

TERMS AND CONDITIONS

SERVICE SUBSCRIPTION AGREEMENT

This Agreement (as defined below) governs the acquisition and use of the Service (as defined below) and the Sites (as defined below) by the Customer (as defined below).

If you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement and you may not use the Service.

You may not access the Service if you are our direct competitor, except with our prior written consent. In addition, you may not access the Service for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was updated on the 11th August 2016. This Agreement is effective between you and us as of the date you first accept it and shall continue for the Term.

1. Acceptance

- 1.1: By accepting this Agreement, by executing a Form that references this Agreement, the Customer warrants, represents and acknowledges that the Customer has read and understood this Agreement and the Customer agrees to be bound by this Agreement and acknowledges that this Agreement governs the Customer's use of the Service and supersede any other agreements between the Customer and BCD and further represents and acknowledges that the information that the Customer provided in registering for this Service is accurate and complete and that the information provided is the Customer's or within the Customer's right to use.
- 1.2: If you enter into this Agreement in your personal capacity, you are the Customer (as defined below).
- 1.3: If you are entering into this Agreement on behalf of a third party or other legal entity that is to be the Customer, you represent and warrant that you have the authority to bind such entity and its Affiliates (as defined below) (where applicable) to this Agreement and you agree on behalf of that entity and its Affiliates that it will be the Customer and that authority to enter into this Agreement was given by the Customer with the Customer's full knowledge of the provisions contained in this Agreement. If you do not have such authority or if the Customer does not have such knowledge of this Agreement or if you or the Customer do not agree to the terms and conditions of this Agreement, you must not accept this Agreement and you may not use the Service or access the Sites.
- 1.4: Should the Customer be granted access to or use of the Service prior to acceptance of this Agreement, the terms and conditions of this Agreement shall be deemed to have been entered into and accepted by the Customer on the date that access to or use of the Service commences.
- 1.5: BCD provides the Service through the Sites and the provision of that Service is entirely subject to this Agreement.
- 1.6: Obligations, rules and restrictions affecting the Customer in this Agreement shall also bind any agents, licensees, servants, contractors, sub-contractors and

employees of the Customer and any Affiliates and any agents, licensees, servants, contractors, sub-contractors and employees of any Affiliates. Any breach of such obligations, rules and restrictions by such parties shall be deemed to be a breach of same by the Customer.

- 1.7: By accepting this Agreement, the Customer is also accepting and agreeing to any Forms generated by BCD, including any Forms which vary or alter this Agreement.

2. Definitions

- 2.1: In this Agreement the following words and expressions (that are capitalised for the same purpose) whether appearing under this clause or before it shall have the following meanings, that is to say:

“Admin User” means the number of persons noted on the Forms who will be responsible for the Customer Account and who will have authorised access to the Database as a read and write user;

“Agreement” means the terms and conditions as outlined herein which apply to the use of the Service and the Sites by the Customer and includes the Forms;

“Affiliates” means any person, partnership, joint venture, company, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by or under common control of the Customer and **“Affiliate”** shall be construed accordingly;

“Authorised Employees” means BCD’s employees who have a need to know or otherwise access Personal Information to perform its obligations under this Agreement;

“Authorised Persons” means (i) Authorised Employees; and (ii) BCD’s agents who have a need to know or otherwise access Personal Information to perform BCD’s obligations under this Agreement, and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Agreement;

“BCD” “we” “us” “our” means BCD Safety & Business Support Limited (trading as Effective Software), a company registered in Ireland with company number 447607;

“Confidential Information” means all information disclosed by a Party (the **“Disclosing Party”**) to the other Party (the **“Receiving Party”**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

“Customer”, “you”, “your” means the person, company, organisation or other legal entity and its Affiliates (if applicable) entering into this Agreement and agreeing to be bound by it in their use of the Service;

“Customer Account” means the account created for the Customer’s use of the Service and governed by this Agreement;

“Database” means the database created by the Customer using the Service;

“DPA” means the Data Protection Acts 1988 and 2003;

“Fees” may include the Subscription Fee, the On Boarding Fee and the Training Fee as determined by the BCD products and the support features which the Customer chooses in the BCD order form.

“Form(s)” means any BCD generated ordering document including any addenda and supplements thereto that is entered into between you and us or any of our Affiliates with respect to the Customer’s subscription to the Service including, without limitation, the BCD order form and any agreements or confirmations as to the Term, the Fees or any other matter;

“Highly Sensitive Personal Information” means any individual’s private data including but not limited to: (i) government-issued identification number (including social security number, driver’s license number or state-issued identified number); (ii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number or passwords, that would permit access to an individual’s financial account; or (iii) biometric or health data;

“Intellectual Property” means any and all of the following items, whether or not registered, applications for the following items (whether or not registrable), and the right to apply for the items (where registrable): (a) Copyright; (b) database rights; (c) trademarks, Community trademarks; (d) design rights, registered designs, community designs; (e) registered and unregistered designs; (f) rights in respect of confidential information;

“Losses” means all losses, including without limitation financial losses, indirect loss including loss of profit, damages, legal costs and other expenses of any nature whatsoever;

“Normal Business Hours” means the hours from 8.30 am to 5.00 pm Monday through to Friday when BCD is open for business and for the avoidance of doubt excluding Saturdays, Sundays and public holidays in Ireland;

“On Boarding Fee” means the one off fee paid by the Customer for the activation, set-up and configuration of the Customer Account, as specified by BCD in the applicable Form(s), which for the avoidance of doubt will be exclusive of VAT;

“Parties” means BCD and the Customer and **“Party”** shall mean either of them;

“Personal Information” means information provided to BCD by or at the direction of the Customer, in course of BCD’s performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers), in case of both sub-clauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information. Customer’s business contact information is not by itself deemed to be Personal Information;

“Service” means the online provision, by BCD to the Customer, of the cloud based compliance management system, which is accessed through the Customer’s desktop hardware and/or a mobile application that is ordered by the Customer using a Form;

“Service Purpose” means the strict use of the Service by the Customer to manage data, business processes, documentation and action implementation in respect of compliance matters;

“Software” means BCD’s software and its components, structured database, source code, object code and design through which the Service is delivered;

“Site(s)” means BCD’s website at www.effective-software.com or any bespoke URL created by BCD for the purpose of accessing the Service;

“Subscription Fee” means the annual fee specified by BCD in the applicable Form(s) (which for the avoidance of doubt will be exclusive of VAT), which may be subject to a cost of business increase of up to 4% annually throughout the Term. The Subscription Fee will be based on a number of factors including, but not limited to, the number of Users, Admin Users, modules being subscribed for, storage required, mobile users, support package, and which may vary for any Customer with multiple locations, groups or associations and which may increase and decrease, inter alia, over time, for example, on renewal of the Term and relative to the number of Users and Admin Users of the Service;

“Term” means the term of each subscription by the Customer which shall be set out in the Form and which can be extended in any applicable Form;

“Termination Fee” means the aggregate of the total Fees (plus VAT) which would have been paid by the Customer to BCD had this Agreement continued in the normal course until the expiry of the Term, less any such fee already paid by the Customer to BCD;

“Third Party Application” means any web-based, mobile, offline or other software application functionality that is provided by you or a third party and interoperates with the Service;

“Training Fee” means the one off fee for specified training, which may be online or in person but limited to no more than 8 hours, as specified by BCD in the applicable Form(s) , which for the avoidance of doubt will be exclusive of VAT; and

“User” means any individual who is authorised by you to use the Service, for whom you have purchased a subscription and to whom you (or, when applicable, us at your request) have supplied a user identification and password (for the Service utilising authentication) and **“Users”** shall be construed accordingly. Users may include, for example, your employees, consultants, contractors and agents, and third parties with which you transact business.

3. Our Responsibilities

- 3.1: We will (i) make the Service available to you pursuant to this Agreement and the applicable Forms, (ii) provide applicable standard support for the Service to you at no additional charge, and/or upgraded support if purchased, (iii) use commercially reasonable efforts to make the online Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which we shall give advance electronic notice), and (b) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving our employees), internet service provider failure or delay, Third Party Application, or denial of service attack.
- 3.2: Beta versions of the Services (which are clearly designated as beta, limited release, for evaluation or other similar descriptions) may in our sole discretion become available to you on occasion at no charge (the **“Beta Services”**). The Beta Services will be optional and the choice to use them is at the discretion of the Customer. The Beta Services are intended for evaluation purposes only and do not constitute Services as defined herein. However, all restrictions, limitations and obligations set out in this Agreement shall apply equally to your use of the Beta Services and we will have no liability arising out of your use of or in connection with the Beta Services.

4. The Service

- 4.1: Subject to the Customer paying the Fees in accordance with clause 8 and the other terms and conditions of this Agreement, BCD hereby grants to the Customer a non-exclusive, non-transferable right to use the Service during the Term solely for the Service Purpose and the Customer's internal business operations.
- 4.2: Unless otherwise provided in the applicable Form, (a) the Service is purchased as a subscription, (b) the Customer may switch their subscription package during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, (c) any added subscriptions will terminate on the same date as the underlying subscriptions, and (d) where applicable additional Admin Users can be added for an agreed price.

5. Usage Limits

- 5.1: The Service is subject to usage limits. Unless otherwise specified, (a) a quantity in a Form refers to Users and/or Admin Users and the Service may not be accessed by more than that number of Users and/or Admin Users, (b) a User's and/or Admin Users' password may not be shared with any other individual, and (c) except as set out in a Form, a Users' and/or Admin Users' identification may only be reassigned to a new individual replacing one who will no longer use the Service.
- 5.2: If you exceed your usage limit, we will invoice you in respect of the amount exceeded.
- 5.3: You will (a) be responsible for all Users' and/or Admin Users' compliance with this Agreement and the Forms, (b) be responsible for the accuracy, quality and legality of all data submitted by or for you to the Service and the means by which you acquired this data, (c) use commercially reasonable efforts to prevent unauthorised access to or use of the Service and notify us promptly of any such unauthorised access or use, (d) use the Service only in accordance with this Agreement, the Forms and applicable laws and government regulations, and (e) comply with terms of service of any Third Party Application with which you use Service.
- 5.4: You will not (a) make the Service available to or use the Service for the benefit of anyone other than you or the Users or the Admin Users unless expressly stated otherwise in a Form, (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Service, or include the Service in a service bureau or outsourcing offering, (c) use the Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Service to store or transmit code, files, scripts, agents or programs intended to do harm (including, for example, viruses, worms, time bombs and Trojan horses), (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, (f) attempt to gain unauthorised access to the Service or its related systems or networks, (g) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit, or use the Service to access or use any of our Intellectual Property except as permitted under this Agreement or a Form, (h) copy the Service

or any part, feature, function or user interface thereof, (i) frame or mirror any part of the Service, other than framing on your own intranets or otherwise for your own internal business purposes, (j) access the Service in order to build a competitive product or service or to benchmark with a competing product or service, or (k) reverse engineer the Service (to the extent such restriction is permitted by law).

- 5.5: Any use of the Service in breach of this Agreement by you or your Users or the Admin Users that in our judgment threatens the security, integrity or availability of the Service, may result in our immediate suspension of the Service, however we will use commercially reasonable efforts under the circumstances to provide you with notice and an opportunity to remedy such violation or threat prior to such suspension.

6. Prohibitions

It is prohibited for the Customer to (a) use the Software and/or the Service other than for the Service Purpose; (b) copy the design of the application or the Database framework; (c) access the 'object code' or the 'source code' for the Software; (d) examine, reproduce, copy, amend, modify, decompile, reverse engineer, and/or distribute the Software; (e) use components of the Software for applications not running in the Software; (f) sell, transfer, or assign any right granted under this Agreement; and (g) during the Term of this Agreement and for a period of two years thereafter, compete with BCD by making and/or selling similar software or provide a similar service to the Service.

7. Ownership

- 7.1: The Customer acknowledges and agrees that, subject to the limited rights expressly granted hereunder, BCD and its licensors own and reserve all of our/their right, title and interest in and to the Software and the Service and all of our/their related Intellectual Property rights, which inure in the Software and in the Database and in the Service, excluding the title to the data inputted by the Customer. No rights are granted to you hereunder other than as expressly set forth herein.
- 7.2: The Customer acknowledges and agrees that it owns and controls and has responsibility for the data, which it puts into the Database as part of the Service.
- 7.3: The Customer acknowledges that no right is granted herein to any third party, other than the Customer's contractors and agents acting on behalf of the Customer, to use the Software or the Service, or to the Customer to use the Software or the Service for any third party other than Customer Affiliates in which the Customer has a minimum fifty percent (50%) shareholding.
- 7.4: You have the right to access and use the Service subject to the terms of applicable Forms and this Agreement.
- 7.5: You grant us, our Affiliates and applicable contractors a worldwide license limited to the Term to host, copy, transmit and display all electronic data and information submitted by or for you to us and any Third Party Application and program code created by or for you using the Service or for use by you with the Service, as reasonably necessary for us to provide the Service in accordance with this Agreement. Subject to the limited licenses granted herein, we acquire no right, title or interest from you or your licensors under this Agreement in or to any of the data

and information submitted by or for you to us, any Third Party Application or such program code.

- 7.6: You grant to us and our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into our and/or our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by you, your Users or Admin Users relating to the operation of our or our Affiliates' services.

8. Payment

- 8.1: The Customer shall pay the Fees for the use of the Service annually in advance. We will invoice you in advance and otherwise in accordance with the relevant Form. Unless otherwise stated in the relevant Form, invoiced charges are due for payment within 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. Payment shall take the form specified by BCD in the Forms.
- 8.2: Except as otherwise specified herein or in a Form, (i) the Fees are based on the subscription purchased (ii) all payment obligations are non-cancellable and all Fees paid are non-refundable, and (iii) the Subscription Fee cannot be decreased during the relevant Term.
- 8.3: Without prejudice to BCD's other rights and remedies under this Agreement or otherwise, if any sum payable by you to us is not paid on or before the due date, then: (a) the overdue sum may (at our discretion) accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) we may condition future subscription renewals and Forms on payment terms shorter than those specified herein, and/or (c) we may accelerate your unpaid fee obligations so that all such obligations become immediately due and payable, and/or (d) suspend provision of the Service to you until all unpaid amounts are paid in full.
- 8.4: We will not exercise our rights under clause 4 above if you are disputing the applicable charges reasonably and in good faith and are co-operating diligently to resolve the dispute, which shall be determined in our sole discretion
- 8.5: You are responsible for paying all taxes, levies, duties or similar governmental assessments of any nature assessable by any jurisdiction whatsoever that may be associated with your purchases hereunder. If we are legally obliged to pay or collect any such taxes, levies or duties for which you are responsible under this clause, we will invoice you for this cost and you will pay that amount unless you provide us with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.
- 8.6: You agree that your purchases are not contingent on the delivery of any future functionality or features by us, or dependent on any oral or written public comments made by us regarding future functionality or features.

9. Customer Account and Access

- 9.1: A Customer Account will be opened for the Customer and the Customer will be given a link to its Customer Account and will be required to choose a password.
- 9.2: Upon activation of Customer Account an invoice will be issued. Failure to make payment within 30 days of the date of the invoice may result in deactivation or suspension of Customer Account.
- 9.3: The Customer will follow BCD's process and instructions in relation to setting up the Customer Account.
- 9.4: The Customer shall, so far as is reasonably practicable co-operate with BCD in all matters relating to the Service and provide BCD with reasonable access to the Customer's premises, office accommodation and other facilities should such access be required by BCD in order to perform the Service.
- 9.5: Once a Customer Account has a suspended status, access to the Database and other content is denied.
- 9.6: After 30 days' suspension, the Customer Account, the Database, and the data contained therein will, at BCD's discretion, be permanently deleted.
- 9.7: The Customer must not permit, and must report to BCD, any attempt to obtain unauthorised access, through whatever means, to the Customer Account and/or the Database.
- 9.8: The Customer must not use or permit use of the Customer Account or the Database, to send unsolicited email or any material for marketing or publicity purposes or other illicit or illegal materials.
- 9.9: The Customer must not post or write or permit the posting or writing of any infringing, defamatory, obscene or other unlawful information in the Database.

10. Confidentiality

- 10.1: Confidential Information may be disclosed in the course of performance of this Agreement.
- 10.2: The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) and it shall (i) not make the Disclosing Party's Confidential Information available to any third party, (ii) not use the Disclosing Party's Confidential Information for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.
- 10.3: Neither Party will disclose the terms of this Agreement or any Form to any third party other than its Affiliates, legal counsel and accountants without the other Party's prior written consent, provided that a Party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such

Affiliate's, legal counsel's or accountant's compliance with this clause.

Notwithstanding the foregoing, we may disclose the terms of this Agreement and any applicable Form to a sub-contractor under terms of confidentiality materially as protective as set forth herein to the extent necessary to perform our obligations to you under this Agreement.

- 10.4: A Party's Confidential Information shall not be deemed to include information that:
 - 10.4.1: is or becomes publicly known other than through any act or omission of the Receiving Party;
 - 10.4.2: was in the Receiving Party's lawful possession without breach of any obligation owed to the Disclosing Party before the disclosure;
 - 10.4.3: is lawfully disclosed to the Receiving Party by a third party without breach of any obligation owed to the Disclosing Party;
 - 10.4.4: is independently developed by the Receiving Party, which independent development can be shown by written evidence; or
 - 10.4.5: is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.5: For the avoidance of doubt, BCD's Confidential Information includes but is not limited to the Software, all Forms (including pricing), as well as business and marketing plans, trade secrets, technology and technical information, product plans and designs, and business processes disclosed by us.

11. Representations and Disclaimers

- 11.1: Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- 11.2: Except as expressly provided herein, neither Party makes any warranty of any kind, whether express, implied, statutory or otherwise, and each Party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law. The Service is provided "as is," exclusive of any warranty whatsoever. Each Party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.

12. Data Protection

- 12.1: In this clause 12, the terms "**Data Controller**", "**Data Processor**" and "**processing**" bear the respective meanings given to them in the DPA.
- 12.2: The Parties hereby acknowledge and agree that the Customer is the Data Controller of all Personal Information which is provided to, or otherwise accessed by, BCD for processing under this Agreement.
- 12.3: Standard of Care:

- 12.3.1: BCD acknowledges and agrees that, in the course of its engagement by the Customer, it may receive or have access to Personal Information. BCD shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of such Personal Information and be responsible for the unauthorised collection, receipt, transmission, access, storage, disposal, use and disclosure of Personal Information under its control or in its possession by all Authorised Employees/Authorised Persons; and
 - 12.3.2: In recognition of the foregoing, BCD agrees that it shall: (i) keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorised access, use or disclosure; (ii) use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for BCD's own purposes or for the benefit of anyone other than the Customer, in each case, without Customer's prior written consent; and (iii) not, directly or indirectly, disclose Personal Information to any person other than its Authorised Employees/Authorised Persons, including any, subcontractors, agents, outsourcers an "Unauthorised Third Party", without express written consent from Customer, unless and to the extent required by Government Authorities or as otherwise, to the extent expressly required, by applicable law, in which case, BCD shall (i) use best efforts to notify Customer before such disclosure or as soon thereafter as reasonably possible and (ii) require the Unauthorised Third Party that has access to Personal Information to execute a written agreement agreeing to comply with the terms and conditions of this Agreement relating to the treatment of Personal Information.
- 12.4: BCD confirms that to the extent it receives Personal Information from the Customer or its agents, licensees, servants, contractors, sub-contractors and employees of the Customer and any Affiliates and any agents, licensees, servants, contractors, sub-contractors and employees of any Affiliates of the Customer:
 - 12.4.1: it shall comply with all of the obligations of a Data Processor in the DPA;
 - 12.4.2: it shall process the Personal Information at all times in accordance with the DPA, solely in connection with the provision of the Service under this Agreement;
 - 12.4.3: ensure that its employees are made aware of its obligations under this Agreement with regard to the security and protection of the Personal Information and that they possess an appropriate level of skill, competence and training to ensure the reliability of employees having access to the Personal Information; and
 - 12.4.4: without limiting BCD's obligations, BCD shall to the best of their ability implement administrative, physical and technical safeguards to

protect Personal Information that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

- 12.5: If at any time BCD suspects or has reason to believe that any Personal Information to which it has access to pursuant to this Agreement has or may become corrupted, lost, accessed by any unauthorised party and/or materially degraded in any way for any reason (“**Security Incident**”), then BCD shall:
 - 12.5.1: notify the Customer of the Security Incident as soon as possible with details of the Security Incident;
 - 12.5.2: take all reasonable steps necessary to mitigate the consequences of the Security Incident or (if applicable) to protect against a threatened Security Incident;
 - 12.5.3: BCD and the Customer agree to comply with all applicable data protection requirements, laws and regulations within their respective jurisdictions;
 - 12.5.4: no information can be entered into the Database that would cause BCD to be in breach of applicable data protection requirements, laws and regulations;
 - 12.5.5: BCD is not responsible for inappropriate data access through the application interface as a result of poor password selection or control of the Customer’s Account; and
 - 12.5.6: the data entered into the Database will be stored remotely by BCD or a service provider. Reasonable commercial efforts will be made to ensure that data privacy is respected at all times. The Customer agrees that BCD is not responsible for any inappropriate or unauthorised access to the data.
- 12.6: BCD shall maintain appropriate administrative, physical, and technical safeguards to help protect the security, confidentiality, and integrity of data that its customers submit to BCD. BCD’s customers are responsible for ensuring the security of their customer data in their use of the Service.
- 12.7: This clause is governed by relevant legislation including Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (EU Data Protection Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications (EU E-Privacy Directive).

13. Right to Access, Edit, and Remove Data

- 13.1: Subject to clauses 10 and 12, BCD, its contractors, agents and service providers, will have direct access to and the right to access the data in the Customer Account and the Database for support services until termination of the Service.
- 13.2: BCD, its contractors, agents and service providers, have the right on reasonable notice in writing to the Customer to temporarily and for no longer than reasonably necessary disable access to the Customer Account and the Database where there is a technical problem or for maintenance and upkeep reasons or where inappropriate or illegal material is entered into the Database or in any other
- 13.3: BCD, its contractors, agents and service providers, will not be liable for any claims, demands or Losses arising from such access to or disabling of the Database or the Customer Account.

14. Security

- 14.1: The Customer acknowledges and accepts that its Customer Account and the Database are accessed through its internet service provider and are stored remotely on servers by BCD or a service provider and therefore are subject to the Internet's inherent risks including unauthorised invasion of privacy, unauthorised publication of information, fraud, and forgery. Although the security features adopted by BCD and/or its service provider may reduce these risks, their elimination cannot be guaranteed. The Customer acknowledges this risk and accepts that BCD and/or its service providers cannot be liable for any claims, demands or Losses resulting from this risk.
- 14.2: It is the Customer's responsibility to ensure that the Customer takes all reasonable steps to ensure that the Customer's computers and related systems which are used to access the Service are protected against the events listed above in clause 1.
- 14.3: Where there is an obligation upon the Customer under law or any other regulatory requirement to maintain physical records of digital information entered onto the Database, it is the Customer's sole responsibility to keep back up records of such information and any documents uploaded into the Database.

15. System Availability

- 15.1: On occasion, it will be necessary to take the Service offline for maintenance, updates, upgrading or other reasons. We will give advance electronic notice of when it is planned that the Service will be offline. All efforts will be made to schedule these activities for off-peak hours (with reference to GMT) but this may not always be possible.
- 15.2: You hereby consent to the installation of any new releases or upgrades to the Services that we may provide. You hereby acknowledge that we are under no obligation to provide any support services with respect to any previous versions or releases of the Software.
- 15.3: The Customer agrees that BCD cannot be responsible for any claims, demands or Losses resulting from any unavailability of the Service.

16. Termination and Expiry

- 16.1: Either party may terminate this Agreement upon 30 days' written notice where:
 - 16.1.1: the other party has committed a material breach of this Agreement, if such breach remains uncured on the expiration of 30 days following receipt of written notice of such breach from the other party; or
 - 16.1.2: the other party becomes the subject of a petition in bankruptcy or goes into liquidation or receivership or administration/examinership or any other similar insolvency procedure or arrangement.
- 16.2: BCD may terminate this Agreement immediately without notice and without liability (on the part of BCD) of any kind where the Customer purports to assign the rights or benefits of the Service to a third party without BCD's consent, other than an assignment within the Customer's group and agreed in writing between the Parties.
- 16.3: Either party may, without cause, serve on the other party a written notice to terminate this Agreement with a minimum of 90 days' notice and, where such notice is served by the Customer and such termination is to take effect during the Term, the Customer shall be liable for the applicable Termination Fee. Upon the expiry of such notice of termination or otherwise upon the termination of this Agreement, the Customer will immediately pay BCD any applicable Termination Fee.
- 16.4: The Parties agree that prior to three (3) months' before the expiry of the Term and where the Customer wishes to continue to use the Service beyond such date, the Parties shall meet to review and discuss the operation of the Service and other relevant commercial aspects. If the Customer intends to extend the Term of the Agreement, it will be required to sign a Form provided by BCD to indicate same. If such a Form is not signed prior to the expiry of the Term then, subject to the payment of the relevant fee, this Agreement will automatically renew for a further period of three months to facilitate further negotiations on the renewal of the Agreement. If a Form is not signed prior to the expiry of this three month period then this Agreement shall terminate.

17. Effect of Expiry or Termination

- 17.1: On expiry or termination of this Agreement:
 - 17.1.1: all rights (if any) granted to the Customer shall immediately terminate and revert to BCD;
 - 17.1.2: the Customer's access to the Customer Account and the Database will be blocked;
 - 17.1.3: the data within the Database will be exported in JSON format (or such other open standard machine and human readable format deemed appropriate by BCD) and will be provided to the Customer within 30 days of termination in a format deemed appropriate by BCD (digital delivery, hardcopy, etc.) depending on size;
 - 17.1.4: following export of the data as outlined in clause 1.3 above, the Customer Account and the Database shall be deleted.

- 17.2: For the avoidance of doubt and as set out above, the Customer will not receive or be entitled to a refund of any part of the Fees on the expiration or termination of the Service.

18. Mutual Indemnity

- **18.1: Indemnification by The Company.** BCD shall defend, indemnify and hold The Customer harmless against any loss, damage or costs (including reasonable lawyers' fees) in connection with claims, demands, suits, or proceedings made or brought against the Customer by a third party alleging that the use of the Service or the Site infringes or misappropriates such third party's intellectual property rights ("Claim"); provided, however, that the Customer: (a) promptly gives written notice of the Claim to The Company; (b) gives The Company sole control of the defence and settlement of the Claim (provided that The Company may not settle any Claim unless it unconditionally releases The Customer of all liability on terms acceptable to the Customer); and (c) provides to The Company, at The Company's cost, all reasonable assistance. Without prejudice to BCD's indemnity obligations in this clause 18.1, If BCD receives information about an infringement or misappropriation claim related to a Service, BCD may in its discretion and at no cost to the Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for continued use of that Service in accordance with this Agreement, or (iii) terminate your subscriptions for that Service upon 30 days' written notice and refund you any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply to the extent a Claim against you arises from Customer Data, or your use of the Services in violation of this Agreement.
- **18.2: Indemnification by Customer.** To the extent permitted by law, the Customer shall defend, indemnify and hold BCD harmless from any claims made or brought by a third party alleging that any data input by the Customer through the Services (the "Customer Data") infringes the rights of, or has caused harm to, a third party or violates any applicable law ("Claim"); provided, however, that BCD: (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defence and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases BCD of all liability on terms acceptable to BCD); and (c) provides to Customer, at Customer's cost, all reasonable assistance.
- 18.3: Clauses 19.3 and 19.4 will not apply to the indemnities in this clause 18.

19. Liability

- 19.1: BCD shall not be liable for any claims or demands or for any Losses or injury, caused by the use of the internet based Software and the Database, a computer virus, defective software, non-compatibility, any failure of performance, error, omission, interruption, deletion, delay in operation, line failure or other problem, system unavailability, or unauthorised access or publication of data.
- 19.2: The provisions of the Sale of Goods and the Supply of Services Act 1980 and the Sale of Goods Act 1893 and 1980 (as amended) are expressly excluded from this Agreement.
- 19.3: Without prejudice to the above, the maximum aggregate liability which BCD owes to the Customer for any claim or claims or any Losses arising from any cause of

action arising out of or related to this Agreement shall be limited to the total amount paid by you hereunder in the twelve months preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability, but will not limit your and your Affiliates' payment obligations under this Agreement.

- 19.4: In no event will either Party or its Affiliates have any liability arising out of or related to this Agreement for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, business interruption or punitive damages, whether an action is in contract or tort and regardless of the theory of liability, even if a Party or its Affiliates have been advised of the possibility of such damages or if a Party's or its Affiliates' remedy otherwise fails of its essential purpose. The foregoing disclaimer will not apply to the extent prohibited by law.

20. Announcements and Marketing

- 20.1: You hereby permit us and our Affiliates to refer to you as our customer and you consent to the use and/or display of your trademark, logo, design, and/or business name on our and our Affiliates website and in marketing documentation published and/or distributed by us and our Affiliates.
- 20.2: We acknowledge that you own and will retain all rights, title and interest in and to your trademark, logo, design, and/or business name. We will not place or depict your trademark, logo, design, and/or business name in any manner or in any materials that would tend to denigrate, disparage, tarnish, dilute, misrepresent or otherwise adversely affect your reputation.
- 20.3: You may revoke this permission at any time with immediate effect by written notice to In such circumstances the full amount of any associated discount of which the Customer was in receipt of during the Term, shall be immediately due and payable to BCD.

21. Notice

- Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after posting, or (c), except for notices of termination or an indemnity claim ("**Legal Notices**"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant person designated by you.

22. Entire Agreement and Variation

- 22.1: This Agreement together with any Form(s) (as varied from time to time) constitute the entire agreement and supersede any and all prior agreements, negotiations, representations of any kind, and proposals, written and oral between the Customer and BCD with regard to the subject matter hereof.
- 22.2: No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. Severability

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

24. Waiver

The delay or failure of BCD to exercise in any respect any rights provided for in this Agreement shall not be deemed a waiver of any actual or further right under this Agreement.

25. Applicable Law, Jurisdiction and Dispute Resolution

- 25.1: Each Party irrevocably agrees that this Agreement shall be governed by and construed in accordance with the laws of Ireland without regard to choice or conflicts of law rules and that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 25.2: If a dispute between the Parties arises about either Party's performance of their obligations under this Agreement, the Parties shall attempt to resolve the dispute informally as soon as possible. If such informal resolution is not possible, either Party may refer the dispute to arbitration to be conducted by such person as the Parties hereto may agree to appoint as arbitrator or failing such agreement as to the person to be appointed as arbitrator on the request of any Party to the President of the Institute of Chartered Accountants of Ireland or in the event of such person being unable or unwilling to act by the next senior officer of the Institute of Chartered Accountants of Ireland and such arbitrator shall act as an arbitrator within the meaning of the Arbitration Act, 2010 and shall be governed by the Arbitration Acts for the time being in force (or such Act or Acts amending or extending same and any applicable Regulations made thereunder) and his decision shall be final and binding on the parties hereto and the cost of Arbitration shall be payable as the arbitrator shall determine.
- 25.3: Nothing in this clause shall operate to prevent any Party from requesting before or during arbitration proceedings, an interim measure of protection from the Irish courts
- 25.4: Performance of this Agreement shall continue during any dispute between the parties and during the operation of any arbitration under this Agreement. No payment due or payable by the customer shall be withheld on account of a pending reference to arbitration except to the extent that such payment is the subject of such dispute.

26. Relationship of the Parties

- 26.1: In this Agreement, nothing shall be deemed to:
 - 26.1.1: constitute a partnership, franchise, joint venture, fiduciary or employment relationship between the Parties; or
 - 26.1.2: make any Party an agent for any other Party for any purpose whatsoever.

27. Survival of Obligations

Notwithstanding the expiration or termination of this Agreement, clauses 6 (Prohibitions), 7 (Ownership), 8 (Payment), 10 (Confidentiality), 11 (Representations and Disclaimers), 12 (Data Protection), 14 (Security), 16 (Termination), 17 (Effect of Expiry or Termination), 18 (Indemnity), 19 (Liability), clauses 20 to 28 and any other clauses that by their nature should survive termination, shall survive any such termination or expiration of this Agreement.

28. Assignment

- Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms) without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement and all past due fees are paid in full, except that Customer shall have no right to assign this Agreement to a direct Competitor of BCD. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.