



PREMIER SOFTWARE MAINTENANCE AGREEMENT

BETWEEN

1. Journey Hospitality Limited who is registered in England and Wales with company number 07413674 whose registered office is at Elmstone Business Park, Stoke Road, Elmstone Hardwicke, Cheltenham, GL51 9SY ("Journey", "Us", "We" or the "Supplier") is a hospitality-focused, ecommerce, marketing and technology business who has developed a range of performance marketing products, technology and digital services.
2. and the Client or Company whose details are noted in the signed contract ("Client", "Customer", "You")

BACKGROUND

- (A) The Supplier will supply and licence the Software (defined below) to the Customer under the terms of the Licence (defined below) and agrees to provide support and maintenance for such Software on the terms set out in this agreement.
- (B) The Supplier is the entire legal and beneficial owner and licensor of the Software and is willing to license the Customer to use these products.

1 Definitions

In this agreement unless inconsistent with the context or otherwise specified the following definitions will apply:

"Charges" means the charges payable for the Services, including any charges agreed for Upgrades under this agreement as specified in more detail in the Quotation.

"Contract Year" means any 12-month period ending on any anniversary of the date of this agreement.

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

"Data Protection Legislation" means the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR (i.e. UK GDPR)).

"Deliverables" any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

"Documentation" means the operating manuals, user instructions and other related materials supplied by the Supplier to the Customer (whether physically or by electronic means) for aiding the use of the Software, including any part of or copy of them.

"Effective Date" as defined in clause 25.

"Expenses" means any reasonable expenses incurred by the Supplier in carrying out the Services and includes without limitation, travel (such as flights, ferries, taxis or vehicles hire amongst others), travel visas, accommodation, subsistence and non-personal internet charges.



“Hosting Service” the hosting of the Software provided by a Third Party Supplier, which is available to the Customer.

“Initial Term” as defined in clause 25.

“Initial Term Date” means the date falling 12 months after the commencement of the Initial Term.

“Installation Date” means the date on which the Software is installed on the Customer’s system as set out in Schedule 1.

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

“Licence” means the licence granted by the Supplier to the Customer to make use of the Software as set out in clause 2.

“Licence Fee” means the fee payable by the Customer to the Supplier for the use of the Software as more particularly set out in the Quotation.

“Modification” means any Release or Upgrade which is acquired by the Customer.

“Non-Critical Fault” means any reproducible fault in the Software which does not substantially hinder or prevent the Customer from using a material part of the functionality of the software in question.

“Payment Gateway” the payment gateway provided by a Third Party Supplier for use with the Software to enable the Customer to take card payments from its own customers.

“Premier Support Service” (if applicable) means the support service more particularly described in Schedule 3, which is to be provided by the Supplier to the Customer under clause 4.1 and clause 4.4.

“Premier Support Hours” means 8.30 am to 8.30 pm Monday to Sunday and any such additional hours as agreed between the parties, but excluding Christmas Day, Boxing Day, New Years’ Day and any other days off that the Supplier generally gives to its staff from time to time.

“Quotation” means the written quotation provided by the Supplier to the Customer.

“Release” means a release of the Software which corrects faults, adds functionality or otherwise amends or updates the Software, but which does not constitute an Upgrade.

“Services” means (as appropriate) the Standard Support Service, the Updating Service, the Hosting Service (if applicable), the Payment Gateway (if applicable) and the Premier Support Service (if applicable).



"Software" means the computer programs in object code form only, as briefly described in Schedule 1 including any copies of it or them but excluding source code material or preparatory design material.

"Standard Support Hours" means 9.00 am to 5.30 pm Monday to Saturday (GMT), except on days which are bank holidays in England and any other days that the Supplier generally gives to its staff from time to time.

"Standard Support Service" means the support service more particularly described in Schedule 2, which is to be provided by the Supplier to the Customer under clause 4.1 and clause 4.2.

"Term" means the term of this agreement as set out in clause 15.

"Third Party Supplier" any third party supplier of services, which are necessary for the supply of the Services.

"Upgrade" means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

"Updating Service" means the service to be supplied by the Supplier to the Customer under clause 4.1 and clause 4.3.

2. **LICENCE**

2.1 The Supplier shall grant the Customer access to the software electronically within 60 days of signature of this agreement.

2.2 In consideration of the Licence Fee paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive perpetual licence to use the Software under the terms of this clause 2, which shall govern the use of the Licence for its duration.

2.3 For the avoidance of doubt, the Customer is only required to pay the Licence Fee once. In circumstances where the Customer has previously been granted a Licence under clause 2.2, the remainder of this clause 2 will not apply and the agreement will continue in respect of the Services only.

2.4 In relation to scope of use:

2.4.1 for the purposes of clause 2.2, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);

2.4.2 for the purposes of clause 2.2, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed;



- 2.4.3 the Customer may not use the Software other than as specified in clauses 2.2 and 2.4 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;
 - 2.4.4 the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying; and
 - 2.4.5 except as expressly stated in this clause 2, the Customer has no right (and shall not permit any third party) to copy, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 2.5 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 2.4.5 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 2.6 The Customer shall not:
- 2.6.1 sub-licence, assign or novate the benefit or burden of the Licence in whole or in part;
 - 2.6.2 allow the Software to become the subject of any charge, lien or encumbrance; and
 - 2.6.3 deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 2.7 The Supplier may at any time sub-licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Licence, provided it gives written notice to the Customer.
- 2.8 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 2.9 Notwithstanding clause 10, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to the Licence or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 2.9 shall



be made until notice of the identity of the proposed assignee has been given to the other party.

2.10 The Customer shall:

2.10.1 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;

2.10.2 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person; and

2.10.3 pay, for broadening the scope of the licences granted under the Licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 5.6, from such date to the date of payment.

2.11 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the Licence, for the purposes of ensuring that the Customer is complying with the terms of the Licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3. SUPPORTED SOFTWARE

3.1 The Supported Software is:

3.1.1 the Software;

3.1.2 any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between the Supplier and the Customer) during the course of this agreement and which accordingly becomes part of the Software; and

3.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of this agreement including the software listed in Schedule 1.

3.2 In relation to Releases:

3.2.1 as part of the Updating Service, the Supplier shall from time to time make Releases available to the Customer without charge; and

3.2.2 if the Customer fails to acquire and install a Release within 6 months of the Supplier's notifying the Customer that such Release is available for installation, the Supplier may terminate this agreement by giving 1 month's written notice to the Customer.

3.3 The Customer acknowledges that owing to changes and advances in technology, Upgrades or Releases of the Software may in the future not always be compatible with any of the environments present at the date of installation. The Supplier will endeavour to provide the Customer with as much advance notice as it reasonably can, should the Supplier be aware that Upgrades or Releases of the Software will require changes to an agreed environment. It is the Customer's responsibility to upgrade the environments, as advised by the Supplier with reasonable notice, in order to meet the requirements of Upgrades or Releases.



4. THE SERVICES

4.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services:

- 4.1.1 the Standard Support Service;
- 4.1.2 the Updating Service;
- 4.1.3 (if applicable) the Premier Support Service;
- 4.1.4 (if applicable) the Payment Gateway; and
- 4.1.5 (if applicable) the Hosting Service.

4.2 In relation to the Standard Support Service:

- 4.2.1 the Standard Support Service shall be provided during the Standard Support Hours and shall comprise of a telephone help desk to provide first-line technical support to users of the Supported Software regarding day to day enquiries in respect of understanding and operation of the Software to the extent that these are not covered in the Documentation. For the avoidance of doubt, support will only be given in this way where it can be provided by means of a telephone call of reasonable duration;
- 4.2.2 if additional support is requested or required by the Customer in any month it may be provided by the Supplier at its option at such cost as is agreed between the Supplier and the Customer; and
- 4.2.3 where a Non-Critical Fault is to be corrected in a forthcoming Release, then for a reasonable period before the issue of such Release the Supplier may decline to provide assistance in respect of that Non-Critical Fault.

4.3 In relation to the Updating Service:

- 4.3.1 the Supplier shall issue Modifications of the Software as and when required and in whatever form (including, in the case of Non-critical Faults, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of the Supplier;
- 4.3.2 the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer;
- 4.3.3 for the avoidance of doubt, the cost of the Updating Service is included in the Charges payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of delivery and/or installation of the Modifications; and
- 4.3.4 once any Modification has been installed by the Customer, the Customer shall return all copies of the Software or any part of the Software which is superseded by that Modification.

4.4. In relation to the Hosting Service (if applicable) and/or the Payment Gateway (if applicable):

- 4.4.1 The Supplier shall provide the Hosting Service and/or the Payment Gateway through a Third Party Supplier;



- 4.4.2 The Customer shall have the option to make use of the Hosting Service, which shall involve the hosting of the Software on external servers;
- 4.4.3 The Customer shall have the option to make use of the Payment Gateway, which shall involve access to third party servers to enable the Customer to take card payments from its own customers;
- 4.4.4 The Supplier shall not be liable for the loss of any of the Customer's data through use of the Hosting Service and/or the Payment Gateway; and[KF1]
- 4.4.5 The Supplier makes no warranties or representations that the Hosting Service and/or the Payment Gateway will be uninterrupted or error-free.
- 4.5 The Premier Support Service(if applicable) offers support for any Priority 1 Issues during the Premier Support Hours, as more particularly defined in Schedule 3.
- 4.6 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.
- 4.7 The Supplier shall have no obligation to provide the Services where faults arise from:
 - 4.7.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
 - 4.7.2 failure to maintain the necessary environmental conditions for use of the Software;
 - 4.7.3 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
 - 4.7.4 relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
 - 4.7.5 any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
 - 4.7.6 any Modification not authorised by the Supplier; or
 - 4.7.7 operator error.
- 4.8 The Supplier may at its discretion and by giving not less than 3 months' written notice to the Customer:
 - 4.8.1 withdraw any of the Services where the Supplier in its reasonable opinion deems the Software to be obsolete or at end of life; or
 - 4.8.2 withdraw any of the Services for Upgrades or Releases which in the Supplier's reasonable opinion are no longer in wide commercial use.

5. **CHARGES**

- 5.1 Subject to clause 2.3, the Customer shall pay to the Supplier the Licence Fee.
- 5.2 In consideration of the Services, the Customer shall pay the Charges set out in Schedule 2 and (if applicable) Schedule 3. These Charges shall be paid either:
 - 5.2.1 monthly in advance by the Customer to the Supplier on or around the 5th day of each month; or



- 5.2.2 annually in advance by the Customer to the Supplier on or around the last day of the calendar month in which each anniversary of the Installation Date falls.
- 5.3 Charges for any Upgrade to the Customer shall be agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer) following acceptance by the Supplier of the Customer's written order for such Upgrade.
- 5.4 The Customer shall pay all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by this agreement.
- 5.5 The Customer shall reimburse any Expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 5.6 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 16, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.7 If the Customer disputes any invoice in good faith, the Customer will notify the Supplier in writing within 14 days of receipt of such invoice, providing the reasons for such dispute. Failing which, the Customer will raise no objection to any such invoice and will make full payment in accordance with it.
- 5.8 All amounts payable under this agreement shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.
- 5.9 The Supplier may increase the Charges upon giving no less than 3 months' notice.
- 5.10 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in the Deliverables shall belong to the Supplier, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under this agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may from time to time require for the purpose of giving the Supplier the full benefit of the provisions of this clause 6.1.
- 6.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables (or any part of them) infringes the UK Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of or in connection with any such Claim.



For the avoidance of doubt, clause 6.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables in combination with any hardware or software not supplied or specified by the Supplier, if the infringement would have been avoided by the use of the Deliverables not so combined, or use of a non-current release of the Software.

- 6.3 Clause 6.2 is conditional on the Customer:
- 6.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 6.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 6.3.3 giving the Supplier and its professional advisers at reasonable times (on reasonable prior notice) access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 6.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 6.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 6.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of this agreement;
 - 6.4.2 modify the Deliverables so that they cease to be infringing;
 - 6.4.3 replace the Deliverables with non-infringing works; or
 - 6.4.4 terminate this agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.
- 6.5 This clause 6 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 13.1.

7. THE CUSTOMER'S RESPONSIBILITIES

- 7.1 The Customer shall provide the Supplier and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be



required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Supplier's staff and take reasonable care to ensure their health and safety.

7.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.

7.3 The Customer shall:

7.3.1 co-operate with the Supplier in performing the Services and provide any assistance, materials or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;

7.3.2 report faults promptly to the Supplier; and

7.4 The Supplier shall not be liable for any failure to provide or any delay or error in providing any part of the Services resulting from the Customer's failure to comply with this clause 7.

7.5 Notwithstanding clause 7.4 above, the Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

8. NON-SOLICITATION

The Customer shall not, for the duration of this agreement, and for a period of 6 months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this agreement to leave the employment of the Supplier.

9. RISK AND TITLE

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the Customer on delivery to the Customer.

10. CONFIDENTIALITY AND PUBLICITY

10.1 Each party shall, during the term of this agreement and thereafter, keep confidential, and shall not use for its own purposes (other than implementation of this agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its affiliates (Confidential Information), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes



lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

- 10.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 10.3 The terms of this agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Supplier.
- 10.4 **Relationship Disclosure** - We have the right to use the Your name and logo(s) in media announcements, on our website and in our sales collateral in order to announce our relationship. We won't use the Name and Logo for any other purpose without your agreement.
- 10.5 We will work together to develop and publish press releases and joint user and success stories for use in our marketing activities, which may include our Website, brochures and external press. We reserve the right to determine publishing priorities.
- 10.6 The provisions of this clause 10 shall remain in full force and effect notwithstanding any termination of this agreement.

11. DATA PROTECTION

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 The parties acknowledge that:
 - 11.2.1 if the Supplier processes any personal data (as defined in the Data Protection Legislation, (Personal Data)) on the Customer's behalf when performing its obligations under this agreement, the Customer 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); and
 - 11.2.2 the Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Supplier's other obligations under this agreement.
- 11.3 Without prejudice to the generality of clause 11.1, 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 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.
- 11.4 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 11.4.1 process that Personal Data only on the 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;

11.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Supplier, 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);

11.4.3 not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:

- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) 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
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

11.4.4 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;

11.4.5 notify the Customer without undue delay on becoming aware of a Personal Data breach;

11.4.6 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; and

11.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Customer or the Customer's designated auditor.

11.5 Either party may, at any time on not less than 30 days' notice, revise this clause 11 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).



- 11.6 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

12. THE SUPPLIER'S WARRANTIES

- 12.1 If the Customer notifies the Supplier in writing of any defect or fault in the Software and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do either of the following:

12.1.1 repair the Software; or

12.1.2 replace the Software,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

- 12.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

- 12.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

- 12.4 The Supplier represents and warrants to the Customer that:

12.4.1 the Services will be performed:

- (a) in accordance with all applicable laws and regulations; and
- (b) with all reasonable skill and care;

12.4.2 to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and

12.4.3 at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services.

- 12.5 If, during the term of this agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in clause 12.4.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this clause 12.5. This clause sets out the Customer's sole remedy and the Supplier's entire liability for breach of clause 12.4.1.

- 12.6 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.



12.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

13. LIMITS OF LIABILITY

13.1 Except as expressly stated in clause 13.2:

13.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which are caused as a result of the actions of any Third Party Supplier or which fall within any of the following categories:

- (a) special damage, even though the Supplier was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of or goodwill; or
- (f) loss of, or damage to (including corruption of), data;

provided that this clause 13.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 13.1.3 or any other claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive of this clause 13.1.1;

13.1.2 the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement; and

13.1.3 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to 50% (fifty percent) of the Charges payable by the Customer in the Contract Year in which the liability arises.

13.2 The exclusions in clause 13.1 and clause 13.3 shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for:

- 13.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- 13.2.2 fraud or fraudulent misrepresentation;
- 13.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
- 13.2.4 any other liability which cannot be excluded by law.



13.3 The Supplier shall not be liable for any interruptions to or failures of the Services arising directly or indirectly from:

13.3.1 any changes, updates or repairs to the Software;

13.3.2 any interruptions to the flow of data to or from the internet;

13.3.4 factors outside of the Supplier's reasonable control;

13.3.5 the actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations under this agreement);

13.3.6 any issues with the Customer's equipment or the equipment of any Third Party Supplier; or

13.3.7 any interruption of the Services that the Customer has requested.

13.4 The Customer acknowledges that:

13.4.1 it is exclusively responsible for:

(a) reviewing any new Modifications in accordance with clause 3;

(b) ensuring that the staff of the Customer are trained in the proper use and operation of the Software;

(c) ensuring the security, completeness and accuracy of all inputs and outputs;

(e) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;

13.4.2 the level of the Charges reflects the allocation of risk between the parties set out in clause 12 and clause 13; and

13.4.3 it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.

13.5 All dates supplied by the Supplier for the delivery of the Modifications or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

13.6 All references to the Supplier in this clause 13 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its associates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 26.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

14.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.



- 14.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.4 Notwithstanding clause 10, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 14.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

15. DURATION

- 15.1 Supply of the Services by the Supplier to the Customer shall commence on the date of this agreement and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of 12 months. After expiry of the fixed term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by either the Supplier or the Customer on 3 months' prior written notice to the other. Please be aware that during the 3 month cancellation period we will not be able to make an amendments to packages (including licences).
- 15.2 If the Customer is a Previous Customer, the Supply of the Services by the Supplier to the Customer shall commence on the date of this agreement and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of 12 months or as agreed by the Supplier in its absolute discretion. After expiry of the fixed term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by either the Supplier or the Customer on 3 months' prior written notice to the other to expire at the end of the current Contract Year of the term.

16. TERMINATION

- 16.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Services with immediate effect by giving written notice to the other party if:
- 16.1.1 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 30 days after being notified in writing to make such payment;
- 16.1.2 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 16.1.3 the other party repeatedly breaches any of the terms of this agreement 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 the terms of this agreement;
- 16.1.4 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;



- 16.1.5 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;
- 16.1.6 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;
- 16.1.7 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;
- 16.1.8 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;
- 16.1.9 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;
- 16.1.10 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 its assets and such attachment or process is not discharged within 14 days;
- 16.1.11 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 16.1.4 to clause 16.1.10 (inclusive);
- 16.1.12 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 16.1.13 any warranty given in clause 12 is found to be untrue or misleading.
- 16.2 For the purposes of clause 16.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 16.3 Either party may terminate this agreement in accordance with clause 18.
- 16.4 The Supplier may, without prejudice to its other rights or remedies, terminate this agreement immediately by notice to the Customer if the Customer:
 - 16.4.1 undergoes a change of Control;
 - 16.4.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
 - 16.4.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.



17. EFFECT OF TERMINATION

- 17.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 17.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 2, clause 6, clause 10, clause 11 and clause 13, shall remain in full force and effect.
- 17.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 17.4 Notwithstanding its obligations in this clause 17, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 17.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically.
- 17.6 On termination of this agreement for any reason other than the Supplier's breach of any of clauses 16.1.2 to 16.1.13 (inclusive), the Customer shall pay any and all remaining payments due under the agreement and outstanding at the date of termination.

18. FORCE MAJEURE

- 18.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under this agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this agreement and the time for performance of the affected obligation will be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 60 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.
- 18.2 If termination occurs under clause 18.1, the Supplier may in its absolute discretion refund sums paid to the Supplier by the Customer under this agreement, but the Supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

19. ASSIGNMENT

This agreement is personal to the parties and the parties may not assign or otherwise transfer their rights or obligations under this agreement without the prior written consent of the other party.

20. NOTICES

- 20.1 All notices which are required to be given under this agreement will be in writing and will be sent to the address of the recipient set out on the signed agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or Electronic Mail and will be deemed to have been received:



- 20.1.1 by hand delivery - at the time of delivery;
- 20.1.2 by first class post - 48 hours after the date of mailing; or
 - 20.1.3 by Electronic Mail - immediately upon transmission subject to delivery receipt.
- 20.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. SEVERABILITY

- 21.1 If any part of this agreement is found by a Court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this agreement which will continue to be valid and enforceable to the fullest extent permitted by law.
- 21.2 If any provision or part-provision of this agreement is deemed severed under clause 21.1 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.

22. WAIVER

No delay or failure by either party to exercise any of its powers, rights or remedies under this agreement will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in this agreement are cumulative and not exclusive of any remedies provided by law.

23. ENTIRE AGREEMENT

- 23.1 This agreement constitutes the entire agreement between the parties and save as provided in clause 2, supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 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.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

24. VARIATION

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

25. THIRD PARTY INTEGRATIONS

- 25.1 Where any part of the Services requires input from a Third Party Supplier, the Supplier will provide support as deemed necessary by the Supplier in accordance with this agreement.



- 25.2 Where the Hosting Service is terminated in accordance with clause 25.2, the Customer shall be responsible for any costs associated with the local installation of the Software.

26. DISPUTE RESOLUTION

- 26.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 26 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 26.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:
- 26.2.1 a duly authorised representative of the Customer and a duly authorised representative of the Supplier shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then
- 26.2.2 the matter shall promptly be referred by either party to a Senior Manager or Director of the Customer and a Senior Manager of the Supplier for immediate resolution.
- 26.3 If, within 30 days of the matter first having been referred to a Senior Manager no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 26 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 26.4 For the avoidance of doubt, this clause 26 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

27. GOVERNING LAW AND JURISDICTION

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. 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).

28. RESPONSIBILITIES OF THE SERVICE PROVIDER

- 28.1 Service Provision: The Service Provider will diligently provide the agreed-upon services, maintain the system's performance, and provide technical support as specified in the service agreement.
- 28.2 Data Integrity: The Service Provider will take reasonable measures to ensure the integrity and accuracy of Customer data stored within the system.



29. SECURITY

- 29.1 Security Measures: The Service Provider will implement reasonable security measures to protect against unauthorized access, disclosure, or alteration of Customer data. These measures may include encryption, access controls, and regular security assessments.
- 29.2 Incident Response: In the event of a data breach or security incident, the Service Provider will promptly notify the Customer and take necessary steps to mitigate the impact and comply with legal obligations regarding data breach notifications.