

These terms and conditions (“**Terms**”) apply to the order placed by the Customer with the Supplier for the use of the Supplier’s service to scan the websites of the Customer’s marketing partners (“**Order**”).

If the Order is accepted by the Supplier, these Terms will be incorporated into the contract between the Customer and the Supplier (“**Contract**”) from the Contract Date. These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 1. Interpretation

- a. The definitions and rules of interpretation in this clause apply in these Terms.

**Applicable Law:** all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal, all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice.

**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:** 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 (whether or not it is marked as such) and such information identified as Confidential Information in clause 10.6 or clause 10.7.

**Contract Date:** the date that the Order is accepted by the Supplier.

**Customer:** the person or company who purchases Services from the Supplier, as specified on the Order Form.

**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 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time including the UK GDPR, General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended from time to time.

**Documentation:** the documents made available to the Customer by the Supplier online via [www.rightlander.com](http://www.rightlander.com) or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

**Initial Subscription Term:** a period of 12 months from the Contract Date.

**Normal Business Hours:** 8.00 am to 6.00 pm local UK time, each Business Day.

**Order Form:** the Supplier's order form attached to these Terms.

**Renewal Period:** the period described in clause 13.1.

**RPI Rate:** the "RPI Percentage change over 12 months: monthly rate" announced by the United Kingdom Office for National Statistics in February at <https://www.ons.gov.uk/> (such URL as may be updated from time to time).

**Services:** the subscription services, including the Software, provided by the Supplier to the Customer under these Terms accessed via [www.rightlander.com](http://www.rightlander.com) or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

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

**Subscription Fees:** being the subscription fees per month payable by the Customer to the Supplier for the Services for the UK facing product; other fees will be charged for additional services as agreed separately between Customer and Supplier.

**Subscription Term:** has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Supplier:** the company specified on the Order Form.

**UK GDPR:** has the meaning given to it in the Data Protection Act 2018.

**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.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability

- b. Clause headings shall not affect the interpretation of these Terms.
- c. 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.
- d. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- e. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- f. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms and shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- g. A reference to writing or written includes e-mail.

- h. References to clauses and schedules are to the clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

## 2. Authorised Users

2.1 Subject to the Customer paying the Subscription Fees in accordance with clause 8.1, the restrictions set out in this clause 2 and the other provisions of these Terms, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 In relation to the Services, the Customer undertakes that:

2.2.1 it will not allow or suffer the Services to be used by a person other than an Authorised User and the Customer acknowledges that the Supplier may levy additional fees in respect of any users other than the Authorised Users who use the Services and the Supplier may require the Customer to enter into a further Order Form or vary the Contract in respect of such additional users; and

2.2.2 each Authorised User shall keep the password for their use of the Services and Documentation secure and confidential.

2.3 Subject to payment by the Customer of an additional fee, the Customer may, from time to time during any Subscription Term, purchase logins for additional Authorised Users and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions these Terms.

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

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

2.4.2 facilitates illegal activity;

2.4.3 depicts sexually explicit images;

2.4.4 promotes unlawful violence;

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

2.4.6 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 access to any material that breaches the provisions of this clause.

2.5 The Customer shall not:

2.5.1 except as required by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:

2.5.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- 2.5.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;  
or
  - 2.5.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 2.5.3 use the Services and/or Documentation to provide services to third parties; or
  - 2.5.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users;
  - 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
  - 2.5.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.7 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 Services**

- 3.1 The Supplier shall, during the Subscription Term use its reasonable endeavours, to provide the Services and make available the Documentation to the Customer on and subject to these Terms.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1 planned maintenance carried out during the maintenance windows of (i) 3.00am to 7.00 am UK time on Business Days; and (ii) weekends; and
  - 3.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 2 Normal Business Hours' notice in advance.
- 3.3 The Supplier will, as part of the Services provide the Customer with the Supplier's standard customer email support services during Normal Business Hours.

### **4 Customer data**

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 The Supplier shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy 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, if any, maintained by the Supplier. 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).

- 4.3 The Supplier shall, in providing the Services, comply with its Privacy and Cookies Policy relating to the privacy and security of the Customer Data, available at: <https://www.rightlander.com/privacy-policy/>, as such document may be amended from time to time by the Supplier in its sole discretion.
- 4.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 4.5 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The Personal Data processed by the Supplier under this Contract shall be limited to names and email address of the Customer's employees.
- 4.6 Without prejudice to the generality of clause 4.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of these Terms.
- 4.7 Without prejudice to the generality of clause 4.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under these Terms:
- 4.7.1 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws or Data Protection Legislation to otherwise process that Personal Data;
  - 4.7.2 ensure that it has in place appropriate technical and organisational measures 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);
  - 4.7.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 4.7.4 not transfer any Personal Data outside of the United Kingdom or the European Economic Area unless the following conditions are fulfilled:
    - 4.7.4.1 the Supplier complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 4.7.4.2 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 4.7.5 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;

- 4.7.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 4.7.7 at the written direction of the Customer and to the extent technically practicable, delete or return Personal Data and copies thereof to the Customer on termination of this Contract unless required by Applicable Law to retain copies of the Personal Data; and
- 4.7.8 maintain records and information to demonstrate its compliance with this clause and promptly inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

4.8 The Supplier may use any agent, sub-contractor or other third party ("**Sub-Processor**") for the purpose of carrying out its obligations under the Agreement. The Customer gives a general written authorisation to the Supplier to engage any Sub-Processor, subject to the Supplier informing the Customer of any intended changes concerning the addition or replacement of any Sub-Processors and allowing the Customer to object (acting reasonably) to such changes.

## 5 Third party providers

5.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 6 Supplier's obligations

6.1 The Supplier shall perform the Services substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The obligation 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 in breach of these Terms or as a result of inaccurate, incomplete or incorrect information being provided to the Supplier by the Customer, 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.

6.3 Notwithstanding the foregoing, the Supplier:

6.3.1 does not warrant that:

- 6.3.1.1 the Customer's use of the Services will be uninterrupted or error-free;
- 6.3.1.2 the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- 6.3.1.3 the Services will be free from Viruses or Vulnerabilities.

- 6.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 These Terms 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 these Terms.
- 6.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms. The Supplier shall indemnify the Customer against all proper and reasonable claims, actions, fines, proceedings, losses, damages, expenses and costs for any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising directly out of the supply of the Services by the Supplier subject always to the limitations in clause 12.

## **7 Customer's obligations**

### **7.1 The Customer shall:**

- 7.1.1 provide the Supplier with:
- 7.1.1.1 all necessary co-operation in relation to these Terms and the provision of the Services; and
  - 7.1.1.2 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;
- 7.1.2 comply with all Applicable Laws and regulations with respect to its activities under these Terms;
- 7.1.3 carry out all other Customer responsibilities set out in these Terms 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;
- 7.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Terms and shall be responsible for any Authorised User's breach of these Terms;
- 7.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms, including without limitation the Services;
- 7.1.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier'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;
- 7.1.7 provide to the Supplier a list of domains for the performance of the Services and the Customer warrants to the Supplier that those domains are not owned or used by competitors or fall outside the scope of the Services;

- 7.1.8 supply a list of domain names owned by them which will be utilised in the provision of Services, if the Customer requires a report of links to their brand;
  - 7.1.9 provide the Supplier with at least one contact name and email address for its Authorised Users in order for them to receive reports; and
  - 7.1.10 ensure that data provided in reports from the Services is stored for any further audit purposes and to comply with statutory, regulatory and legal duties.
- 7.2 The Customer acknowledges and agrees that:
- 7.2.1 the Services will scan and collect information based on the domains, words, phrases and brand names that are supplied by the Customer to the Supplier in accordance with clause 7.1.8;
  - 7.2.2 website content can be changed which prevents the Services from scanning and accessing all the information that may be available from a particular website or from providing an exact up to date report on that content;
  - 7.2.3 some domains may be unavailable or unreachable or contain software to block the Services from accessing certain pages or content on a website;
  - 7.2.4 some domains may provide false or misleading information in order to stop the Services from accurately scanning websites and the reports generated from the Services in those instances may be inaccurate, incomplete or incorrect without the knowledge of the Supplier;
  - 7.2.5 the Services will assist with complying with regulatory compliance requirements but not guarantee or ensure full compliance and the liability for full compliance remains with the Customer;
  - 7.2.6 the Services are for the sole benefit of the Customer and any results, reports or information provided by the Supplier as part of the Services shall not be published, distributed or shared with any third party; and
  - 7.2.7 the Customer assumes sole responsibility for the reports obtained from the use of the Services and for conclusions drawn from such use.

## **8 Charges and payment**

- 8.1 The Customer shall pay the Subscription Fees for the Services to the Supplier. The Supplier may invoice the Customer for the Subscription Fees monthly (or such other frequency as set out in the Order Form) and the Customer shall pay each invoice within 14days of the date of such invoice.
- 8.2 If the Supplier has not received payment within 21 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - 8.2.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 8.2.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% 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.
- 8.3 All amounts and fees stated or referred to in these Terms:

- 8.3.1 shall be payable in pounds sterling or such other currency as specified by the Supplier;
- 8.3.2 are non-cancellable and non-refundable;
- 8.3.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.4 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 30 days' prior notice to the Customer.

8.5 The Subscription Fees shall be subject to an annual increase by the RPI Rate which will first appear on the Customer's first invoice following the announcement of the RPI Rate in the preceding February.

## **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 and the Documentation. Except as expressly stated herein, these Terms does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

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 these Terms.

## **10 Confidentiality**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

10.1.4 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 these Terms.

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 these Terms.

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, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning these Terms 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 these Terms, however arising.

## **11 Indemnity**

- 11.1 The Customer shall fully and effectually indemnify and hold harmless the Supplier against claims, actions, fines, 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.

## **12 Limitation of liability**

- 12.1 Except as expressly and specifically provided in these Terms:
  - 12.1.1 the Customer assumes sole responsibility for (1) the results, reports, and information obtained from the use of the Services and the Documentation by the Customer, (2) for conclusions drawn from such use and (3) any actions taken by the Customer and the results of such actions. 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 in connection with the Services, or any actions taken by the Customer or any actions taken by the Supplier at the Customer's direction;
  - 12.1.2 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 these Terms; and
  - 12.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis; and
  - 12.1.4 the Supplier shall not be liable for any failure in the Service as a result of any matter referred to in clause 7.2.
- 12.2 Nothing in these Terms excludes or limits liability:
  - 12.2.1 of both parties for death or personal injury caused negligence;
  - 12.2.2 of both parties for fraud or fraudulent misrepresentation; or
  - 12.2.3 for any breach of clauses 2.4, 2.5 and 7.1.2.
- 12.3 Subject to clause 12.1 and clause 12.2:

- 12.3.1 neither party shall 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 these Terms; and
- 12.3.2 both parties total aggregate liability in contract, tort (including negligence or breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the aggregate fees paid to the Supplier by the Customer in the six months immediately preceding the date on which the claim arose.

### 13 Term and termination

- 13.1 This Contract shall, unless otherwise terminated as provided in this clause 13, commence on the Contract Date and shall continue for the Initial Subscription Term and, thereafter, this Contract shall be automatically renewed for a successive period as defined in the Order Form (each a **Renewal Period**), unless:
- 13.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 13.1.2 otherwise terminated in accordance with the provisions of these Terms,
- 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 Contract with immediate effect by giving written notice to the other party if:
- 13.2.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment;
- 13.2.2 the other party commits a material breach of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- 13.2.3 the other party repeatedly breaches any of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms;
- 13.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- 13.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of

a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 13.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - 13.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 13.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 13.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - 13.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.4 to clause 13.2.10 (inclusive); or
  - 13.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if there is a Change of Control of the Customer.
- 13.4 On termination of this Contract for any reason:
- 13.4.1 all rights and licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
  - 13.4.2 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 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
  - 13.4.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Terms 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 these Terms if it is prevented from or delayed in performing its obligations under these Terms, 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.

## **15 Variation**

15.1 No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **16 Waiver**

16.1 No failure or delay by a party to exercise any right or remedy provided under these Terms 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 Rights and remedies**

17.1 Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18 Severance**

18.1 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **19 Entire Agreement**

19.1 This Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 The Customer acknowledges that in entering into this Contract 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 Contract.

19.3 The Customer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

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

## **20 Assignment**

20.1 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 Contract.

20.2 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 Contract.

## **21 No partnership or agency**

21.1 Nothing in these Terms 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).

## **22 Third party rights**

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

## **23 Notices**

23.1 Any notice required to be given under these Terms 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 these Terms, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email number as set out in these Terms.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received on transmission (as shown by the timed printout obtained by the sender), or at the time of receiving the read receipt, if earlier

## **24 Governing law**

24.1 This Contract 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.

## **25 Jurisdiction**

25.1 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 Contract or its subject matter or formation (including non-contractual disputes or claims).