

**LOQIVA LIMITED  
PLATFORM SERVICES AGREEMENT**

**THIS AGREEMENT IS MADE ON [ ] (“the Effective Date”)**

**PARTIES:** (1) **LOQIVA LIMITED** (a company registered in England and Wales under company number 11212570) whose place of business is at [ ] (“the Provider”); and

(2) [ ] (a company registered in [ ] under company number [ ] whose registered office/principal place of business is at [ ] (“the Licensee”))

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**RECITALS:**

- (A) The Provider is the owner and provider of a local area management software platform (named “Loqiva”) which includes a suite of content personalisation, behaviour tracking and proximity-marketing tools that it intends to license to the Licensee under this Agreement to enable the Licensee to distribute the software platform to customers. The Provider has the right to grant licences of the software platform.
- (B) The Parties intend to agree Statements of Work (“**SOWs**”) from time to time, which will contain details of such Loqiva software licensed to the Licensee together with various services (which may include but not be limited to support services) that the Provider shall provide to the Licensee in return for the relevant fees.
- (C) The commercial terms agreed in SOWs will be governed by and subject to the terms and conditions contained in Schedule 2 unless superseded by the G-Cloud 10 framework agreement or call-off contract.
- (D) The Initial SOW is set out in Schedule 1.

The Schedules to this Agreement and Annexures referred to are as follows:

Schedule 1: Initial Statement of Work  
Schedule 2: Terms and Conditions  
Schedule 3: Change Control Procedure  
Schedule 4: Acceptance Procedure for Platform<sup>1</sup>  
Annex A: Platform Set-Up and Testing Services  
Annex B: Support Services  
Annex C: Development Services  
Annex D: Customer Platform Services Agreement

The parties agree that the Schedules form an integral part of this Agreement

**SIGNED** for and on behalf of **the Provider**

**SIGNED** for and on behalf of **the Licensee**

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Name:.....

Name:.....

Position:.....

Position:.....

Date:.....

Date:.....

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**SCHEDULE 1**  
**STATEMENT OF WORK**

This is a Statement of Work as defined in the Framework Platform Services Agreement entered into between Loqiva Limited and [insert Customer ] dated [insert date of Framework Agreement] (the “**Framework Agreement**”) and will be governed by the terms and condition of the Framework Agreement. Terms defined in the Framework Agreement will, unless the context requires otherwise, have the same meanings when used in this Statement of Work.

In the event that there is any conflict between the provisions of this Statement of Work, any Annexes attached to this Statement of Work and the Framework Agreement, the provisions of this Statement of Work shall take precedence, followed by the Framework Agreement, and finally any Annexes attached to this Statement of Work.

[Note: details to be inserted]

**A. CUSTOMER, DATES AND TERM**

1.	<b>CUSTOMER</b>	-
2.	<b>COMMENCEMENT DATE</b>	-
3.	<b>MINIMUM LICENCE TERM</b>	-
4.	<b>SUPPORT TERM</b>	-
5.	<b>ACCEPTANCE TEST COMMENCEMENT DATE AND PLATFORM SET UP AND TESTING PERIOD</b>	-
6.	<b>ACCEPTANCE DATE</b>	-
7.	<b>[SERVICE COMMENCEMENT DATE]</b>	-
8.	<b>CUSTOMER WORKSHOPS &amp; DATES</b>	-
9.	<b>[GO LIVE DATE]</b>	-
10	<b>CUSTOMER IP ADDRESS</b>	-
10.	<b>CUSTOMER EMAIL</b>	-

## B. DESCRIPTION OF APPLICABLE PLATFORM SERVICES

1.	PLATFORM SOFTWARE	<i>[insert details eg, the Provider's local area management platform] ("Platform");</i>
2.	MAXIMUM NUMBER OF REGISTERED END USERS	-
3.	HOSTING ENVIRONMENT	Enterprise Virtual Data Centre (UK) Monitoring services for system performance and health status with threshold violation. Managed daily back-up. SSL security certificate. Performance guaranteed up to 5,000 concurrent users.
4.	SERVICES	The Provider shall provide the following services (" <b>Services</b> "): <ul style="list-style-type: none"> <li>• Licence to use the Platform <b>all modules</b> to include:- <ul style="list-style-type: none"> <li>◦</li> </ul> </li> <li>• <b>Platform Set-Up and Testing Services</b> as set out in Annex A;</li> <li>• <b>[Support Services</b> as set out in Annex B]; <i>[delete if inapplicable]</i> and</li> <li>• <b>[Development Services</b> as set out in Annex C]. <i>[eg UX and app customisation, API integration] [delete if inapplicable]</i></li> </ul>
5.	AUTHORISED USE	To enable the Licensee to enter into a Customer Platform Services Agreement pursuant to which the Licensee enables the Customer to make the Platform available to End Users pursuant to the delivery of services to the residents of, and visitors to -

**C. FEES (all in UK £)**

1.	<b>LICENCE FEE</b>	<b>Module</b>  All modules Including hosting storage (UK) Up to 10GB Including hosting bandwidth up to 1TB pcm	<b>Total Cost UK£</b>  £X,XXX per calendar month
2.	<b>PLATFORM SET-UP AND TESTING SERVICES FEES</b>	<b>Platform Set-Up and Testing Services</b>  Installation	<b>Total Cost UK£</b>  £XXXX.XX
3.	<b>DEVELOPMENT SERVICES FEES</b>	<b>Development Services Fees</b>  UX & App Customisation, API Integration e.g. payments bespoke requirements	<b>Total Cost UK£</b>  Quoted on a project basis at £XXX per day
5.	<b>SUPPORT SERVICES FEE</b>	<b>Description</b>  Package: Channel: Suitable For: Total Contact Time Per Month: Maximum Response Time:  Monthly Package Fee: Total Support Services Fee (per annum): UK£ XXXX.XX  All fees charged by Google (for the Google Maps API) or any other third party provider application or service provider and costs relating thereto are the responsibility of and shall be paid by the Licensee or the Customer and the Provider shall have no liability in respect of such fees or costs.	
6	<b>THIRD PARTY REVENUE DETAILS</b>	<b>Description</b>  Third party business access Card payment processing	<b>Costs UK£</b>
7.	<b>PAYMENT DATES/ PAYMENT PROFILE</b>	<ul style="list-style-type: none"> <li>Platform Set-Up and Testing Services Fees shall be paid in full by the Licensee in advance on the Commencement Date.</li> <li>The License Fee in respect of the first month shall be paid by the Licensee in advance on the Commencement Date and thereafter shall be paid on the <b>1st</b> day of each month (and proportionately for any period less than a month) for the remainder of the Term.</li> <li>Support Services Fees shall be invoiced annually in advance.</li> <li>The Fees for such Development Services as may have been provided by the Provider and any relevant expenses shall be invoiced monthly in arrears.</li> </ul>	
8.	<b>PAYMENT METHODS</b>	All fees are quoted exclusive of any value added tax or other sales or local tax which shall be payable by the Licensee in addition.  The Provider shall provide to the Licensee a valid invoice in respect of each payment, but payment is due in accordance with this Agreement whether or not an invoice has been issued by the Provider or received by the Licensee.	
9.	<b>FEE REVIEW</b>	The Provider will not undertake a fee review whilst the agreement is in place.	

**D. GENERAL**

1.	<b>CONTACT DETAILS</b>	<p>The Provider:</p> <p>FAO: Loqiva, [REDACTED]</p> <p>Email: [REDACTED]</p> <p>the Licensee: <i>[insert details including postal address]</i></p> <p>FAO: [REDACTED]</p>
2.	<b>SPECIAL TERMS</b>	N/A

**STATEMENT OF WORK**

**SIGNED** for and on behalf of **the Provider**

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Name:.....

Position:.....

Date:.....

**SIGNED** for and on behalf of **the Licensee**

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Name:.....

Position:.....

Date:.....

## SCHEDULE 2

### TERMS AND CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement including the Schedules, the following words and phrases shall have the following meanings:

**"Acceptance Test"** means the test of the proper functioning of the Platform to ensure that the Platform's performance is in accordance with the Platform Documentation and specifications;

**"Applicable Laws"** means any statute, enactment, ordinance, order, regulation, guidance or other similar instrument (including, but not limited to, the Anti-Bribery Act 2010 and Modern Slavery Act 2015) in any jurisdiction, including any jurisdiction in which the Platform and/or Support Services are provided and/or received;

**"Agreement"** means the signature page and the Schedules (including these Terms and Conditions) together;

**"Authorised User"** means those individuals employed or engaged by the Licensee or the Customer who are authorised in writing by the Licensee or the Customer to access and use the Platform Dashboard;

**"Business Day"** means Monday to Friday, excluding all UK bank or national holidays;

**"Change Control Procedure"** means the procedure set out in Schedule 3 of this Agreement;

**"Customer"** means that person identified in a SOW and in respect of which the Provider has authorised the Licensee to enter into a Customer Platform Services Agreement;

**"Customer Platform Services Agreement"** means an agreement to be entered into by the Licensee with a Customer substantially in the form set out in Annex D;

**"Confidential Information"** means

- (a) the Materials; and
- (b) any documents, materials, information or data of one Party in whatever medium (including, but not limited to, all business, financial, commercial, technical, operational, organisational, legal, management and marketing information) which is disclosed or made available to the other Party (or, in the case of the Licensee, any of the Licensee Group Company) under or in connection with this Agreement and which at the time of such disclosure is designated as confidential by the disclosing Party;

**"Core Functionality"** means the functionality of the software modules provided as part of the Platform and current as at the date of the applicable SOW (which for the avoidance of doubt excludes any Development Functionality);

**"Current Release"** means the then current release of the Platform;

**"Data Protection Law"** the Data Protection Act 1998 or other local implementing legislation of Directive 95/46/EC, the Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (GDPR) and any applicable superseding or replacement legislation;

**"Development Functionality"** means functionality of the Platform developed by the Provider on behalf of the Licensee in the course of Development Services;

**"Development Services"** means bespoke software development, app customisation, API integration, on-site support, training, project management and any other service not covered by the Platform Set-Up and Testing Services, Support Services or Upgrades which may be agreed between the Parties shall be provided by the Provider;

**"End User"** means the users permitted by a Customer to use any system interface, including voice, connected devices, third party service providers and other graphic user interface elements of the Platform;

**"End User Agreement"** means an agreement entered into by the Customer with an End User;

**"Fault"** means any defect or error in the Platform;

**"Fees"** means all fees and other amounts payable by the Licensee to the Provider including but not limited to Licence Fees, Platform Set-up and Testing Services Fees, Support Service Fees and Additional Service Fees as set out in applicable SOWs;

**"Force Majeure"** means any act, event, omission or cause or circumstance whatsoever beyond the reasonable control of a Party, including without limitation, the following:

- (a) act of God;

- (b) outbreak of hostilities, riot, civil disturbance, acts of terrorism;

- (c) an act of any government or authority (including refusal or revocation of any licence or consent);

- (d) fire, explosion, flood, fog or bad weather;

- (e) power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles;

- (f) default of suppliers or sub-contractors; and

- (g) theft, malicious damage, strike, lock-out or industrial action of any kind.

**"Group Company"** means, with respect to a Party, that Party and any direct subsidiary or holding company of that Party or direct subsidiary of any such holding company (for which purposes "subsidiary" and "holding company" shall mean as set out in s736 and s736A of the Companies Act 1985) or any company in which a Party holds 50% or more of the shares;

**"Initial Support Term"** means the initial period during which the Provider provides Support Services as specified in the applicable SOW;

**"Intellectual Property Rights"** means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered and including rights in semiconductor topographies), copyright, database rights, trade and service marks (both registered and unregistered) together with all applications for, rights to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right;

**"Licence Fee"** means the platform software licence fee payable by the Licensee to the Provider as specified in the applicable SOW;

**"Materials"** means all Platform and Platform Documentation licensed by the Provider under this Agreement, and all materials and other deliverables created or developed or otherwise arising in the course of the provision of any Services which are licensed by the Provider under this Agreement;

**"Party"** means each of the persons identified as parties to this Agreement and jointly **"the Parties"**;

**"Platform"** means the Platform in object code form as described in the applicable SOW, and all Upgrades supplied to the Licensee under this Agreement, and all changes thereto or additional software created or developed or otherwise arising in the course of the provision of any Development Services and supplied to the Licensee under this Agreement;

**"Platform Dashboard"** means the website used to administer the Platform;

**"Platform Documentation"** means any instruction manuals and other information associated with the Platform which may be supplied by the Provider to the Licensee, whether in electronic form or otherwise;

**"Platform Set-Up and Testing Services"** means those set-up and testing services provided by the Provider in respect of the Platform as specified in the applicable SOW;

**"Platform Specifications"** means the technical specifications from time to time published by the Provider in respect of the Platform;

**"Renewal Term"** means any term following the Initial Support Term, for which the Support Services are renewed;

**"Service Commencement Date"** means the estimated date on which Services pursuant to an applicable SOW will commence;

**"Services"** means the services to be provided by the Provider pursuant to an applicable SOW including, if applicable, Platform Set-Up and Testing Services, the Support Services, and Development Services;

**"Support Services Fee"** means the fee payable by the Licensee to the Provider for the provision of Support Services in respect of the applicable Platform;

**"Support Services"** means those support services provided by the Provider in respect of the Core Functionality and Upgrade Functionality of the Platform as specified in the applicable SOW plus the provision to the Licensee of Upgrades in accordance with clause 7;

**"Term"** means the Minimum Licence Term, Initial Support Term or other period set out in the applicable SOW or agreed pursuant to this Agreement for which the applicable Services are provided or Platform is licensed to the Licensee;

**"Upgrades"** means patches, modifications, updates or upgrades to existing modules or functionality of the Platform but not including new versions or new functionality in respect of any future software modules developed by the Provider;

**"Upgrade Functionality"** means new functionality that is introduced to the Platform by way of an Upgrade (which for the avoidance of doubt excludes any Development Functionality);

**"Use"** means the authorised use of the Platform by the Licensee and/or Customer, as described in Section B of the SOW;

**"Working Hours"** means 9.00 am to 5.00 pm (GMT) on any Business Day;

1.2. In this Agreement, unless otherwise specified or the context otherwise requires:-

- (a) the singular includes the plural and vice versa and any gender includes the other gender;
- (b) references to clauses and schedules are to clauses of, and schedules to, this Agreement and, unless otherwise stated, references to clauses are references to clauses of the schedule containing the referring clause;
- (c) reference to any statutory provision includes a reference to any subordinate legislation made under that provision from time to time; and
- (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.

## 2. GRANT OF LICENCE

2.1. Pursuant to the relevant SOW, in consideration of payment of the applicable Licence Fee, the Provider hereby grants to the Licensee a revocable, non-exclusive, non-transferable licence to Use the Platform and to possess and Use the Platform Documentation during the applicable Term, in accordance with this Agreement.

2.2. The Licensee must only Use the Materials for the purposes of a Customer Platform Services Agreement, or otherwise for its internal business purposes.

2.3. The Licensee shall not:

- 2.3.1. copy the whole or any part of the Materials;
- 2.3.2. save as required to be permitted by law modify, merge or combine the whole or any part of the Materials with any other software or documentation;
- 2.3.3. assign, license, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Materials nor use on behalf of or make available the same to any third party; or
- 2.3.4. save as required to be permitted by law reverse engineer or decompile the whole or any part of the Materials from object code into source code or make any derivative works from or based upon the Materials or any part thereof.

2.4. The Licensee shall:

- 2.4.1. comply with all Applicable Laws;
- 2.4.2. (unless waived by the Provider) reproduce on any copy of the Materials the copyright and trade mark notices displayed on the Materials without any modification or adjustment or in such other form as the Provider may require;
- 2.4.3. only enter into a Customer Platform Services Agreement that contains, at a minimum, the terms and conditions substantially similar to those contained in Annex D to a SOW;
- 2.4.4. maintain an up-to-date record of the number of copies of the Materials and their location and upon request forthwith produce such record to Logiva;
- 2.4.5. ensure that the number of individual users entitled to use the Platform at any time does not exceed the number of End Users and that the Platform Dashboard is used by Authorised Users only;
- 2.4.6. without prejudice to the foregoing, take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of the Provider in the Materials.

2.5. The Provider will make available the Platform to the Customer and/or Licensee by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account prior to the anticipated commencement date of the Acceptance Tests. The Licensee shall provide the Provider with each IP address to be used in respect of the Platform.

2.6. The Licensee shall not either in whole or part transfer, sub-license, lend, charge or otherwise deal in or make available the Materials to any third party in any manner whatsoever except in accordance with a Customer Platform Services Agreement.

2.7. The Provider and its nominated representatives shall have the right to audit all the Platform provided under this Agreement and all back-up copies of the Platform to ensure that the use of the Platform by the Licensee is in compliance with the terms of this Agreement. The Licensee shall provide all reasonable

assistance to the Provider as the Provider may require in the performance of such audit.

## 3. PLATFORM SET-UP AND INSTALLATION

3.1. The Provider shall commence the Platform Set-Up and Testing Services deliver the Platform to the Licensee on or as soon as reasonably practicable following the applicable date specified in the SOW. Time shall not be of the essence in respect of delivery of the Platform or the Platform Set-Up and Testing Services.

3.2. The Licensee shall at its own cost:-

- 3.2.1. provide suitably skilled staff capable of operating, testing and providing 1st line support for the Platform;
- 3.2.2. undertake testing of the Platform upon its delivery in accordance with Schedule 4;
- 3.2.3. promptly report in writing any deficiencies in the Platform in detail to Logiva;
- 3.2.4. provide such reasonable working space, facilities and services to Logiva as may be required by Logiva to fulfil its obligations under this Agreement

3.3. Acceptance Tests shall be conducted in respect of Platform pursuant to the provisions of Schedule 4.

3.4. The Licensee shall at its own cost nominate a duly authorised project manager to act as the principal point of contact for the purposes of this Agreement.

## 4. FEES AND EXPENSES

4.1. All Fees set out in each applicable SOW are stated exclusive of value added tax and any other sales or local taxes which shall be paid by the Licensee at the rate and in the manner for the time being prescribed by law.

4.2. In addition to the fees payable under this Agreement, additional costs are payable by the Licensee in respect of additional requirements including but not limited to any of the following:

- 4.2.1. documentation as may be required by the Licensee in addition to the Platform Documentation;
- 4.2.2. additional requirements due to a deficient operating environment for the Platform;
- 4.2.3. any support, maintenance or other additional services required in respect of any Development Functionality or other agreed changes to the functional specifications of the Platform;
- 4.2.4. any additional training required by the Licensee.

4.3. All fees payable by the Licensee under this Agreement shall be due on the day specified in the SOW or otherwise within 30 days from the date of invoice by the Provider.

4.4. The Licensee shall pay all amounts due under this Agreement in full and without set-off, deduction or counterclaim. If the Licensee is required to make any withholding by way of withholding tax it shall gross up the payment due to the Provider so that the Provider receives the sum that it would have received had no such withholding been made.

4.5. All payments shall be made in the currency in which the relevant fee is stated on the Provider's invoice, and shall be made by electronic payment to the Provider's bank account (as nominated by the Provider from time to time).

4.6. If the Licensee fails to pay the Provider any sum due within 5 days of the date due pursuant to this Agreement then, without prejudice to any other right or remedy available to the Provider:

- 4.6.1. the Provider shall be entitled to terminate this Agreement forthwith;
- 4.6.2. at its sole discretion, the Provider shall be entitled to suspend or terminate the provision of any Services immediately (including but not limited to access to the Hosted Service);
- 4.6.3. the Provider shall be entitled to appropriate any payment made by the Licensee under this Agreement (or any other agreement between the Provider and the Licensee) as the Provider may see fit; and
- 4.6.4. the Licensee will be liable to pay interest to the Provider on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of HSBC Bank Plc or its successor in title, accruing on a daily basis until payment is made, whether before or after any judgment. The Provider reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.7. If any federal, state or local sales or use tax (or its equivalent) is legally due in relation to the Platform or Services, the Provider shall separately bill such tax on its invoice. The Licensee shall pay the Provider for such tax or, if such tax is not applicable to the Platform or Services, the Licensee shall show appropriate exemption statements and any necessary information required by the applicable taxing authority. All other taxes, including but not limited to federal, state and local income taxes, franchise taxes, gross receipt taxes and property taxes shall be the responsibility of the party who incurs the tax liability.

- 4.8. On not less than thirty written days' notice to the Licensee, Loqiva may increase any and all of the Fees once in every successive period of twelve months during the currency of this Agreement. Such increase shall be by an amount no greater than 5% unless otherwise agreed.
5. **CONFIDENTIALITY**
- 5.1. Each Party shall:
- 5.1.1. use the Confidential Information disclosed to it (by whoever disclosed) only for the proper performance of its duties under this Agreement;
- 5.1.2. not without the disclosing Party's written consent disclose or permit the disclosure of the Confidential Information disclosed to it;
- 5.1.3. only make such records as are strictly necessary for the proper performance of its duties under this Agreement and clearly mark all records as confidential;
- 5.1.4. take all necessary and proper security precautions (and at least as great as those it takes to safeguard its own confidential information) to safeguard every part of the Confidential Information to prevent it from being disclosed or otherwise made available to any third party except as permitted by this Agreement;
- 5.1.5. without keeping any copies (except that one copy may be kept solely for archive or regulatory purposes), delete or deliver to the disclosing Party, within three (3) days of receipt of a request to do so made at any time, all records;
- 5.1.6. keep all Confidential Information of the other Party confidential, and not without the prior written consent of the other Party disclose or permit the disclosure of the same to any third party other than its or their respective personnel on a strictly need to know basis; and
- 5.1.7. use the Confidential Information of the other Party only for the proper performance of its duties or exercise of its rights under this Agreement;
- provided that nothing in this clause 5.1 shall prevent or restrict the Provider from incorporating or reproducing any ideas, concepts or functionality of or relating to any software or systems to which the Provider is permitted access by the Licensee in the course of performing its obligations under or pursuant to this Agreement.
- 5.2. Save in respect of the Materials (which the Licensee shall continue to treat in confidence notwithstanding their entry into the public domain), the provisions of clause 5.1 shall not apply to any Confidential Information that:
- 5.2.1. the receiving Party can reasonably demonstrate was known to the receiving Party or in its possession before that information was acquired from the disclosing Party;
- 5.2.2. is in or enters the public domain through no wrongful default of the receiving Party or any person on its behalf, with effect from the date that the relevant Confidential Information enters the public domain; or
- 5.2.3. the receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence.
- 5.3. Save as expressly permitted by the Provider, the Licensee shall keep confidential and not disclose to any third party any Materials and all coding, documentation, materials, information and data relating or preparatory thereto.
- 5.4. The provisions of clauses 5.1 and 5.3 shall not apply to any information which is required to be disclosed by any applicable law or by order of any court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure, provided that the receiving Party shall use all reasonable endeavours:
- 5.4.1. to give the other Party as much written notice of the disclosure as it reasonably can to enable the other Party to seek a protective order or other action protecting such information from disclosure;
- 5.4.2. to furnish only that portion of the information that it is legally obliged to disclose; and
- 5.4.3. to consult with the other Party with a view to agreeing the timing and content of any such disclosure.
- 5.5. The receiving Party shall notify the disclosing Party promptly if it becomes aware that any of the Confidential Information falls within the provisions of clauses 5.2 or 5.4.
- 5.6. If this Agreement is terminated, the receiving Party shall promptly return or destroy at the request of the disclosing Party all Confidential Information of the disclosing Party.
6. **INTELLECTUAL PROPERTY**
- 6.1. The Licensee hereby acknowledges and agrees that:
- 6.1.1. the Provider is the exclusive owner of all Intellectual Property Rights protecting software, materials or other works created, developed or otherwise arising in the course of the provision of any Services provided by the Provider; and
- 6.1.2. the Provider is the exclusive owner of all other Intellectual Property Rights protecting the Materials.
- 6.2. To the extent that any Intellectual Property Rights protecting any software, materials or other works created or developed in the course of the provision of the Services do not, by operation of law, vest automatically in the Provider but are owned by the Licensee or any Licensee Group Company, the Licensee hereby irrevocably assigns, and/or shall procure the assignment of the same to the Provider by way of present and (where possible) future assignment with full title guarantee, and the Licensee shall at the expense and request of the Provider do or procure to be done all such things and execute or procure the execution of all such documents which may be necessary or desirable to vest such rights in the Provider absolutely.
- 6.3. The Provider hereby warrants that the use and possession by the Licensee of the Platform in accordance with this Agreement shall not infringe any registered trade marks or copyright of any third party in the UK and under English law. The Provider shall indemnify the Licensee against all actual direct damages, costs and expenses awarded against the Licensee by a court of competent jurisdiction not subject to appeal arising from breach of the warranty in this clause 6.3, provided that:
- 6.3.1. the Licensee shall promptly notify the Provider in writing of any claim of alleged infringement for which indemnification is sought under this clause 6.3 ("Infringement Claim");
- 6.3.2. the Licensee makes no admissions as to liability or compromise or agree any settlement of any Infringement Claim without the prior written consent of the Provider, or otherwise prejudice the defence of any Infringement Claim;
- 6.3.3. the Licensee gives the Provider (or such person as the Provider shall direct) immediate and complete control of the conduct or settlement or all negotiations and litigation arising from any Infringement Claim, provided that the Provider shall consult the Licensee periodically in relation to such conduct or settlement; and
- 6.3.4. on payment of its reasonable costs, the Licensee gives the Provider and such other third parties as the Provider shall direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.
- 6.4. In the event of any Infringement Claim, the Provider may, at its sole option and own expense:
- 6.4.1. procure the right for the Licensee to continue using the infringing Platform;
- 6.4.2. avoid future infringement by making or procuring such alterations, modifications or adjustments as the Provider considers necessary or desirable provided that such alterations, modifications or adjustments do not entail a material diminution in performance or function;
- 6.4.3. replace the Platform or infringing part thereof with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function; or
- 6.4.4. terminate this Agreement on giving written notice to the Licensee and refund the total Licence Fees paid by the Licensee in the immediately preceding 12 month period.
- 6.5. Notwithstanding clause 6.3, the Provider shall have no liability for any claim of infringement based on:
- 6.5.1. use of the Platform other than in accordance with the Platform Documentation or this Agreement, or use of the Platform for a purpose for which it was not designed;
- 6.5.2. the use of a superseded or altered release of the Platform which is no longer supported under this Agreement if the infringement would have been avoided by the use of the current release of the Platform; or
- 6.5.3. any repair, adjustment, alteration or modification of the Platform which has not been authorised in writing by the Provider.
- 6.6. The Licensee shall be under an obligation to mitigate its losses in respect of liabilities being indemnified and shall, if requested by the Provider, provide evidence to the Provider of all steps that it has taken to do so.
- 6.7. The Licensee shall render the Provider and, if requested by the Provider, all reasonable assistance in connection with any matter pertaining to the maintenance, protection, enforcement or infringement of the Intellectual Property Rights in the Materials, whether in the courts, administrative or quasi-judicial agencies, or otherwise and the Provider will reimburse the Licensee for reasonable out-of-pocket costs pre-approved by the Provider in writing and incurred by the Licensee in connection with rendering such assistance.
- 6.8. The Licensee will not do anything inconsistent with the Provider's ownership of the Materials and shall not claim adversely to the Provider, or assist any third party in attempting to claim adversely to the Provider, with regards to such ownership. The Licensee agrees that it will not challenge, in any country or jurisdiction, the Provider's title to or ownership of the Materials or any rights therein or challenge the validity of the Materials or the licence granted under this Agreement. The Licensee will neither do, assist the doing of nor permit to be done any act which

- would or might jeopardise or invalidate any registration of the Intellectual Property Rights in the Materials or the Provider's right or title to any Materials.
- 6.9. This clause 6 states the entire liability of the Provider in respect of infringement of any Intellectual Property Rights of any third party.
- 7. INFRINGEMENT**
- 7.1. The Licensee will as soon as it becomes aware notify the Provider of any use or proposed use by any third party which amounts or might amount to infringement of any Intellectual Property Rights in the Materials.
- 7.2. If the Licensee becomes aware that any third party alleges that any of the Intellectual Property Rights in the Materials are invalid or that use of the Materials infringes any third party right, the Licensee will immediately notify the Provider and will make no comment or admission to anyone else regarding these matters.
- 7.3. Unless otherwise agreed in writing between the Parties:
- 7.3.1. the Licensee may not bring any claim for infringement;
- 7.3.2. the Provider will have the conduct of all claims regarding infringement or alleged infringement of the Intellectual Property Rights in the Materials and all claims brought or threatened regarding the use or registration of the Materials;
- 7.3.3. the Provider will be entitled to retain all of any damages awarded in respect of any such claim; and
- 7.3.4. the Provider will not be obliged to bring or defend any such claim under any law or regulation and may decide what action (if any) to take regarding any such claim.
- 7.4. The Licensee will on request co-operate with the Provider regarding any such claim.
- 8. SUPPORT SERVICES**
- 8.1. Clauses 8.2 to 8.11 and relevant defined terms shall be applicable if the Provider provides Support Services to the Licensee.
- 8.2. With effect from the applicable Service Commencement Date, subject to the Licensee paying any and all Support Services Fees as they become due, the Provider shall provide the Support Services specified in the applicable SOW subject to the terms and conditions of this Agreement. The Provider shall use all reasonable endeavours to provide the Support Services promptly but time shall not be of the essence.
- 8.3. The Provider shall not be liable to provide Support Services:
- 8.3.1. in respect of Platform that is not properly licensed pursuant to clause 2.1 of this Agreement;
- 8.3.2. if the Licensee does not maintain any Development Functionality in conformity with any minimum technical requirements and prerequisites as set out in Annex C or which are otherwise applicable;
- 8.3.3. in the circumstances set out in clause 8.4; or
- 8.3.4. if the Licensee is in breach of this Agreement.
- 8.4. Support Services shall not include the diagnosis and rectification of any Fault resulting from:
- 8.4.1. the improper use, operation or neglect of either the Platform or the equipment upon which the Platform is installed or used;
- 8.4.2. the failure by the Licensee or a Customer to implement recommendations in respect of or solutions to Faults previously advised by the Provider;
- 8.4.3. any change, repair, adjustment, alteration, merger or modification of the Platform by any person other than the Provider without the Provider's prior written consent;
- 8.4.4. any breach by the Licensee or a Customer of any of its obligations under any maintenance agreement in respect of the equipment upon which the Platform is installed or used;
- 8.4.5. any Development Functionality (except where the Fault is attributable directly to a lack of reasonable skill and care by the Provider in the performance of the Development Services);
- 8.4.6. any failure, accident, neglect or misuse of equipment, software, application or media not supplied by the Provider;
- 8.4.7. the Platform having been used by the Licensee or a Customer not in accordance with the procedures set out in the Platform Documentation or for any purpose other than its intended purpose or otherwise having been incorrectly used or misused;
- 8.4.8. the Platform being used with software, application, media and/or equipment with which it is (or subsequently becomes) incompatible or otherwise than as permitted by the Provider in writing;
- 8.4.9. the Licensee not having incorporated all replacements, modifications, upgrades or additions to the Platform as may be issued by the Provider to the Licensee;
- 8.4.10. any virus contracted by the Platform after the date of delivery to the Licensee; or
- 8.4.11. any wilful or negligent act or omission of the Licensee or a Customer causing a Fault.
- 8.5. Subject to clause 8.6, the Provider may at its own discretion upon request by the Licensee provide Support Services notwithstanding that the Fault results from any of the circumstances described in clause 8.4 above.
- 8.6. The Provider shall be entitled to levy additional charges, subject to prior written request by Licensee, for:
- 8.6.1. Support Services provided pursuant to clause 8.5;
- 8.6.2. the provision of any other services by the Provider not specified in this Agreement; or
- 8.6.3. any Support Services provided outside of the hours specified for the provision of the Support Services in the applicable SOW.
- 8.7. The Licensee shall allow the Provider all necessary access to the Licensee's premises and shall procure access to a Customer's premises where this is required to provide the Support Services under this Agreement. The Licensee shall take all reasonable precautions to ensure the health and safety of the Provider's employees or agents whilst on the Licensee's (or a Customer's) premises. The Provider and its employees shall to the extent that they have been so advised by the Licensee observe and comply with the Licensee's reasonable security, health and safety requirements applicable to such premises.
- 8.8. The Provider will provide Support Services for the current release of Platform.
- 8.9. All Upgrades supplied to the Licensee and all changes to the Platform or additional software created or developed in the course of the provision of the Services and supplied to the Licensee, shall with effect from the date of each such supply be deemed to be Platform and shall accordingly be licensed to the Licensee in accordance with and subject to the terms and conditions of this Agreement. For the avoidance of doubt, Upgrades shall not include changes to the Platform to enable the Platform to operate on hardware platforms different from the platforms advertised and the Licensee accepts and acknowledges that the Provider shall provide regular Upgrades to the Platform.
- 9. CHANGE CONTROL**
- 9.1. Any proposed material variations to the Development Services ("**Change**") by either party must be made in accordance with the Change Control Procedure set out in Schedule 3.
- 9.2. No Change will be considered effective unless or until the applicable Modification Note has been signed by authorised representatives of both Parties.
- 10. DEVELOPMENT SERVICES**
- 10.1. The Provider may, to supplement the Support Services and the provision of Upgrades, provide Development Services. In the event the Licensee requires Development Services it may so notify the Provider, and shall provide the Provider with documented particulars of the services required.
- 10.2. The provision of any Development Services shall be subject to prior written agreement by the Provider. If agreed, the Provider shall use all reasonable endeavours to provide such Development Services but time shall not be of the essence.
- 10.3. In the event that the proposed Development Services would involve the provision of additional software as part of any Development Functionality, the following procedure shall be followed:
- 10.3.1. The Provider shall, in conjunction with the Licensee and for the Licensee's approval, prepare an outline specification of the Development Functionality. The Parties shall endeavour to agree the specification including any costs for producing more detailed specifications, where required; and any amendments as may be reasonably required. On agreement of the specification the Provider will provide to the Licensee, for the Licensee's approval, an estimate of the costs of designing, developing and implementing the Development Functionality and of date of delivery, and a statement on the period of validity of that estimate.
- 10.3.2. Should the Licensee wish to accept the specification and estimates and to proceed with the proposed Development Functionality, it shall so inform the Provider in writing within the period of validity referred to in clause 10.3.1 above. In that event the Provider shall supply the Development Functionality pursuant and subject to the terms of this Agreement.
- 10.4. All Intellectual Property Rights in any Development Functionality or other work product of the Development Services shall as between the Parties be the exclusive property of the Provider.
- 10.5. From the date when any Development Functionality is first made available to the Licensee, the Development Functionality shall from part of the Platform under this Agreement and accordingly the Licensee's rights to use the Development Functionality shall be governed by clause 2 above save the Licensee shall have an irrevocable, perpetual and transferable non-exclusive licence in respect (and

only in respect) of the Intellectual Property Rights created by the Provider specifically in connection with that Development Functionality. The Licensee acknowledges that the Provider may make any Development Functionality available to any other licensee or customers at any time.

## 11. WARRANTY

11.1. The Provider does not warrant or represent that the Platform will be fault-free but if the Licensee discovers a material fault within 90 days from the date of delivery of the Platform (the "Platform Warranty Period") whereby the Platform does not conform to the Platform Specifications then the Provider shall have the right, at its sole option, either to terminate the Agreement and refund the Licence Fees or use all reasonable endeavours to correct by patch or new release (at its option) that part of the Platform which does not comply, provided that the Licensee shall not be entitled to such refund, correction or new release if such fault is caused by:-

- 11.1.1. any Development Functionality (except where the Fault is attributable directly to a lack of reasonable skill and care by the Provider in the performance of the Development Services);
- 11.1.2. use of the Platform which is not in accordance with the procedures set out in the Platform Documentation or otherwise in accordance with the Agreement; or
- 11.1.3. any virus contracted by the Platform after the date of delivery to the Licensee; or
- 11.1.4. use of the Platform with software and/or equipment with which it is incompatible.

11.2. The Provider warrants that it uses commercially reasonable methods to test and protect the Platform against viruses and other harmful elements designated to disrupt the orderly operation of, or impair the integrity of data files resident on, any data processing system, and that the Provider shall not install or otherwise deliver any Platform that does not pass such testing. The Provider does not warrant that the Platform shall be free from all known viruses and other such harmful elements. Furthermore, the Provider shall not be liable for any failure on the part of the Licensee or a Customer to use commercially reasonable methods to protect its systems, software and data against viruses and other harmful elements.

11.3. The Provider warrants that the Support Services and any Development Services that may be supplied under this Agreement will be carried out with reasonable care and skill.

11.4. The Provider shall not be liable under clause 11.3 to remedy any problem arising from or caused by any cause not related to faulty work by the Provider. If any problem reported by the Licensee as faulty work is found upon investigation not to be caused by faulty work on the part of the Provider, the Licensee shall reimburse the Provider in respect of all reasonable costs and expenses incurred by the Provider in the course of or in consequence of such investigation.

11.5. The rights and remedies set out in this clause 11 are the entire rights and remedies of the Licensee in respect of a breach of the warranties contained in clauses 11.1 and 11.3.

11.6. Except as expressly warranted in this Agreement, the Provider makes no other warranty of any kind, express or implied, and any such warranties are hereby excluded to the fullest extent permissible by applicable law.

## 12. LIABILITY

12.1. Neither Party excludes or limits its liability to the other Party for death or personal injury resulting from its negligence or for fraudulent misrepresentation or for any other liability which cannot be limited under applicable law.

12.2. Without prejudice to clause 12.1, in no event shall the Provider be liable to the Licensee for:

- 12.2.1. loss of revenue;
- 12.2.2. loss of anticipated savings;
- 12.2.3. loss of profits;
- 12.2.4. trading losses;
- 12.2.5. loss of data;
- 12.2.6. damage to goodwill;
- 12.2.7. loss of reputation; or
- 12.2.8. any type of indirect, economic or consequential loss or damage whatsoever or howsoever caused.

12.3. Without prejudice to clause 12.1, and except as otherwise provided in this Agreement, the total liability of the Provider in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement shall be limited in aggregate to the total Fees paid and payable by the Licensee under this Agreement in the previous twelve months up to and including the date of the claim.

12.4. Without prejudice to the generality of clauses 12.1 to 12.3 above, the Licensee expressly acknowledges that the Platform will process data which is provided

from sources other than the Provider and the Provider has no control over the contents of such data and does not purport to verify the accuracy of such data so it is not reasonable to require the Provider to warrant or to be liable in respect of the accuracy of calculations made by the Platform.

12.5. The Provider excludes any liability for any failure or termination of supply or denial of service of third party systems or services to which the Platform may be interfaced, howsoever caused.

12.6. The Provider excludes any liability arising from any failure on the part of the Licensee or a Customer to incorporate Upgrades, replacements, modifications, upgrades or additions to the Platform as may be issued by the Provider to the Licensee.

12.7. The Licensee shall fully indemnify, hold harmless and defend the Provider and its respective directors, officers, employees and agents for any losses, costs (including legal costs) and liabilities incurred or suffered by any of them resulting directly or indirectly from:

12.7.1. any infringement of any third party rights arising directly or indirectly from any work done by the Provider at the request of the Licensee on third party materials, including without limitation software and hardware;

12.7.2. any claim arising directly or indirectly from any use of any data produced by or transmitted by or in any other way communicated or made available directly or indirectly by the Platform to or via third parties, including but not limited to a Customer, any End Users (whether for business or private use) or any unauthorised use of the Platform. The Licensee shall defend any claims described in this clause 12.7.2 and make settlements thereof at its own discretion (provided that the Licensee may not enter into any settlement under which the Provider would be required to assume any liability or make any admission without the prior written consent of the Provider) and the Provider shall give such assistance as the Licensee may reasonably require to settle or oppose any such claims, at the Licensee's request and expense.

## 13. TERM AND TERMINATION

13.1. This Agreement shall commence on the Effective Date and, subject to termination in accordance with this clause 13, shall continue thereafter.

13.2. The relevant licence or service term shall be set out in each applicable SOW, subject to earlier termination in accordance with the terms of this Agreement.

13.3. Without prejudice to any other rights or remedies of the Provider, the Provider may terminate or suspend this Agreement and/or a particular SOW with immediate effect by written notice if:

13.3.1. Licensee fails to pay all or any fees by the due date (save where such fees are the subject of a bona fide dispute) and, following notice of such breach, fails to remedy the breach within a period of 5 Business Days of receipt of written notice to do so from the Provider;

13.3.2. there is a material deviation from the intended Use.

13.4. This Agreement and/or a particular SOW may be terminated immediately by either Party, on giving written notice to the other:

13.4.1. If the other commits a material breach of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

13.4.2. if the other Party is dissolved or struck off the register of companies maintained by the Companies Registration Office or a winding up order is made against the other Party or a meeting is convened, resolution passed or any step taken by the other Party with a view to the winding-up of the other Party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;

13.4.3. if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the other Party;

13.4.4. if the other Party is unable to pay its debts or is insolvent as defined in section 123 of the Insolvency Act 1986;

13.4.5. if the other Party enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other Party;

13.4.6. if notice of intention to appoint an administrator is given by any person (including the other Party's directors, the other Party or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the other Party into administration as defined by the Insolvency Act 1986;

13.4.7. if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in clauses 13.4.2 to 13.4.7 in relation to the other Party;

13.4.8. the other Party ceases or threatens to cease carrying on business.

13.5. This Agreement, the Support Services and/or a particular SOW may be terminated by the Licensee on not less than 90 days written notice to the Provider provided such notice expires on the expiry of the Minimum Licence

Term, an anniversary of the Commencement Date, or if later, upon termination of the Customer Platform Services Agreement. In the event of such termination, the Licensee will pay to the Provider any fees due and payable for the remainder of each applicable Term in respect of any then current SOWs or, if a particular SOW only is terminated, in respect of the relevant SOW.

- 13.6. Subject to the terms of this Agreement including the rights of either Party to terminate this Agreement under any provision thereof, the Support Services shall be provided for the Initial Support Term and shall thereafter continue to be provided for subsequent Renewal Terms of the same duration as the Initial Support Term or such other duration as the Parties may agree in writing unless and until terminated in accordance with clause 13.5. In the event of termination of the Support Services the Licensee will pay to the Provider any fees due to the Provider for Support Services on a pro rata basis calculated as at the date of termination.
- 13.7. Any termination of this Agreement and/or a SOW shall be without prejudice to any other accrued rights or remedies either Party may be entitled to under this Agreement or at law.
- 13.8. In the event of expiry or termination (howsoever arising) of this Agreement or SOW (as applicable):
- 13.8.1. all Customer Platform Services Agreements and other licences granted hereunder shall immediately cease and accordingly the Licensee shall immediately cease and procure that each relevant Customer shall cease all use of the Platform;
- 13.8.2. the Licensee shall within 14 days of such expiry or termination return (or procure the return) to the Provider or at the Provider's direction destroy (or procure the destruction of) all copies of the Materials in its or a Customer's possession, custody or control, and a duly authorised officer of the Licensee shall certify in writing to the Provider that the Licensee has complied with this obligation; and
- 13.8.3. the Licensee shall promptly pay all sums due and payable under this Agreement without delay, (in respect of which the Provider shall deliver to the Licensee a final invoice as soon as reasonably possible).

#### 14. DATA PROTECTION

- 14.1. The Licensee warrants that it has the legal right to disclose all personal data that it does in fact disclose to the Provider under or in connection with this Agreement.
- 14.2. The Provider warrants that:
- 14.2.1. it will act only on instructions from the Licensee in relation to the processing of any personal data performed by the Provider on behalf of the Licensee; and
- 14.2.2. it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of personal data and against loss or corruption of personal data processed by the Provider on behalf of the Licensee.
- 14.3. Each Party shall in relation to its activities under this Agreement comply with their respective obligations under Data Protection Law and any directions issued by the Information Commissioner (or any analogous regulator) in its processing of such personal data with the Provider as a "Data Processor" (as defined in Data Protection Law).
- 14.4. The Licensee permits the Provider to process and use anonymised data taken from the all works and materials uploaded to, stored on, processed using or transmitted via the Platform and other End User data for the purposes of research and analysis and furthermore the Licensee shall procure that all End Users provide the requisite consent to enable such activity and use by the Provider.

#### 15. FORCE MAJEURE

- 15.1. Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by Force Majeure.
- 15.2. Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for ninety (90) days or more, the Party not affected may, at its the Provider and if in its opinion it is reasonable for it to do so, terminate this Agreement by giving 14 days written notice of such termination to the defaulting Party.

#### 16. NON-SOLICITATION

The Parties agree that during the period in which this Agreement is in place and for 12 months after the date on which this Agreement is terminated or expires, neither party shall directly or indirectly, solicit, endeavour to entice away, employ or offer to employ any director, officer or employee of the other Party, whether or not that person would commit any breach of his or her contract of service in leaving his or her employment.

#### 17. WAIVER

The failure by either Party to exercise or enforce any rights under this Agreement shall not be deemed to be a waiver of any such rights, nor shall any single or partial exercise of any right, power or privilege, or further exercise thereof, operate so as to bar the exercise or enforcement thereof at any later time. The waiver by either Party of any breach of any of the terms of this Agreement by the

other Party shall not be deemed to be a waiver of any other breach of this Agreement.

#### 18. NOTICES

- 18.1. Any notices required to be given under this Agreement shall be in writing and delivered personally or by first class post to the Parties at the address specified in this Agreement.
- 18.2. Any notice served by:
- 18.2.1. personal delivery, shall be deemed served at the time of delivery;
- 18.2.2. recorded post, shall be deemed served at the start of the fifth Business Day after posting; and
- 18.2.3. by email, at the time of transmission (provided the sending party retains written evidence of the transmission).
- 18.3. Any Party may change any details of its address by notice in the manner described above.

#### 19. SEVERABILITY

If any term or provision of this Agreement or its application to any Party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of the term or provision to any other Party or circumstances, other than those as to which it is already invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties shall negotiate in good faith to replace any invalid or unenforceable provisions by substitute provisions.

#### 20. ENTIRE AGREEMENT

- 20.1. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and invalidates all prior oral or written communications, understandings, representations or warranties relating to the subject matter hereof.
- 20.2. Each Party warrants to the other that it has not relied on any such communications, understandings, representations or warranties in entering into this Agreement.
- 20.3. Notwithstanding anything contained herein to the contrary, the provisions of clauses 4, 5, 6, 12, 13, 14, 16, 20 and 27 and any other clauses which are intended to survive termination shall survive termination of the Agreement and shall continue in full force and effect thereafter.

#### 21. VARIATIONS

No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties. Such variations shall then be deemed incorporated into this Agreement.

#### 22. ASSIGNMENT/SUB-CONTRACTING

- 22.1. The Provider shall be entitled to assign, sub-contract or otherwise transfer its rights or obligations under this Agreement (in whole or part). If the Provider sub-contracts its obligations under this Agreement such sub-contracting shall not relieve the Provider of its obligations under this Agreement.
- 22.2. Save as stated herein, the Licensee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under this Agreement whether in whole or part without the Provider's prior written consent (which may be withheld in the Provider's absolute discretion).

#### 23. STATUS

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### 24. THIRD PARTY RIGHTS

- 24.1. Each and every obligation of the Licensee under this Agreement is owed to the Provider and each other member of the Provider Group Company who may enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 and references to the Provider in the context of the Licensee's obligations should be construed accordingly.
- 24.2. Subject to clause 24.1 only, a person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### 25. PUBLICITY

The Provider shall be permitted to use the Licensee's name in its marketing and promotional materials, including but not limited to the Provider's website.

**26. DISPUTE RESOLUTION**

- 26.1. If at any time any question, dispute or difference shall arise between the Parties as to any matter or thing of whatever nature arising under or in connection with this Agreement (a "Dispute"), then either Party may give to the other notice in writing as to such Dispute (a "Dispute Notice") and upon receipt of such notice, authorised representatives shall meet as soon as possible and use their reasonable endeavours to resolve such Dispute in good faith.
- 26.2. If the Dispute has not been resolved by negotiation within sixty (60) days of delivery of the Dispute Notice, the Parties shall seek to resolve the Dispute pursuant to clause 26.3.
- 26.3. If any Dispute cannot be resolved in accordance with clauses 26.1 and 26.2, the Parties will consider using mediation in accordance with CEDR procedures then in force before resorting to litigation. If either Party does not wish to use, or continue to use, mediation or if mediation does not resolve the dispute, either Party may proceed to litigation in accordance with clause 27.

- 26.4. If a Party requires an order for urgent and/or injunctive relief (whether interim or final) and/or needs to commence proceedings to prevent a claim from becoming time-barred due to the expiry of any statutory, contractual or procedural time limit or limitation period, nothing in this clause 26 shall prevent a Party from seeking relief and/or issuing a claim.

**27. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and each Party hereby irrevocably submits to the non-exclusive jurisdiction of the English courts.

**SCHEDULE 3**  
**CHANGE CONTROL PROCEDURE**

**1. GENERAL**

- 1.1. If either Party identifies a need for any Change to the Services under this Agreement, the Parties shall proceed in accordance with the Change Control Process set out in this Schedule.
- 1.2. Neither Party shall unreasonably withhold its agreement to any Change.
- 1.3. There shall be no presumption that the obligations undertaken by either party in connection with the Agreement are in any way changed until an amendment has been effected in writing signed by authorised representatives of each Party.
- 1.4. No amendments to the Agreement shall be valid and the rights of and obligations of both Parties in connection with this Agreement shall not be changed, and no Change shall be effective unless and until they have been agreed in writing by the authorised representative of each Party.

**2. PROCEDURE**

- 2.1. The Licensee and the Provider shall discuss any Change proposed by either party and such discussion shall result in either:
  - 2.1.1. agreement in writing not to proceed further with the Change;
  - 2.1.2. a written request for a Change by the Licensee;
  - 2.1.3. a recommendation for a Change by the Provider.
- 2.2. Where a written request for a Change is received from the Licensee, the Provider shall, unless otherwise agreed, submit a proposal ("**Modification Note**") to the Licensee within fifteen (15) Business Days (or such other time as the Parties may agree in writing) containing the information set out in Part 2 of this Schedule and any other relevant information.
- 2.3. A recommendation for a Change by the Provider shall be submitted as a Modification Note at the time of such recommendation.
- 2.4. For each Modification Note submitted the Licensee shall, within the period of the validity of the Modification Note:
  - 2.4.1. allocate a sequential number to the Modification Note;
  - 2.4.2. evaluate the Modification Note and either:
    - (a) request further information, which the Provider shall promptly provide; or
    - (b) discuss the terms of the Modification Note with the Provider and request amendments thereto; or
    - (c) approve the Modification Note, as submitted by the Provider or as amended pursuant to (ii) above; or
    - (d) reject the Modification Note.
- 2.5. The Licensee shall notify the Provider of its approval or rejection of the Modification Note by notice in writing to the Provider. No such notice shall be valid unless signed by a duly authorised officer of the Licensee.
- 2.6. If the Licensee and the Provider agree a Change and the relevant Modification Note then signature of the Modification Note and any supplement or amendment thereto by both Parties shall constitute a formal amendment to the Agreement to the extent only specified in the Modification Note and any such supplement or amendment.
- 2.7. If the Provider modifies the whole or any part of the Platform in accordance with any Change it shall make all appropriate related modifications to Platform Documentation, the cost of which (if any) shall be included within the charges specified in the Modification Note, and such amended documents when approved in writing by the Licensee shall be the applicable documents for the purpose of this Agreement.

## Form of Modification Note

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Acceptance Procedures:

Timetable:

Date of Expiry of Validity of the Modification Note:

Charges for Change:

Originator: Signed.....

Response: Accept/Reject Signed.....

**SCHEDULE 4**  
**ACCEPTANCE PROCEDURE**

**1. ACCEPTANCE TESTING**

- 1.1. Within five days after completion of the Platform Set-Up and Testing Services by the Provider the Acceptance Test shall be started by the Licensee with such support from the Provider as may reasonably be required.
- 1.2. Upon expiry of a period of seven days after completion of the Acceptance Test or twenty one days from the start of the Acceptance Test, whichever is the earlier, the Licensee shall give the Provider written notice of acceptance of the Materials ("Acceptance Notice") or, alternatively, written notice of the ways in which the Materials do not comply with the Acceptance Test ("Defects Notice"). As soon as reasonably possible following receipt of the Defects Notice, the Provider shall use all reasonable endeavours to remedy the relevant defects specified in the Defects Notice whereupon it shall be the Licensee's responsibility to ensure that it is satisfied that the relevant defects have been addressed.
- 1.3. Notwithstanding section 1.2 of this Schedule 4, the Materials shall be deemed accepted on the first of the following events occurring:-
  - 1.3.1. receipt of the Acceptance Notice by the Provider;
  - 1.3.2. the Platform being placed in "live operation" for more than seven days;
  - 1.3.3. no receipt by the Provider of an Acceptance Notice or a Defects Notice upon the expiry of seven days after completion of the Acceptance Test or twenty one days from the start of the Acceptance Test, whichever is the earlier;
  - 1.3.4. the expiry of 21 days following after completion of the Platform Set-Up and Testing Services by the Provider or such other date as the Parties may agree and state in the relevant SOW.
- 1.4. The Licensee is solely responsible for satisfying itself that the Platform fully performs to the Licensee's requirements.
- 1.5. The Licensee shall:
  - 1.5.1. where the relevant SOW indicates that the Provider is to provide the Platform Set-Up and Testing Services, make all necessary preparations for the installation and commissioning of the Platform including without limitation ensuring suitable environmental conditions for the Platform and any necessary configuration of any component or hardware with which the Platform is intended to operate;
  - 1.5.2. provide the Provider with (or procure the provision of) access to and around the relevant location and hardware and equipment onto which the Platform is or is to be installed, as the Provider may reasonably require in connection with the provision of installation; and
  - 1.5.3. provide all such information and assistance and facilities as reasonably required by the Provider, including reasonable access to the Licensee's employees, consultants and sub-contractors, to enable or facilitate the performance by the Provider of its obligations under or pursuant to this Agreement.
- 1.6. The Provider shall not be liable in respect of any delay or other default which is attributable to any non-compliance, or delay in complying with, paragraph 1.5 above by the Licensee or any Customer.

**ANNEX A**  
**PLATFORM SET UP AND TESTING SERVICES**

**[Specification to be added]**

## ANNEX B SUPPORT SERVICES

### Introduction

1.1 In this Schedule:

“**Issue**” means the software comprising the Core Functionality or Upgrade Functionality functioning in a way that is unexpected and/or outside the Platform Specifications.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

### 2. Helpdesk

2.1 The Provider will make available, during Business Hours, a telephone and/or email helpdesk facility for the purposes of:

- (a) assisting the Licensee with the configuration of the Platform
- (b) assisting the Licensee with the proper use of the Platform; and/or
- (c) determining the causes of errors and fixing errors in the Platform.

2.2 The Licensee must make all requests for Support Services through the helpdesk on the details provided.

2.3 When making a request, the Licensee must include the following information:

- (a) the number of End Users affected by any Issue
- (b) an accurate description of any Issue, including screenshots where possible

### 3. Response and resolution times

3.1 The Provider will:

- (a) Use all reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
- (b) Use all reasonable endeavours to resolve Issues raised by the Licensee,
- (c) For Tier 1,2,3 and 4 support service customers, promptly in accordance with the following response time matrix.

Severity	Example	Target Response Time	Target Resolution Time
<b>Critical</b>	An Issue that affects all end users	3 Hours	1 Day
<b>Serious</b>	An Issue that affects more than one end user and can be replicated on more than one device;	3 hours	Up to 10 Days

<b>Minor</b>	Requests for support and clarification, when the platform is functioning as expected and end users are not affected	1 Working Day	N/A
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3.2 The target response and resolution times are targets only and shall not be binding on the Provider.

3.3 The Provider will determine, acting reasonably, in to which severity category an Issue raised through the Support Services falls.

3.4 Where the Provider is dependent on a third party to deliver the resolution to the End User (eg. an update published to Apple) the times shown at 3.1 relate to the time taken to publish to the third party server.

3.5 All Support Services will be provided remotely.

### 4. Limits on Support Services

4.1 Where the total person-hours spent by the Provider performing the Support Services under paragraphs 2.1(a) and 2.1(b) above during any 12 month period exceeds **INSERT** hours, then:

- (a) the Provider will cease to have an obligation to provide those Support Services to the Licensee during that period; providing that
- (b) the Provider may agree to provide additional such Support Services to the Licensee during that period, but the provision of such services will be subject to payment by the Licensee of additional fees at the Provider's standard hourly rates from time to time.

4.2 The Provider shall have no obligation under this Agreement to provide Support Services in respect of any fault or error caused by:

- (a) the improper use of the Platform; or
- (b) the use of the Platform otherwise than in accordance with the Platform Documentation; or
- (c) any Development Functionality (except where the Fault is attributable directly to a lack of reasonable skill and care by the Provider in the performance of the Development Services);

and any service with the Provider does nevertheless provide shall be charged to and payable by the Licensee at the Provider's then applicable day rate for Development Services.

### 5. Upgrades

5.1 The Licensee acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may result in changes to the appearance and/or functionality of the Platform.

5.2 The Provider will give to the Licensee reasonable prior written notice of the application of any significant Upgrade to the Platform. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.

5.3 The Licensee shall not be subject to any additional fees arising out of the application of the Upgrade, save where:

- (a) the Upgrade introduces Upgrade Functionality to the Platform;
- (b) that Upgrade Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;
- (c) access to or use of the Upgrade Functionality is chargeable to the licensees of the Provider using the Platform generally; and
- (d) any decision by the Licensee not to pay the fees for the Upgrade Functionality will not prejudice the Licensee's access to and use of the rest of the Platform.

## **6. Uptime commitment**

6.1 The Provider shall use all reasonable endeavours to ensure that the Platform is available 98% of the time during each calendar month, subject to paragraph 8 below.

6.2 The provisions at 6.1 shall not apply in the case that the interruption is the result of force majeure.

## **7. Back-up and restoration**

7.1 The Provider will make back-ups of the Licensee's (or any Customer's) materials or data stored on the Platform on a daily basis, which will be over-written by the following back-up.

7.2 In the event of the loss of, or corruption of, Licensee's (or any Customer's) materials or data stored on the Platform being notified by the Licensee to the Provider under paragraph 2 above, the Provider shall if so directed by the Licensee use all reasonable endeavours to promptly restore such materials and data from the most recent available back-up copy.

## **8. Scheduled maintenance & Exceptional Circumstances**

8.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance, such maintenance to be carried out for not more than 2 hours in each calendar month.

8.2 The Provider must give to the Licensee reasonable written notice of schedule maintenance, including full details of the expected Platform downtime.

8.3 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this

paragraph 8 shall not be counted as downtime for the purposes of paragraph 6.

8.4 Exceptional circumstances include Denial of Service (Dos) attacks, geographic network failures (e.g. local to the data centre) or unknown third-party software vulnerabilities.

**ANNEX C**  
**DEVELOPMENT SERVICES**

*[Specification to be added if relevant]*

ANNEX D  
CUSTOMER PLATFORM SERVICES AGREEMENT  
*[Specification to be added if relevant]*

## ATTACHMENT 1: TERMS AND CONDITIONS

### 1. Definitions and interpretation

#### 1. In this Agreement:

**“Agreement”** means this software platform services agreement (including the Schedules) and any amendments to it from time to time;

**“Customer Materials”** means all data, works and materials: (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer’s account in respect of the Platform; and (b) otherwise provided by the Customer to the Provider in connection with this Agreement;

**“the Licensor”** means XXXX.....

**“the Provider”** means Loqiva Limited or such other person from time to time which has granted the Licensor the rights to distribute the Platform on the terms of this Agreement;

### 2. The End Users

- 2.1. The Platform enables the Customer to provide certain functionality to End Users who may access certain elements of the Platform as permitted by the Customer and in accordance with the Platform Documentation. The Customer shall be responsible for granting access to the End Users to the Platform and for their on-going use of the Platform.
- 2.2. The Customer is entirely responsible for the relationship with End Users and the Customer acknowledges that neither the Licensor nor the Provider has any contractual relationship with the End User and that as such it is for the Customer to enter into a contract with the End User in relation to the End User’s use of the Platform.
- 2.3. The “Privacy Policy” and “End User Terms and Conditions” attached to this Agreement are provided by the Licensor without liability. It is the responsibility of the Customer to provide terms and conditions and associated policies for use with the End User which are in form and content acceptable to the Customer and which are no less protective of the Customer than those scheduled to this Agreement. Such terms and conditions shall create a contractual relationship between the Customer and the End User and shall (unless required by the Licensor) make no reference to either the Licensor or the Provider. The Licensor has no responsibility in relation to such terms and conditions or policies.
- 2.4. The Customer shall have no right to give any representations or warranties or in any way commit to any obligation or duty in the name of or on behalf of the Licensor or the Provider and shall not in any way pledge the credit of the Licensor or the Provider.
- 2.5. The Customer agrees that all issues which the End User has in relation to the Platform shall be dealt with and managed by the Customer and that neither the Licensor nor the Provider shall have any responsibility to or communication with the End User. To the extent that there is any issue with the Platform this shall be managed as between the Licensor and the Customer.
- 2.6. Prior to granting access to the End Users to the Platform the Customer must ensure that they have all necessary permissions and consents from the End Users (and any relevant third parties) to ensure that they (and the Licensor and the Provider) are permitted to process and use all data provided by such End Users (and third parties) as is anticipated by virtue of this Agreement and the provision of the Platform

### 3. Customer Materials

- 3.1. The Customer grants to the Licensor and the Provider a non-exclusive licence to store, copy and otherwise use the Customer Materials for the purposes of operating the Platform, providing the Services, fulfilling the Licensor’s other obligations under this Agreement, and exercising its rights under this Agreement.

- 3.2. Subject to Clause 9.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
- 3.3. The Customer warrants and represents to the Licensor that the Customer Materials and all materials provided by the End Users, and their use by the Licensor or the Provider in accordance with the terms of this Agreement, will not:
- (a) breach any laws, statutes, regulations or legally-binding codes; or
  - (b) infringe the Intellectual Property Rights or other rights of any third party;
  - (c) give rise to any cause of action against either the Licensor or the Provider or the Customer or any third party,
- in each case in any jurisdiction and under any applicable law.
- 3.4. The Customer will indemnify and will keep indemnified each of the Licensor and the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses) suffered or incurred by the Licensor or the Provider arising as a result of any breach of clause [x.3].
- 3.5. Where the Licensor reasonably suspects that there has been a breach by the Customer of the provisions of this Clause [x], the Licensor may:
- (a) delete or amend the relevant Customer Materials; and/or
  - (b) suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.
- 3.6 Any breach by the Customer of this Clause [x] will be deemed to be a material breach of this Agreement for the purposes of Clause [x]

[ ] **Third Party Rights**

Save in respect of the Provider, a person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**[NAME OF THE APP, E.G. LOQIVA] iOS and Android  
APP  
PRIVACY POLICY**

**[INSERT NAME]**, (company registration number **[INSERT NUMBER]**, whose registered office is **[INSERT ADDRESS]**, and whose principal office is at **[INSERT ADDRESS]**,, with the trading name **[insert trading name, e.g. Loqiva]** (“**The Provider**” / “**we**” / “**us**” / “**our**”) treats the handling of personal data seriously. This Privacy Policy details how we use the data collected about you through your use of this App (“**the App**”), and by other means. The Provider assures you that it will only use your data as specified here and for its legitimate business reasons. Please read this Privacy Policy through carefully to ensure you understand how we will treat your personal data.

By using the App you are accepting and consenting to the practices described in this Privacy Policy. If you do not agree to our use of your data as described in this Privacy Policy please refrain from using the App.

For the purposes of the Data Protection Act 1998 (“**DPA**”) (as may be updated and/or superseded from time to time), the data controller is **[The Provider]**, unless otherwise confirmed in writing to you at the time your data is collected by **[insert details]**. The Provider operates in accordance with all applicable law and regulation in relation to the security, processing and control of personal data including the DPA, and any amendments thereto.

## **1. COLLECTION OF DATA**

The Provider can obtain personal data from you (including your name, postal address, telephone number, email and payment details) from a number of different sources:

**a. Information you give us.**

- You supply us with your details when you register with us or subscribe to our services, when you submit a request for details to be provided to you by mail or email, or via the App, or through the data services offered on your mobile phone or device.
- You also supply us with information when you respond with our feedback tools, e.g. our survey, and reporting modules, although it's your choice to use these.

**b. Information we collect about you.**

- We collect information about you via your personal GPS location. This is a function of the App that enables us to assess your session information, helping us to present relevant content to you.
- We collect information about your visit and use of the App such as the duration of the visit, your IP address, operating system and the type of phone used. This helps us with system administration, enables us to report on use of the App and helps us to diagnose problems with our server.
- We collect information through “tokens” (which are stored on your phone). Tokens are used in order to provide certain services on the App and to enable users and subscribers to access areas on the App and for us to be able to identify the users correctly. The tokens enable your session to remain live whilst the App is activated on your phone and to check and authenticate you, as the correct user, when the App is relaunched.
- We also collect information about you from third-party software providers integrated with our platform..

## **2. USE OF THE DATA**

- a. Why The Provider needs your data.** The Provider needs your data so that it can provide you with content, information, commercial promotions and products that it thinks may be of interest to you. The Provider also requires this information about you in order to provide you with its services (and updates relating to those services) and to potentially allow you to participate in interactive features of its services (when you choose to do so).
- b. Minors.** If you are under 18, please ensure that your parent/guardian has notice of the terms of this Privacy Policy and the Terms of Use **[link]** to ensure that we have the necessary consent for us to collect and use your personal data as set out in this Privacy Policy and for you to use the App in accordance with the Terms of Use.
- c. Sharing your data.** The Provider will only pass your data to other third parties in accordance with this Privacy Policy, Terms of Use, any other terms and conditions you agree to, or if it is required to do so by law. The Provider may disclose your data to certain permitted third parties, such as third party service providers, The Providers’ own professional advisers who are bound by confidentiality obligations and to other third parties when The Provider is legally obliged to disclose your data. This

may involve the transfer and storage of information outside the European Economic Area (“EEA”) and by providing The Provider with this information you provide your consent to transfer such information out of the EEA. The information collected may include your name and any other relevant information required for performance of the services.

We may disclose your data to any member of our group of companies, which means our subsidiaries, our ultimate holding company and its subsidiaries, as defined in section 1159 of the UK Companies Act 2006. We may disclose your data to third parties in the event that we sell or buy any business or assets (in which case we may disclose your personal data to the prospective seller or buyer of such business or assets).

- d. **Security.** Unfortunately, the transmission of information via the internet is not completely secure. Although we will do our best to protect your personal data, we cannot guarantee the security of your data transmitted to our App; any transmission is at your own risk. Once we have received your information, we will use strict procedures and security features to try to prevent unauthorised access.
- e. **Marketing.** Unless otherwise provided in this Privacy Policy and/or the Terms of Use [\[link\]](#), The Provider will not sell, rent or trade your data to third parties for marketing purposes without your express written consent.

The Provider does not disclose information about identifiable individuals to advertisers, but it may provide them with aggregate information about users (for example, that 500 men aged under 30 clicked on an advertisement on the App on any given day). The Provider may also use aggregated information to help advertisers reach the kind of audience they want to target (for example, men who like sport in London). The Provider may make use of the personal data it has collected from you to enable it to comply with its advertisers’ wishes by displaying their advertisement to that target audience.

### 3. ACCESS TO INFORMATION.

- a. **Your rights.** You have the right to ask us not to process your personal data for marketing purposes. You also have the right to access information held about you by us. Your right to access can be exercised in accordance with the DPA, as amended from time to time, and any access request may be subject to a fee of £10 to meet our costs in providing you with details on the personal data we hold about you.
- b. **'Unsubscribe' policy.** You may at any time unsubscribe to receiving information about The Provider by sending an email to [legal@\[insert details\].com](mailto:legal@[insert details].com).
- c. **Change/Modify Details.** If you change your contact details, please send an email with your new details to [legal@\[insert details\].com](mailto:legal@[insert details].com).

### 4. CHANGES TO THIS PRIVACY POLICY

Any changes to this Privacy Policy will be posted to this App and (where appropriate) emailed to the last email address you have given to us. The changes become effective as of the date we post the changes on the App.

### 5. CONTACT US

If you have any questions or concerns about the information we hold about you, you may email us at [legal@\[insert details\].com](mailto:legal@[insert details].com). Alternatively, you may write to us at [\[insert details\]](#).

**[INSERT NAME, E.G. LOQIVA] iOS and Android APP  
TERMS OF USE**

## 1. ABOUT THESE TERMS

- a. **The App.** These Terms (together with any documents referred to in them) explain to you the terms applicable to your use of this app (registered as **[App name]**) (together with any of our websites, products, APIs, documentation, data feeds, and software related to it) ("**the App**"), whether you are using the App as a temporary user or as a registered user.
- b. **The Terms.** Please read these Terms carefully before you use the App. By using this App, you indicate that you accept these Terms (and any applicable payment terms) and that you agree to abide by these Terms. If you do not agree to these Terms, please refrain from using the App.
- c. **Your data.** We process information about Users in accordance with our Privacy Policy **[link]**. By using the App you consent to such processing.
- d. **Our liability.** In particular, we draw your attention to the limitations on our liability in section 8 below. Please note, the App provides a means for you to access goods and services. All rights, remedies and responsibilities in respect of the goods and services you access via the App are between you and the relevant third party. We shall have no liability or responsibility for any services or goods supplied to you by third parties via the App.
- e. **Us.** The App is operated by **[INSERT NAME]**, company registered number **[INSERT NUMBER]** whose registered office is at **[INSERT ADDRESS]** and whose principal office is at **[INSERT ADDRESS]**, using the trading name **[insert trading name, e.g. Loqiva]** ("**The Provider**" / "**we**" / "**us**" / "**our**").
- f. **You.** References in these Terms to "**User**", "**you**" or "**your**" are to the individual, firm or company using the App and/or accessing the services available on the App.

## 2. YOUR USE OF THE APP

- a. **Licence grant.** We grant you a non-transferable, non-exclusive licence to use the App, subject to these Terms, the Privacy Policy and any applicable rules applied by any appstore provider from whose site you downloaded the App. We reserve all other rights.
- b. **Withdrawal.** Access to the App is permitted on a temporary basis and The Provider reserves the right to withdraw or amend any/all of the services provided on the App without notice.
- c. **Accuracy.** Where The Provider publishes and controls information on the App, it will use all reasonable endeavours to promptly correct errors or omissions after being notified of them. The Provider shall not be held liable in any way for any inaccuracy, misunderstanding or expectation drawn from the content on the App. The Provider does not provide any warranty in relation to the materials contained on the App.
- d. **Links.** Any links provided on the App to other websites or apps are not intended to provide an endorsement by The Provider of those websites or apps. The Provider will have no liability or responsibility for the content of those websites or apps or for any services or goods supplied by third parties through those websites of apps whatsoever. You may link to our App on a website that is owned by you, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link to this App in such a way as to suggest any form of association, approval or endorsement on our part where none exists. Your app must comply in all respects with the content standards set out below. We reserve the right to withdraw linking permission without notice.
- e. **Updates.** From time to time, The Provider may restrict access to some parts of the App, or the entire App, if required. The Provider aims to update the App regularly and may change the content (including information about services offered) at any time without notice.
- f. **Access.** You are responsible for making all arrangements necessary for you to have access to the App and for ensuring that all persons who access the App through your internet connection are aware of these Terms and that they comply with it, and that you have relevant permission in place to use any relevant equipment and internet connection.
- g. **Charges.** You may be subject to and are responsible for any and all mobile network charges from your internet services providers which arise due to your use of the App.
- h. **Internet Security.** While certain precautions have been taken to detect computer viruses and ensure security, we cannot guarantee that the App is virus-free and secure. We shall not be liable for any loss or damage which occurs as a result of any virus or breach of security. We do not give any warranties as to the compatibility of the App with your computer systems, software and/or hardware.

- i. **Minors.** The use of the App by minors is subject to the consent of their parent or guardian.
- j. **General Restrictions.** You must not use the App in any way that is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- k. **Termination or suspension.** If you breach any of the provisions of the Terms, The Provider shall be entitled to suspend or permanently terminate your access to the App without notice.

### 3. HOW TO BECOME A REGISTERED USER

- a. **Application.** All the provisions in these Terms apply to any person using the App. Certain of the provisions only apply to those who have registered to use the App in accordance with the following sub-paragraphs (“**Registered Users**”).
- b. **Services.** As a Registered User you will be provided with certain services including a licence to access, view and listen to the content on the App (the “**Content**”). You will have access to a personalised version of the App using your login details from the day on which you receive the email notification from us containing the login details (as described below).
- c. **Registration.** You can request to register with the App by entering your details on to the App and making any required payments. All payments (including any applicable refunds) will be subject to any payment terms notified to you at the time of registration. The Provider shall acknowledge your request for registration by sending you an email, providing you with confirmation of your login details (consisting of a user name and password), at which point a contract is formed between the parties (the “**Contract**”). The Provider reserves the right to reject any application to register a User, in its entire discretion and without having to provide a reason for such rejection. When you register you will remain a Registered User until your registration is cancelled, terminated or expires in accordance with these Terms.
- d. **Cancellation.** If you are contracting as a consumer, you may cancel the Contract at any time within 14 days, beginning the day after you apply for registration on the App. To cancel the Contract, you must inform us in writing at [legal@\[insert details\].com](mailto:legal@[insert details].com). However, your right to cancel a Contract under this paragraph shall not apply if you agree that the Services should commence prior to the end of the 14 day cancellation period.
- e. **Confidentiality.** You must keep your user identification, password or any other piece of information confidential, and you must not disclose it to any third party. We have the right to disable any user identification code or password at any time if, in our opinion, you have failed to comply with any provision of these Terms.

### 4. SERVICES AND CONTRIBUTIONS

- a. **Services.** As a Registered User on the App you shall be entitled to:
  - view Content on the App as follows: (i) based on the personal profile you set; (ii) the contextual data that’s available to the App from location, time and weather; and (iii) your past interactions with the App;
  - engage in discussions with users through the App and/or make any contributions to or through the App, including (but not limited to) comments made regarding Content, blogs, posts, uploads or any other form of contributions in accordance with these Terms (the “**Contributions**”);
  - experience other services including targeted emails to the email address provided; SMS texts where selected; in-App alerts; and interactivity with street furniture and retailers in the User’s vicinity.
- b. **Variations.** You acknowledge that The Provider uses software and other technical processes in the provision of the Services and The Provider reserves the right to change processes and software used in the provision of the Services to ensure that the Services are kept up to date and in line with current and changing technologies.
- c. **Contributions.** Any Contribution submitted by any User (whether or not a Registered User) to the App is made having accepted these Terms and provisions relating to the making of Contributions on the App. The App is not moderated for Content and/or Contributions. The Provider will not be responsible as author, editor or publisher of any Content and/or Contributions submitted to the App and expressly excludes liability for any loss or damage arising from the use of the App by any person in contravention of the provisions of these Terms. The Provider reserves the right to promptly remove, or to disable access to, any Contribution which The Provider deems to be potentially defamatory of any person, unlawful or in violation of any third party rights or these Terms in any way.
- d. **Content Standards.** The following content standards apply to each part of a Contribution as well as to its whole. The content standards must be complied with in spirit as well as to the letter. The

Provider will determine, in its absolute discretion, whether a Contribution breaches the content standards. To comply with the content standards, a Contribution must:

- be accurate (where it states facts);
- be genuinely held (where it states opinion);
- comply with the law applicable in England and Wales and in any country from which it is posted; and
- be relevant

To comply with the content standards, a Contribution must not:

- be defamatory, libellous or maliciously false;
- be obscene, indecent, offensive, hateful or inflammatory;
- promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- disclose the name, address, telephone, mobile or fax number, email address or any other personal data in respect of any individual;
- infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights of any other person;
- breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
- be in contempt of court;
- constitute negligent advice or contain any negligent statement;
- be in breach of official secrets legislation;
- be likely to harass, upset, embarrass, alarm or annoy any other person;
- use profane language;
- post any files or materials which contain viruses or other harmful computer code;
- 'spam' through the App;
- impersonate any person, or misrepresent your identity or affiliation with any person;
- give the impression that the Contribution emanates from The Provider if this is not the case;
- advocate, promote, incite any third party to commit, or assist any unlawful or criminal act;
- contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism; or
- contain any advertising or promote any services or web links to other Apps or websites.

You warrant that any contribution made and/or material uploaded complies with these standards and you agree to indemnify us for any breach of that warranty. We have the right to remove any Contribution or any other material or post on the App if, in our opinion, such material does not comply with the terms contained in these Terms.

- e. **Licence.** By submitting a Contribution to the App, you agree to grant to The Provider a non-exclusive licence to use that Contribution. Although you will still own the copyright in your Contribution, The Provider will have the right to freely use, edit, alter, reproduce, publish and/or distribute the material contained in your Contribution. This licence will be free of charge, perpetual and capable of sub-licence. The Provider may exercise all copyright and publicity rights in the material contained in your Contribution in all jurisdictions, to their full extent and for the full period for which any such rights exist in that material. By submitting your Contribution to the App, you are warranting that you have the right to grant to The Provider the non-exclusive copyright licence described above. If you are not in a position to grant such a licence to The Provider, please do not submit the Contribution to the App.
- f. **Breaching the Content Standards.** When The Provider considers that a breach of the content standards has occurred, it may in its entire discretion take such action as it deems appropriate. Failure to comply with the content standards constitutes a material breach of these Terms and may result in:
- immediate, temporary or permanent withdrawal of your right to make Contributions;

- immediate, temporary or permanent removal of any Contribution already posted on the App;
- legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable legal costs) resulting from the breach;
- suspension or termination of your User account; and/or
- disclosure of such information to law enforcement authorities as we reasonably feel is necessary or as required by law.

The actions set out in this paragraph are not limited and The Provider may take any other action it reasonably deems appropriate.

- g. **Notification.** If a User reasonably believes that any Content and/or Contributions on the App are against the content standards set out in these Terms, then the User may alert The Provider to such Content and/or Contributions by sending an email to [legal@\[insert details.com\]](mailto:legal@[insert details.com]) for The Provider to assess and decide (in its absolute discretion) on whether such Content and/or Contributions should remain on the App or should be removed from the App. The Provider's decision on whether such Content and/or Contributions should remain on the App or not shall be final. The Provider will inform you of the outcome of its review within a reasonable time of receiving your alert.

## 5. YOUR OBLIGATIONS

- a. **Obligations.** You shall (as applicable):
- co-operate with us in all matters relating to the Services;
  - supply all relevant information to us in order for us to provide the Services;
  - make Contributions only in accordance with these Terms;
  - use the App only in accordance with these Terms;
  - indemnify us against any losses, claims, costs, expenses, damages and fees (including legal fees) without limitation arising due to the your use of the App.
- b. **Restrictions.** Except as expressly set out in these Terms or as permitted by law, you agree:
- not to copy the App or the Content except where such copying is incidental to normal use of the App, or necessary for the purpose of back-up or operational security;
  - not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App or the Content;
  - not to make alterations to, or modifications of, the whole or any part of the App or the Content, or permit the App, the Content or any part of it to be combined with, or become incorporated in, any other programs;
  - not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or the Content or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program, and provided that the information obtained by you during such activities:
    - is used only for the purpose of achieving inter-operability of the App with another software program;
    - is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
    - is not used to create any software that is substantially similar to the App;
  - to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
  - to include our copyright notice on all entire and partial copies you make of the App on any medium;
  - not to provide or otherwise make available the App or the Content in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
  - to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App.

## 6. INTELLECTUAL PROPERTY RIGHTS

- a. **Rights.** All intellectual property rights and all other rights in the App (including, but not limited to, the software) and the Services (including, but not limited to, the Content) shall be owned by or licensed to The Provider. The User acknowledges that no rights or licences are granted to the User in respect of any intellectual property rights, unless specified in these Terms.

- b. **Restrictions.** You are prohibited from copying, modifying, transmitting, distributing, selling, displaying, licensing or reproducing any Content including images and other media on this App. You must also not change the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics taken from the App separately from any accompanying text. If you print off, copy or download any part of the App in breach of these Terms, your right to use the App will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

## 7. CONFIDENTIALITY

The User shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature, and any Intellectual Property Rights, that have been disclosed to the User by The Provider or its agents, or discovered by the User, and any other confidential information concerning The Provider's business or Services which the User may obtain. The User shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the User's obligations to The Provider, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the User.

## 8. LIMITATION OF LIABILITY

- a. **Disclaimer.** You agree that you use the App and access the Content at your own risk.
- b. **Limitation.** We make no representations or warranties of any kind about the suitability, reliability, timeliness, and accuracy of the information contained on the App or the Content for any purpose. We expressly disclaim all warranties and conditions with regard to this information, including, without limitation, warranties of technical efficiency, satisfactory quality, availability, non-infringement, completeness and fitness for a particular purpose. Nothing in these Terms excludes or limits the liability of either party:
- for death or personal injury caused by that party's negligence; or
  - for fraud or fraudulent misrepresentation.
- c. **Exclusions.** We will not be liable for any indirect or consequential damages whatever, or for any damages for loss of use, opportunity, data, profits or revenues (whether direct or indirect) arising out of the use or performance of the App, the provision of or failure to provide services, or for any Content (including any Contribution) or other information obtained through the App, or otherwise arising out of the use of the App, whether based on contract, tort, or otherwise, without limitation, even if we have been advised of the possibility of damage.
- d. **Liability cap.** Our maximum aggregate liability in connection with the provision of the App and the Content whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the greater of one hundred pounds sterling (£100) or the amount you have paid directly to us for your use of the App.
- e. **Remedy.** If you are dissatisfied with any portion of the App or the Content, or with any of these Terms, your sole remedy, except as specifically provided in these Terms, is to stop using the App.

## 9. TERMINATION

- a. **The Provider's termination rights.** We may restrict your access to the App and the Content, refuse to correspond with you, and/or remove your details from the relevant database without prejudice to any other accrued rights, without prior notice to you where:
- there is a regulatory or statutory change limiting the ability to provide access to the App or the Content;
  - there is an event beyond our reasonable control preventing us from providing access to the App or the Content (for example, and without limitation, technical difficulties, capacity problems and communications failures); or
  - we consider in our sole discretion that you are abusing the App or are otherwise acting in breach of these Terms.
- b. **Automatic termination for inactivity.** A User's account will be automatically deleted if a User has not logged in to their account and it has been inactive for a period of 12 months. Once a User's

account has been deleted, a User would be required to re-register on the App to set up another account with The Provider once the 12 month period of inactivity has passed.

- c. **Rights on termination.** On termination for any reason, any rights or licences granted under these Terms shall immediately cease, including (but not limited to) access any Content on the App and make Contributions on the App.

## 10. GENERAL

- a. **Variations.** These Terms may be varied from time to time. Any variations will be made by amending this page. You are expected to check this page from time to time to take notice of any changes we made, as they are binding on you. Some of the provisions contained in the Terms may also be superseded by provisions or notices published elsewhere on the App. By using this App you accept that you are bound by the terms and conditions in force at that time and those displayed on this page.
- b. **Severance.** If any provisions of these Terms shall be unlawful, void or for any reason unenforceable then that provision shall be deemed severable and shall not affect the validity and enforceability of the remaining provisions.
- c. **Entire Agreement.** The Terms and any documents, or terms and conditions or policies referred to herein or entered into in addition (for example, the Privacy Policy [\[link\]](#)) shall govern the entire relationship between the parties relating to the use of the App to the exclusion of any other terms.
- d. **Third parties.** It is not the intention of the parties to confer any rights on any third parties by virtue of the Terms and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Terms.
- e. **Waiver.** A failure or delay by us in enforcing compliance with these Terms shall not be a waiver of that or any other provision of these Terms.
- f. **Notices.** Any and all notices to be given by either one of us to the other pursuant to or in connection with these Terms shall be deemed sufficiently given when forwarded by e-mail or facsimile transmission in each case addressed to you at the e-mail address or facsimile number you have given us or to us at the e-mail address or facsimile number displayed on the App.
- g. **Governing Law and Jurisdiction.** The Terms and any disputes that may arise between you and The Provider will be governed by the laws of England and Wales and the parties shall submit to the jurisdiction of the English courts.