** any document made available to the Customer by the Supplier from time to time which sets out a description of the Services and the relevant Applications and the user instructions for the Services and the relevant Applications.

**Effective Date:** the date on which an authorised representative of the Customer confirms acceptance of this Agreement or, if different, the date stated in the Order Form.

**Fair Usage Policy:** the Supplier's fair usage policy, a copy of which shall be provided by the Supplier to the Customer.

**Initial Subscription Term:** the initial term of this Agreement specified in the Order Form.

**Intellectual Property Rights:** patents, utility models, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

**Normal Business Hours:** 9.00 am to 5.30pm local UK time, each Business Day.

**Order Form:** the form sent by the Supplier to the Customer setting out the Initial Subscription Term, the Subscription Fees and the Applications.

**Renewal Period:** the period described in clause 13.

**Services:** the subscription services provided by the Supplier to the Customer under this Agreement via admin.argandsolutions.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation and/or any Training, and which may include access and/or use of one or more of the Applications.

**Subscription:** means a subscription by the Customer to access and use one or more Application.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order Form.

**Subscription Term:** has the meaning given in clause 1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services as made available by the Supplier to the Customer.

**Training:** training on use of the Applications provided to the Customer at the Supplier's discretion prior to or shortly after the Effective Date.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2 User Subscriptions**

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 8.1, its compliance with the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely as envisaged under this Agreement and for no other purpose.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time whether purchased in total or respect of each Application;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - (c) each Authorised User shall keep a secure password for his/her use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
  - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request at any time or times;
  - (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense subject to the provisions of clause 2.2(g), and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within ten (10) Business Days of the date of the relevant audit together with the costs and expenses incurred by the Supplier in carrying out the audit.

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

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

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

2.4 The Customer shall not, and shall procure that the Authorised Users shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any of the Services or all or any portion of any Application and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of any Application or any part of the Services or Documentation; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (i) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation or any Application available to any third party except the Authorised Users, or
  - (ii) attempt to obtain, or assist third parties in obtaining, access to the Services, Documentation and/or Application, other than as provided under this clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Applications and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3 Additional User Subscriptions and Applications**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order Form or further Applications and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement for the remainder of the Subscription Term.
- 3.2 If the Customer wishes to purchase additional User Subscriptions and/or Applications, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and/or Applications and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions and/or Applications or provide access to the additional Applications within seven (7) days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions and/or Applications, the Customer shall, in accordance with clause 8 pay to the Supplier the relevant fees for such additional User Subscriptions and/or Applications as set out in the Order Form and, if such additional User Subscriptions are purchased by the Customer part way through a month or part way through the Initial Subscription Term or any renewal period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the month or Initial Subscription Term or then current Renewal Period (as applicable).

### **4 Services**

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer and the Authorised Users on and subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to:
- (a) make the Services available 24 hours a day, seven days a week; and
  - (b) notify the Customer in advance in the event of any unplanned or planned maintenance.
- 4.3 The Supplier will, as part of the Services and in consideration of the Subscription Fees, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

### **5 Customer Data**

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2 The Supplier shall not be responsible for any delay, unavailability or cost increase in respect of the Services, Training or Documentation which is caused directly or indirectly by:
- (a) any failure by the Customer or the Authorised Users to comply with the provisions of clause 5; and

- (b) any act or omission of the Customer or Authorised User or failure to comply materially with any of the provisions of this Agreement;
  - (c) any inaccuracy, omission or corruption of the Customer Data due to any act, omission or breach of this Agreement by the Customer, its agents, employees or subcontractors; and
  - (d) any act or omission or issue arising in respect of any third party who is not a sub-contractor or agent of the Supplier.
- 5.3 In the event of any loss, corruption or damage to the Customer Data which is due to an act or omission of the Supplier or breach of this Agreement by the Supplier, the Customer's and its Authorised User's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its then current archiving procedure. The Supplier shall back up all Customer Data inputted into the Applications once a day and will retain copies for two (2) years after the date that such Customer Data is inputted for audit purposes. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.4 The Supplier shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://www.argandsolutions.com> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 5.5 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.6 The parties acknowledge that:
- (a) if the Supplier processes any personal data on the Customer's or the Authorised Users' behalf when performing its obligations under this Agreement, the Customer (or the Authorised User) is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
  - (b) Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of data subject.
  - (c) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement.
- 5.7 Without prejudice to the generality of clause 5.4, the Customer will ensure (and procure that the Authorised Users will ensure) that it/they has/have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf. The Customer shall indemnify the Supplier in full for any costs, liabilities, charges, penalties, fines or other amounts incurred by the Supplier which arise from a breach of this clause 5 by the Customer or Authorised Users.
- 5.8 Without prejudice to the generality of clause 5.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (e) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data or retain the same for legal purposes or retain aggregated, anonymised data derived from the Personal Data for our own internal and commercial use; and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

5.9 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, 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 Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to 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 it).

5.10 The Customer consents to the Supplier appointing Digital Ocean and/or Amazon Web Services as a third-party processor of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement substantially on that third party's standard terms of business.

5.11 Either party may, at any time on not less than thirty (30) days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms

forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

- 5.12 In accordance with the rights granted to the Supplier under clause 9.3, the Supplier may use anonymised aggregated information derived from the Customer Data for its own internal records and business or product development or enhancement purposes.

## **6 Supplier's obligations**

- 6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's or the Authorised Users' use of the Services will be uninterrupted or error-free; or that the Services, Documentation, Applications and/or the information obtained by the Customer or Authorised Users through the Services will meet the Customer's or the respective Authorised User's requirements;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Applications and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- (c) does not provide investment advice and any information provided by the Supplier and/or output of the Applications should not be regarded or used as such. Any investment advice should be obtained from a third party.

- 6.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

- 6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## **7 Customer's obligations**

- 7.1 The Customer shall, and shall procure that the Authorised Users where applicable shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer or Authorised User responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that it/they use the Services, Applications and the Documentation in accordance with the terms and conditions of this Agreement and it/they shall be responsible for any breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's, its agents or subcontractor's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **8 Charges and payment**

- 8.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and the Order Form.
- 8.2 The Customer shall on a monthly basis pay in advance for the Authorised Users permitted to use the Services and Applications (subject to any incremental Authorised Users or additional Applications added during the continuance of this Agreement pursuant to clause 3).
- 8.3 If the Supplier has not received payment within seven (7) days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's or Authorised Users' password, account and access to all or part of the Services or individual Applications and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in the agreed currency;
  - (b) are, subject to clause 12.3(b), non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.5 *If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation or the Fair Usage Policy, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees as set out in the Fair Usage Policy.*
- 8.6 *The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3, the support fees payable*

pursuant to clause 3 and/or the excess storage fees payable pursuant to clause 8.5 at the start of each Renewal Period upon thirty (30) days' prior notice to the Customer or at any time to reflect any change in third party supplier fees.

## **9 Proprietary rights**

- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services, the Applications and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights (including Intellectual Property Rights) or licences in respect of the Services, Applications or the Documentation.
- 9.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 9.3 The Customer shall own the rights (including Intellectual Property Rights) in the Customer Data save that the Supplier may use anonymised aggregated information derived from the Customer Data for its own internal records and business or product development or enhancement purposes. For these purposes the Customer grants the Supplier a perpetual, non-exclusive, royalty free right to use the Customer Data to derive anonymised aggregated material from the same for these purposes. Such right shall survive termination or expiry of this Agreement.

## **10 Confidentiality**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 10.6 The Customer acknowledges that details of the Services, Applications and the results of any performance tests of the Services, together with the pricing related to the Services, constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer subject always to the provisions of clause 10.3.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

## **11 Indemnity**

- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services or Application(s) as applicable, replace or modify the Services or Applications so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier;  
or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5 The foregoing clause 11 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12 Limitation of liability

12.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services, Applications and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer or the Authorised Users in connection with the Services, or any actions taken by the Supplier at the Customer's or the Authorised Users' direction;
- (b) the Customer assumes sole responsibility for financial decisions made or investment activity undertaken on the basis of information received as a result of the Customer's or the Authorised Users' use of the Services, Applications and the Documentation;
- (c) 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
- (d) the Services and the Documentation are provided to the Customer on an "as is" basis and no warranty is given as to availability or that Services will be error free.

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

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

12.3 Subject to clause 12.1 and clause 12.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £5000 or the total Subscription Fees paid for the User Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose, whichever is the lesser amount.

## 13 Term and termination

13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Subscription Term or any Renewal Period, in which case

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

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

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

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

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to clause 13.21(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 13.3 The Supplier shall be entitled to terminate this Agreement with immediate effect (in part in respect of a single or multiple Authorised User or in whole in respect of the Customer and all Authorised Users) if:
- (a) the Customer and/or any Authorised User (in respect of partial termination) are in breach of clause 2 of this Agreement;
  - (b) if the Supplier's actions pursuant to clause 11.3 cannot resolve an infringement claim or permit the Customer and/or the Authorised Users to continue to use the Services within a reasonable period (in the Supplier's sole opinion);
  - (c) there is a change of control of the Customer.

13.4 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, Applications and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 5.7(e), unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data save that the Supplier shall be permitted to retain a copy for its internal audit purposes pursuant to clause 5.2 and to the extent required pursuant to clause 9.3 . The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **14 Force majeure**

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

14.2 If such an event hinders, prevents or delays the Supplier's performance of its obligations for a continuous period of 320 days the Supplier may terminate this Agreement by giving 2 weeks written notice to the Customer.

## **15 Conflict**

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

## **16 Variation**

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

## **17 Waiver**

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

## **18 Rights and remedies**

18.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **19 Severance**

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20 Entire Agreement**

20.1 This Agreement, including the relevant Order Form, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **21 Assignment**

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

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **22 No partnership or agency**

22.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23 Third party rights**

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

## **24 Notices**

- 24.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes (except that we may give such communications by email).

- 24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. If sent by email a communication shall be deemed delivered when sent (unless an "undelivered" report is returned to the sender within 24 hours of sending).

## **25 Governing law**

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

## **26 Jurisdiction**

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

## **Schedule 1 Processing, Personal Data and Data Subjects**

### **27 Processing by the Supplier**

- 27.1 Scope: The processing of personal data to the extent necessary for the provision of the Services by the Supplier to the Customer including but not limited to provision of access to the Documentation and the Applications to Authorised Users via the internet during the Subscription Term.
- 27.2 Nature: The processing of personal data to the extent necessary for the provision of the Services including but not limited to enabling Authorised Users to log in to access the Applications and Documentation and contact the Supplier regarding use of the Applications.
- 27.3 Purpose of processing: In order to provide the to the Customer including but not limited to provision of access to the Documentation and the Applications to Authorised Users via the internet during the Subscription Term.
- 27.4 Duration of the processing: During the Subscription Term and for two (2) years after the date that such Personal Data is provided for audit purposes.

### **28 Types of Personal Data**

Email address, username and passwords of Authorised Users.

### **29 Categories of Data Subject**

Authorised Users