

## SUPPLIER TERMS AND CONDITIONS

### Agreement Structure

The agreement is comprised of the following documents (collectively referred to as the **Agreement** unless expressly stated otherwise). If a conflict arises between any of the following documents, the following order of precedence shall apply:

- the Order Form;
- the Service Description; and
- these Terms and Conditions.

The Service Description has been produced on an 'if applicable' basis. The Order Form sets out the Modules to be provided as part of the Services under this Agreement. Only those parts of the Service Description which relate to the Modules included in a relevant Order Form shall be incorporated into the Agreement.

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these clauses, unless the context otherwise requires, the following words shall have the following meanings:

<b>Additional Subscription</b>	the additional Subscription (if any) calculated in accordance with clause 9.5;
<b>Agreement</b>	the Order Form, these terms and conditions and the Design Document;
<b>Annual Rate</b>	the latest available, as at the date of use, "RPI All Items: Percentage change over 12 months" measure published by the Office for National Statistics or, failing such publication, such other index as replaces the "RPI All Items: Percentage change over 12 months" or most closely resembles it;
<b>Annual Subscription</b>	the subscription fee for the provision of the Services set out in the Order Form;
<b>Business Day</b>	a day (other than a Saturday, Sunday or bank or public holiday in Ireland or the United Kingdom);
<b>Business Hours</b>	9.00am to 5.30pm (local UK time) on a Business Day;
<b>Charges</b>	the Implementation Costs, Annual Subscription, Additional Subscription, each as set out in the Order Form and Expenses;
<b>Complaint</b>	means a complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;
<b>Confidential Information</b>	information in any form or medium whether disclosed orally or in writing before or after the date of this Agreement (together with any reproductions of such information) relating to the business affairs, finances, systems, processes, methods of operation, plans, products, developments, trade secrets, know how, customers or suppliers of a party or any member of its Group;
<b>Control</b>	an entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a body corporate (whether through the ownership of voting shares, by contract or otherwise) and "Controlling" and "Controlled" shall be interpreted accordingly;
<b>Customer Data</b>	the data and information provided to the Supplier by the Customer or Third-Party Providers about Employees and their dependants, and the Modules which they have selected or which they receive at the direction of the Customer;
<b>Customer Laws</b>	(a) any law, statute, regulation or subordinate legislation in force from time to time; the common law and laws of equity from time to time; any binding court order, judgment or decree; any industry code, policy or standard; in each case, which is applicable in any jurisdiction and to which the Customer is subject, and which relates to the receipt of the Services or the operation of the Customer's business; and (b) any applicable direction, policy, rule or order that is binding on the Customer and that is made or given by any regulatory body having jurisdiction over the Customer or any of the Customer's assets, resources or business in any jurisdiction;
<b>Customer's Group</b>	the Customer, its subsidiaries and holding companies and subsidiaries of those holding companies;
<b>Customer Name</b>	the name, brand, logo and trademarks of the Customer and members of its Group;
<b>Data Controller</b>	has the meaning set out in the Data Protection Laws;
<b>Data Processor</b>	has the meaning given to that term (or to the term 'processor') in the Data Protection Laws;
<b>Data Processing Details</b>	the details of data processing, including the list of Sub-processors, which is found at <a href="https://group-login.com/data-processing-details-001">https://group-login.com/data-processing-details-001</a> ;

<b>Data Protection Laws</b>	<p>(a) all applicable data protection and privacy legislation in force from time to time in the UK, including:</p> <ul style="list-style-type: none"> <li>i) the retained EU law version of the General Data Protection Regulations (EU 2016/679) (<b>UK GDPR</b>);</li> <li>ii) the Data Protection Act 2018 and regulations made under it; and</li> <li>iii) Privacy and Electronic Communications Regulations (SI 2003/2426) as amended;</li> </ul> <p>(b) in member states of the European Union the General Data Protection Regulation (EU 2016/769) (<b>EU GDPR</b>) and the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) (ePrivacy Directive), and all relevant member state laws or regulations giving effect to or corresponding with any of them; and</p> <p>(c) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved accreditation and certification mechanisms issued by any relevant Supervisory Authority;</p>
<b>Data Subject</b>	has the meaning set out in the Data Protection Laws;
<b>Data Subject Request</b>	a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
<b>Design Document</b>	the document which is mutually agreed in writing between the parties setting out the Modules;
<b>Employees</b>	those employees, agents and independent contractors of the Customer or the Customer's Group who are authorised by the Customer to use the Website and the Services, and whose names are provided in writing to the Supplier by the Customer (only, and not by any member of the Customer's Group) from time to time;
<b>Exit Management Plan</b>	the operations plan detailing the procedures to be followed in the event of the expiry or termination of this Agreement as set out in clause 15.1.1;
<b>Expenses</b>	such costs and expenses as may be agreed between the parties from time to time, including: <ul style="list-style-type: none"> <li>(a) reasonable and necessary travel and subsistence; and</li> <li>(b) third party costs and fulfilment costs;</li> </ul>
<b>Force Majeure Event</b>	any event or circumstances or cause outside the reasonable control of a party (which does not arise from its fault or negligence) including Act of God, riot, civil disturbance, act of terrorism, fire, explosion, flood, or unusually severe weather. A Force Majeure Event does not include (a) strikes or other industrial action by employees of the affected party or any of its sub-contractors; or (b) any failure by a subcontractor, unless such failure also results from a Force Majeure Event;
<b>Good Industry Practice</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as can reasonably be expected from a skilled and experienced provider of products and services similar to the Services;
<b>Group</b>	in relation to a company, that company's subsidiaries and holding companies and subsidiaries of such holding companies;
<b>Implementation Costs</b>	the implementation costs set out in the Order Form;
<b>Information Security Schedule</b>	the Supplier's information security standards which fall within the Benefex information security standards found here: <a href="https://www.hellobenefex.com/benefex-information-security-schedule/">https://www.hellobenefex.com/benefex-information-security-schedule/</a> (as amended from time to time);
<b>Intellectual Property Rights</b>	all patents, copyrights, design rights, trademarks, service marks, trade secrets, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements;
<b>Losses</b>	losses, damages, liabilities (including any liability to taxation), claims, costs and expenses including fines, penalties, reasonable legal and other professional fees and expenses;
<b>Malware</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
<b>Module</b>	a module of the Website as identified in the Order Form;

<b>Permitted Use</b>	use by the Supplier or a Third-Party Provider of Employees' nominated email addresses in order to: (a) respond to queries, questions and communications from Employees; (b) issue communications to Employees in order to provide the Services detailed in the Service Description; (c) enable password resets; (d) send out the newsletters provided by the Customer; (e) send communications from any Third-Party Provider as permitted by Employees' preferences; and (f) send any other communications as requested by the Customer from time to time;
<b>Personal Data</b>	has the meaning given to that term in the Data Protection Laws and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing Services under this Agreement (but does not, in particular, include personal data provided by an Employee to the Supplier or to a third party acting in the capacity of a data controller);
<b>Personal Data Breach</b>	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data;
<b>Processing</b>	has the meaning given to that term in the Data Protection Laws and "processed" and "process" shall be construed accordingly;
<b>Quarter</b>	each successive period of three months starting on the Agreement Start Date (except in relation to clause 9.5, where it shall mean each successive period of three months starting on the Initial Period Start Date) and <b>Quarterly</b> shall be construed accordingly;
<b>Service Credit</b>	the sums attributable to a Service Failure as specified in the Service Description;
<b>Service Description</b>	the service description set out at <a href="https://group-login.com/service-description-001">https://group-login.com/service-description-001</a> , which sets out the parties' respective obligations in relation to the Services;
<b>Service Failure</b>	a failure by the Supplier to deliver the relevant parts of the Services in accordance with the Service Levels;
<b>Service Levels</b>	the service levels set out in the Service Description;
<b>Services</b>	the provision of the Website and any Module(s) identified in the Order Form, and any accompanying services as described in the Service Description;
<b>Software</b>	all software used by the Supplier in the creation of the Website, the online software applications provided by the Supplier as part of the Services (including, without limitation, software programs proprietary to the Supplier, open-source software and third-party software);
<b>Sub-processor</b>	each of the sub processors set out in the Data Processing Details and any additional or replacement sub processors appointed in accordance with this Agreement;
<b>Supervisory Authority</b>	any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;
<b>Supplier</b>	the entity defined as such on the Order Form;
<b>Supplier Brand</b>	the name, brand, logo and trademarks of the Supplier and its Group;
<b>Supplier Laws</b>	(a) any law, statute, regulation or subordinate legislation in force from time to time; the common law and laws of equity from time to time; any binding court order, judgment or decree; any industry code, policy or standard; in each case, which is applicable in the United Kingdom and to which the Supplier is subject and which relates to the delivery of the Services or the operation of the Supplier's business in the United Kingdom; and (b) any applicable direction, policy, rule or order that is binding on the Supplier and that is made or given by any regulatory body having jurisdiction over the Supplier or any of the Supplier's assets, resources or business in the United Kingdom;
<b>Supplier Personnel</b>	all employees, staff, other workers, agents and consultants of the Supplier;
<b>Third-Party Provider</b>	any provider of the Modules or other Services (including in the form of special offers, discounts, voucher codes, cashback) and whose services are accessible through a link from the Website;
<b>Tools</b>	all know-how, development tools, processes, methodologies and technologies, documents, data and other material and the software, created prior to or outside the scope of this Agreement, the Intellectual Property Rights in which are vested in or licensed to the Supplier, and which are used by the Supplier in performing the Services and any tools (including software) and know-how developed, and methods invented, by the Supplier in the course of or as a result of carrying out the Services, whether or not developed or invented specifically or used exclusively to carry out the Services; and
<b>Website</b>	the branded online system (the details of which shall be set out in the Design Document) which gives the Customer and the Employees access to the Modules.

- 1.2 In this Agreement (except where the context otherwise requires):
- 1.2.1 any reference to a clause, sub-clause, schedule, appendix or party is to a clause, sub-clause, schedule, appendix of or party to this Agreement;
- 1.2.2 save where otherwise specified reference to a clause is to a clause in the same schedule or appendix;
- 1.2.3 headings are included for convenience only and do not affect the interpretation of this Agreement;
- 1.2.4 use of the singular includes the plural and vice versa;
- 1.2.5 use of any gender includes the other genders;
- 1.2.6 any reference to a person includes natural persons, firms, partnerships, companies, corporations, associations, organisations;
- 1.2.7 any reference to a person includes that person's legal personal representatives, successors and assignees;
- 1.2.8 **subsidiary** and **holding company** have the meanings given to them by section 1159 Companies Act 2006;
- 1.2.9 all references to a statute shall be construed as including references to:
- (a) any statutory modification, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force;
- (b) all statutory instruments or orders made pursuant to that statute; and
- (c) any statutory provisions of which it is a consolidation, re-enactment or modification;
- 1.2.10 a reference to a **Module** or **module** includes a replacement of, or a supplement or amendment to, that module, from time to time;
- 1.2.11 any phrase introduced by the terms "including", "include", "in particular" or any similar expression is illustrative only and does not limit the sense of the words preceding those terms; and
- 1.2.12 any summary in the Order Form of provisions contained in these clauses does not limit the sense or extent of such clauses.
- 2 ACCESS TO THE SERVICES**
- 2.1 Subject to the restrictions set out in this clause 2 and the other provisions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-sublicensable, non-transferable right to permit the Customer, members of the Customer's Group and the Employees to use the Website and the Services during the term of this Agreement.
- 2.2 The Supplier does not warrant that the Customer's use of the Website will be uninterrupted or error-free.
- 2.3 The Supplier shall not be liable for any Losses arising directly or indirectly from any Employee's failure to keep a secure password for their use of the Website.
- 2.4 The Customer shall not (and shall ensure that the Employees and members of the Customer's Group shall not):
- 2.4.1 store, transmit or distribute any Malware through the Website or otherwise when receiving the Services; and
- 2.4.2 access, store, distribute or transmit any material during the course of its use of the Website that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on age, race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.5 The Customer shall not (and shall ensure that the Employees and members of the Customer's Group shall not):
- 2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- (a) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Website (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software and/or the Website; or
- 2.5.2 access or use all or any part of the Website in order to build a product or service which competes with the Website and/or the Services whether for its own use or use by third parties; or
- 2.5.3 access or use all or part of the Website to provide services to third parties (other than members of the Customer's Group and the Employees as permitted by this Agreement); or
- 2.5.4 licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Website available to any third party other than members of the Customer's Group and the Employees as permitted by this Agreement; or
- 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or the Website, other than as provided under this clause 2.
- 2.6 Without limiting the terms of clause 2.5, the Customer shall not at any time or in any circumstances (including on the termination of this Agreement) permit access to the Website or the Software or the Services to any alternative supplier or potential alternative supplier of the Services or any services similar to the Services.
- 2.7 The Customer shall use all commercially reasonable endeavours to prevent any unauthorised access to, or use of, the Services and the Website and, in the event of any such unauthorised access or use, promptly notify the Supplier in writing.
- 2.8 The Customer shall install and maintain throughout the term of this Agreement the latest version of anti-Malware software available from an industry

accepted anti-Malware software vendor in respect of the Customer's network and information systems.

- 2.9 The Supplier accepts no responsibility for retaining information on behalf of the Customer and the Customer should ensure it has kept adequate back-ups of information it provides the Supplier with and/or which is entered into the Website.
- 2.10 The Supplier shall be under no obligation to provide any services under the terms of this Agreement other than the Services.
- 2.11 The Customer shall, at all times, remain responsible for the actions and omissions of the Employees and members of the Customer's Group.

### **3 SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier shall:
  - 3.1.1 comply with all Supplier Laws;
  - 3.1.2 carry out all the Supplier responsibilities set out in this Agreement in accordance with Good Industry Practice;
  - 3.1.3 comply with its obligations under this Agreement;
  - 3.1.4 provide the Services in accordance with (i) the Service Description in all material respects; and (ii) any applicable Service Levels, and shall ensure that the Modules comply with the Design Document; and
  - 3.1.5 comply with the Information Security Schedule.
- 3.2 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 3.3 Except as set out in this Agreement, all warranties, clauses and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 3.4 The Supplier shall not be responsible for any Losses caused by use of the Website contrary to the Supplier's instructions or this Agreement, or modification or alteration of the Website by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 3.5 The Supplier shall, without additional charges to the Customer:
  - 3.5.1 implement patches and fixes to the Website; and
  - 3.5.2 implement new versions of the Website, such as the Supplier, in its absolute discretion, may from time to time decide (provided that such patches, fixes, and new versions do not entail a material diminution in performance, availability, capacity or functionality of the Website).
- 3.6 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services that are similar to those provided under this Agreement.

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
  - 4.1.1 comply with all Customer Laws;
  - 4.1.2 carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner;
  - 4.1.3 comply with its obligations under this Agreement;
  - 4.1.4 provide the Supplier with all necessary access to such information as may be required by the Supplier in order to provide the Services, including Customer Data; and

- 4.1.5 inform the Supplier promptly should there be any change of Control of the Customer or the owner of the Customer (if applicable) or there occurs a material adverse change in the financial condition of the Customer, or any company who Controls the Customer.

- 4.2 The Customer shall with comply with all applicable laws and warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

- 4.3 Without limiting the effect of clauses 4.1 and 4.2, the Customer shall ensure that the Design Document reflects the rules of and eligibility to the Modules required by the Customer.

- 4.4 The Customer is responsible for retaining copies of all information (i) which the Customer provides to the Supplier; and (ii) provided to the Customer on termination of this Agreement.

### **5 CUSTOMER DELAY**

- 5.1 If at any time the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer, (including delay or failure by the Customer to perform any relevant obligation, or to provide information or data required by the Supplier, or if any information is provided to the Supplier in a different form or format from the one specified by the Supplier or from the one in which it has previously been provided under the Agreement) (**Customer Delay**):

- 5.1.1 the Customer shall, at its own cost, take all steps as the Supplier may reasonably require to remedy the Customer Delay;

- 5.1.2 the Supplier shall, without limiting its other rights or remedies, rely on the Customer Delay to relieve it from the performance of any of its obligations to the extent the Customer Delay prevents or delays the Supplier's performance of such obligations;

- 5.1.3 the Supplier may, without limiting its other rights or remedies, adjust any previously agreed timetable or delivery schedule as reasonably necessary as a consequence of the Customer Delay (after consultation with the Customer); and

- 5.1.4 the Supplier shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform those of its obligations prevented or delayed by the Customer Delay.

### **6 EMPLOYEE E-MAIL ADDRESSES**

- 6.1 If the Supplier or any Third-Party Provider uses an e-mail address provided by the Customer or any member of the Customer's Group or any Employee in connection with the provision of the Services (without prejudice to the Supplier's compliance with clauses 3.1.5 (compliance with Information Security Schedule), clause 17 (Confidentiality) and 18 (Data Protection)), the Supplier shall not be liable to the Customer for any Losses (including, for the avoidance of doubt, loss arising from loss of data or breach of confidentiality) arising from:

- 6.1.1 the Supplier's or a Third-Party Provider's Permitted Use of such e-mail address; and

- 6.1.2 the provision to the Supplier or a Third-Party Provider of an incorrect e-mail address.

### **7 INTERNET AND BROWSER**

- 7.1 Access to the Website requires an up-to-date major modern web browser as set out at

<https://www.hellobenefex.com/about-us/information-security-and-business-continuity/>, such as Chrome, Safari, Edge or Firefox. The Customer acknowledges that, if it or an Employee does not use one of these versions of web browser, there may be a material diminution in the performance and/or functionality of the Website which will be outside of the Supplier's control.

7.2 The Supplier is not responsible for any delays, delivery failures, or any Losses resulting from the transfer of data over communications networks and facilities, including the internet, (other than those under the Supplier's direct control) and the Customer acknowledges that the Services and the Website may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 8 EMPLOYEE TRANSACTIONS WITH THIRD-PARTY PROVIDERS

8.1 The Customer acknowledges that the Website and the Services may enable or assist the Customer or Employees to access the website content of, correspond with, obtain benefits from and purchase products and services from, Third-Party Providers (which for the purpose of this clause 8 shall include the providers of benefits, products and services available through the Lifestyle Savings Module of the Website) and that the Customer and each Employee does so solely at their own risk.

8.2 The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to:

8.2.1 the content or use of any Third-Party Provider's website;

8.2.2 any correspondence between the Customer or any Employee and any Third-Party Provider;

8.2.3 any transactions completed, and any contract entered into by the Customer or any Employee, with any Third-Party Provider; or

8.2.4 any benefits, products or services obtained by the Customer or any Employee from any Third-Party Provider.

8.3 Any contract entered into and any transaction completed via any third-party website is between the Customer or Employee and the relevant third party, and not the Supplier. The Supplier recommends that the Customer and Employees refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any third-party website made available via the Services.

8.4 The Supplier shall not be liable for:

8.4.1 any losses of data, programs, breaches of security, viruses and disabling or harmful devices that the Customer or any Employee may download or otherwise experience as a result of accessing any third-party website;

8.4.2 any claims and actions relating to any benefits, products or services purchased from, or offers made by, such third parties; or

8.4.3 any acts or omissions of any Third-Party Provider or any failure by any Third-Party Provider to comply with its obligations to the Customer or any of the Employees.

## 9 CHARGES AND PAYMENT

9.1 The Customer shall pay the Charges to the Supplier in accordance with this clause 9 and the terms of this Agreement.

9.2 The Customer shall provide any purchase order, reference number (or other documents or information required by the Customer before an invoice can be issued) in sufficient time for the Supplier to be able to submit each invoice in accordance with this Agreement.

9.3 *Implementation Costs* – will be invoiced as set out in the Order Form.

9.4 *Annual Subscription* – will be invoiced annually in advance on the date specified in the Order Form and on each anniversary of that date.

9.5 *Additional Subscription* - If at the end of a Quarter the average number of Employees in that Quarter is higher than the Contracted Number of Employees (stated in the Order Form), the Supplier reserves the right to raise an invoice for the Additional Subscription for that Quarter. The Additional Subscription for each Quarter will be calculated by multiplying the average number of Employees in that Quarter in excess of the Contracted Number by the Subscription per Employee per Month and multiplying by three (3).

9.6 *Reviews* - the Supplier shall, with effect from each anniversary of the Agreement Start Date, increase the Annual Subscription for the forthcoming year by up to the Annual Rate.

9.7 *Expenses* – the Supplier will invoice the Customer Quarterly for all Expenses incurred by the Supplier in the previous Quarter.

9.8 *Payment terms* - The Customer shall pay all valid and undisputed Charges within the Payment Period set out in the Order Form or invoice, in full and in cleared funds to a bank account nominated in writing by the Supplier.

9.9 *Disputed items* – If the Customer has a bona fide dispute in respect of the whole or any part of any invoice then the Customer shall notify the Supplier of the nature of such dispute in writing within fourteen (14) days of the invoice date giving all relevant details. If the Customer notifies the Supplier in accordance with this clause 9.9, the Customer shall be entitled to withhold payment of the amount in dispute, but shall pay the undisputed part in accordance with this Agreement. On settlement of any dispute the Customer shall make the appropriate payment within 10 days of the settlement of such dispute.

9.10 *Late payment* – Without limiting any other right or remedy of the Supplier, and subject to the Customer giving notice of any disputed amount pursuant to clause 9.9, if the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the then current HSBC base rate accruing on a daily basis, from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. (In the event that the Customer gives notice of a disputed amount pursuant to clause 9.9, the Due Date for the disputed amount shall be 10 days from the settlement of such dispute.)

9.11 Subject to clause 9.9, if the Supplier has not received payment within 30 days of the invoice date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, subject to the Supplier giving 30 days' written notice to the Customer, without liability to the Customer, disable the Customer's and Employees' passwords, accounts and access to all or part of the Website,

and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. The Supplier shall promptly restore access to the Website and resume provision of the Services when payment is made.

9.12 *Taxes* – All amounts payable by the Customer under this Agreement are exclusive of Value Added Tax which the Customer shall pay at the same time as the sums to which it relates.

9.13 *Withholding* – Save as set out in clause 9.9 or clause 10, the Customer shall pay all amounts due under this Agreement in full without any deduction, withholding, set-off or counterclaim against the Supplier.

## 10 SERVICE LEVELS AND SERVICE CREDITS

10.1 The Supplier shall ensure that the Services meet or exceed the relevant Service Levels.

10.2 If there is a Service Failure, the Supplier shall use its reasonable endeavours to take all remedial action that is necessary to rectify it and/or to prevent the Service Failure from recurring.

10.3 The Supplier shall not be liable for failure to meet any Service Levels that can reasonably be evidenced (i) is caused by factors beyond the reasonable control of the Supplier; or (ii) results from a Customer Delay.

10.4 Subject to the limit set out in clause 16.4, if there is a Service Failure, the Supplier shall credit the Customer with the applicable Service Credit. Service Credits shall either be shown as a deduction from the amount due from the Customer to the Supplier in the next invoice then due to be issued under this Agreement, or the Supplier shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 30 days of the date of the credit note. The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Customer.

10.5 This clause 10 represents the Customer's sole and exclusive remedy available for breach of any Service Levels and/or Service Failures.

## 11 CUSTOMER DATA

11.1 The Customer consents to the Supplier using the Customer Data for the provision of the Services and acknowledges that when:

11.1.1 receiving Customer Data in connection with the Employees' access to, and use of the Website; or

11.1.2 transferring Customer Data to Third-Party Providers in connection with the provision of the Services,

the Supplier is acting on behalf of the Customer (except as set out in clause 18.3).

11.2 As between the Customer and the Supplier the Customer shall own all rights, title and interest in and to all of the Customer Data.

11.3 The Supplier shall be permitted to disclose all or any of the Customer Data to Third-Party Providers to the extent necessary for the Supplier to perform its obligations under this Agreement and to perform all or any part of the Services.

11.4 The Supplier shall have no responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data save to the extent that the Supplier incorrectly makes amendments to information provided to the Supplier by or on behalf of the Customer or any Employee.

## 12 PROPRIETARY RIGHTS

12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services, the Website, the Software and the Tools. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Website or the Software or the Tools.

12.2 The Supplier warrants that it has all the rights in relation to the Services and the Website that are necessary to grant all the Intellectual Property Rights it purports to grant under, and in accordance with, the terms of this Agreement.

12.3 The Intellectual Property Rights in the Software and the Tools are, and shall remain, the property of the Supplier and the Supplier reserves the right to grant a licence to use the Software and the Tools to any other party or parties.

12.4 Nothing in this Agreement, shall prevent the Supplier from:

12.4.1 using the Software and the Tools in the course of its normal business to the extent that this use does not result in a disclosure of the Customer's Confidential Information or Customer Data; and

12.4.2 creating sites for other customers and third parties with a similar look and feel to the Website, to the extent that such sites do not make use of the Customer Name or any of the Customer Data.

12.5 All Intellectual Property Rights in the Customer Name shall be the property of the Customer.

12.6 The Customer hereby grants to the Supplier a non-exclusive, royalty-free, worldwide licence to use and copy the Customer Name during the term of this Agreement to the extent necessary and for the sole purpose of the proper performance of the Services. The Customer shall be responsible for ensuring that such use complies with the Customer's brand guidelines.

12.7 The licences granted by the Customer pursuant to clause 12.6 shall terminate automatically on the termination or expiry of this Agreement.

12.8 The Customer shall not use the Supplier Brand without the prior written approval of the Supplier and such use, if consent is granted, must comply with the Supplier's brand guidelines.

## 13 THIRD PARTY IPR

13.1 Subject to clauses 13.2, 16.2 and 16.3, the Supplier shall indemnify the Customer against all Losses suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of or in connection with the Customer's use of the Website.

13.2 If any third party makes a claim, or notifies an intention to make a claim, against a party (the **Receiving Party**) which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Receiving Party shall:

13.2.1 as soon as reasonably practicable, give written notice of the Claim to the other party, specifying the nature of the Claim in reasonable detail;

13.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the other party;

- 13.2.3 give the other party reasonable assistance in connection with the defence of the Claim; and
- 13.2.4 take such action as the other party may reasonably request, at the expense of the other party, to avoid, dispute, compromise or defend the Claim.
- 13.3 In the event of a Claim, the other party shall be entitled at its own expense and option either to:
- 13.3.1 procure the right for the Receiving Party to continue receiving and/or using the infringing Intellectual Property Rights; or
- 13.3.2 make such alterations, modifications or adjustments so that the infringement becomes non-infringing, without incurring a material diminution in performance, capacity or functionality; or
- 13.3.3 replace the infringing part with a non-infringing substitute provided that such substitute does not entail a material diminution in performance, capacity or functionality (and the provisions of this clause 13 shall apply equally to any such substitute) reimbursing the Receiving Party its reasonable costs associated with such substitution.
- 13.4 Subject to clauses 13.2, 16.2 and 16.3, the Customer shall indemnify the Supplier against all Losses suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Customer Name.
- 14 TERM AND TERMINATION**
- 14.1 This Agreement shall start on the Agreement Start Date and, unless terminated in accordance with the terms of this Agreement, shall continue until terminated in accordance with clause 14.2, 14.4, 14.6 or 14.7.
- 14.2 Either party may terminate this Agreement by giving, at any time after the end of the Initial Period, written notice to the other of not less than the Notice Period, provided that, in the case of termination by the Customer pursuant to this clause 14.2, such termination shall only be effective provided the Customer has fulfilled all its obligations under clauses 15.1.2 and 15.1.3.
- 14.3 The Initial Period shall start on the Initial Period Start Date.
- 14.4 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 14.4.1 the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of full particulars of the breach and being required to remedy it;
- 14.4.2 the other party approves a voluntary agreement, or an administration order is made, or a receiver or administrative receiver is appointed over any of its assets or an undertaking or a resolution or petition or order for winding up or bankruptcy is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order; or
- 14.4.3 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.5 For the purposes of clause 14.4.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 14.6 In the event of three or more Service Failures, within a rolling period of 6 months, the Customer may terminate the Agreement with immediate effect. Any such notice to terminate under this clause 14.6 must be received by the Supplier within 20 Business Days of the last Service Failure in the relevant period.
- 14.7 The Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 14.7.1 the Customer fails to pay any undisputed amount due under the Agreement on the Due Date for payment and remains in default for over thirty (30) days after being notified in writing to make such payment; or
- 14.7.2 there is a change of Control of the Customer which is either to a competitor of the Supplier or, in the Supplier's reasonable opinion, would have a material effect on the Customer's continued ability to pay for the Services.
- 15 CONSEQUENCES OF TERMINATION**
- 15.1 On expiry or termination of the Agreement for any reason:
- 15.1.1 the parties shall comply with their respective obligations set out in this Agreement upon termination, including the following (the Exit Management Plan), provided that any further exit assistance requested by the Customer from the Supplier may be charged at the Supplier's then current daily rates or as otherwise agreed in writing between the parties:
- (a) the Supplier shall close the Website to Employees and their user accounts; and
- (b) the Supplier shall be entitled to store Customer Data and data provided by Employees ("Employees Data") for up to 180 days after termination for the purposes of handling Employee's queries and outstanding cashback payments. Such Customer Data and Employees Data shall be automatically deleted thereafter, unless Customer requests manual deletion before the end of the 180-day period.
- 15.1.2 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest (including any invoice submitted pursuant to clause 15.1.3);
- 15.1.3 the Supplier shall be entitled to submit an invoice in respect of (i) any part of the Charges as yet not invoiced for the period from the date of the last invoice to the actual date of termination of the Agreement and (ii) all Implementation Costs as yet not invoiced;
- 15.1.4 unless the Supplier has terminated this Agreement as a result of the circumstances set out in clause 14.4 or clause 14.7 (in which case this clause shall not apply), the Supplier shall issue a credit note to the Customer for, and repay to the Customer (or deduct from any invoice rendered under clause 15.1.3) any part of the Annual Subscription already invoiced and paid



by the Customer for the period after the actual date of termination of the Agreement;

- 15.1.5 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;
- 15.1.6 those clauses which expressly or by implication have effect after termination shall come into or continue in full force and effect; and
- 15.1.7 all licences granted under the Agreement shall immediately terminate.

## **16 LIABILITY**

- 16.1 Nothing in this Agreement shall limit or exclude either party's liability for:
  - 16.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 16.1.2 fraud or fraudulent misrepresentation;
  - 16.1.3 Losses suffered by the other arising under clause 13 (Third Party IPR); or
  - 16.1.4 any other liability which cannot be excluded or limited by applicable law.
- 16.2 Subject to clause 16.1 neither party shall in any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, for loss of profit, loss of business, loss of enjoyment, depletion of goodwill, loss of reputation and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, in each case whether direct, indirect or consequential, or any indirect or consequential loss arising under or in connection with this Agreement.
- 16.3 Subject to clauses 16.1 and 16.2, each party's aggregate liability, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in no circumstances exceed in aggregate an amount equal to the Charges (excluding any Expenses) paid or payable by the Customer in the year in which the breach or breaches occurred.
- 16.4 Subject to clauses 16.1 and 16.2 the Supplier's total aggregate liability in respect of the Service Credits is limited to the amount set out in the Service Credit calculation column underneath the relevant Service Level.
- 16.5 The Supplier shall take out and maintain with an insurer of good repute:
  - 16.5.1 employer's liability insurance in accordance with the Employer's Liability (Compulsory Insurance) Act 1969; and
  - 16.5.2 professional indemnity insurance; and
  - 16.5.3 public liability insurance,in such amounts as is reasonable, or required by law, in connection with its provision of the Services and the Supplier shall, at the request of the Customer, provide to the Customer evidence of such insurance once in each year.
- 16.6 This clause 16 shall survive termination of the Agreement.

## **17 CONFIDENTIALITY**

- 17.1 Each party undertakes to the other to keep secret and strictly confidential all Confidential Information

of the other party for the term of this Agreement and for a period of two years after its expiry or termination. Each party receiving Confidential Information (the **Receiving Party**) undertakes to the other party disclosing Confidential Information (the **Disclosing Party**) only to use the Confidential Information of the Disclosing Party to the extent necessary for the purpose of enabling it to enforce or perform any of its rights or obligations under this Agreement.

- 17.2 The foregoing provision shall not prevent the disclosure or use by either party of any Confidential Information which was in the lawful possession of the receiving party prior to disclosure under this Agreement or which is or hereafter becomes, through no fault of that party, public knowledge or lawfully acquired or independently developed without the obligation of confidentiality.
- 17.3 Each party shall be permitted to disclose Confidential Information of the other party to the extent that it is required to do so by law or by any public, governmental, supervisory or regulatory authority or by any legally binding order of any court or tribunal.
- 17.4 On termination of this Agreement the Receiving Party shall:
  - 17.4.1 destroy (or at the request of the Disclosing Party return to the Disclosing Party) all documents and materials (and any copies) containing, reflecting, incorporating or based on the Disclosing Party's Confidential Information; and
  - 17.4.2 to the extent technically, reasonably and legally practicable erase all the Disclosing Party's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form.
- 17.5 Nothing in clause 17.4 shall require the Receiving Party to return or destroy any documents and materials containing or based on the Disclosing Party's Confidential Information that the Receiving Party is required to retain by applicable law. The provisions of this clause shall continue to apply to any documents and materials retained by the Receiving Party pursuant to this clause 17.5.
- 17.6 This clause 17 shall survive termination of the Agreement.

## **18 DATA PROTECTION**

- 18.1 Subject to clause 18.3, the parties agree that, in respect of the Personal Data, the Customer shall be the Data Controller and the Supplier shall be the Data Processor.
- 18.2 Each party shall comply with all Data Protection Laws in connection with their respective rights and obligations under this Agreement.
- 18.3 Where the Supplier processes:
  - 18.3.1 the contact details of the Customer's representatives in connection with the administration of this Agreement and the Services;
  - 18.3.2 the Personal Data of Employees for the specified purpose of analysing Employees' wellbeing as part of the POWR/Wellbeing Module; or
  - 18.3.3 Personal Data provided directly from Employees for a specified purpose, such as a cashback redemption;

it does so as a Data Controller and the Supplier shall undertake such processing in its own right for that specific purpose only and in accordance with its legal obligations to Data Subjects under the

Data Protection Laws and its privacy policy (see [www.wrkit.com/privacy](http://www.wrkit.com/privacy)).

*Instructions and details of processing*

18.4 Insofar as the Supplier processes Personal Data on behalf of the Customer:

18.4.1 subject to clause 18.4.3, the Supplier shall (and shall ensure each of its Sub-processors shall) process the Personal Data only on and in accordance with the Customer's documented instructions as set out in this clause 18 and Data Processing Details, and as updated from time to time by the written agreement of the parties (together **Processing Instructions**);

18.4.2 The Supplier shall promptly inform the Customer, if, in the Supplier's opinion, any of the Processing instructions infringe any of the Data Protection Laws;

18.4.3 if any Supplier Laws require it to process Personal Data other than in accordance with the Processing Instructions, the Supplier shall notify the Customer of any such requirement before processing the Personal Data (unless any of the Supplier Laws prohibit such information on important grounds of public interest); and

18.4.4 The Supplier shall make available to the Customer all information reasonably necessary to demonstrate its compliance with the provisions of Article 28 UK GDPR (and where applicable, Article 28 EU GDPR).

*Supplier personnel*

18.5 The Supplier shall ensure that all Supplier Personnel processing Personal Data:

18.5.1 are subject to obligations of confidentiality which apply, generally or specifically, to the Personal Data; and

18.5.2 are reliable and have received appropriate training on compliance with the Data Protection Laws.

*Security of Personal Data*

18.6 The Supplier shall implement and maintain, at its cost and expense (taking into account those factors which it is entitled to take into account pursuant to the Data Protection Laws) appropriate technical and organisational measures in relation to the processing of Personal Data by the Supplier so as to ensure a level of security in respect of the Personal Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

*Breach notification*

18.7 In respect of any Personal Data Breach, the Supplier shall:

18.7.1 notify the Customer of the Personal Data Breach without undue delay (and in any event within 48 hours after becoming aware of the Personal Data Breach); and

18.7.2 provide the Customer without undue delay (and in any event within 48 hours after becoming aware of the Personal Data Breach) with such details as the Customer reasonably requires regarding:

(a) the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Personal Data records concerned; and

(b) any measures taken, or that the Supplier recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects,

provided that (without prejudice to the above obligations) if the Supplier cannot provide all these details within such timeframes, it shall (before the end of this timeframe) provide the Customer with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give the Customer regular updates on these matters;

18.7.3 taking into account the nature of processing and the information available to the Supplier, provide such assistance as the Customer reasonably requests to enable the Customer to comply with its obligations pursuant to the Data Protection Laws in connection with the Personal Data Breach.

*International Data Transfer*

18.8 The Supplier may only transfer any Personal Data to an organisation outside both the United Kingdom and the European Economic Area (EEA) (an **International Recipient**) if the Customer has consented to the transfer and to the mechanism of the transfer in writing (such consent not to be unreasonably withheld) or if such transfer is to a member of the Supplier Group.

18.9 If the Supplier does transfer any Personal Data to an International Recipient, the Supplier shall do so under the following conditions:

18.9.1 the Personal Data is being processed in a territory which is subject to an adequacy decision;

18.9.2 the Supplier has implemented appropriate safeguards in accordance with Article 46 UK GDPR, such as by implementing an International Data Transfer Agreement or EU Standard Contractual Clauses made available by the European Commission or relevant Supervisory Authority from time to time; or

18.9.3 pursuant to the derogations set out in Article 49 UK GDPR.

18.10 For the avoidance of doubt, by signing this Agreement, the Customer consents to the transfer of Personal Data to the International Recipients which are listed as Sub-processors in the Data Processing Details at the Agreement Start Date.

*Using other processors*

18.11 Subject to clauses 18.10, 18.12 and 18.13, the Supplier shall not engage another Data Processor for carrying out any processing activities in respect of the Personal Data without the Customer's prior written consent.

18.12 The Customer consents to the appointment of the Third-Party Providers and the Sub-processors and the processing of Personal Data by each of them in accordance with the Data Processing Instructions. In the event that the Supplier proposes to change the identity of, or appoint a new, Data Processor (in addition to the Sub Processors) and that Data Processor will be Processing the Personal Data (a "**New Sub Processor**"):

18.12.1 the Supplier shall give the Customer not less than 20 Business Days prior written notice of the intended appointment of the New Sub Processor, including reasonable information on the identity and location of the New Sub Processor and the nature of the Processing;

- 18.12.2 the Customer may object to the appointment of the New Sub Processor within 20 Business Days of receipt by the Customer of the notice referred to in clause 18.12.1 on the grounds that the Customer reasonably believes that the appointment of the New Sub Processor will have an adverse impact on the protection afforded to the Personal Data;
- 18.12.3 if the Customer raises objections in accordance with clause 18.12.2 the Supplier shall not appoint (or disclose any the Personal Data to) the New Sub Processor to process the Personal Data until the Supplier and the Customer have agreed on reasonable steps to address the objections raised by the Customer (including, where necessary) by the Supplier providing additional information;
- 18.12.4 in the event that no such reasonable steps can be agreed between the Customer and the Supplier within 40 Business Days from the Supplier's receipt of the Customer's notice, then the Supplier shall either:
- continue to process the Personal Data but shall not engage the New Sub Processor for such purpose; or
  - shall notify the Customer that it is unable to process the Personal Data without using the New Sub Processor in which event, notwithstanding anything in the Agreement, the Customer may by written notice to the Supplier with immediate effect terminate the Agreement to the extent that it relates to the Services which require the use of the New Sub Processor;
- 18.12.5 if the Customer does not object within the time period identified in clause 18.12.2, or where the Customer withdraws its objection, the Supplier may appoint the New Sub Processor immediately.
- 18.13 Where the Supplier engages a sub processor to carry out activities which involve the processing of Personal Data the Supplier shall:
- carry out appropriate due diligence of such sub processor;
  - engage such sub processor on written terms which comply with the Data Protection Laws; and
  - remain fully liable to the Customer for the sub processor's failure to fulfil its obligations in relation to Personal Data.
- Complaints*
- 18.14 Each party shall promptly inform the other party if it receives a Complaint and provide the other party with full details of such Complaint.
- Assistance with Customer's Compliance with Data Subject Rights*
- 18.15 The Supplier shall:
- taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to Data Subject's Requests;
  - record and then refer all Data Subject Requests it receives to the Customer, without undue delay (and in any event within 48 hours of receipt);
- 18.15.3 provide such assistance to the Customer as the Customer reasonably requests in relation to a Data Subject Request; and
- 18.15.4 not respond to any Data Subject Request without the Customer's prior written approval.
- 18.16 Without prejudice to clause 18.4 the Supplier shall, at its cost and expense, provide such assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) in ensuring compliance with such obligations as apply to the Customer under Data Protection Laws, with respect to:
- security of processing;
  - Data Protection Impact Assessments (as such term is defined in the Data Protection Laws); and
  - prior consultation with a Supervisory Authority regarding high risk processing.
- Deletion or return of Personal Data*
- 18.17 At the end of the provision of the Services and the provision of information pursuant to the Exit Management Plan, the Supplier shall without delay, securely delete all of the Personal Data unless:
- retention of data is required pursuant to clause 15.1.1(b);
  - storage of any data is required by the Supplier Laws and, if so, the Supplier shall inform the Customer of any such requirement); or
  - the Supplier requires storage of any data for the establishment, exercise or defence of legal claims.
- Records, Information and Audit*
- 18.18 The Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer.
- 18.19 The Supplier shall make available to the Customer on request in a timely manner copies of the records under clause 18.18.
- Audit*
- 18.20 The Supplier shall allow for and contribute to audits, including inspections, conducted by the Customer or its auditors, for the purpose of demonstrating compliance by the Supplier with its obligations under Data Protection Laws and under this clause 18.
- Customer responsibility*
- 18.21 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier to the extent that such action or omission resulted from the Customer's instructions or from the Customer's failure to comply with Data Protection Laws or its obligations under this Agreement.
- 18.22 The Customer shall establish the legal basis under Data Protection Laws for the processing of the Personal Data by the Supplier for the delivery of the Services (including, in the absence of any other legal basis, all necessary consents).
- 18.23 If at any time the Supplier is unable to process any Personal Data because the Customer has failed or been unable to establish a legal basis for such processing or an Employee has exercised any of its

rights under the Data Protection Laws to prevent such processing, such failure or inability or prevention shall for the purposes of clause 5 be a Customer Delay and the provisions of clauses 5.1.1 to 5.1.4 inclusive shall apply.

- 18.24 Where the Customer or any Employee uses or accesses the Services from outside both the UK and the EEA (**Relevant Jurisdiction**), it shall be the Customer's responsibility to ensure that any use of or access to the Personal Data outside both the UK and the EEA and any transfers of such Personal Data to the UK or the EEA complies with the provisions of the Data Protection Laws and all laws relating to data protection in the Relevant Jurisdiction.

#### *Anonymization of Personal Data*

- 18.25 The Supplier may carry out analysis on the data it receives from its customers in an aggregated and anonymised form and use it for statistical, research and/or benchmarking purposes. When anonymised and aggregated it no longer identifies a person or the Customer's Employees and therefore no longer constitutes Personal Data.
- 18.26 This clause 18 shall survive termination of the Agreement.

## **19 AUDIT RIGHTS**

- 19.1 The Customer shall have the right upon reasonable prior notice (being not less than thirty (30) days) and at agreed times and intervals (but no more frequently than once in each twelve (12) month period) to inspect at its own expense (including costs reasonably incurred by the Supplier to provide such audit assistance) the Supplier's books and records to verify the Supplier's compliance with clause 18 (only) of this Agreement.
- 19.2 The Customer shall procure that the auditors comply with the security arrangements of the Supplier in respect of the premises and systems and sign any reasonable confidentiality undertaking required by the Supplier and shall indemnify the Supplier in respect of any breach thereof.

## **20 COMPLIANCE**

- 20.1 Each party shall, at all times, comply with the Bribery Act 2010.
- 20.2 In performing its obligations under this Agreement the Supplier shall comply with all anti-slavery and human trafficking laws from time to time in force which apply to it, (including but not limited to those parts of the Modern Slavery Act 2015 which apply to it).
- 20.3 The Supplier represents and warrants that at the date of this Agreement neither the Supplier nor any of its officers or employees:
- 20.3.1 has been convicted of any offence involving slavery and human trafficking; or
- 20.3.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 20.4 The Supplier shall notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

## **21 SUBCONTRACTING**

- 21.1 The Supplier shall be entitled to use third parties (i) to outsource functions related to the general operation of the Supplier's business; (ii) in connection with the development or modification

of the Tools or Software; and (iii) for incidental engagements by the Supplier of individual experts or consultants as independent contractors, provided that the Supplier shall remain responsible for performance of the Agreement and for all acts and omissions of its subcontractors as if such acts and omissions were its own.

## **22 FORCE MAJEURE**

- 22.1 Without prejudice to clause 5 neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event (save that no Force Majeure Event affecting the Customer shall excuse failure or delay in making any payment due under this Agreement). Subject to clause 22.2, in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 22.2 On the cessation of any Force Majeure Event, the Supplier may, without limiting its other rights or remedies, adjust any previously agreed timetable or delivery schedule as reasonably necessary.
- 22.3 If the event a Force Majeure Event causes a party to be unable to perform all of its obligations under this Agreement for a continuous period of 90 days, the party not affected may terminate this Agreement by not less than 30 days written notice to the affected party.

## **23 GENERAL**

- 23.1 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Agreement.
- 23.2 The terms of this Agreement operate to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 23.3 No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.
- 23.4 Nothing in this Agreement constitutes a partnership between the parties nor constitutes any party the agent of the other party.
- 23.5 The Customer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Supplier, which shall not be unreasonably withheld or delayed. The Supplier shall be entitled to assign or transfer absolutely or by way of security (and in whole or in part), its rights or obligations hereunder. Notwithstanding any such assignment, the Supplier will remain liable for all its obligations hereunder.
- 23.6 Each party to this Agreement shall, at the request and cost of the other, do or procure to be done all such further acts and things and execute or procure the execution of all such other documents

as are necessary to give effect to the terms of this Agreement.

- 23.7 No variation of this Agreement shall be valid unless made in writing and signed by an authorised representative on behalf of each of the parties.
- 23.8 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

#### **24 THIRD PARTY RIGHTS**

- 24.1 Except where expressly stated, for the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement.
- 24.2 The Customer shall be entitled to enforce any provision of this Agreement for and on behalf of the members of the Customer's Group (who shall not bring any action, claim or proceeding against the Supplier in their own names) and any Losses suffered by a member of the Customer's Group shall be deemed to be suffered by the Customer.

#### **25 NOTICES**

- 25.1 Any notice given under or pursuant to this Agreement shall be in writing and delivered by hand or posted to the relevant party at its registered address or such other address as set out in the Order Form or notified in writing for this purpose to the other party. A notice is deemed served upon its deposit at the appropriate address and, in the case of notices sent by post, 48 hours after being sent by first class post. The Customer acknowledges that the Supplier may serve notices to the Customer email address set out in the Order Form or notified from time to time and such notice is deemed served on confirmation of dispatch without error message.

#### **26 COUNTERPARTS & ELECTRONIC SIGNATURE**

- 26.1 The Order Form may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.
- 26.2 Transmission of an executed counterpart of the Order Form (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the Order Form. Unless electronically signed in accordance with clause 26.3, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonable possible thereafter.
- 26.3 Signature using an industry-standard electronic signature management system (such as DocuSign) shall be permitted by the parties and shall take effect as delivery of an executed counterpart of the Order Form.

#### **27 DISPUTE RESOLUTION**

- 27.1 In the event of any dispute or difference arising in connection with the Agreement (including any question regarding its existence, validity or termination or the legal relationships established by this Agreement), the Chief Executive or Chief Finance Officer (or equivalent officer) of each party will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute or difference. If the dispute

or difference is not resolved at that meeting, or if such meeting does not take place, either party may refer the dispute to the courts in accordance with clause 28.

#### **28 GOVERNING LAW AND JURISDICTION**

- 28.1 Notwithstanding the provisions of clause 27.1 either party may commence or take proceedings or seek remedies before the courts or any other competent authority for interim, interlocutory or injunctive remedies in relation to this Agreement.
- 28.2 No action regardless of form arising out of this Agreement may be brought by either party more than two (2) years after the party concerned becomes aware or should reasonably have become aware of the facts constituting the cause of action. However, where applicable law prohibits this two (2) year time limit, the minimum period of time permitted by such law shall apply. In no circumstances shall this clause be construed as extending any statutory limitation period.
- 28.3 The laws of England and Wales shall govern this Agreement. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England in respect of any claim or matter arising out of or in connection with this Agreement.