

# Better Compliance Terms and Conditions

## 1 Definitions

1.1 We have tried to make our Conditions as clear and simple as possible to understand, here are the definitions of the terms we use:

**Additional Term:** has the same meaning given to that term in Condition 7.1.

**Adopted** means demonstrable evidence that the services are being used as intended and as recommended by us during implementation and in the user guides, videos and documentation. Evidence that all audit actions are closed in the allocated time and Helpline advice given is followed with actions closed in a timely manner.

**Authorised Locations** means the sites/locations as set out in the Service Agreement (where relevant) from which we allow Users to access and use the Software Services and the Documentation in accordance with the Contract.

**Back-Up Policy** means our back-up policy (as amended from time to time), available by request to us.

**Business Days** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions** means these services terms and conditions (as amended by us from time to time pursuant to Condition 2.7).

**Contract** means the contract between us and you for the supply and purchase of Services in accordance with these Conditions.

**Confidential Information** means information of a confidential nature disclosed by us to you (or vice versa), whether or not marked as 'confidential', including all information relating to the discloser's business affairs, technical and commercial know-how, specifications, inventions, processes, products and services. Confidential Information does not include information that:

- a. was public knowledge or already known to the recipient at the time of disclosure;
- b. subsequently becomes public knowledge without a breach of the Contract;
- c. subsequently comes lawfully into the possession of the recipient from a third party; or
- d. is otherwise agreed by you and us in writing not to be confidential.

**Data Protection Legislation** means any applicable European Union or English laws relating to privacy or the use or processing of data relating to natural persons, including:

- a. EU Directive 95/46/EC and any legislation implementing or made pursuant to such directive; and
- b. EU Regulation 2016/679 ("GDPR"); and
- c. any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; in each case, to the extent in force, and as such are updated, amended or replaced from time to time.

**Default** has the meaning given to that term in Condition 4.1.9.

**Deliverables** means the deliverables to be provided by us as part of the provision of the Services as set out in the Service Agreement.

**Documentation** means the documentation (if any) relating to the Software Services, as set out in the Service Agreement.

**Due Date** has the meaning given to that term in Condition 8.4.

**Force Majeure Event** means an event beyond our reasonable control including strikes, lock-outs or other industrial disputes, failure of a utility service, telecommunication or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of our suppliers or subcontractors.

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright (including the content of any diary solution and policy documentation provided by us as part of the Services) and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software (including the Better Compliance Software and online services), database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**IPR Claim** has the meaning given to that term in Condition 17.2.

**Minimum Term** means the period stated as such in the Service Agreement.

**Order** means your order for the supply of Services (whether via an order form, purchase order or acceptance of a quotation provided by us or otherwise).

**Our IPR** has the meaning given to that term in Condition 9.1.

**Our Materials** means all of our materials, equipment, documents and other property.

**Our Personnel** means our employees, agents, consultants and subcontractors engaged by us to perform any part of the Services for you.

**Premises** means any of your sites and properties from which the Services are to be performed.

**Privacy Policy** means our privacy policy available at [www.bettercompliance.co.uk](http://www.bettercompliance.co.uk) (as amended from time to time) which describes the way in which we collect, use, maintain and disclose the Personal Data of our customers of the Services. Unless otherwise agreed this Privacy Policy will apply to all prospects and clients.

**Recipient** has the meaning given to that term in Condition 10.1.

**Relevant Personal Data** has the meaning given to that term in Condition 12.3.

**Better Compliance Software** means the online software applications and programs owned by or licensed to us which provide the underlying function and features of the Software Services.

**RPI** means the Retail Prices Index as published by the Office of National Statistics (or such other replacement index or body).

**Services** means the services, including the Deliverables, agreed to be supplied by us to you as set out in the Service Agreement.

**Service Agreement** means the document supplied by us that contains a description of the Services being offered to you by us.

**Software** means the online software applications which are part of our Better Compliance, Report Support and Training Tracker Software packages that are detailed in the Service Agreement to be provided to you as part of the Software Services (including all future modifications, updates, upgrades, releases, and new versions as may be made available to you by us).

**Software Services** means the subscription services available at [www.bettercompliance.co.uk](http://www.bettercompliance.co.uk) (or such alternative URL as we may notify to you in writing from time to time).

**Start Date** has the meaning given to that term in Condition 2.2.

**Term** means the duration of the Contract (to include the Minimum Term and each Additional Term until the Contract is terminated in accordance with these Conditions).

**Users** means each individual you authorise or permit to access the Software Services.

**Virus** means any thing or device (including any software, code, file or programme) which may

- i. 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;
- ii. 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
- iii. adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**VAT** has the meaning given to that term in Condition 8.3.

**Website** means our website at [www.bettercompliance.co.uk](http://www.bettercompliance.co.uk) (or such other URL as we notify you from time to time).

**we/us/our** means Better Compliance Limited, a private limited company whose registered number is 06862485 and whose registered office is at 18 Stoneleigh Broadway, Epsom, Surrey England KT17 2HU.

**you/your** means the entity purchasing the Services and described further in the Service Agreement.

**Your Data** means any data or information (i) provided by you to us in connection with the Services and (ii) uploaded by you or the Users of the Software Services.

1.2 In these Conditions, unless otherwise stated:

- a. words in the singular will include the plural (and vice versa);

- b. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and will include all subordinate legislation made from time to time under that statute or statutory provision;
- c. a reference to “written” or “in writing” includes emails, but excludes faxes and all content sent by any text message, instant messaging or similar platform;
- d. any words that follow the terms “including” or “include” will be interpreted as examples only and will not limit the sense of the words before those terms.

## **2 The contract**

- 2.1 Any Order constitutes an offer by you to purchase Services in accordance with these Conditions.
- 2.2 An Order will only be deemed to have been accepted by us and a Contract for the Services agreed when one of the following has occurred:
  - 2.2.1 we have received a copy of the Service Agreement signed for or on behalf of you;
  - 2.2.2 we have received written confirmation of your agreement to these Conditions and the Service Agreement; or
  - 2.2.3 we have started to perform the Services,
  - 2.2.4 and the first date on which one of the above events occurs shall be the "Start Date" (unless we agree in writing with you an alternative date for the Start Date).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that you may wish to impose or incorporate, or which are implied by trade, custom or practice.
- 2.4 The Contract constitutes the entire agreement between us and you. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in these Conditions or the Service Agreement.
- 2.5 Any samples, drawings, descriptive matter or advertising we issue (including any descriptions of the Services contained on any website) are issued or published for the sole purpose of giving an approximate idea of the Services. They do not form part of the Contract and are not binding on us.
- 2.6 Any proposal or quotation we issue to you is only valid for a period of 30 days from date of issue.
- 2.7 At our discretion we can update the Conditions from time to time with effect from the date we publish a revised version on the Website.

## **3 We will:**

- 3.1.1 deliver the Services to you materially in accordance with the Contract and using reasonable skill and care;
- 3.1.2 use reasonable efforts to meet any performance dates for the Services agreed in writing with you, it being agreed that any dates given are estimates only and not binding;
- 3.1.3 ensure that we have in place all necessary licenses, consents, and permissions necessary for the performance of our obligations under the Contract.
- 3.2 If the Services do not conform to the commitments at Condition 3.1, we will, at our own expense, use all reasonable commercial efforts to correct the non-conformance promptly or provide you with an alternative means of accomplishing the desired performance. This correction or substitution is your sole and exclusive remedy for any breach of the commitment given in Condition 3.1.

## **4 Your Obligations**

- 4.1 You will:
  - 4.1.1 ensure that all information provided by you to us relating to you and/or the Services is accurate, up to date and complete;
  - 4.1.2 provide all reasonably required access to the Premises and its facilities for Our Personnel to perform the Services during the normal business hours of the Premises or as otherwise agreed with you;

- 4.1.3 provide such assistance (including access to documentation and information) at the Premises that we may reasonably require to perform the Services;
- 4.1.4 co-operate with us in all matters relating to the Services;
- 4.1.5 in advance of the attendance of Our Personnel at the Premises, make such preparations to the Premises as are reasonably required by us;
- 4.1.6 in good time before the Services are due to start (and thereafter at all times during the Term), ensure that you have in place all necessary licenses, consents, and permissions necessary for the performance of your obligations under the Contract and our performance of the Services; and
- 4.1.7 take all reasonable steps to ensure that any reasonable advice or instruction given by us to protect the health and safety of Our Personnel or other persons using the Premises during or after the provision of the Services is followed and you will indemnify us and hold us harmless from any liability or damage suffered by us and Our Personnel as a result of your failure to comply with this Condition 4.1.7; and
- 4.1.8 keep and maintain any of Our Materials at the Premises in safe custody at your risk or loss or damage, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our written consent.
- 4.1.9 If our performance of any of our obligations in respect of the Services is prevented or delayed by your act or omission or a failure by you to comply with any of your obligations under the Contract (a "Default"), then without preventing us from any other of our rights or remedies:
  - 4.1.10 we will have the right to suspend performance of the Services until you remedy the Default;
  - 4.1.11 we will not be liable for any costs or losses incurred by you arising from our failure or delay to perform any of our obligations that have been so prevented, delayed or suspended; and
  - 4.1.12 you will reimburse us on written demand for any costs, expenses and losses we incur (including any wasted travel expenses and Our Personnel time) arising from the Default.
- 4.2 If you enter into a commercial relationship with an employee of ours by which the employee ceases to be an employee of ours and then becomes an employee of yours or carries out work as a self-employed private individual or in any other capacity for you, we will charge a fee for the introduction of that employee to you. The fee will be calculated as 25% of 1st year's gross guaranteed earnings subject to a minimum of £20,000.

## **5 Software Services**

### **5.1 Licence and Restrictions**

- 5.1.1 If you have purchased our Software Services and subject to payment of the price to us for the Software Services and the restrictions set out in Condition 8, we grant to you a non-exclusive non-transferable right, without the right to grant sub-licences, to permit Users at the Authorised Locations to use the Software Services and the Documentation from the Start Date and ending on termination of the Contract (the "Licence Term") solely for your internal business operations. To be clear, the rights provided under this Condition are granted to you only and are not granted to any of your subsidiaries, holding companies or any third party. This licence shall immediately terminate on the termination of the Contract and your access to the Software, the Software Services and the Documentation will be denied.
- 5.1.2 You may not use the Software, Software Services and/or the Documentation other than as specified in the Contract (or the Documentation) without our prior written consent.

5.1.3 Except as may be allowed by applicable law which we cannot exclude by agreeing with you otherwise and unless expressly permitted by the Contract, you will not (and shall not permit any third party) to:

- a. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- b. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.

5.1.4 You will not:

access all or any part of the Software Services and Documentation in order to build a product or service which competes with the Software Services and/or the Documentation; or

- a. use the Software Services and/or Documentation to provide services to third parties; or
- b. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Software Services and/or Documentation, or otherwise make the Software Services and/or Documentation available to any third party except the Users; or
- c. attempt to obtain, or assist third parties in obtaining, access to the Software Services and/or Documentation, the server on which the Software is stored or any server, computer or database connected to the Software, other than as permitted under the Contract; or
- d. allow the Software or Documentation to become the subject of any charge, lien or encumbrance.

5.1.5 You and the Users will not access, store, distribute or transmit any Viruses, or any material during the course of your use of the Software Services that:

- a. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; or
- b. facilitates illegal activity; or
- c. depicts sexually explicit images; or
- d. promotes unlawful violence; or
- e. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- f. in a manner that is otherwise illegal or causes damage or injury to any person or property,

and, in addition to any other rights and remedies we may have, we may disable your access to any material that breaches this Condition 5.1.5.

5.1.6 You:

- a. will keep confidential any username and/or password required for your or your Users access or use the Software Services and you agree that we are not responsible for any use, misuse or loss of any such usernames and/or passwords;
- b. are responsible for making all arrangements necessary to enable your and your Users access to the Software Services and you are responsible for ensuring that all Users who access the Software Services through your login/access code are aware of these Conditions and our Privacy Policy and that they comply with them;

- c. agree that we are responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and that you acknowledge that the Software, the Software Services and/or the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
  - d. will use all reasonable efforts to prevent any unauthorised access to, or use of, the Software, the Software Services and the Documentation.
- 5.1.7 We reserve the right, without liability and without preventing us from any other right or remedy, to:
- a. disable your access to the Software, the Software Services and/or the Documentation following the introduction by you or your Users of any material that breaches the provisions of this Condition 5.1; and
  - b. disable any of your usernames or passwords, if in our opinion you are in breach of the Contract.
- 5.1.8 The commitment given in Condition 3.2 will not apply in the event of any non-conformance which is caused by use of the Software or the Software Services contrary to the Documentation or our instructions, this includes any modification or alteration of the Software by you or on your behalf.
- 5.1.9 You will notify us as soon as you become aware of any unauthorised use of the Software, the Software Services or the Documentation by any person.
- 5.1.10 Upon no less than two (2) Business Days' notice to you, you will permit us (and our representatives) to inspect and have access during normal business hours to any premises (and to the computer equipment located there) from which the Software is being used, and have access to any records kept in connection with the licence granted for the purposes of ensuring that you are fully complying with the terms of the licence as set out in the Contract.
- 5.2 Authorised Locations
- 5.2.1 You agree that:
- a. the Software, the Software Services and Documentation will only be used for the Authorised Locations; and
  - b. you will not allow or purport to allow any site or premises that is not an Authorised Location to use or benefit from the Software Services without our written consent.
- 5.2.2 You may purchase licences for additional sites or premises from us from time to time during the Term. If we agree to add additional licences to an existing Contract between us and you for Software Services then the cost for such will be pro-rated for the remainder of any unexpired Minimum Term, or as relevant, the then Additional Term.
- 5.3 Modifications
- 5.3.1 We have the right to make changes to the Software Services at our discretion including the right to:
- a. issue new releases, improvements, modifications, updates, patches, bug fixes, and similar items at any time; and
  - b. add or remove features to the Software Services.



## **6 Expiration of Services**

6.1 It is your responsibility to ensure you fully use any of the Services that are only made available to you for a specific period of time during the Term. To be clear, purchased:

6.1.1 Personnel days for safety consultancy services;

6.1.2 Audits (announced or unannounced);

6.1.3 self-Audit licenses for use on the Better Compliance software; and

6.1.4 resources and materials for training services including eLearning licenses, will expire at the end of a period of 12 months following the "Start Date", so any unused days or resources will not be carried forward for use after the expiry of this period.

## **7 Term**

- 7.1 The Contract will begin on the Start Date and will continue in force for the Minimum Term. After the Minimum Term the Contract will automatically renew for further successive periods of the same duration as the Minimum Term (each an "Additional Term") unless and until you or we terminate the Contract in accordance with these Conditions. The price payable for the Services for each Additional Term is set in in Condition 8.
- 7.2 You or we can terminate the Contract for any reason whatsoever with effect on (but not before) the expiry date of the Minimum Term, or as relevant, an Additional Term, if you or we notify the other in writing of the termination by no later than two (2) full calendar months before the end of the Minimum Term, or as relevant, the then Additional Term.

## **8 Charges and payment**

- 8.1 The price payable by you for the Services during the Minimum Term will be set out in the Service Agreement. Unless otherwise agreed in writing, the price payable by you for the Services during each successive Additional Term will be the price payable during the Minimum Term, plus a percentage increase equal to the increase in the RPI, to be applied at the start of each Additional Term and each twelve (12) month anniversary of such date.
- 8.2 We will invoice you in accordance with the payment terms set out in the Service Agreement. We may require advance payment of the price or an instalment of the price of the Services before we commence the Services and we reserve the right to withhold performance of the Services until such payment has been made in cleared funds. Unless otherwise agreed in writing, you must pay each invoice submitted by us within seven (7) days of the date of invoice in full and in cleared funds to the bank account nominated in writing by us.
- 8.3 All amounts stated or paid by you under the Contract are exclusive of value added tax ("VAT"). Where VAT is chargeable on the supply of the Services and is invoiced by us to you, these costs are to be paid at the same time as payment is due for the supply of the Services.
- 8.4 Without preventing us from relying on any other right or remedy, if you fail to make any payment due to us under the Contract by the due date for payment ("Due Date"), we will have the right to charge you interest on the overdue amount at the rate of 4% per year accruing on a daily basis from the Due Date until the date of actual payment.
- 8.5 You must pay all amounts due under the Contract in full without any deduction or withholding except as required by law. You may not assert any credit, set-off or counterclaim against us in order to justify withholding payment of any amount in whole or in part. We may, without preventing us from relying on any other rights or remedies, reduce any amount payable by us to you by the amount owed to us by you.

## **9 Intellectual Property Rights**

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables (including Intellectual Property Rights relating to the Software and all modifications and updates thereto and any and all developments and improvements made to the Services), with the exception of Intellectual Property Rights in Your Data, will be owned absolutely by us ("Our IPR").
- 9.2 Save as set out in the Contract, Our IPR is our exclusive property and nothing in the Contract will be deemed to assign, transfer or license any Intellectual Property Rights in Our IPR to you.

- 9.3 Subject to any restrictions stated in the Contract, we grant to you a non-exclusive licence during the Term to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in the ordinary course of your business. You will not sub-license, assign or otherwise transfer the rights granted in this Condition 9.3.
- 9.4 To be clear, if as part of the Services you purchase a diary or policy from us the right to use such Deliverables terminates immediately upon the termination of the Contract. Any use by you of a copy or recreation (in any medium or format and whether in whole or in part) of the Deliverables after the termination of the Contract will be deemed a breach of this Condition 12.2 and you will be liable to pay to us upon demand an annual licence fee equal to our then standard prices for those products and services used for each year or part year you copy, recreate and/or use in any way the Deliverables in breach of the Contract.
- 9.5 This Condition 12 will survive termination of the Contract.

## **10 Confidentiality**

- 10.1 You and we (each a "Recipient") will keep in strict confidence all Confidential Information and will not use any Confidential Information for any purpose other than to perform obligations under the Contract.
- 10.2 A Recipient of Confidential Information may disclose it to its employees, officers, representatives, subcontractors or professional advisers who need to know such information for the purposes of carrying out the Recipient's obligations under the Contract but not otherwise and at all times subject to the obligations of confidentiality outlined in this Condition 10. A Recipient will be liable for any breach of this Condition 13 by such persons.
- 10.3 This Condition 10 will survive termination of the Contract.

## **11 Your Data**

- 11.1 You will own all of Your Data and you have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.
- 11.2 We will follow our archiving procedures for Your Data as set out in the Back-Up Policy. In the event of any loss or damage to Your Data, your sole and exclusive remedy will be for us to use reasonable commercial efforts to restore Your Data that is lost or damaged from the latest back-up of Your Data maintained by us in accordance with the archiving procedure described in the Back-Up Policy. We will not be responsible for any loss, destruction, alteration or disclosure of Your Data caused by any third party (except those third parties sub-contracted by us to perform services related to Your Data maintenance and back-up).
- 11.3 We will, in providing the Services, comply with the Privacy Policy relating to Your Data.

## **12 Data Protection**

- 12.1 When used in these Conditions, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Process" will have the same meaning given to them in the Data Protection Legislation.
- 12.2 You and we will comply with our respective obligations under the Data Protection Legislation.
- 12.3 If and to the extent we are required to Process any Personal Data on your behalf when performing any of our obligations or the Services under the Contract, you and we agree that you will remain the Data Controller and we will be the Data Processor of such Personal Data ("Relevant Personal Data").
- 12.4 The
- i. subject matter, duration, nature and purpose of the Processing of Relevant Personal Data,

- ii. the type of Relevant Personal Data and
- iii. the categories of Data Subjects of the Relevant Personal Data is likely to depend on the Services to be performed by us.

It is acknowledged that we may Process the following Relevant Personal Data:

- 12.4.1 for Safety Advice Line Services: names, dates, the specifics of any incident raised by you using the Services (including health and medical reports relating to any incident);
- 12.4.2 for Better Compliance Registry Services: data within certificates stored as part of the Software Services which may include names, contact details and other specifics to manage key certification and assets;
- 12.4.3 for Audit, Fire Risk Assessment and Risk Assessment Services: names of individuals involved in the performance of the relevant Services;
- 12.4.4 Training Services: training records of individuals including names and certification details;
- 12.4.5 for all Services: names, contact details, job titles and other Personal Data as reasonably required to perform the Services and relating to individuals that are your clients, customers or guests or are employed or engaged by you, your service providers, suppliers or contractors.
- 12.5 Without limiting the application of Condition 12.2, you will ensure that you have all necessary appropriate consents and notices in place to enable the lawful transfer of the Relevant Personal Data to us for the duration and purposes of the Contract.
- 12.6 We will Process the Relevant Personal Data only to the extent, and in such a manner, as is necessary in order to meet our obligations under the Contract and in accordance with your written instructions from time to time, unless the Processing is required by applicable law (in which case we will notify you before such Processing unless applicable law prevents us from doing so). You acknowledge that necessary Processing of the Relevant Personal Data carried out in the normal course of the Services is done so on your documented instructions.
- 12.7 We will implement and maintain appropriate technical and organisational measures, to ensure a level of security appropriate to the risk in respect of the Relevant Personal Data, against accidental, unauthorised or unlawful loss, destruction, alteration, disclosure of or access to Relevant Personal Data having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Relevant Personal Data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to Relevant Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us).
- 12.8 We will ensure that all of Our Personnel who have access to and/or Process Relevant Personal Data are obliged to keep the Relevant Personal Data confidential.
- 12.9 Without prejudice to the Processing by us under Condition 12.14 or otherwise in a manner not incompatible with the Contract, we will only Process the Relevant Personal Data as reasonably required in the provision of the Services and not for any other purpose.
- 12.10 Where appropriate taking into account the nature of the Processing, at your cost and expense we will assist you in respect of
  - a. any requirement for you to notify any supervisory authority or Data Subject of a personal data breach in respect of the Relevant Personal Data; and

- b. any data privacy impact assessment which you may from time to time be required to undertake in accordance with applicable law with regard to the Relevant Personal Data and/or the Services; and
- c. your obligation under the Data Protection Legislation to respond to requests of any Data Subject in relation to the Relevant Personal Data in so far as possible by using appropriate technical and organisational measures.

- 12.11 We may transfer and/or Process the Relevant Personal Data outside of the United Kingdom or in areas outside of the European Union and you consent to such transfer and Processing provided that such transfer and Processing is undertaken in a manner compliant with Chapter V of the GDPR. You and we agree that unless the relevant transfer is to a third party based in a country confirmed as having adequate data protection safeguards by the European Commission, or unless the relevant transfer is to a US-based third party which is validly certified under the Privacy Shield (or such other European Commission approved mechanism) from time to time, the standard contractual clauses for data export as stipulated from time to time by the European Commission, insofar as and for so long as such contractual clauses remain legally valid and enforceable will be adopted.
- 12.12 Following the termination of any Services which involve the Processing of Relevant Personal Data and subject to Conditions 13.14, you may by written notice to us require us and each sub-processor of the Relevant Personal Data engaged by us to delete or return all copies of the Relevant Personal Data and we will comply with such request. We may charge a reasonable administration fee to you for dealing with any request you make to us for the return or deletion of the Relevant Personal Data. This Condition 12.12 shall not apply to Relevant Personal Data that we or the sub-processor are required to continue to store it under applicable laws or for any other lawful or legitimate reason and we will be the data controller of such Personal Data and delete it in accordance with our retention policies.
- 12.13 We will only engage a third party to process Relevant Personal Data with your prior specific or general written consent and provided also that there is a written contract in place between us and such sub-processor under which the sub-processor is required to comply with the same or equivalent terms as we are required to comply with under Conditions 12.6 to 12.12. For the purpose of the Contract, you grant to us a general written consent for us to appoint those sub-processors listed on the Website and we will update the Website and notify you in writing with any intended additions or replacements and give you no less than ten (10) Business Days to object to the changes. You acknowledge that an objection may mean we can no longer provide the Services (or part of them) to you and in this event we can terminate the Contract on seven (7) days' written notice to you.
- 12.14 We may anonymise Relevant Personal Data following termination of the Contract. To do so such data will be aggregated within certain non-identifying criteria, and all references to individual Data Subjects will be deleted, and such data will no longer constitute Relevant Personal Data, and in such circumstances we will retain such data in aggregated form for statistical, research and/or benchmarking purposes only.

### **13 Marketing Permissions**

- 13.1 We want you to know how much you mean to us as a customer and from time to time we will send you exclusive offers, share information and provide the latest updates from us by email, social media, SMS, phone and other electronic means. We will always treat your details with the utmost care in line with clause 14 and we would like to be able to communicate and share information online. Except where otherwise agreed in writing:
- 13.2 you consent to us using your logo and referring to your brand on our website, tagging you online or on social media platforms (including but not limited to; LinkedIn, Twitter, Facebook and Instagram);
- 13.3 you consent to us sharing testimonials and case studies provided by you on our website and on social media.

## **14 Termination and Suspension**

- 14.1 We have the right, without preventing us from relying on any other right or remedy, to terminate the Contract or suspend the performance of the Services (in whole or part) immediately upon written notice at any time if:
- 14.1.1 you fail to observe or perform any of the terms of the Contract; or
  - 14.1.2 you (being a company) take any step or action in connection with your entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing (or threaten to cease) to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - 14.1.3 you (being an individual) are the subject of a bankruptcy petition, application or order, or die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation; or
  - 14.1.4 any credit references relating to you obtained by us are unsatisfactory to us.
- 14.2 If:
- 14.2.1 you attempt to terminate the Contract before the expiry of the Minimum Term or as relevant, the then Additional Term, without giving us the required period of notice as set out in Condition 17.2; or
  - 14.2.2 we terminate the Contract under Condition 14.1,
- 14.3 you will pay to us immediately upon receipt of an invoice a sum equal to the total price of the Services for the unexpired period of the Minimum Term, or as relevant, the then Additional Term, during which you were committed to us to purchase the Services. Termination of the Contract, for any reason, will not affect our or your accrued rights, remedies, obligations or liabilities existing at termination.

## **15 Consequences of Terminations**

- 15.1 On termination of the Contract for any reason:
- 15.2 we may submit an invoice to you for all Services performed and not yet invoiced;
  - 15.3 you will immediately pay to us all of our unpaid invoices together with interest (where it applies);
  - 15.3.1 you will immediately return to us all of Our Materials and any Deliverables which have not been fully paid for and if you fail to do so within seven (7) days of termination of the Contract, we may enter any of your premises where we reasonably believe the relevant Our Materials and Deliverables to be held and take possession of them; and
  - 15.3.2 conditions which are stated to survive termination or by implication have effect after termination, will continue in full force and effect.

## **16 Limitation of Liability**

- 16.1 Except where the Contract expressly and specifically states otherwise:
- 16.1.1 you take sole responsibility for results obtained from your use of the Services and/or the Documentation and for conclusions drawn from such use;
  - 16.1.2 we will have no liability to you for any damage caused by errors or omissions in any of Your Data or any action we take at your direction or instruction;

- 16.1.3 we will not be liable for any loss or damage caused by any Virus accessed, stored, distributed or transmitted due to your use of the Services;
- 16.1.4 the Services and the Documentation are provided to you on an 'as is' basis, we do not warrant that your use of the Services and/or the Documentation will be uninterrupted or error-free or that the Services, the Documentation and/or the information obtained by you through the same will meet your requirements; and
- 16.1.5 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.
- 16.2 Nothing in the Contract limits any liability which cannot legally be limited, including our liability for
- i. for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors,
  - ii. fraud or fraudulent misrepresentation,
  - iii. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 16.3 Subject to Conditions 17.1 and 17.2, we will under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution, or otherwise, for any
- i. loss of profit,
  - ii. loss of business,
  - iii. loss of sales or business,
  - iv. loss of anticipated savings,
  - v. depletion of goodwill,
  - vi. loss of use or corruption of software, data or information,
  - vii. pure economic loss, or
  - viii. any special, indirect or consequential loss, costs, damages, charges, liabilities or expenses,
- in each case however arising under or in connection with the Contract.



- 16.4 Subject to Conditions 17.1 and 17.2, our total liability to you in respect of all losses, costs, damages, charges, liabilities or expenses arising under or in connection with the Contract whether in contract (including indemnities), tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, during each contract year (being each twelve (12) month period commencing on the Start Date and each anniversary of it) will in no circumstances exceed the greater of:
- 16.4.1 the price paid or payable under the Contract during that contract year; and
- 16.5 the sum of £5,000 (five thousand pounds).
- 16.6 This Condition 16 will survive termination of the Contract

## **17 Indemnities**

- 17.1 You will defend and indemnify us, our officers, directors and employees on demand against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the use of the Services and/or the Documentation by you and/or by any person under your direction or control (whether or not an employee and whether or not acting in the course of their employment or engagement), provided that:
- 17.1.1 you are given prompt notice of any matter for which we wish to be indemnified;
- 17.1.2 we provide reasonable co-operation to you in the defence and settlement of any relevant claim, at your expense; and
- 17.1.3 you are given sole authority to defend or settle the relevant claim, provided that no settlement may be made by you which prejudices our rights or places us under any additional obligations without our prior written consent (which we cannot unreasonably withhold or delay).
- 17.2 We will defend you, your officers, directors and employees on demand against any claim that the Services and/or the Documentation infringes any United Kingdom patent effective as at the Start Date, copyright, trade mark, database right or right of confidentiality ("IPR Claim"), and will indemnify you for any amounts awarded against you in judgment or settlement of an IPR Claim, provided that:
- 17.2.1 we are given prompt notice of the IPR Claim;
- 17.3 you provide reasonable co-operation to us in the defence and settlement of the IPR Claim, at our expense; and
- 17.3.1 we are given sole authority to defend or settle the IPR Claim, provided that no settlement may be made by us which prejudices your rights or places you under any additional obligations without your prior written consent (which you cannot unreasonably withhold or delay).
- 17.4 In the defence or settlement of an IPR Claim, we may obtain the right for you to continue using the Services and/or Documentation, replace or modify the Services and/or Documentation so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Contract on two (2) Business Days' written notice to you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 17.5 In no event will we, our employees, agents and sub-contractors be liable to you to the extent that an alleged infringement (whether or not the subject of an IPR Claim) is based on:
- 17.5.1 a modification of the Services or Documentation by anyone other than us; or
- 17.5.2 your use of the Services or Documentation in a manner contrary to the instructions given to you by us; or

- 17.5.3 your use of the Services or Documentation after notice of the alleged or actual infringement from us or any appropriate authority.
- 17.6 This Condition 17 states your sole and exclusive rights and remedies, and our (including our employees', agents' and sub-contractors') entire obligations and liability, in relation to any infringement or alleged infringement of any patent, copyright, trade mark, database right or right of confidentiality resulting from the Services or the Documentation.

## **18 Variations**

No variation of the Contract will be binding unless it is confirmed in writing by one of our Directors.

## **19 Severance**

- 19.1 If a court or any other competent authority finds that any part of the Contract is invalid, illegal or unenforceable, that part will be deemed deleted but the validity and enforceability of the remainder of the Contract will not be affected.
- 19.2 If any invalid, unenforceable or illegal part of the Contract would be valid, enforceable and legal if some part of it were deleted or modified, the part will apply with the minimum modification necessary to make it legal, valid and enforceable.

## **20 Assignment**

- 20.1 You may not assign, transfer, charge or otherwise deal in any manner with all or any of your rights and/or obligations under the Contract without our prior written consent.
- 20.2 We may at any time assign, transfer, charge or otherwise deal in any manner with all or any of our rights under the Contract and we may subcontract or delegate any or all of our obligations to any third.

## **21 Force Majeure**

- 21.1 We will not be liable to you as a result of any delay or failure in our performance of any of our obligations under the Contract caused by a Force Majeure Event.
- 21.2 If the Force Majeure Event prevents us from providing any of the Services for more than six (6) weeks, we will have the right to terminate the Contract immediately by giving written notice to you.

## **22 Notices**

- 22.1 Any notice to be given to you under the Contract will be in writing and will be sent by hand or by first class mail to your address appearing in the Service Agreement (or any address notified in writing by you for the purpose of this Condition).
- 22.2 Any notice to be given to us under the Contract will be in writing and will be sent by hand or by first class mail to 18 Stoneleigh Broadway, Epsom, Surrey England KT17 2HU (or any address notified in writing by us for the purpose of this Condition).
- 22.3 Any notice will be deemed to have been given at the time of actual delivery if delivered by hand and on the second Business Day from dispatch if delivered by first class mail.

## **23 Third Party Rights**

- 23.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **24 Governing Law and Jurisdiction**

- 24.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. You and we irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

