

## Terms and Conditions of this Order Confirmation

Where a Groop master agreement or contract is in place to which this Order Confirmation relates, the terms and condition of that master agreement or contract shall apply to this Order Confirmation.

The below referenced agreement shall be the terms and conditions in force at the time the contract was entered into by the parties and shall include any variation of such terms as notified by Groop from time to time. The terms of the Groop master agreement or contract shall prevail over any terms and conditions contained in or referred to in any documentation submitted to the Customer, unless specifically varied or excluded in writing by a director or authorized representative of Groop.

In signing this Order Confirmation, you are confirming that that the Order Confirmation is governed by the terms of the master agreement or contract and that you have been given an opportunity to consider such terms before signing below.

## Customer Information

Customer Name		Invoice Address	
CRN/CCN			
Contact Name			
Contact Job Title		Delivery Address	
Contact E-mail			
Contact Tel.			

## Order Details

Term	Years	Commencement Date	Renewal Date	
Notice		Order Type	Subscription to the Groop Platform	

## Service Details and Fees

*All fees are GBP £ and excl. VAT*

	Quantity	Price	Total
Subscription to the Groop platform   No of Accounts (inc. 150 Users per Account)			
Additional Users			
Total Payable (exclusive of VAT)			

## Payment Details

Payment Option:	Payment Method:	Payment Terms: 30 days from date of Invoice
-----------------	-----------------	---

## Additional Notes / Terms

--

## Authorisation

Signed for and on behalf of GROOP LIMITED		Signed for and on behalf of the CUSTOMER	
Groop Ltd Signature		Customer Signature	
Name		Name	
Position/Title		Position/Title	
Date		Date	

## 1. Definitions

**1.1.** The following definitions and rules of interpretation apply in this agreement:

**Account:** an account purchased by the Customer with access provided through the Platform, with such account having a limit of up to 150 Users.

**Additional Services:** to include, but not be limited to, client face to face meetings, workshops, specialist/bespoke reports and API Integration for which costs can be provided upon request.

**Administrative Support:** account queries, which can include queries in relation to payment and billing.

**Affiliate:** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

**API Integration:** an application programming interface that enables interaction between data, applications and devices.

**Applicable Laws:** all applicable laws, statutes, regulation from time to time in force.

**Business Day:** 9.00am to 5.00pm on a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Change Order:** has the meaning given in clause 7.1.

**Commencement Date:** the date stated on the Order Confirmation.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person, legal entity or partnership which subscribes for the Services in order to gain access to the platform for themselves and for the Users.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities used by the Customer in order to operate the Platform.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Groop or

uploaded to the Platform in connection with the Services, including the items provided pursuant to clause 6.1(b).

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Extended Term:** a rolling term of one year following the expiry of the Initial Term or a subsequent extended term as referred to in clause 2.2(b).

**Groop:** the supplier of the Services and Platform being a company registered in England and Wales with company number 07529352 whose registered office is at Hartham Park, Hartham Lane, Corsham, Wiltshire, SN13 0RP.

**High Priority:** where there has been a complete loss of Platform access for the Customer or a significant feature is completely unavailable, and no workaround exists. This does not include development issues or problems in staging environments.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Initial Term:** the period stated in the Order Confirmation if applicable.

**Low Priority:** includes product questions raised by the Customer, feature requests and development issues.

**Medium Priority:** includes intermittent issues and reduced quality of service with the Platform, however a workaround may be available for the Customer. This does not include development issues or problems in staging environments.

**Order Confirmation Charges:** the sums payable for the Services as set out in the Order Confirmation.

**Order Confirmation:** a detailed plan, executed by Groop and the Customer in accordance with clause 4, or as otherwise agreed, describing the services to be provided by Groop and agreed by the Customer and the related matters including the associated fees. Such Order Confirmation being incorporated and subject to the terms of this agreement.

**Privacy Policy:** Groop's privacy policy located at <https://groop.com/privacy-policy/>

**Platform:** Groop's proprietary software accessed via the internet pursuant to the terms of this agreement.

**Purchased Period:** the period stated in the Order Confirmation if applicable.

**Services:** the services as set out in clause 3.

**Support Requests:** support relating to the functionality of the Services and/or Platform, including technical support for which a User Guide is not available or not determinative and reporting requests.

**Term:** the term relevant to each Order Confirmation as set out therein.

**Terms of Use Policy:** Groop's terms of use policy located at [www.groop.com/terms-of-use/](http://www.groop.com/terms-of-use/).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**User(s):** a person or organisation who is authorised by the Customer to use the Platform and to whom the Customer provides access to the Platform to.

**User Guide(s):** means the guides made available to the Customer through the Platform.

**VAT:** value added tax chargeable in the UK.

**Website:** <https://groop.com>

**1.2.** Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

**1.3.** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.4.** The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

**1.5.** A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

**1.6.** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.7.** Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

**1.8.** This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

**1.9.** A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

**1.10.** A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

**1.11.** A reference to **writing** or **written** includes email.

**1.12.** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**1.13.** A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

**1.14.** References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

**1.15.** Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Term

**2.1.** This agreement shall commence on the Commencement Date and shall continue until expiration or termination of the Term stated in the relevant Order Confirmation and upon notice being given in accordance with clauses 2.2 or 13.

**2.2.** Where clause 13 does not apply and the Customer pays on a:

- (a) monthly basis, this agreement and/or Order Confirmation can only be terminated by the Customer giving Groop 30 days written notice to terminate, with such notice expiring on the last day of the monthly period; or
- (b) yearly basis, this agreement and/or Order Confirmation shall continue for the Initial Term and shall automatically extend for the Extended Term at the end of the Initial Term, unless, the Customer gives Groop written notice to terminate, such notice to be given no later than 3 months before the end of the Initial Term or the relevant Extended Term, which shall terminate this agreement and all Order Confirmations at the end of the Initial Term or the relevant Extended Term, as the case may be.

**2.3.** The parties shall not enter into any further Order Confirmations after the date on which notice to terminate is served under this clause 2.

## 3. Groop Services

**3.1.** Subject to clauses 6, 8 and 15, Groop shall supply the following Services to the Customer under and in accordance with this agreement:

- (a) access to the Platform and Account for the Term and for the number of agreed Users;
- (b) monitored Administrative Support during Groops Business Day. Where a request is made on a day other than a Business Day, Groop guarantees a response within 7 Business Days of the request being received;
- (c) monitored Support Requests (available through the Platform 24 hours a day, seven days a week) submitted by the Customer, which shall be responded to by Groop within the following time frames:
  - (i) 0-72 hours for issues classified by Groop as High Priority;
  - (ii) within 5 Business Days for issues classified by Groop as Medium Priority; and
  - (iii) within 7 Business Days for issues classified by Groop as Low Priority.
- (d) management of Groop's knowledge base and support content; and
- (e) data reporting on demand through the Platform using the features included within your account subscription as at the Commencement Date.

**3.2.** Any additional features that Groop develop on the Platform after the Commencement Date may be offered to the Customer from time to time and at the discretion of Groop, subject to an additional fee.

**3.3.** If a Customer specifically requests a new functionality for the Platform, Groop shall ascertain from their development team as to whether such functionality is possible and notify the Customer of any additional charges. If such functionality is available Groop shall notify the Customer of timeframes for producing the functionality.

**3.4.** Should Groop decide that it is required, they may also provide remote assistance to the Customer. This service will be provided within the timescales set out in 3.1(c)(i)-(iii).

**3.5.** Should an Account exceed the 150 maximum Users (including the Customer account) or the Customer wishes to set up another Account, the Customer may contact Groop and request further user accounts or an additional Account for an additional charge, such additional charge to be notified by Groop to the Customer at the time of the request. Should the Customer choose to purchase more user profiles for their current Account clause 7 shall apply.

**3.6.** Subject to clause 6, 8 and 15, the Platform and Services outlined in clause 3.1(a), (c), (d) will be available to the Customer and all agreed Users, 24 hours a day, seven days a week, except during scheduled maintenance for which the Customer will be given reasonable notice of where possible.

**3.7.** The parties may also agree any Additional Services for an additional charge from time to time.

## 4. Order Confirmation

**4.1.** Each Order Confirmation shall be agreed in the following manner:

- (a) the Customer shall ask Groop to provide the Services and the Customer shall provide Groop with as much information as Groop reasonably requires in order to prepare a draft Order

Confirmation for the Services and any Additional Services requested. If this is completed online through Groop's self-serve facility on the Website, the pricing and Order Confirmation will be automatically generated;

(b) following receipt of the information requested from the Customer, Groop shall, as soon as reasonably practicable either:

- (i) inform the Customer that it declines to provide the requested Services and/or Additional Services; or
- (ii) provide the Customer with a draft Order Confirmation.

(c) if Groop provides the Customer with a draft Order Confirmation pursuant to clause 4.1(b)(ii), Groop and the Customer shall, if required discuss, and agree the draft Order Confirmation. If the Order Confirmation is completed through the self-serve option on the Website, the Order Confirmation will be automatically generated; and

(d) both parties shall sign, or if the self-serve option is used on the Website, the Customer shall tick the Order Confirmation when it is agreed, to make it final and binding on the parties.

**4.2.** Once an Order Confirmation has been agreed and signed in accordance with clause 4.1(d), no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 17 (Variation).

**4.3.** Each Order Confirmation shall form and be incorporated as part of this agreement and shall not form a separate contract to it.

## **5. Groop's responsibilities**

**5.1.** Subject to clause 6, 8 and 15, Groop shall:

- (a) provide the Services to the Customer, in accordance with the Order Confirmation and this agreement in all material respects; and
- (b) meet any service or other requests as set out in clause 3.1(b).

**5.2.** Groop may appoint (but shall not be obliged to) a manager in respect of the Services to be performed under each Order Confirmation, such person will be identified in the Order Confirmation. Where a manager is appointed, Groop may replace that person from time to time where reasonably necessary in the interests of Groop's business.

## **6. Customer's obligations**

**6.1.** The Customer shall:

- (a) co-operate with Groop in all matters relating to the Services;
- (b) provide to Groop in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required or otherwise reasonably required by Groop in connection with the Works and ensure that they are accurate and complete in all material respects;
- (c) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and managing the Platform;
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Groop to provide the Services, including in relation to the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;
- (e) comply with any additional responsibilities of the Customer as may be set out in the relevant Order Confirmation; and
- (f) observe and ensure that all Users observe and comply with this agreement in all respects and do not do anything that would or could result in breaching the terms of this Agreement or Terms of Use Policy and Privacy Policy.

**6.2.** If Groop's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Groop shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## **7. Change control**

**7.1.** Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a relevant Change Order has been issued by Groop in accordance with this clause 7. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Order Confirmation Charges;
- (c) the timetable for the Services; and/or
- (d) any of the other terms of the relevant Order Confirmation.

**7.2.** If Groop wishes to make a material change to the Services it shall provide the Customer with reasonable written notice of such change.

**7.3.** If the Customer wishes to make a change to the Services:

(a) it shall notify Groop and provide as much detail as Groop reasonably requires of the proposed changes, including the timing of the proposed change;

(b) Groop shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a Change Order to the Customer; and

**7.4.** If the Customer agrees to the Change Order provided in accordance with clause 7.3(b), the Change Order shall amend the relevant Order Confirmation and the request shall automatically come into effect on the day agreed between the parties.

**7.5.** Groop may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis.

## **8. Fees and payment**

**8.1.** In consideration of the provision of the Services by Groop, the Customer shall pay the Order Confirmation Charges in advance of the Services being provided if a yearly contract is agreed, or monthly in advance if a monthly contract is agreed and on such date as set out in the Order Confirmation.

**8.2.** Where the Customer chooses to include Additional Services in the Order Confirmation such charges may be calculated on a time and materials basis, unless agreed otherwise.

**8.3.** Groop shall invoice the Customer for the Order Confirmation Charges at the intervals specified, in the Order Confirmation i.e. monthly or yearly.

**8.4.** The Customer shall pay each invoice submitted to it by Groop on receipt and in advance as set out in clause 8.1 above, to a bank account nominated in writing by Groop from time to time.

**8.5.** The Platform allows the Customer to collect money relating to the activities of the Customer, through the Account from Users, and as such, each transaction currently carries a transaction fee of 2.4% plus 20 pence, which is paid at the point of payment. The transaction fee is calculated as follows:

(a) 1% is a transaction fee imposed by Groop and is inclusive of VAT; and

(b) 1.4% plus 20 pence, is imposed by Groop's payment provider, Stripe, and is not subject to VAT.

Following payment of the above transaction fee, the Customer will be issued with the difference paid for the transaction fee and the amount paid by the User.

Groop reserves the right to change the payment provider at any point during the term of this agreement.

**8.6.** The fee set out in clause 8.5 above is subject to change from time to time and Groop shall notify the Customer as soon as reasonably practicable of such change, with the fees as stated in clause 8.5 being varied accordingly.

**8.7.** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Groop any sum due under this agreement on the due date:

(a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and

(b) Groop may suspend part or all of the Services until payment has been made in full.

**8.8.** All sums payable to Groop under this agreement:

(a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **9. Intellectual property rights**

**9.1.** In relation to the Services:

(a) the Customer shall retain all rights, title and interest in and to all Customer Material which is uploaded, stored, processed or transmitted through the Platform; and

(b) Groop shall retain all rights, title and interest in and to the Platform, User Guides and Services and any other matter or document which is not Customer Material.

**9.2.** Subject to the terms of this agreement and for the Term, Groop grants to the Customer, or shall procure the direct

grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to access and use the Platform. This licence is only granted to the Customer and for the number of Users specified in the applicable Order Confirmation and to this extent, the Customer acknowledges that the sharing of user accounts is prohibited and would be a material breach of this agreement pursuant to clause 13.2.

**9.3.** Should a User no longer require access to the Platform, the Customer should inform Groop of the name of the User immediately and Groop will reallocate the relevant account if necessary.

**9.4.** The Customer grants to Groop, a fully paid-up, worldwide, non-exclusive and royalty-free licence to use the Customer Materials to copy, store, reproduce, use, transmit and analyse in paper or electronic form in order to carry out the Services or otherwise.

**9.5.** The Customer shall not sub-licence, assign or otherwise transfer the rights granted in clause 9.2.

**9.6.** The Customer:

(a) warrants that the receipt and use in the performance of this agreement by Groop, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

(b) shall indemnify Groop against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by Groop arising out of or in connection with any claim brought against Groop, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

**9.7.** If the Customer is required to indemnify Groop under this clause 9, Groop shall:

(a) notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.7(b) (IPRs Claim);

(b) allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer shall obtain Groop's prior

approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of Groop's costs so incurred; and

(d) not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of Groop into disrepute.

## **10. Data protection**

**10.1.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

**10.2.** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Groop is the processor in relation to information processed within the Customer's user account on the Platform and Groop is the controller and the Customer is the processor in relation to information that Groop collects from the Customer in order to set up the Customer's user account on the Platform.

**10.3.** Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Groop for the duration and purposes of this agreement.

**10.4.** Without prejudice to the generality of clause 10.1, where the party is the processor, they shall, in relation to any personal data processed in connection with the performance by it of its obligations under this agreement:

(a) process that personal data only for the purposes of carrying out the terms of this agreement unless they are required by Applicable Laws to otherwise process that personal data. Where the party is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the processor shall promptly notify the controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the party from so notifying the other;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or

unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored (as far as reasonable possible in subject to clause 15) in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the controller has been obtained and the following conditions are fulfilled:

- (i) appropriate safeguards have been put in place in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) the processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) the processor complies with reasonable instructions notified to it in advance with respect to the processing of the personal data;

(e) the processor, at the controller's cost, responds to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the controller without undue delay on becoming aware of a personal data breach; and

(g) at the written direction of the controller, delete or return personal data and copies thereof to the controller on termination of the agreement unless required by Applicable Law to store the personal data.

## **11. Confidentiality**

**11.1.** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(a).

**11.2.** Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**11.3.** No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **12. Limitation of liability**

**12.1.** Nothing in this agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**12.2.** Subject to clause 9, Groop's total liability to the Customer shall not exceed the cost of the Order Confirmation relevant to such liability or at the time the breach is notified to Groop. Groop's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.

**12.3.** Groop has given commitments as to compliance of the Services with relevant specifications in clause 5.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

**12.4.** Unless the Customer notifies Groop that it intends to make a claim in respect of an event within the notice period, Groop shall have no liability for that event. The notice period



for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**12.5.** Neither party shall be liable to the other for any failure to perform, or delay in the performance of, any obligation under this agreement and/or Order Confirmation, which is caused by a Force Majeure Event.

### **13. Termination**

**13.1.** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(i) (inclusive); or

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**13.2.** For the purposes of clause 13.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 6, 8, 9, 10 and 11,

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**13.3.** Without affecting any other right or remedy available to it, Groop may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) there is a change of control of the Customer.

### **14. Consequences of termination**

**14.1.** On termination or expiry of this agreement:

- (a) all existing Statements at Work shall terminate automatically;
- (b) the Customer shall immediately pay to Groop all of Groop's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Groop may submit an invoice, which shall be payable immediately on receipt;
- (c) Groop shall on request return any of the Customer Materials not used up in the provision of the Services;

(d) where termination in clause 13 is in respect of the Customer or fault of the User, no refund shall be offered to the Customer and the Customer shall not be entitled to claim for the same; and

(e) the following clauses shall continue in force: clause 1 (Interpretation), clause 9 (Intellectual property rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 18 (Waiver), clause 20 (Severance), clause 22 (Conflict), clause 27 (Multi-tiered dispute resolution procedure), clause 28 (Governing law) and clause 29 (Jurisdiction).

**14.2.** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **15. Force majeure**

**15.1. Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) interruption or failure of utility service.

**15.2.** Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay

in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

**15.3.** The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

**15.4.** The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing (of possible) of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

**15.5.** If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

## **16. Assignment and other dealings**

**16.1.** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**16.2.** Groop may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

## **17. Variation**

Subject to clause 7 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **18. Waiver**

**18.1.** A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

**18.2.** A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any

other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **19. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **20. Severance**

**20.1.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

**20.2.** If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21. Entire agreement**

**21.1.** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**21.2.** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## **22. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Order Confirmation, the provisions of the Order Confirmation shall prevail.

## **23. No partnership or agency**

**23.1.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another

party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**23.2.** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **24. Third party rights**

**24.1.** This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **25. Notices**

**25.1.** Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address specified by the parties at the Commencement Date.

**25.2.** Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt;

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; and

(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 25.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**25.3.** This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **26. Multi-tiered dispute resolution procedure**

**26.1.** If a dispute arises out of or in connection with this agreement the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On

service of the Dispute Notice, a duly authorised representative of the Customer and a duly authorised representative of Groop shall attempt in good faith to resolve the Dispute;

(b) if the representatives of either party are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of Groop and if relevant, a director of the Customer, or if there is not director, the most senior person able to deal with the Dispute, who shall attempt in good faith to resolve it; and

(c) if for any reason the Parties referred to in 27.1(b) are unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (Alternative Dispute Resolution (**ADR notice**)) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

**26.2.** No party may commence any court proceedings in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

**26.3.** If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England.

## **27. Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

## **28. Jurisdiction**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated on the Order Confirmation or at date of signing.