

# Platform Terms and Conditions

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Updated February 2023

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comgem®

# Platform Terms and Conditions

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## 1. Customer details

1.1. The Customer is the business who has signed up to receive the Comgem Services detailed on the Service Order Form.

1.2. The Comgem services are made up of the core and professional services as follows:

### 1.2.1. Core Services

1.2.1.1. Hosted Platform Services including Comgem's Ecommerce Platform, Back Office system, marketing platform and content management system.

### 1.2.2. Professional Services

1.2.2.1. Platform configuration and set-up

1.2.2.2. Comgem's Design Services

1.2.2.3. Comgem's Development Services

1.2.2.4. Comgem's training

## 2. Specification of Services

2.1. Comgem provides a modular ecommerce and sales order processing platform, which depending on the modules selected will allow customers to manage and maintain their ecommerce website and sales order processes.

2.2. The parties have indicated their acceptance of the Agreement by accepting these terms and conditions.

2.3. These terms and conditions apply in addition to any other terms of use or other terms and conditions, policies or guidelines agreed between you and Comgem from time to time, the Privacy and Cookie Policy (together the **Other Terms**).

## 3. Terms and Conditions

3.1. Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions, and the Provider will ask the Customer for the Customer's express written acceptance of these Terms and Conditions before providing any such services to the Customer.

## 4. Definitions

a. Except to the extent expressly provided otherwise, in these Terms and Conditions:

**Acceptable Use Policy:** means services may not be used to facilitate, send, knowingly receive, upload, download, or use or store illegal software or images, or any material considered to be illegal in the United Kingdom; pornographic material (unless in relation to

legitimate Customer business); software in breach of the owner's copyright; material that is considered to be racist or likely to incite racist behaviour (unless in relation to legitimate interests of business); material which is offensive, abusive, indecent, defamatory, obscene or menacing, in breach of copyright, confidence, privacy or any other rights (unless in relation to legitimate interests of business).

**Acceptance Criteria:** means the acceptance criteria as specified in Clause 7.7, or referred to in the Service Order Form, or as otherwise agreed by the Parties expressly in writing after the date of the Service Order Form against which the Acceptance Tests are to be carried out to determine whether the Deliverables are satisfactory for go live and ready to be invoiced.

**Acceptance Tests:** means the acceptance tests as specified or referred to in the Service Order Form or as expressly agreed between the Parties in writing, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**"Account"** means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

**"Business Day"** means any weekday other than a bank or public holiday in England & Wales;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**Change Request:** means any request to alter the Services pursuant to this Agreement as set out in Clause 11.

**"Charges"** means the following amounts:

- a. the amounts specified in the Services Order;
- b. such amounts as may be agreed in writing by the parties from time to time; and
- c. amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

**"Confidential Information"** means the Provider Confidential Information and the Customer Confidential Information;

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

**"Customer"** means the person or entity identified as such in Section 1 of the Services Order Form;

**"Customer Confidential Information"** means:

- a. any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - a. was marked as “confidential”; or
  - b. should have been reasonably understood by the Provider to be confidential; and
- b. the Customer Data;

**“Customer Data”** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

**“Customer Personal Data”** means Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement and may include any information or data derived from Hosted Services that alone or together with any other information relates to an identified or identifiable natural person, or data considered to be personal data as defined under applicable privacy law.

**“Data Protection Laws”** means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the UK General Data Protection Regulation and The Data Protection Act 2018 (DPA 2018);

**“Documentation”** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

**“Effective Date”** means the date of execution of this Agreement;

**“Force Majeure Event”** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**“Hosted Services”** means Comgem Platform, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

**“Hosted Services Specification”** means the specification for the Platform and Hosted Services as set out in Service Order Form and in the Documentation;

**“Intellectual Property Rights”** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these “intellectual property rights” include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**“Maintenance Services”** means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

**“Minimum Term”** means the period specified as such in the Services Order Form.

**“Personal Data”** has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

**“Platform”** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

**Professional Services:** the service described in the Statement of Work to be performed by the Provider in accordance with this Agreement.

**“Provider”** means Comgem Ltd,

**“Provider Confidential Information”** means:

- a. any information disclosed by or on behalf of the Provider to the Customer [during the Term] OR [at any time before the termination of the Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as “confidential” or should have been understood by the Customer (acting reasonably) to be confidential; and
- b. the terms of the Agreement;

**“Services”** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**“Services Order Form”** means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference, or the subscription to services via the Platform ;

**“Set Up Services”** means the configuration, implementation and integration of the Hosted Services in accordance with these terms and conditions;

**“Support Services”** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**“Comgem”** means Comgem Ltd, a company incorporated in England and Wales with company number 5620550 whose registered office is at Bark Mill House, 5 Dunraven Place, Bridgend, CF31 1JF;

**“Supported Web Browser”** means the current release from time to time of Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

**“Term”** means the term of this Agreement, commencing with the dates found on the related

Services Order Form.

**“Terms and Conditions”** means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

**“Third Party Services”** means any hosted or cloud services provided by any third party that may transmit data to and/or from the Hosted Services;

**“Update”** means a hotfix, patch or minor version update to any Platform software; and

**“Upgrade”** means a major version upgrade of any Platform software.

## 5. Term

- 5.1. The Agreement shall come into force upon the Effective Date.
- 5.2. This agreement shall, subject to termination in accordance with Clause 22 continue for the minimum term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period).
- 5.3. Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

## 6. Customer Obligations

- 6.1. The Customer shall use the Comgem’s Services in accordance with the terms and conditions of this agreement and those included in the Other Terms;
- 6.2. The Customer shall use the Comgem’s Add-On services, when ordered via Services Order Form, in accordance with the terms and conditions of this agreement and those included in the relevant Schedules;

## 7. Set Up & Professional Services

- 7.1. The Provider shall provide the Set Up Services to the Customer and may, provide additional professional services to the customer.
- 7.2. The Provider shall use reasonable endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.
- 7.3. The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 21.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 7.4. The Customer acknowledges that the Provider will commit an amount of time for Set Up Services which is deemed fair and reasonable in order for the Customer to sufficiently use the platform. This is deemed to be in the region of 10 hours of Customer Support Time for

the Customer set up.

- 7.5. The Provider retains the right to charge an additional service charge for Set Up Services over and above what is deemed fair and reasonable.
- 7.6. Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up & Professional Services by the Provider shall be the exclusive property of the Provider.
- 7.7. For Professional Services, the Requirements Definition Form shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 7.8. In relation to any Acceptance Testing:
  - 7.8.1. the Customer shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Requirements Definition Document, from the Provider's delivery of each Deliverable under the relevant Requirements Definition (the "Acceptance Period") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If the Customer determines that a Deliverable does not conform to the agreed Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to the Provider an Issues List of the non-conformities to the Acceptance Criteria;
  - 7.8.2. the Customer shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Provider within the Acceptance Period (as defined in Clause 7.8.1) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period or the Customer has approved the solution to be deployed in a live environment, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if the Customer had issued a written acceptance thereof. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Provider during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 7.8.3 below.
  - 7.8.3. If there are any non-conformities within any Deliverable, which have been highlighted by Customer or the Provider during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of the Provider (and not subject to a Change Order (as defined in Clause 11 or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) the Provider shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
  - 7.8.4. If any non-conformity cannot be remedied by the Provider due to an error, defect or fault which the Provider is able to demonstrate to the reasonable satisfaction of the Customer to be outside the Provider's control and which has disabled the Provider's ability to remedy such non-conformity, then the Provider reserves the right to

terminate work on that specific Deliverable. The Provider agrees not to charge Customer, any amounts paid or payable by Customer to Provider which specifically relate to the non-conforming Deliverables which cannot be remedied.

## 8. Hosted Services

- 8.1. The Provider shall ensure that the Platform will, be accessible by the Customer upon completion of the Set-Up and required Professional Services.
- 8.2. The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 8.3. The licence granted by the Provider to the Customer under Clause 8.2 is subject to the following limitations:
  - 8.3.1. the Hosted Services may only be used by the employee and subcontractors of either the Customer or an Affiliate of the Customer.
- 8.4. Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 8.2 is subject to the following prohibitions:
  - 8.4.1. the Customer must not sub-license its right to access and use the Hosted Services;
  - 8.4.2. the Customer must not permit any unauthorised person to access or use the Hosted Services;
  - 8.4.3. the Customer must not use the Hosted Services to provide services to third parties;
  - 8.4.4. the Customer must not republish or redistribute any content or material from the Hosted Services;
  - 8.4.5. the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
  - 8.4.6. the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services.
- 8.5. The Customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 8.6. The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.
- 8.7. The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an Account comply with Schedule 1 (Acceptable Use Policy).
- 8.8. The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility

of the Hosted Services.

8.9. The Customer must not use the Hosted Services:

8.9.1. in any way that is unlawful, illegal, fraudulent or harmful; or

8.9.2. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

8.10. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

8.11. The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **9. Maintenance Services**

9.1. The Provider shall provide the Maintenance Services to the Customer during the Term.

9.2. The Provider shall where practicable give to the Customer prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.

9.3. The Provider shall give to the Customer written notice of the application of an Upgrade to the Platform.

9.4. The Provider shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.

9.5. The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **10. Support Services (Schedule 4)**

10.1. The Provider shall provide the Support Services to the Customer during the Term.

10.2. The Provider shall provide the Support Services with reasonable skill and care.

10.3. The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).

10.4. The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

## **11. Change Requests**

11.1. Either Party may request changes to any Services (in each case, a "Change Request"). Any Change Request shall be made in writing and sent to the Customer Representatives or Provider representative (as appropriate) and shall set out the change in

sufficient detail so as to enable the other Party to make a proper assessment of such change.

- 11.2. Where the Parties propose a Change Request the Provider shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Customer shall notify the Provider whether it accepts or reasonably rejects the Change Request within five working days of its receipt of the written estimate.
- 11.3. Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Services Order Form without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into Agreement and Services Order Form and the Provider shall commence performance of the Change Request accordingly.
- 11.4. Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 11.5. Unless otherwise agreed in writing, Provider shall be entitled to charge the Customer at Provider's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Customer.

## **12. Customer Data**

- 12.1. The Customer hereby grants to the Provider a non-exclusive licence to store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 12.2. The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 12.3. The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 12.4. Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 7.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **13. Integrations with Third Party Services**

- 13.1. The Hosted Services are integrated with those Third Party Services identified on the website / Sales Order Form. The Provider may integrate additional Third Party Services with

the Hosted Services at any time.

13.2. The Customer acknowledges that the integration of Third Party Services may entail the transfer of Customer Data from the Hosted Services to the relevant Third Party Services.

13.3. The Customer hereby consents to the transfer of the Customer Data to the Third Party Services.

13.4. Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 18.1:

13.4.1. the Provider gives no warranties or representations in respect of any Third Party Services; and

13.4.2. the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third Party Services or any provider of Third Party Services

#### **14. No assignment of Intellectual Property Rights**

14.1. Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

#### **15. Charges**

15.1. The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

15.2. All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

15.3. The Provider may charge the price of the relevant fees, including recurring Charges, from time to time and will automatically change the charge amount based on the Customer usage, in accordance with the pricing tiers set out on the Service Order Form. Price changes will take effect from the next month billing cycle following the date of the price changes. Subject to applicable law, you accept the new price by continuing to use the Services and/or Platform after the price changes take effect. If the Customer does not agree with the price change, the Customer will have the right to reject the change by unsubscribing from the Service prior to the price change going into effect.

15.4. If the Provider has not received payment by the due date on the invoice, and without prejudice to any other rights and remedies of the Provider:

15.4.1. the Provider may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and/or Platform and the Provider shall be under no obligation to provide any or all of the Services and/or Platform while the invoice(s) concerned remain unpaid; and

15.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Bank of England from time to time,

commencing on the due date and continuing until fully paid, whether before or after judgment.

15.5. The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of the Agreement, providing that no such variation shall constitute a percentage increase in the relevant element of the Charges that exceeds 2% over the percentage increase, since the date of the most recent variation of the relevant element of the Charges under this Clause 12.3 (or, if no such variation has occurred, since the date of execution of the Agreement), in the Retail Prices Index (all items) published by the UK Office for National Statistics.

15.6. If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately inform the Provider in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The relevant party shall provide evidence as may be reasonably necessary to verify the disputed invoice or request for payment.

## **16. Payments**

16.1. The Provider shall issue invoices for the Charges to the Customer monthly in advance, from the Effective Date.

16.2. The Customer must pay the Charges to the Provider within the period of 14 days following the receipt of an invoice issued in accordance with this Clause 13.

16.3. The Customer must pay the Charges by BACs payment or GoCardless (using such payment details as are notified by the Provider to the Customer from time to time).

16.4. If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month). The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 11.4 constitute a substantial remedy within the meaning of that Act.

## **17. Confidentiality obligations**

17.1. The Provider must:

17.1.1. keep the Customer Confidential Information strictly confidential;

17.1.2. not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;

17.1.3. use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own

confidential information of a similar nature, being at least a reasonable degree of care;

17.1.4. act in good faith at all times in relation to the Customer Confidential Information;  
and

17.1.5. not use any of the Customer Confidential Information for any purpose other than as agreed by the Customer.

17.2. The Customer must:

17.2.1. keep the Provider Confidential Information strictly confidential;

17.2.2. not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality approved in writing by the Provider;

17.2.3. use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;

17.2.4. Information; and

17.2.5. not use any of the Provider Confidential Information for any purpose other than as agreed by the Provider.

17.3. No obligations are imposed by this Clause 17 with respect to a party's Confidential Information if that Confidential Information:

17.3.1. is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality; or

17.3.2. is or becomes publicly known through no act or default of the other party.

17.3.3. The provisions of this Clause 17 shall continue in force indefinitely following the termination of the Agreement.

## **18. Publicity**

18.1. Neither party may make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

18.2. Nothing in this Clause 18 shall be construed as limiting the obligations of the parties under Clause 17.

## **19. Data protection**

19.1. Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

- 19.2. The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.
- 19.3. The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement:
- 19.3.1. the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 5 (Data processing information); and
- 19.3.2. Personal Data of the types specified in Part 2 of Schedule 5 (Data processing information).
- 19.4. The Provider shall only process the Customer Personal Data for the purposes specified in this agreement.
- 19.5. The Provider shall only process the Customer Personal Data during the Term and for not more than 180 days following the end of the Term, subject to the other provisions of this Clause 19.
- 19.6. The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the UK).
- 19.7. The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
- 19.7.1. the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities;
- 19.7.2. the Provider may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in the Privacy Policy, providing that such transfers must be protected by any appropriate safeguards identified therein; and
- 19.7.3. the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the United Kingdom has decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 19.8. The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 19.9. Notwithstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 19.10. The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory

obligation of confidentiality.

- 19.11. The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified.
- 19.12. As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties, and third parties within the categories identified.
- 19.13. The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 19.14. The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay.
- 19.15. The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 19 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 19.15.
- 19.16. The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 19.17. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

## **20. Limitations and exclusions of liability**

- 20.1. Nothing in these Terms and Conditions will:
- 20.1.1. limit or exclude any liability for death or personal injury resulting from negligence;
  - 20.1.2. limit or exclude any liability for fraud or fraudulent misrepresentation;
  - 20.1.3. limit any liabilities in any way that is not permitted under applicable law; or
  - 20.1.4. exclude any liabilities that may not be excluded under applicable law.
- 20.2. The limitations and exclusions of liability set out in this Clause 20 and elsewhere in these Terms and Conditions:

20.2.1. are subject to Clause 20.1; and

20.2.2. govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

20.3. The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

20.4. The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

20.5. The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

20.6. The Provider shall not be liable to the Customer in respect of any loss of use or production.

20.7. The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

20.8. The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software.

20.9. The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

20.10. The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the greater of:

20.10.1. £500; and

20.10.2. the total amount paid and payable by the Customer to the Provider under the Agreement in the 1 month period preceding the commencement of the event or events.

## **21. Force Majeure Event**

21.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

## **22. Termination**

22.1. Either party may terminate the Agreement by giving to the other party not less than 90 days' written notice of termination. The agreement will then be terminated effective from the next renewal date.

- 22.2. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- 22.2.1. the other party commits any material breach of the Agreement, and the breach is not remediable; or
  - 22.2.2. the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.
- 22.3. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- 22.3.1. the other party:
    - 22.3.1.1. is dissolved;
    - 22.3.1.2. ceases to conduct all (or substantially all) of its business;
    - 22.3.1.3. is or becomes unable to pay its debts as they fall due;
    - 22.3.1.4. is or becomes insolvent or is declared insolvent; or
    - 22.3.1.5. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - 22.3.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
  - 22.3.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.
- 22.4. The Provider may terminate the Agreement immediately by giving written notice to the Customer if:
- 22.4.1. any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
  - 22.4.2. the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this agreement.
- 22.5. The rights of termination set out in the Agreement shall not exclude any rights of termination available at law.

## 23. Effects of termination

- 23.1. Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms

or otherwise indefinitely): Clauses 1, 4, 8.4, 8.10, 13.2, 13.4, 14,15, 16, 17, 19.1, 19.3, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, 19.10, 19.11, 19.12, 19.13, 19.14, 19.15, 19.16, 19.17, 20, 23, 24, 26, 27, 28, 29, 30, 31 and 32

23.2. Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

23.3. Within 30 days following the termination of the Agreement for any reason:

23.3.1. the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and

23.3.2. the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

23.3.3. without prejudice to the parties' other legal rights.

#### **24. Non-solicitation of personnel**

24.1. The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 12 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.

#### **25. Notices**

25.1. Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

25.2. Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods:

25.2.1. sent by email to the relevant email address specified through the Hosted Services, in which case the notice shall be deemed to be received upon receipt of the email by the recipient's email server; or

25.2.2. sent using the contractual notice mechanism incorporated into the Hosted Services, in which case the notice shall be deemed to be received upon dispatch, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

#### **26. Subcontracting**

26.1. The Provider may subcontract any of its obligations under the Agreement

26.2. The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

26.3. Notwithstanding any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **27. No waivers**

27.1. No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

27.2. No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

## **28. Severability**

28.1. If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

28.2. If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

28.3. In the event that any provision of this Agreement becomes or is held invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

## **29. Third party rights**

29.1. The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

29.2. The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

## **30. Entire agreement**

30.1. The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

30.2. Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

### **31. Law and jurisdiction**

- 31.1. These Terms and Conditions shall be governed by and construed in accordance with English law.
- 31.2. Any disputes relating to the Agreement shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.

### **32. Interpretation**

- 32.1. In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:
  - 32.1.1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - 32.1.2. any subordinate legislation made under that statute or statutory provision.
- 32.2. The Clause headings do not affect the interpretation of these Terms and Conditions.
- 32.3. References in these Terms and Conditions to “calendar months” are to the 12 named periods (January, February and so on) into which a year is divided. In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things