

**iWise2ebusiness Ltd kokm**  
**TERMS & CONDITIONS**

**1. DEFINITIONS**

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Active Users:** Authorised Users that have a user account to access and utilise the Platform and Services.

**Authenticated kokm Chat Users:** Authorised Users or other people that have a user account in the kokm Chat feature either via integrations to the Platform and its Services (Authorised Users) or via any other method of authorised access and account provision by the Client.

**Authorised Users:** individual people authorised by the Client to use the Platform and the Services and are given access by the Client via a unique User Account Record either manually or system generated (for example, on purchase of items via the Platform or via integration to another Client or Client approved system or service or method of access: for example an internal human resource information system, active directory or public access method like using a social media service providers user account details).

**Authorised Active User Bands:** the bands of Authorised Users permitted to use the Platform during the Term.

**Business Hours:** United Kingdom (UK) standard Business Hours (9 am to 5pm) Monday to Friday excluding all UK Public Holidays.

**Business Days:** United Kingdom (UK) standard business working days, Monday to Friday excluding all UK Public Holidays.

**Client Content:** the content (including without limitation any information, data, records, reports, videos, photographs, documents, papers, drawings, designs, transparencies, graphics, logos, typographical arrangements and all other materials in whatever form) uploaded to the Platform by the Client and/or Authorised Users and Platform Non Members for the purpose of using the Platform and/or Services.

**Client Available Date:** the date the Client may access the Platform and Services to prepare the Platform and Services with Client Content ready for the Go Live Date and will be no more than 5 UK Business Working Days from the Effective Date.

**Client Go Live Date:** The UK Business Day date set by the Client after the Commencement Date that the Company makes the Platform and Services available to the internet via the Client URL provided the Client has provisioned the Client URL and SSL and makes them available for the connection process with the Company, with a minimum of 48 UK Business Hours' notice by the Client to the Company or to the Client via other agreed integration methods providing the Company has agreed that the integration can be completed by that Go Live Date and is the end of the Site Set Up period and end of charges for the Site Set Up and is acceptance by the Client that Site Set Up is completed and is the Start of any Development Services or additional services as per the Schedule 1 or site changes post the Client Go Live Date and any consequential costs incurred as per Schedule 1 unless an Site Set Up Extension agreement has been agreed.

**Client URL:** the URL provided and owned by the Client, visible to the internet and linked to the Company URL to enable the Platform to perform in accordance with this Agreement when the Platform and Services are provided to the Client via the internet or the Client URL is required to ensure another agreed integration method enables the Platform and Services to be provided by the Company in accordance with this Agreement.

**Company Content:** content supplied by the Company to the Client as agreed in a Purchase Order.

**Commencement Date:** the date work is commenced by the Company on the Platform and is the same as the Effective Date.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5.

**Development Services:** development and change services as set out in Part 1 of the Schedule or by a separate Purchase Order.

**Effective Date:** the date this Agreement is signed by both parties.

**Features:** The key capability and feature components of the Platform the detail of which may vary from time to time that are enabled for the Client as part of the Platform and this Agreement the extension of which will require an additional Purchase Order and separate agreement.

**Fees:** the fees payable by the Client to the Company for the use of the Platform and Services and any additional services, as set out in Part 2 of the Schedule.

**Initial Purchase Order:** the purchase order attached at Part 1 of the Schedule that sets out the details of the Platform and Services to be provided by the Company to the Client under the Agreement.

**Initial Term:** the initial term of this Agreement commencing on the Licence Start Date and continuing for a period of twelve (12) months.

**kokm Chat:** The Platforms advanced chat capability.

**Licence Start Date:** Is the same as the Effective Date.

**Platform:** the underlying hardware and software enabling the SaaS provided by the Company to the Client as per this Agreement including the Features set out in Schedule 1.

**Platform Licence:** the licence purchased by the Client pursuant to this Agreement which entitles the Client and its Authorised Users to access and use the Platform in accordance with this Agreement.

**Platform Non-Member:** any anonymous internet visitor to the site that uses the Platform without logging into the Platform.

**Purchase Order:** any additional purchase orders (in the form of the Initial Purchase Order attached at Part 1 of the Schedule) that may be used by the Client to order additional Services or capacity and such Purchase Order shall form part of this Agreement once it is executed on behalf of each Party.

**Renewal Period and Fee:** the period defined in clause 16.1 with a 5% increase in all annually based fees each period to reflect all increases in standard Platform features and Media Centre features and capability released by the Company to the Client on an ongoing basis.

**Services:** the services provided by the Company to enable the Client to use the Platform.

**Site Set Up:** The activity by the Company in order enable a Platform to be ready for a Client to prepare the site for the Go Live Date performed for no more than 1 month prior to the Go Live Date except by separate agreement and charged for under the Set Up Fees.

**Site Set Up Complete:** The Client Go Live Date or Site Set Up Extension Complete if a Site Set Up Extension is agreed between the Client and the Company.

**Site Set Up Extension:** Site Set Up activities requested by the Client and agreed by the Company that continue after the Client Go Live Date in order to provide capabilities initially requested by the Client in Site Set Up, in the Platform, that could not be delivered by the Company or Client by the Client Go Live Date, these activities to continue for no more than 3 months post the Client Go Live Date at which date the Company will cease any more Site Set Up Extension activities and the Client will accept that Site Set Up has been completed and any further site changes of any description including but not limited to report creation and generation will incur costs as per Schedule 1.

**Site Set Up Warranty:** The Company will fix any changes made during Site Set Up activities or Site Set Up Extension Activities for a period of 3 months after Site Set Up Complete at its costs.

**Support Services:** additional services requested by the Client from the Company as defined in Part 1 of the Schedule or a separate Purchase Order.

**Software:** the software application provided by the Company as part of the Platform Licence.

**Term:** the Initial Term and all subsequent Renewal Periods.

**Terms of Service:** the terms governing each Authorised User's access and use of the Platform and Services and accepted by the Authorised User on logging into the Platform or Platform Non-Members using the Platform and Services available to them via the internet or other Client and Company approved method.

**Terms and Conditions of Use:** the terms and conditions defined by the Client, presented on the Platform and available to all Authorised Users of the Platform or Platform Non-Members that define the use of the Platform by that Authorised User or Platform Non-Member.

**User Account Record:** The unique account record identifying and individual user of the Platform.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data; or adversely affect the user experience, including worms, trojan horses, viruses etc. or the user device.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes both genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes and e-mail.
- 1.8 References to clauses are to clauses of the relevant schedule to this Agreement.

## 2. LICENCE

- 2.1 Subject to the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Company hereby

grants to the Client during the Term a non-exclusive, non-transferable right to:

- (a) use the Platform and Services for its own business purposes only; and
- (b) permit the Authorised Users and Platform Non-Members to use the Platform and Services provided such Authorised Users and Platform Non-Members accept and comply with the Terms of Service; and
- (c) use the Platform with the Client URL agreed by the Company and the Client at Commencement Date and not change the Client URL or any integrated access methods agreed between the Company and the Client without providing the Company with a minimum of 1 months' notice to allow the Company to maintain the Service.

- 2.2 In relation to the Authorised Users and Platform Non-Members, the Client undertakes that:

- (a) it will not allow or suffer any User Account Record to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Platform and/or Services;
- (b) each Authorised User shall keep a secure password for use of the Platform and Services, such password shall be changed at a frequency determined by the Client, and each Authorised User shall keep his password confidential; the Company shall have no liability in any regard for lost or stolen passwords or unapproved access to the Platform;
- (c) it shall approve all Authorised Users of the Platform and its Services;
- (d) it shall be aware at all times of who the Authorised Users are;
- (e) it shall use all reasonable endeavours to procure that each Authorised User and Platform Non-Member reads and complies with the Terms of Service governing the use of the Platform and Services; and
- (f) it shall not offer to its Authorised Users or Platform Non-Members any terms and conditions of use of the Platform that undermine the terms of this Agreement.

- 2.3 The Client shall not use the Platform to access, store, distribute or transmit any Viruses, or any documents, files of any kind, webpages, images, videos, podcasts, audio files or any other type of content that:

- (a) are unlawful, harmful, threatening, obscene, defamatory, infringing, harassing or racially or ethnically offensive;
- (b) facilitate illegal activity;
- (c) depict sexually explicit images;
- (d) promote unlawful violence;
- (e) are discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) are otherwise illegal or causes damage or injury to any person or property;

The Company reserves the right, without liability or prejudice to its other rights or remedies, to disable the Client's access to any material that breaches this clause.

- 2.4 The Company reserves the right, without liability or prejudice to its other rights or remedies, to disable the Service immediately if, following written notification, the Client does not immediately remove materials that breach this clause and

fails to take all reasonable measures to prevent a re-occurrence.

2.5 The Client shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform, SaaS, server environment, Services, Software and/or and associated content or documentation in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer, reconstruct, reconstitute, replicate or otherwise reduce to human-perceivable form all or any part of the Platform and/or Software; or

(b) license, sell, rent, lease, sub-let, transfer, assign, distribute, display, disclose or otherwise commercially exploit, or otherwise make the Platform and/or Services available to any third party except the Authorised Users and Platform Non Members.

(c) attempt to obtain, or assist third parties in obtaining, access to the Platform other than as provided under this clause 2.

2.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform and/or Services and, in the event of any such unauthorised access or use, promptly notify the Company.

2.7 The rights provided under this clause 2 are granted to the Client only and are:

(a) not granted to any other company or organisation, including but not limited to, any partner, consortium, joint venture, subsidiary, customer or any other related or non-related entity of the Client;

(b) provided solely for the Client to conduct its own business and provide services to its customers.

2.8 The Client shall not:

(a) re-sell the Platform to its clients or other entities;

(b) allow any other entity to conduct business using the Platform and will not provide access to the Platform to any other organisation, other than its own customers;

(c) grant administration access to the Platform to any other entity or employees of any other entity;

(d) represent itself to any other entity as owning the Platform or being able to resell, white label or provide the Platform and its Services to that entity in any manner.

2.9 The Company reserves the right, without liability or prejudice to its other rights or remedies to:

(a) disable the service immediately if the Client does not immediately cease any activity that breaches Clauses 2.7 or 2.8; and

(b) delete all Authorised Users contravening Clauses 2.7 and 2.8.

2.10 The Company will maintain system administrative and web developer access to the Platform to ensure the Platform is performing in Accordance with this Agreement.

2.11 The Company will maintain control of the Platform, its code and all aspects of the Platform and Services at all times. The Client has no control or ownership rights to the Platform, its code or its Services and may not resell the Platform or Services.

### 3. FAIR USE POLICY

3.1 The Client acknowledges and agrees that its use of the Platform and the Services cannot exceed any limits agreed in the Initial Purchase Order or a subsequent Purchase Order signed by the Parties.

3.2 Provided the Client has purchased the right to use Company Content as part of the Initial Purchase Order or a subsequent Purchase Order, the Client may use the Company Content on the Platform with its Authorised Users but the Client may not offer the Company Content free of charge to anonymous Non-Members visiting the site from the internet or by other means of site access. The Client is not permitted to provide or include any Company Content in any materials or resources (whether in softcopy or hardcopy form) or present the Company Content inside or outside the Platform to any other party, business or person unless specified and agreed in the Initial Purchase Order or a subsequent Purchase Order.

### 4. ADDITIONAL USERS AND CAPACITY

4.1 If the Client wishes to purchase additional capacity and/or Services, the Client and the Company shall execute a new Purchase Order where required by Part 1 of the Schedule.

4.2 The Company shall provide the additional capacity and Services for the Client and invoice the Client 30 days in arrears.

4.3 The Client will not exceed the Media Centre Authenticated Users Limit defined in the Initial Purchase Order, without the Company's prior agreement in writing.

4.4 The Company and the Client will discuss the Media Centre Authenticated User projections and pricing if the Authenticated Media Centre Users reach the Media Centre Authenticated Users Limit or are predicted to exceed within 2 months.

4.5 The Client and the Company will agree the pricing, if the Client wishes to exceed the Media Centre Authenticated Users Limit.

4.6 If the Client and the Company cannot agree the price for Authenticated Media Centre Users in excess of the Media Centre Authenticated Users Limit the Client may not exceed that number on the Platform.

4.7 The Client will give the Company all reasonable notice of any material anticipated change in usage, Authorised Users that may impact the performance of the Platform or Services.

### 5. SERVICES

5.1 The Company shall, during the Term, provide the Services to the Client on and subject to the terms of this Agreement.

5.2 The Company agrees to use reasonable commercial endeavours to make the Services available 24 hours a day, seven days a week, except for maintenance which (where possible) will be planned to minimise inconvenience for the majority of Authorised Users and Platform Non-Members.

5.3 The Company will, as part of the Services and at no additional cost to the Client, provide the Client with the Support Services as set out in the Initial Purchase Order or a separate Purchase Order.

5.4 The Company will have full access to the SaaS, Platform and Services at all times to ensure the Company can control, administer, test, maintain, upgrade, remove, cancel, edit and develop or change the Platform and Services in accordance with the terms of this Agreement.

5.5 The Services provided by the Company include services provided by third party service providers and although the Company will use all reasonable endeavours to maintain the third party services, the Company is not responsible for the third party services and cannot warrant the continued supply of third party services.

- 5.6 In the event a third party service provider ceases to trade or is no longer able to provide the third party services to the Platform, the Company will transfer the service provision to a new third party service provider comparable in price and service and will use all reasonable endeavours to do so with minimal disruption to the Platform and/or Services. If no suitable services can be provided this Agreement will continue minus the provision by the Company of the ceased third party services.

## **6. CLIENT CONTENT**

- 6.1 The Client shall own all right, title and interest in and to all of the Client Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Content.
- 6.2 The Company shall follow its back up and archiving procedures for Client Content as set out in the Initial Purchase Order and as may be amended by the Company in its sole discretion from time to time. In the event of any loss or damage to Client Content, the Client's sole and exclusive remedy shall be for the Company to use reasonable commercial endeavours to restore the lost or damaged Client Content from the latest back-up of such Client Content maintained by the Company. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Client Content caused by any third party except those third parties sub-contracted by the Company to perform services related to Client Content maintenance and back-up.
- 6.3 Subject to clause 6.2, the Company will undertake, at the Client's request, and in any event on the termination of this Agreement, promptly to deliver to the Client at the Client's expense, a copy of all Client Content and any correspondence, documents, papers and records on all media (an all copies or abstracts of them), recording or relating to any part of the Client Content which in the Company's custody or control unless requested not to by the Client, in which case upon termination the Platform for the Client will be deleted unless requested not to by the Client and agreed by the Company.
- 6.4 Other than the User Account Record information and any Authorised User content or Platform Non-Member Content provided and authorised by the Client relating to each Authorised User or Platform Non-Member, the Company does not intend to store personal data. If the Company processes any personal data on the Client's behalf when performing its obligations under this Agreement, the parties record their intention that the Client shall be the data controller and the Company shall be a data processor and in any such case:
- (a) the Client acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Client and the Authorised Users are located in order to carry out the Services and the Company's obligations under this Agreement;
- (b) the Client shall ensure that the Client is entitled to transfer the relevant personal data to the Company so that the Company may lawfully use, process and transfer the personal data in accordance with this Agreement on the Client's behalf;
- (c) the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (d) the Company shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Client; and
- (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **7. COMPANY'S OBLIGATIONS**

- 7.1 The Company undertakes that the Platform and the Services will be provided with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Platform and/or Software contrary to the Company's instructions, or modification or alteration of the Platform or Software by any party other than the Company or the Company's duly authorised contractors or agents.
- 7.3 Notwithstanding the foregoing clauses 7.1 and 7.2, the Company:
- (a) does not warrant that the Client's use of the Platform, Software and/or Services will be uninterrupted or error-free; or that the Platform, Software, Services and/or the information obtained by the Client through the Services will meet the Client's requirements; and
- (b) is not 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 the Client acknowledges that the Platform, Software and Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 The Company warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 7.5 The Company cannot warrant or guarantee that all computing devices and mobile internet devices used by the Client or Authorised Users or Platform Non-Members will receive or be able to access the SaaS, Platform and Services.
- 7.6 The Company will take all reasonable measures to ensure that the SaaS, Platform and Service can be accessed by all users of the internet but cannot guarantee that the web-browser and user computing or mobile device combination used by the Client or the Authorised Users or Platform Non-Members will result in access to the SaaS, Platform and Services or result in the SaaS, Platform or Service being presented to the Authorised Users or Platform Non-Members as expected.
- 7.7 The SaaS, Platform and Services are designed for the following web-browsers:
- (a) Microsoft Internet Explorer (IE) version 11
- (b) Google Chrome version 10
- (c) Apple Safari:
- (i) Version 5.1.7 for Windows
- (ii) Version 5.0.6 for Leopard
- (iii) Version 5.1.10 for Snow Leopard
- (d) Mozilla Firefox version 28
- (e) Any use of the SaaS, Platform and Service on versions of these web-browsers prior to those stated above may result in degraded performance, webpage display or user experience and performance is not guaranteed.
- (f) The Company will use all reasonable endeavours to ensure the continued performance of the SaaS, Platform and Services on subsequent versions of the web-browsers but this cannot be guaranteed.
- (g) The Company cannot guarantee the performance of the Platform on any particular combination of the Client's Authorised User's or Platform Non-Member's computing or mobile devices, their devices' operating system and chosen web-browser.

## 8. CLIENT'S OBLIGATIONS

- 8.1 The Client shall provide all necessary co-operation in relation to this Agreement, and provide the information required by the Company to provide the Platform and Services, including but not limited to: Client Content, software account information to enable integrations, account or software components such as API's or API Keys, security access and configuration services.
- 8.2 The Company cannot guarantee any element of Platform or Service performance if the information in clause 8.1 is not provided to the Company within a timeframe defined by the Company or is withheld from the Company. Failure to provide access to items defined in clause 8.1 may result in termination of this Agreement by the Company.
- 8.3 The Client will notify the Company in writing of any changes to the Client software account information that requires changes to the Platform or Services in order to maintain performance of the SaaS, Platform and Services in accordance with this Agreement. This includes, but will not be limited to changes to the Payment Gateway Account information.
- 8.4 Failure to give notice to the Company in accordance with Clause 8.3 will relieve the Company of any obligation to provide the Platform or Service in accordance with this Agreement.
- 8.5 The Client shall maintain and hold valid at all times, appropriate licences for the Client's URL, Client SSL, PayPal, SagePay or other payment gateway third party service provider Accounts and any and all other such services that permit the Platform and Services to function as per this Agreement. The Company shall not be liable for any failure in performance that results from the failure of the Client to maintain appropriate services and accounts that enable the Platform and the Service to function as agreed.
- 8.6 If the Client fails to remedy any loss of licences required for the Platform within 48 Business Hours, the Company may suspend the Services. Any Fees due according to Part 2 of the Schedule will remain in force. Should the Client not remedy the loss of service within a further 48 Business Hours, the Service will be cancelled by the Company and all Fees for the remaining period of the Term in accordance with Part 2 of the Schedule will be due immediately.
- 8.7 The Client shall:
- (i) comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - (ii) carry out its responsibilities set out in this Agreement in a timely and efficient manner;
  - (iii) obtain and maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under this Agreement;
  - (iv) ensure that its network and systems comply with the relevant specifications provided by the Company from time to time; and
  - (v) be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links.
  - (vi) Permit the Company to use its name, testimonials and references provided by the Client to assist with the Company's marketing and assist the Company with the creation and provision of suitable information.
  - (vii) Accept that the personal information provided via this contract will be held by the Company for use in respect of this agreement and not used for any other purpose according to the requirements of the GDPR (General Data Protection Regulation) of the EU (European Union)

or any subsequent regulation changing or replacing GDPR.

- (viii) Conform to the requirements of the GDPR where any information is held by The Company on behalf of the Client that is governed by GDPR.
- (ix) Submit any requests for information governed by the GDPR and any other Data Protection legislation affecting the data controlled by the Client and processed by the Company to the Company Data Processing Officer (DPO) at [enquires@iwise2.com](mailto:enquires@iwise2.com).

## 9. CHARGES AND PAYMENT

- 9.1 The Client shall pay the Fees to the Company for the Platform Licence and Services in accordance with this clause, the Initial Purchase Order, any additional Purchase Orders signed by the Parties and Part 2 of the Schedule.
- 9.2 The Client shall, on or before the Licence Start Date, provide valid, up-to-date contact and billing details.
- 9.3 Payment of the Initial Purchase Order will be made in full by the Client to the Company on the Effective Date.
- 9.4 Purchase Orders for Support Services will be paid by the Client to the Company as per the Initial Purchase Order or on or before the commencement date of the Support Services in any subsequent Purchase Order.
- 9.5 Development Services will be paid for by the Client no more than 30 days from the receipt of an invoice from the Company for the completed Development Services.
- 9.6 Payment shall be made by credit card maintained on file with the Company, automatic transfer, BACs payment or any other method approved by the Company. For methods such as credit card, the payment of fees shall be automatic on the due date.
- 9.7 If the Company has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of the Company:
- (a) the Company may, without liability to the Client, disable the Client's password, account and access to all or part of the Platform and Services and the Company shall be under no obligation to provide access to the Platform or any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest will accrue on overdue amounts at an annual rate equal to 4% over the base lending rate of the Company's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid.
- 9.8 All prices and Fees specified in or referred to in this Agreement are stated exclusive of any tax, including withholding tax, sales, use, value added tax, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of Services and all such taxes shall be added to the Company's invoice(s) at the appropriate rate, if applicable.
- 9.9 The Company shall be entitled to increase the Fees at the start of each Renewal Period upon 90 days' prior notice to the Client and Parts 1 and 2 of the Schedule shall be deemed to have been amended accordingly.
- 9.10 If the Company has suspended the Client's access to the Services over the Public Network or via an agreed integration method as provided in clause 8.6, the Client shall incur a £600.00 reconnection fee. The reconnection fee shall be due upon receipt of the invoice for same and the Company will not reconnect any Services to the Client until it has received full payment of such fees.

## 10. AUDIT

- 10.1 The Client shall permit the Company to audit the Platform and Services in order to establish the Authorised Users and

Platform Non-Member use and to verify that the Client has not exceeded any aspect of the Purchase Order and is using the Service in accordance with this Agreement. Such audit may be conducted no more than once per quarter, at the Company's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business.

- 10.2 If any of the audits referred to in clause 10.1 reveal that the Client has breached the terms of the Agreement, then without prejudice to the Company's other rights, the Company may terminate the Client's access to the Platform and Services or at its sole discretion suspend the Services and all outstanding Fees will become immediately due for payment.

#### **11. PROPRIETARY RIGHTS**

- 11.1 The Client acknowledges and agrees that the Company and/or its licensors own all intellectual property rights in the Platform and Services (including without limitation, the Software). The Company cannot warrant that its third party service providers own all the intellectual property rights in their services.
- 11.2 Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Platform and/or Services.
- 11.3 The Client agrees that the Platform and the Software are protected by copyright, trademarks, trade names and other proprietary rights and laws.
- 11.4 The Company confirms that it has all the rights in relation to the Platform, Software and Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

#### **12. CONFIDENTIALITY**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other party's Confidential Information in confidence and, unless required by law, not make the other party's Confidential Information available to any third party, or use the other party's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this Agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Client acknowledges that the details of the Platform, Software and Services, the passwords used by the Client's

Authorised Users, the Fees and terms of this Agreement constitute the Company's Confidential Information.

- 12.6 The Company acknowledges that the Client Content is the Confidential Information of the Client.
- 12.7 This clause shall survive termination of this Agreement, however arising.

#### **13. INDEMNITY**

- 13.1 The Client shall defend, indemnify and hold harmless the Company against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) the Client's use of the Platform and/or Services; and/or (ii) the Client Content, provided that:
- (a) the Client is given prompt notice of any such claim;
  - (b) the Company provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - (c) the Client is given sole authority to defend or settle the claim.

#### **14. DISCLAIMERS**

- 14.1 The Company assumes no liability with regard to the Client Content created and/or uploaded to the Platform by the Client and/or the Authorised Users and the entire risk as to satisfactory quality, performance and accuracy is with the Client. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES AND CONDITIONS (EXPRESS OR IMPLIED) INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE CLIENT CONTENT UPLOADED TO THE PLATFORM OR SHARED BY THE CLIENT WITH ANY THIRD PARTY THROUGH USE OF THE PLATFORM OR SERVICES.

#### **15. LIMITATION OF LIABILITY**

- 15.1 Except as expressly and specifically provided in this Agreement:
- (a) the Company shall have no liability for any damage caused by errors or omissions in any Client Content or in connection with the manner in which the Client inputs the Client Content or any actions taken by the Company at the Client's direction;
  - (b) 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 this Agreement; and
  - (c) the Platform and the Services are provided to the Client on an "as is" basis.
- 15.2 Nothing in this Agreement excludes the liability of the Company for:
- (a) death or personal injury caused by the Company's negligence; or
  - (b) fraud or fraudulent misrepresentation.
- 15.3 Subject to clause 15.1 and clause 15.2:
- (a) the Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
  - (b) the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited the total Fees actually paid by the Client in the year in which the claim arose.

#### 16. TERM, RENEWAL AND TERMINATION

16.1 This Agreement shall, unless otherwise terminated as provided in this clause, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each **Renewal Period and Fee**), unless:

(a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

(b) there is a change of control of the Client within the meaning of section 1124 of the Corporation Tax Act 2010; or

(c) it has been otherwise terminated in accordance with the provisions of this Agreement.

16.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

(a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) a voluntary agreement is approved, or an administration order is made, or an administrator, a receiver or an administrative receiver is appointed over any of the other party's assets or undertaking or a resolution or petition to wind up the other party is passed or presented (other than for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order or the other party ceases to carry on business; or

(c) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

16.3 On termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate; and

(b) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

16.4 If the Company ceases trading during the Term then the Client:

(a) Will have the right to buy the Platform version provided by the Company for the Client of this Agreement only and for the avoidance of doubt, not any other version of the Platform provided by the Company to any other Client, from the Company at a price acceptable to both parties.

(b) If the Platform is purchased by the Client in the event of the Company ceasing trading then the Client will have full responsibility for the Platform version purchased and for establishing agreements with Third party suppliers to enable the Platform version to function as a SaaS with the Services required by the Client.

(c) Any Platform version purchased by the Client in the event of ceased trading by the Company may not be used for any other purpose than for providing the Client solely with the Platform.

#### 17. FORCE MAJEURE

The Company shall have no liability to the Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications 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 suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

#### 18. GENERAL

18.1 **Entire Agreement:** The Agreement supersedes and cancels all previous agreements and working arrangements whether oral or written, express or implied between the Parties in respect of or in connection with the matters referred to in the Agreement.

18.2 **No Waiver:** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No delay or failure by either Party in exercising or enforcing any of its rights or remedies under the Agreement will prejudice or restrict its rights, nor will any waiver of rights by either Party operate as a waiver of subsequent rights.

18.3 **Notices:** Notices to be given under the Agreement must be in writing and sent to the address of the recipient set out in this Agreement, or any other address which the recipient may tell the other in writing. Any notice may be delivered by hand personally or sent by first class prepaid letter (within the United Kingdom) or airmail (if overseas) or by facsimile or by electronic mail and will be treated as served: if by hand, when delivered; if by first class post, 48 hours after posting; if by airmail, 6 business days after posting; if by facsimile, when despatched, provided the sender's fax machine produces automatic confirmation of error free transmission to the recipient's fax number and if by electronic mail, when it is first stored in the other Party's electronic mailbox, evidenced by the sender's electronic delivery receipt.

18.4 **Amendment:** The Agreement may be amended only in writing signed by a director of the Company and a duly authorised representative of the Client.

18.5 **Assignment:** The Agreement is personal to the Client and neither the Agreement nor any rights, licences or obligations under the Agreement may be assigned or novated by the Client without the prior written consent of the Company.

18.6 **Independent Contractor:** Each Party to the Agreement is an independent contractor, and the Agreement does not create a partnership, agency, joint venture or employment relationship between the Company and Client.

18.7 **Sub-contractors:** The Company shall be entitled to sub-contract its obligations and responsibilities under the Agreement provided that the Company shall be responsible for the compliance by such sub-contractors with the obligations and responsibilities of the Company under the Agreement.

18.8 **Severability:** If any of the clauses or other provisions of this Agreement are found by an arbiter, court or other competent authority to be invalid, unenforceable or illegal, such provision shall be deemed to be deleted from the Agreement but the remaining provisions of the Agreement shall continue in full force and effect insofar as they are not affected by any such deletion. In the event of any such deletion, the Parties shall negotiate in good faith with a view to replacing the provisions so deleted with legal and enforceable provisions that have similar economic and commercial effect to the provisions so deleted.

- 18.9 **Third Parties:** A person, company or entity who is not a party to the Agreement has no right to enforce any term of this Agreement.
- 18.10 **Survival:** Termination of this Agreement shall not affect the rights or obligations of the Parties which due to the nature thereof are due to be observed or performed after such termination or expiry.
- 18.11 **Dispute Resolution:** If any dispute arises out of this Agreement, the Parties will attempt to settle it by negotiation. The Parties shall discuss the dispute within five (5) business days of notice of the dispute being given. Where the Parties agree that it may be beneficial, they will seek to resolve the dispute through mediation using the service of the Centre for Effective Dispute Resolution Scotland to facilitate the mediation process. If the dispute is not resolved through negotiation or mediation, the dispute may be resolved in the courts pursuant to clause 18.12.
- 18.12 **Governing Law:** This Agreement shall be governed by and construed and interpreted in accordance with Scottish law, and each of the Parties hereby submits to the exclusive jurisdiction of the Courts of Scotland.