

## Terms and Conditions

These “Terms and Conditions”, together with the Service Level Agreement, Security Provisions and the Personal Data Processing Provisions, any fully executed Order Form(s) and Implementation SOW applicable to the ordered Services shall constitute the legally binding agreement (the “Agreement”) entered into by and between the client named on the Order Form(s) (the “Client”) and the applicable supplier entity (as each named in any fully executed Order Form) (“Supplier”) (each, a “Party” and collectively the “Parties”) in relation to the provision of any of the Services as detailed within such Order Form(s).

The rights and obligations of the Parties in relation to any ordered Services shall be governed by the Agreement. In the event of any conflict or inconsistency between certain provisions contained within different documents that constitute the Agreement, the following order of precedence shall prevail with respect to resolving such conflict or inconsistency: (1) the Order Form; and (2) these Terms and Conditions.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the terms and conditions set forth herein.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, Terms with initial capital letters shall have the meanings ascribed to such terms in this Section 1 or elsewhere in this Agreement or attachments hereto:

- (a) “**Affiliate**” means, with respect to a party, any entity controlling, controlled by or under common control with such party with “**control**” meaning the power (whether direct or indirect) to direct or cause the direction of an entity’s affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and within “**controlling**” and “**controlled**” being construed accordingly;
- (b) “**Applicable Laws**” means all applicable federal, state, local and foreign laws, statutes, ordinances, rules, regulations and directives of the jurisdiction applicable to Supplier in relation to the provision of any of the Services;
- (c) “**Client Administrator**” means the individual appointed by the Client, as detailed on the Order Form, who is responsible for the administration of the Tenant;
- (d) “**Client Data**” means the data uploaded by the Client into the Tenant. Client Data does not include Usage Data;
- (e) “**Confidential Information**” has the meaning set out in Section 11.1;
- (f) “**Content**” means All content generated by the Software using Client Data, including graphs, charts, images, reports and other visual representations of the Client Data;
- (g) “**Deliverable**” means the deliverables that form part of the Implementation Services as more particularly set out in the applicable Implementation SOW;
- (h) “**Documentation**” means the documentation made available to the Client by Supplier that refers to and governs the performance of the Services;
- (i) “**Effective Date**” means the date on which the Services commence, as set out in the Order Form;
- (j) “**Fees**” means the fees for the Services, as more particularly detailed in the Order Form;
- (k) “**Force Majeure**” means any cause beyond a party’s reasonable control, as a result of which such party is unable to perform its obligations under this Agreement. Such causes include but are not limited to acts of fire, flood, explosion, war, embargo, government requirement, civil or military authorities, Acts of God, labor conflicts, acts of war, civil disruption, public utility failures, industry

wide shortages of labor or material, or other causes beyond the reasonable control of the Party seeking to rely on this Section to excuse its delay or failure; provided that such Party will not have contributed in any way to such event;

- (l) **“Good Industry Practice”** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector offering the same services to a client of similar standing;
- (m) **“Hosting Services”** means the services provided by Supplier to allow Users to access and use the Tenant, including hosting set-up and ongoing services;
- (n) **“Implementation Services”** means the services provided by Supplier to implement the Tenant, as more particularly set out in the Implementation SOW;
- (o) **“Implementation SOW”** means the statement of work (“SOW”) which sets out the Implementation Services;
- (p) **“Initial Term”** means the initial term of each Service as set out in each Order Form;
- (q) **“Intellectual Property Right(s)”** means rights of ownership of any kind of intellectual property, including copyrights, patents, trademarks, service marks, trade secrets, rule sets, and all other intellectual property and all rights therein, and the right to apply for, register, obtain, hold, extend and renew any of the foregoing, and includes copyrights, patents, trademarks, trade secrets and all other intellectual property rights, and the right to apply for, obtain, hold and renew any of the foregoing.
- (r) **“Insolvency Event”** means an event in which a Party ceases doing business as a going concern or makes an assignment for the benefit of creditors or is unable to pay its debts as they become due or files a voluntary petition in bankruptcy or is adjudicated a bankrupt or files a petition seeking for itself any reorganization, arrangement, readjustment, liquidation or dissolution under any present or future statute or regulation or is the subject of an involuntary petition in bankruptcy or files an answer admitting the material allegations of a petition filed against it in any such proceeding or consents to or acquiesces in the appointment of a receiver or liquidator with respect to all or any substantial portion of its assets or properties
- (s) **“Learning Management System”** means Supplier’s learning management system accessible by the Client;
- (t) **“Limitations”** means the limit on number of nodes permitted within the Tenant as set out in the Order Form;
- (u) **“Order Form”** means an order form relating to the provision of any of the Services;
- (v) **“Personal Data”** has the meaning set forth in the Personal Data Processing Provisions.
- (w) **“Personal Data Processing Provisions”** means the provisions relating to the Parties’ responsibilities in respect of the processing of personal data under the Agreement, including under the European General Data Protection Regulation and the California Consumer Privacy Act, available at <https://www.concentra.co.uk/terms-and-conditions> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- (x) **“Renewal Term(s)”** has the meaning set forth in Section 8.1.
- (y) **“Security Provisions”** means the security provisions relating to the Services available at <https://www.concentra.co.uk/terms-and-conditions> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Supplier in its sole discretion;

- (z) **“Service Level Agreement (SLA)”** means the service level agreement available at <https://www.concentra.co.uk/terms-and-conditions> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- (aa) **“Services”** means the Implementation Services, Hosting Services, the provision of and access to the Tenant and the services set out in the SLA;
- (bb) **“Software”** means the proprietary modules of Supplier’s software application;
- (cc) **“Subcontractor”** means Amazon Web Services (“AWS”) of 1200 12th Ave S, Ste 1200, Seattle, WA 98144 United States through one of AWS’ Subsidiaries;
- (dd) **“Tenant”** means the Client’s dedicated instance of the Software;
- (ee) **“Term”** means the Initial Term and any subsequent Renewal Terms;
- (ff) **“Usage Data”** has the meaning set out in Section 9.4;
- (gg) **“User”** means those persons authorized by the Client Administrator to access the Tenant;
- (hh) **“User Management”** means the administration of User access to the Tenant;
- (ii) **“Virus”** means any thing or device (including any software, code, file or program) 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program 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; and
- (jj) **“Business Day”** Means, unless specified otherwise, a day in which banks are generally open for business in the applicable jurisdiction of the Supplier entity set out on the Order Form.

In the Agreement:

- 1.2 the words "include", "includes", "including", "included", "in particular" shall be construed without limitation and the words "other" and "otherwise" are illustrative and shall not limit the generality of any preceding words;
- 1.3 any reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement and includes any statute, statutory provision, subordinate legislation, enactment, order, regulation, rules or other similar instrument, as from time to time amended, superseded, replaced, consolidated or re-enacted (with or without modification)..

## 2. ORDERING PROCEDURE

The Client may order any of the Services by completing and executing an Order Form and Implementation SOW, for each order of such Services.

## 3. SERVICES

- 3.1 Upon an Order Form being fully executed by both Parties, Supplier shall, during the Term, provide to the Client the Services ordered within such Order Form.

- 3.2 Supplier shall use commercially reasonable efforts to ensure the Software is free of all Viruses throughout the Term of the Agreement.
- 3.3 Supplier shall use commercially reasonable efforts to make the Services available 24 hours a day, seven days a week, except during the following time periods:
- (a) planned maintenance carried out during the maintenance window of every Sunday between 6.00 am – 10.00 am (UK time); and
  - (b) unscheduled maintenance due to an emergency. Supplier shall use its reasonable efforts to give the Client at least 2 hours' notice in advance in such instances.
- 3.4 Supplier shall perform the Services in accordance with and subject to:
- (a) these Terms and Conditions;
  - (b) the SLA;
  - (c) the Security Provisions;
  - (d) the Personal Data Processing Provisions;
  - (e) the Documentation
  - (f) the applicable fully executed Order Forms and/or Implementation SOWs; and
  - (g) Good Industry Practice.

The Client acknowledges and agrees that the Solutions (as defined within the SLA) shall be, and contain, Supplier's sole liability and the Client's exclusive remedies in respect of any failure to provide the Services in accordance with the Agreement.

#### **4. IMPLEMENTATION SERVICES**

- 4.1 Implementation Services shall include access to the Learning Management System but shall not include on-going professional services, which if required, will be provided subject to a different type of SOW and shall be governed by Supplier's standard contract entitled "Services Agreement".
- 4.2 Supplier shall perform the Implementation Services in accordance with the Implementation SOW. Supplier shall use reasonable endeavours to meet the performance dates set out in Implementation SOW, but any such dates shall be estimates only, and time shall not be of the essence in the Agreement.

#### **5. CLIENT RESPONSIBILITIES**

- 5.1 The Client shall:
- (a) follow Supplier's instructions and in accordance with the Documentation for access to the Tenant and use of the Software;
  - (b) ensure that the Tenant is accessed and the Services are used properly by Users in accordance with Supplier's instructions and the Documentation;
  - (c) train its Users to use the Services, including by completing (and requiring them to complete) the training in the Learning Management System;

- (d) make available to Supplier such information as is required to enable Supplier to perform the Services; and
  - (e) provide Supplier with all necessary co-operation in relation to the Agreement.
- 5.2 The Client shall appoint a Client Administrator who shall be responsible for User Management, including the setting up of Users and removing Users when they cease to be authorised to use the Services. The Client shall ensure that the Client Administrator and each User is an employee of the Client with sufficient skills, training and seniority to undertake the roles and responsibilities referred to in this Section 5.2.
- 5.3 In relation to the Users and Limitations, the Client undertakes that:
- (a) it shall comply with the Limitations;
  - (b) the Supplier or the Supplier's designee may, upon reasonable prior notice to the Client, the Client will grant temporary access to Supplier or Supplier's designee to inspect and audit the Client's compliance with the Limitations and the Agreement at any point during the Term. Each such request may be made no more than once per year.; and
  - (c) if any of the requests referred to in Section 5.1(d) above reveal that the Client has exceeded the Limitations and therefore underpaid Fees to Supplier, then without prejudice to its other rights, Supplier may request that the Client shall pay to Supplier an amount equal to such underpayment, as well as paying all reasonable costs incurred by Supplier in analyzing the information provided to it by the Client to demonstrate its compliance.
- 5.4 The Client shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, religious belief, sexual orientation, disability; or
  - (f) is otherwise illegal or causes damage or injury to any person or property;
- and Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this Section 5.4.
- 5.5 The Client shall not:
- (a) except as may be allowed by any Applicable Laws which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
    - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
    - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - (b) access all or any part of the Services, Software, Tenant and Documentation in order to build a product, software or service which competes with the Services and/or the Software;
  - (c) use the Services, Software, Tenant and/or Documentation to provide a service bureau or to provide services to third parties;

- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software, Tenant and/or Documentation available to any third Party except the Users; or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Tenant and/or Documentation, other than Users.
- 5.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software, Tenant and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Supplier.
- 5.7 The rights provided under this Section 5 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client.
- 5.8 Supplier shall not be liable for any breach of the Agreements that is caused in full or in part by the Client's failure to comply with this Section 5.

## **6. DATA SECURITY AND COMPLIANCE**

- 6.1 The Security Provisions set out Supplier's responsibility in respect of its handling of the Client Data.
- 6.2 The Personal Data Processing Provisions set out each of the Party's responsibilities in respect of Personal Data compliance (as defined within such provisions).

## **7. FEES**

- 7.1 The Client shall pay Supplier the Fees annually in advance unless otherwise stated on the applicable Order Form.
- 7.2 At the commencement of each year of the Initial Term, Supplier reserves the right to increase the Fees by an amount not to exceed 7% per year. Supplier shall notify the Client of any such increases at least thirty (30) days in advance of each anniversary of the Effective Date (as specified in the Order Form relating to each ordered Service).
- 7.3 The Client shall pay Supplier for all other pre-approved, such approval not to be unreasonably withheld or delayed, applicable fees and out-of-pocket expenses (including, but not limited to, reasonable and customary travel, accommodation, and living expenses) incurred by Supplier in the performance of the Services, which shall be calculated in accordance with Supplier's then applicable expenses policy and included with any invoice from Supplier.
- 7.4 The Client shall pay each undisputed invoice within 30 days of its invoice date. The Client shall not be permitted to make any deduction from the Fees whether in respect of set-off, counterclaim or otherwise.
- 7.5 Without prejudice to any of its other rights, if the Client fails to make any payment when due, Supplier shall be entitled to:
- (a) suspend provision of the Services for so long as any payment due hereunder remains outstanding; and/or
  - (b) charge interest on the overdue amount at the greater of 4% above the Bank of England's base rate or the maximum rate allowable per the Applicable Law on all such past due amounts.
- 7.6 All fees set forth in the Agreement are exclusive of applicable taxes and duties, including applicable sales or usage tax. The Client will provide Supplier with any information Supplier may reasonably request in order to determine whether Supplier is obligated to collect sales or usage tax from the Client, including the Client's tax payer identification number. If the Client is legally entitled to an exemption from any sales, use, or

similar transaction tax, the Client is responsible for providing Supplier with legally sufficient tax exemption certificates or other comparable documentation for each taxing jurisdiction. Supplier will apply the tax exemption certificates or other documents to charges under the Client's account occurring after the date Supplier receives the tax exemption certificates or other comparable documents, and shall have no obligation to recognise any tax exemption for any period before it received a tax exemption certificate or other comparable document.

- 7.7 The Client shall make all payments without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Client shall pay to Supplier such additional amount as will ensure that Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

## 8. TERM AND TERMINATION

- 8.1 The Initial Term of each order will commence on the Effective Date and will continue for the Initial Term, as specified in the Order Form. The term of the order shall automatically renew for consecutive one (1) year periods (each, a "**Renewal Term**") unless either Party provides not less than sixty (60) days' prior written notice of its desire not to renew in which event the Term shall expire at the conclusion of the Initial Term or Renewal term, as the case may be.
- 8.2 Either Party ("**Initiating Party**") may terminate the Agreement at any time forthwith by notice in writing if:
- (a) the other Party (the "**Breaching Party**") materially breaches the terms of this Agreement and (if the breach is capable of remedy) fails to remedy the breach within thirty (30) Business Days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;
  - (b) the other Party suffers an Insolvency Event; or
  - (c) the other Party commits any material breach of the Agreement that is not capable of remedy.
- 8.3 If any Force Majeure event relied upon by either Party shall have been continually relied upon for more than sixty (60) consecutive days by such Party, and is continuing, the other Party shall be entitled to terminate the Agreement immediately upon written notice to the other Party.
- 8.4 Upon and after the termination or expiration of the Agreement for any or no reason:
- (a) the Client's rights granted hereunder will immediately terminate and the Parties shall cease all activities hereunder;
  - (b) the Client shall pay all amounts due upon such effective date of expiration or termination of the Agreement;
  - (c) Supplier shall, on the Client's written request and, at the Client's reasonable cost, provide reasonable assistance with the migration of any Client Data to the Client's IT systems;
  - (d) Supplier shall, within three (3) months of termination of the Agreement, delete all Client Data from its IT systems (except that Supplier may retain copies of the Client Data in accordance with its internal record keeping policies, and at all times subject to the confidentiality provisions in this Agreement); and
  - (e) Sections 6, 9, 11, 12, 13, 14 and 15 shall survive termination.

## 9. PROPRIETARY RIGHTS

- 9.1 Subject to the Client making payment in accordance with Section 7, and complying (and ensuring that its Users and other staff comply) with the Client Responsibilities in Section 5, Supplier hereby grants to the

Client a non-exclusive, non-transferable, and non-sublicensable right to permit the Users to access the Tenant for the purposes of using the Software and the Documentation during the Initial Term (and any subsequent Renewal Terms) solely for the Client's internal business operations.

- 9.2 Supplier acknowledges and agrees that the Client shall own all rights (including Intellectual Property Rights), title and interest in and to all of the Client Data and content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the same.
- 9.3 The Client hereby grants to Supplier and its Subcontractors a limited, revocable, royalty-free, fully-paid up, worldwide, non-exclusive, non-transferable and non-sublicensable right to host, display and use the Client Data and the Content as necessary or useful in order to provide the Services for Client's benefit as provided in the Agreement and/or to enforce the Agreement.
- 9.4 For the avoidance of doubt, Client Data does not include any and all data provided, created or generated by, or through, the Client's access to, and use of, the Services, and collected on an aggregate basis in such a manner that does not identify the Client as the source of such data ("**Usage Data**"). The Client acknowledges and agrees that Supplier gathers and interrogates Usage Data from the Client and other clients in order to improve the Services.
- 9.5 The Client acknowledges and agrees that Supplier collects email addresses of all Client Administrators and shall utilise these details solely for the purposes of contacting the Client Administrators in order to provide support or information in regards to the Software or Tenant.
- 9.6 The Client acknowledges and agrees that Supplier and/or its licensors own all intellectual property rights in the Services, Software, Documentation, Usage Data and any database containing the Client Data (when located within Supplier's technology environment). Except in respect of the licenses to receive and use the Services, the Agreement does not grant the Client any rights (including intellectual property rights), title or interest in and to, the Services, Software, Documentation or Tenant or in any development to the Services or Documentation.
- 9.7 Notwithstanding anything in this Agreement to the contrary, each Party shall be entitled to use any know-how, techniques, methodologies, programming methods, industry knowledge, or improvements thereupon, which may be retained in the minds of employees, agents, subcontractors, representatives and service providers of the party seeking to use the foregoing who have had access to Confidential Information of the other party.
- 9.8 Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.

## **10. WARRANTIES AND REPRESENTATIONS**

- 10.1 Each Party represents that it has validly entered into the Agreement and has the legal power to do so.
- 10.2 Supplier warrants that (a) it has all rights and permissions required to grant the licenses contained in the Agreement and to provide the licenses; and (b) during the Term:
  - (a) the Services will perform materially in accordance with the applicable Documentation; and
  - (b) it will not materially decrease the overall functionality of the Services.
- 10.3 Supplier represents and warrants that the Tenant, and the Client's use of the Services, does not and shall not infringe on any Intellectual Property Rights of any person, and that no claim (whether or not embodied in an action, past or present) that the Tenant or Services infringe on any Intellectual Property Rights has been brought or threatened.



10.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER REPRESENTATION, WARRANTY, CONDITION OR PROMISE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, CUSTOMARY, A COURSE OF DEALING OR TRADE PRACTICE OR OTHERWISE WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT AND WHETHER MADE IN WRITING OR ORALLY. EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED TERMS, WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN PARTICULAR, SUPPLIER DOES NOT WARRANT THAT THE SERVICES WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR FREE.

## 11. CONFIDENTIALITY

- 11.1 **"Confidential Information"** means any non-public, proprietary or sensitive information that is disclosed, whether orally, electronically, in writing or otherwise, including copies, or otherwise made available by a party (the **"Disclosing Party"**) to the other party (the **"Receiving Party"**), whether before or after the Effective Date of this Agreement, that is designated as confidential or proprietary, or that the Receiving Party should reasonably understand to be confidential or proprietary given the nature of the information and the circumstances of disclosure. Confidential Information includes (a) for Client, all Client Data transmitted to or from, or stored on, the Services; (b) for Supplier, the Services, Software, and Documentation; and (c) for both parties, any information concerning the Disclosing Party and/or its Affiliates' products, pricing, business information, marketing strategies, financial affairs, employees, customers or suppliers, information concerning marketing plans, research and development efforts, inventions, trade secrets, requirements, software (including software provided by third parties), equipment, technology, names and other identifying information relating to the Client's and its Affiliates' employees, suppliers, clients or customers (including names and other information related to clients), Personal Data, price lists, pricing policies, financial information, business methods, processes and procedures, ideas, concepts, techniques, the terms of the Agreement, the results of services performed under any Statement of Work, and any other information and data.
- 11.2 Other than Client Data or Client Personal Data, "Confidential Information" does not include any particular information of the Disclosing Party that the Receiving Party can demonstrate: (i) was in the possession of, or was rightfully known by, the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Disclosing Party; (ii) was or has become generally available to the public other than as a result of disclosure by the Receiving Party or its agents; (iii) after disclosure to the Receiving Party, was received from a third party who, to the Receiving Party's knowledge, had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further use or disclosure; or (iv) was independently developed by the Receiving Party without use of or reference to any of the Disclosing Party's Confidential information.
- 11.3 Each Party shall keep confidential and shall not make available or disclose the Confidential Information of the other Party to any person, or make or permit any use of such Confidential Information without the prior written consent of the other Party, except that such Confidential Information may be made available or disclosed to and used by those, and only those, of the staff of the receiving Party as are required for the purpose of fulfilling the receiving Party's obligations under the Agreement.
- 11.4 Each Party shall take all reasonable steps to ensure that any such Confidential Information disclosed to any person in accordance with this Section 11 is treated as confidential by the person to whom it is disclosed and shall require its subcontractors to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Information than those imposed upon under the Agreement. The Receiving Party shall protect the confidentiality and integrity of the Disclosing Party's Confidential Information using the same degree of care that it uses to protect its own similar information, but in no event less than reasonable care.

- 11.5 Nothing in this Section 11 shall prevent either Party from disclosing Confidential Information where it is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceeding or claim or otherwise by applicable law; provided, however, that a Party shall, if legally permitted, give the other Party prior reasonable notice as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or measures to protect the confidentiality of the disclosure.
- 11.6 Without prejudice to any other rights or remedies that a Party may have, both Parties acknowledge and agree that the other Party may not have an adequate remedy at law for any breach of the provisions of this Section 11, and that therefore the other Party shall be entitled to equitable relief including injunctive relief.

## **12. INDEMNIFICATION**

- 12.1 Subject to Sections 12.2 and 12.5 below, Supplier will indemnify and defend the Client and its affiliates and its and their agents, directors, officers, representatives, attorneys, and employees from any damages, attorney fees and costs finally awarded against the Client arising out of any claim, demand, suit or proceeding (“**Claim**”) made or brought against the Client by a third party alleging that the Services infringe or misappropriate such third party’s Intellectual Property Rights. If Supplier receives information about an infringement or misappropriation claim related to the Services, Supplier may, in its sole discretion and at no cost to the Client:
- (a) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Supplier’s warranties; and
  - (b) obtain a license for the Client’s continued use of the Services in accordance with the Agreement.
- 12.2 The indemnification obligations contained within Section 12.1 above do not apply if:
- (a) the allegation does not state that the Services are the basis of the Claim; or
  - (b) a Claim arises from the use or combination of the Services or any part thereof with software, hardware, data or processes not provided by Supplier, if the Services or use thereof would not infringe without such combination.
- 12.3 Subject to Section 12.5 below, the Client will defend Supplier and its Affiliates against any Claim, made or brought against Supplier by a third Party alleging that:
- (a) any of the Client Data, or the Client’s use of the Client Data with the Services, infringes or misappropriates such third party’s Intellectual Property Rights; or
  - (b) arising from the Client’s use of the Services in an unlawful manner or in violation of the Agreement, the Documentation or Order Form; and
- Client will indemnify Supplier on demand from any damages, attorney fees and costs finally awarded against Supplier as a result of, or for any amounts paid by Supplier under a settlement approved by Supplier in writing of, a Claim Against Supplier, provided that Supplier complies with the claim conduct procedure set out under Section 12.5 below.
- 12.4 Subject to Section 12.5 below, Supplier will indemnify and defend the Client and its affiliates from any damages, attorney fees and costs finally awarded against the Client arising out of any Claim made or brought against the Client by a third party alleging a breach of the Security Provisions and will indemnify the Client from any damages, attorney fees and costs finally awarded against the Client as a result of the same. Supplier’s total and aggregate liability to the Client under this Section 12.4 shall be limited to the value of £1,000,000 (one million pounds sterling).
- 12.5 The indemnifications obligations contained in this Section 12 will only apply where, and shall be conditional upon, the indemnified Party: (a) promptly giving the indemnifying Party written notice of the claim (or Claim Against Supplier, as applicable); (b) giving the indemnifying Party sole control of the defense and settlement

of the claim (or Claim Against Supplier, as applicable) (except that the indemnifying Party may not settle any Claim (or Claim against Supplier, as applicable) unless it unconditionally releases the indemnified Party of all liability); and (c) giving the indemnifying Party all reasonable assistance, at the indemnified Party's expense.

- 12.6 This Section 12 is the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any Claim.

### **13. LIMITATION OF LIABILITY**

- 13.1 Except as expressly and specifically provided in the Agreement the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. Supplier shall have no liability for any damage caused by Client's use of the Services, errors or omissions in any information, instructions or scripts provided to Supplier by the Client in connection with the Services, or any actions taken by Supplier at the Client's direction.

- 13.2 The limitations in Section 13.3 shall not apply in respect of any liability arising out of: (a) the Parties' indemnity obligations in Sections 12.1 and 12.3, (b) a breach of obligations under the Security Provisions which are subject to the cap in Section 12.4 (c), death or personal injury resulting from any negligence of Supplier, its employees or agents; and (d) for fraud or fraudulent misrepresentation on the part of Supplier; and (e) gross negligence or willful misconduct of the Party to be charged or any person for whom it is responsible.

- 13.3 SUBJECT TO CLAUSE 13.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY PARTY CLAIMING THROUGH OR UNDER THE OTHER PARTY FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, CONTRACTS AND ANTICIPATED SAVINGS, OR SOFTWARE, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSSES, COSTS, CHARGES, EXPENSES OR DAMAGES, HOWEVER ARISING, RESULTING FROM THE AGREEMENT OR THE PERFORMANCE OR USE OF THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO CLAUSES 12.4 AND 13.2 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY TO THE OTHER SHALL BE LIMITED TO THE FEES PAID BY THE CLIENT TO SUPPLIER UNDER THE AGREEMENT DURING THE TWELVE MONTH PERIOD PRECEDING THE CAUSE OF ACTION AT ISSUE (OR, IF THE RELEVANT LIABILITY ARISES WITHIN THE PERIOD OF 12 MONTHS AFTER THE DATE OF THE AGREEMENT, AN AMOUNT EQUAL TO THE FEES LIKELY TO BE PAYABLE BY THE CLIENT TO SUPPLIER IN THE FIRST 12 MONTHS OF THE DATE OF THE AGREEMENT).

### **14. INSURANCE**

- 14.1 During the term of this Agreement, Supplier shall maintain insurance coverage, with one or more insurance companies that have a rating of A minus or better and a financial size category of VIII or larger, (both as determined by A. M. Best & Company). Supplier shall, upon request by Client, furnish adequate proof of the foregoing insurance.

### **15. Miscellaneous**

- 15.1 Subcontractors. The Client acknowledges that Supplier subcontracts (and intends to continue to subcontract) the provision of the Hosting Services to the Subcontractor. In the event that Supplier decides to engage a different Subcontractor it will give the Client a minimum of three (3) months' notice before doing so.
- 15.2 Third party rights. The parties to the Agreement do not intend for any of its term to be enforceable by any person who is not a Party to the Agreement, whether or not such right is imposed by an Applicable Law relating to third party rights.

- 15.3 Entire Agreement. The Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings, communications or statements of any nature made by the parties, whether oral or written, with respect to such subject matter. The rights, powers and remedies provided in the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights, powers and remedies provided by law or otherwise.
- 15.4 No Reliance. Each Party acknowledges that it has not relied on any statements, warranties or representations given or made by any other Party under or in relation to the Agreement, save those expressly set out in the Agreement. Each Party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under the Agreement. Each Party acknowledges and agrees that nothing in this Clause 14 is intended to limit or exclude any Party's liability for fraudulent misrepresentation.
- 15.5 Modification. No variation of the Agreement shall be effective unless made in writing and signed by the parties hereto or their duly authorised representatives.
- 15.6 Forbearance. No relaxation, forbearance or indulgence by either Party in enforcing any of the terms or conditions of the Agreement against the other or the granting of time by either Party to the other shall be deemed to be a waiver or shall prejudice, affect or restrict the rights and powers of that Party against the other, nor shall any waiver by either Party of any breach by the other operate as a waiver of or in relation to any other, subsequent or continuing breach of the Agreement.
- 15.7 Severability. If any provision of the Agreement is found by any court, regulatory or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, such provision shall be severed and the legality, validity and enforceability of the remainder of the Agreement (including the remainder of the provision which contains the relevant provision) shall not be affected. If, as a consequence of the foregoing, the accomplishment of the purpose of the Agreement is prevented, the parties shall immediately commence good faith negotiations to agree upon any lawful and reasonable changes to the Agreement that may be necessary to effect, as close as possible, the commercial intent of the Agreement.
- 15.8 Assignment. Except as otherwise expressly provided herein, neither Party may transfer, assign, mortgage, encumber the Agreement or any of its rights or interests hereunder, nor declare a trust of such interests or delegate or sub-contract any obligation to be performed hereunder, without the prior written consent of the other Party. Any attempted assignment, delegation or sub-contracting in contravention of this provision shall be null and void, and of no force or effect.
- 15.9 Costs and Expenses. Each Party shall bear its own costs and expenses in connection with the negotiation, preparation and signature of the Agreement.
- 15.10 Counterparts & Execution. The Agreement may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.
- 16. Governing Law.**
- 16.1 The Governing Law and Jurisdiction is dependent on where the Client is located.
- 16.2 If the Client is located outside of North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the laws of England and Wales and each Party irrevocably agrees to submit to the sole and exclusive jurisdiction of England and Wales.
- 16.3 If the Client is located within North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and

construed in accordance with, the domestic laws of the State of New York and each Party irrevocably agrees to submit any disputes and claims (including non-contractual) to the sole and exclusive jurisdiction of New York. EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.