

Terms and Conditions

G-Cloud 12
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Solution Partner



Table of Contents

Introduction3

BDQ Terms and Conditions4

Atlassian Cloud Terms of Service16

Zephyr Terms of Use28

Supplier Information35

Supplier Information35

Introduction

To supply the Atlassian or Zephyr products it is necessary for the Buyer to accept the terms of the product vendor's customer agreements. If UKCloud hosting is required, please review the terms set out in the UKCloud Ltd Terms and Conditions.

If any additional Atlassian Marketplace add-ons are required, any license terms associated by the vendor of the add-on must also be accepted by the Buyer.

Please note that the agreements are correct at the time of publication.

BDQ Terms and Conditions

Important

The Terms and Conditions (the "Terms") set out in this agreement govern all purchases of Deliverables by you the Client (whether an individual or single legal entity) from Business Data Quality Ltd T/A BDQ (BDQ), 2 Beauchamp Court, 10 Victors Way, Barnet, Herts, EN5 5TZ, United Kingdom, Company Registration Number 4497196 and are effective from 1st June 2016.

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means this written agreement, including the Schedule and Statement of Work arising here from, the terms of which documents are hereby incorporated by this reference;

"Bespoke Elements" means all materials and/or elements included in Reports, Software and / or Deliverables, which are created in the course of the provision of the Services. For the avoidance of doubt, this shall not include any materials and/or elements included in the Reports which were already in existence on the Effective Date or which are the property of a third party;

"Deliverables" means the Reports, Equipment, Software, source code, object code, executables, scripts or other products of the work, delivered to the Client, pursuant to the provision of the Services as specified in the applicable Statement of Work;

"Equipment" means the equipment supplied by BDQ to Client in the course of the Services as specified in the Statement of Work (if any);

"Effective Date" means the date of this Agreement¹;

"Fees" means BDQ's fees for the Services as set out in the Statement of Work;

"Intellectual Property Rights" means the following rights, wherever in the world enforceable: -

- (i) any patents or patent applications;
- (ii) any trade marks (whether or not registered) including any applications for registration of the same;
- (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
- (iv) copyright or design rights (whether registered or unregistered) in respect of drawings, designs, articles, specifications, drawings, mathematical algorithms, research materials, circuit boards, technical documentation or other documents and including rights in any database, any software (including rights in any source codes relating thereto), firmware or hardware;
- (v) any goodwill in any trade or service name, trading style or get-up; and
- (vi) any and all other intellectual or industrial property rights;

"Order" means any order for Deliverables agreed by BDQ and Client including without limitation an electronic purchase order and/or email requesting Deliverables as defined in this Clause 1;

"Project(s)" means any project(s) agreed between the parties from time to time pursuant to which BDQ is to perform Services and supply Deliverables for Client, as more fully described in Clause 2 and the applicable Statement of Work;

"Reports" means any reports and other written materials delivered to Client, on the agreed media, pursuant to the provision of the Services as specified in the applicable Statement of Work;

"Services" means in respect of each Project the services to be provided by BDQ (including the delivery of Reports, Software, Deliverables and / or licences), as more fully described in the applicable Statement of Work (if any) or Order;

“Software” means the BDQ software and/or third party software supplied by BDQ to Client in the course of the Services as specified in the applicable Statement of Work (if any);

“Support” means the support for a specific BDQ or third party vendor software product as defined in the software product support and maintenance terms or an annual BDQ support contract for assistance with CM products as specified in the applicable Statement of Work (if any);

“Statement of Work” or **“SOW”** means a document in the form set out in Schedule 1 as agreed and signed by the parties from time to time containing a description of the Services, Deliverables, Project, Equipment and Fees. 1 Note, if services have already commenced then the date that the services commenced should be inserted and the reference to the date of this Agreement should be deleted.

1.2 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

1.3 References in this Agreement to:

1.3.1 Clauses and Schedules are to the clauses of and schedules to this Agreement;

1.3.2 the parties herein include references to their respective successors in title, permitted assigns and novatees;

1.3.3 any statute or statutory provision include references to that statute or statutory provision as from time to time amended, extended or re-enacted and to any rules, orders, regulations and delegated legislation made thereunder; and

1.3.4 “person(s)” shall include any individual, firm, company, association, corporation or other organisation or entity.

1.4 Where the context so admits or requires words in this Agreement denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.5 The terms and conditions set out hereunder shall be deemed to have been accepted whereby the Client has:

1.5.1 clicked to accept this agreement where the option is made available in the user interface for any Service; or

1.5.2 used the services in which case Client understands BDQ will imply Client has understood and accepted the terms and conditions in this Agreement; or

1.5.3 signed this Agreement and a copy has been returned to BDQ.

1.6 This Agreement may only be executed by (a) a person of legal age to form a legally binding contract with BDQ, (b) a person who is not barred from receiving the Services under the laws of the country in which they are resident or from which they use the Services, or (c) an officer of Client or any person duly authorized to enter Client into this Agreement.

2. Services (where applicable)

2.1 Subject to the terms and conditions of this Agreement, BDQ shall from time to time during the term of this Agreement perform the Services and supply the Deliverables in accordance with the terms hereof. Details of each Project agreed between the parties from time to time shall be set forth in a Statement of Work which shall be prepared by BDQ with such assistance from the Client as BDQ may reasonably require.

2.2 Upon agreement whether by signature or electronically of the Statement of Work by both parties, the terms of the Statement of Work shall be binding upon the parties and incorporated into and form part of this Agreement. In the event of any inconsistency between the terms of this Agreement and the terms of a Statement of Work incorporated herein, the terms of the Statement of Work shall control.

2.3 BDQ shall not be obliged to supply any Services and/or Deliverables specified in a Statement of Work until BDQ has signed or agreed in writing including electronically by an authorised agent of the Client such a Statement of Work and in the case of Software subject to the further provisions of Clause 4.2.

2.4 BDQ shall apply such time, attention, resources, personnel and skill as may be necessary or appropriate for its performance of the Services hereunder to accepted industry standards.

3. Annual BDQ Support (where applicable)

3.1 All work undertaken as part of an annual BDQ support agreement will be charged in 15 minute time blocks which start from the point at which a BDQ support consultant begins investigation of the support ticket and stop when a response is communicated by BDQ to Client.

3.2 Client will nominate up to 5 [five] authorised representatives who can raise support tickets. All other Client staff must use the Client authorised representative to raise support tickets.

3.3 All issues, responses and time taken will be tracked by BDQ and available to Client upon request.

3.4 Support tickets will not be actively worked by BDQ and will not adhere to any agreed Service Level Agreement if all Support hours within the annual BDQ Support agreement have already been used by Client. Additional Support hours can be purchased by Client at any time during the annual BDQ Support agreement and will be charged as described in Clause 6 of this agreement.

3.5 Any on-site assistance by a BDQ consultant or additional materials required to fulfil the annual BDQ support agreement are fully chargeable to Client (including all applicable reasonable expenses).

3.6 Support hours are non-transferable following the expiration of the Support period and may not be exchanged for consulting assignments which will be quoted and delivered separately.

4. Deliverables (where applicable)

4.1 BDQ shall use all reasonable endeavours to deliver the Deliverables by any date(s) agreed pursuant to the Order and/or in the Statement of Work (if any).

4.2 In the event that the parties have agreed by virtue of an Order that BDQ will provide Software to Client, such Software shall be licensed to the Client under a separate end user licence agreement. BDQ shall not be obliged to supply the Software until Client has accepted the applicable end user licence agreement and where necessary the end user licence agreement of third party vendors. BDQ can and will provide these agreements where applicable to Client upon

4.3 BDQ does not provide any warranty relating to Equipment and Software which are subject to the applicable owner's or manufacturer's warranty terms, a copy of which will be provided to Client upon request.

4.3.1 Client acknowledge that as a condition of being entitled to the warranties referred to in this Clause 4.3 it shall be required to produce a copy of BDQ's applicable sales invoice.

4.4 In the event Client acquires Equipment and/or Software for export, Client shall ensure that it complies with all applicable export and import laws in force from time to time, including those of the United States of America.

4.4.1 In relation to this Clause 4.4 Client assumes responsibility for all export and import and/or other duty where applicable.

4.5 The Client shall be able to inspect, test and evaluate the Deliverables to determine whether they satisfy the acceptance criteria in accordance with any procedures and time frame set out in the related Statement of Work. If the Client does not notify BDQ of any problems within the stipulated time frame, then the Client is deemed to have accepted the Deliverables.

4.6 If the Deliverables do not satisfy the acceptance criteria, the Client shall give BDQ written notice stating reasons.

4.7 BDQ shall have 20 days from the receipt of such notice to correct the deficiencies, however BDQ can extend this date by giving written notice to the Client.

4.8 The Customer shall then have 10 days to inspect, test and reevaluate the Software.

5. Client Obligations

5.1 Client shall be responsible for specifying fully and clearly its requirements from the Services and/or Deliverables. Client agrees to provide BDQ promptly with all information, data, reports and other materials that BDQ may reasonably require from time to time to facilitate the performance of the Services. Client warrants that all such

information, representations, data, reports and other materials is/are accurate and complete and that Client is entitled to provide the same to BDQ for BDQ's use without recourse to any third party.

5.2 If any of BDQ's personnel are to perform any Services at Client's premises, Client shall ensure that such personnel are allowed access to such premises upon reasonable prior notice during normal business hours and shall take full responsibility for the safety and security of BDQ's personnel whilst at such premises providing that BDQ personnel comply with the clients Security and Health and Safety regulations.

5.3 If the performance of any Services hereunder requires the use of any equipment belonging to Client:

5.3.1 Client shall ensure that BDQ's personnel are given such access to the equipment as is reasonably necessary to facilitate the performance of the Services;

5.3.2 such equipment, whether used at Client's premises or elsewhere, shall remain at Client's risk and BDQ shall not assume any responsibility or liability for the safety or security of the same excepting damage of such equipment caused by negligence of BDQ staff; and

5.3.3 Client shall take all reasonable precautions to safeguard the health and safety of BDQ's personnel whilst working with such equipment and shall ensure that such equipment at all times complies with all relevant laws, regulations and codes of practice.

5.4 Without prejudice to its rights under this Agreement, BDQ will notify Client promptly in writing if, in its reasonable opinion, it considers Client has failed to provide information, data, reports and/or other materials or assistance or if BDQ has reason to believe that any such information, data, reports, materials and/or assistance is defective or deficient.

5.5 BDQ's ability to perform its obligations under this Agreement may be dependent on Client fulfilling its obligations. To the extent that Client does not fulfill its obligations under this Agreement within a reasonable period, then (without prejudice to BDQ's rights and remedies), BDQ will be relieved of its obligations to Client to the extent that BDQ is prevented from performing the Services in accordance with the Agreement.

5.6 Client undertakes to BDQ to comply with its obligations under each end user licence agreement governing the Client's use of Software including all Software supplied by third parties and the corresponding end user licence agreements.

6. Fees and Expenses

6.1 In consideration of the Services and Deliverables to be supplied by BDQ hereunder, Client shall pay to BDQ the fees specified in the Order and/or applicable Statement of Work incorporated into this Agreement.

6.2 In addition to the Fees, Client shall reimburse BDQ for all reasonable expenses incurred by BDQ in the course of performing the Services. For the avoidance of doubt, reasonable expenses shall include, but not be limited to, expenses incurred in relation to accommodation, subsistence, hire of equipment, travel insurance and travel. BDQ's expenses policy is available on request.

6.3 Expenses will be presented as a single line item on the applicable sales invoice:

6.3.1 A copy of expenses receipts will not be provided unless requested in advance of the issuance of an invoice;

6.3.2 Client will be notified at the time of quotation that BDQ reserve the right to levy an administration charge equivalent to £50 (fifty pounds) per invoice in the event a full and detailed breakdown of expenses is required;

6.3.3 In the event Client requests a full and detailed breakdown of expenses after the issuance of an invoice BDQ reserve the right to levy an administration charge equivalent to £150 (one hundred and fifty pounds) per invoice.

6.4 All work undertaken by a BDQ consultant for Client on a Saturday will be charged at 1.5 [one point five] times standard rate. All work undertaken by a BDQ consultant for Client on a Sunday or Public Holiday will be charged at 2 [two] times standard rate.

6.5 For consulting and training Services BDQ shall invoice Client upon completion of the Services in full as detailed in the applicable Statement of Work in respect of all Fees payable and all expenses incurred in respect of Services performed and Deliverables supplied.

6.6 For annual BDQ Support contracts BDQ shall invoice Client in full in advance for all Fees payable during the relevant term.

6.6.1 Payment of the invoice for all Fees payable during the relevant Support period must be received in line with BDQ's payment terms outlined in Clause 6.8 of this agreement prior to Support hours being made available for use.

6.6.2 Additional Support hours can be purchased at any time throughout the term of the support contract and will likewise be invoiced in advance and payable by Client in full.

6.7 For software products (both BDQ and Third Party) BDQ shall invoice Client in full in advance for all Fees payable during the relevant term (including annual support and maintenance if appropriate). A temporary license key will be issued to activate the software until full payment is received and cleared, BDQ reserve the right not to extend the temporary license further if payment is not received by the end of the temporary period. An assessment will be made on a case by case basis and is at the sole discretion of BDQ. Extensions of temporary licences will not be unreasonably withheld.

6.8 Client shall pay BDQ's invoices within 30 days of the invoice date preferably by transferring the invoiced amount into a bank account nominated by BDQ. Payments not received within 30 days of the invoice date, unless otherwise agreed in writing prior to the issuing of an invoice, will be deemed late and charges will apply as outlined in clause 6.11.

6.8.1 Credit card payments may be accepted in exceptional circumstances following prior approval from BDQ's Finance Director. A processing fee may apply.

6.8.2 All invoices and all payments hereunder shall be in the currency stated on the invoice.

6.9 All sums referred to in this Agreement are payable in full without deduction, withholding or set-off for any reason whatsoever and are exclusive of Value Added Tax and any other duty or tax, which shall (if and to the extent applicable) be payable by Client. Client shall also be responsible for all applicable bank and/or foreign exchange charges.

6.9.1 In the event payment of an invoice is received deductions identified in this Clause 6.9 BDQ reserves the right to withhold the delivery of Software and/or Support until such time payment for all applicable is received; or

6.9.2 In the event deductions are made from the invoice value in respect of an invoice for consulting and/or consulting BDQ may at its sole discretion invoice Client for such deductions.

6.10 Client may stop the project at any point. At the point of termination, the client will be liable to pay for any Services, Software, Support and / or Deliverables rendered up to the date of termination. If the project is a fixed price piece of work, the client will be liable for full agreed costs.

6.11 If Client is overdue with any payment hereunder, then without prejudice to BDQ's other rights or remedies:

6.11.1 BDQ shall have the right to suspend performance of the Services until BDQ has received payment of the overdue amount together with any accrued late payment fees outlined in Clause 6.11.3; and/or

6.11.2 if payment is not made within 30 days of the due date, BDQ shall have the right to terminate this Agreement immediately upon written notice to Client.

6.11.3 BDQ shall apply a 5% (five per cent) late payment fee immediately after the passing of the due date of the invoice and shall continue to add 5% (five per cent) of the accumulated total for each full 30 (thirty) days period that passes until payment is received in full without deduction inclusive of all applicable duty or tax or other charges.

6.12 BDQ reserves the right to increase the Fees (within reason and in good faith) if the cost to BDQ of performing the Services and/or supplying the Deliverables increases as a result of:

6.12.1 any change to the law or any other reason beyond BDQ's reasonable control;

6.12.2 any material breach of this Agreement by Client;

6.12.3 the supply of materially incorrect or inadequate information by Client; or

6.12.4 any change in the timetable for the delivery of the Services and/or Deliverables or a modification of the Services and/or Deliverables requested by Client and accepted by BDQ

6.13 In the event of BDQ increasing its fees pursuant to section 6.12.1 or 6.12.4, Client shall have the right to terminate this agreement. In such case the client will be liable to pay Fees for Services already provided to Client prior to the date of termination.

6.14 If Client requests to move the start day of Services which have been confirmed by both project teams Client shall be liable to pay the following Fees to BDQ:

6.14.1 No less than 11 (eleven) days prior to the confirmed start date for the commencement of the Services the Client shall pay to BDQ £250.00 (two hundred and fifty pounds) for each day of the days initially scheduled up to a maximum of £2,000.00 (two thousand pounds) whichever is the lesser; or

6.14.2 No more than 10 (ten) working days prior to the confirmed start date for the commencement of the Services the Client shall pay to BDQ £450.00 (four hundred and fifty pounds) for each day of the days initially scheduled up to a maximum of £4,500.00 (four thousand five hundred pounds) whichever is the lesser; and

6.14.3 The Client shall also be liable for all expenses already incurred which are directly and/or indirectly in support of the rescheduled Services.

6.14.4 For the avoidance of doubt the Fees outlined in this clause 6.14 will be charged in addition to the total amount payable for the Services to which this agreement is applicable.

(For the cancellation of Services please refer to Clauses 12 and 13 of this agreement.)

6.15 In the event Client requires to return Software and/or cancel a Support contract the following will apply:

6.15.1 Provided a request to return Software is submitted to BDQ in writing within thirty (30) days from the date payment was received by BDQ a credit note for the full invoice amount will be issued to Client.

6.15.2 In the event a request to return Software is made after thirty (30) days from the date payment was received a credit note will not be provided.

6.15.3 Clauses 6.15.1 and 6.15.2 are subject to the return and refund policies of third party vendors where applicable. Accordingly, in the event a return and/or refund cannot be obtained by BDQ from the third party vendor no credit note will be provided.

6.15.4 In the event Client requests the cancellation of a Support contract, a credit note will be provided for the full invoice amount on the submission, in writing, of notice of Client's intention to cancel within a period of no more than thirty (30) days from the date payment was received by BDQ. Deductions for any hours used will apply.

6.15.5 If Client serves notice to cancel a Support contract following a period of no less than thirty (30) days any applicable credit note will be to the value of the remaining duration from the initial twelve (12) months contract with the total overall contracted Support hours evenly apportioned across the twelve (12) months initial Support contract.

6.16 A refund and/or credit note will not be given in relation to Training or Consulting. All disputes must be settled prior to the issuing of an invoice.

7. Title

7.1 Subject to Clause 7.6, title to the Deliverables shall not pass to Client until BDQ has received payment in full of all sums due to it.

7.2 Until title to the Deliverables has passed to Client, Client must:

7.2.1 store the goods separately from all other products of Client or any third party in such a way that they remain readily identifiable as BDQ's property; and

7.2.2 maintain the Deliverables in satisfactory condition and keep them insured on BDQ's behalf for their full price against all insurable risks;

7.3 Client's right to possession of any Deliverables for which full payment has not been received shall terminate immediately if Client becomes subject to any of the events set out in Clause 12.5.2.

7.4 Client grants BDQ, its agents and employees escorted access to any premises where Deliverables are or may be stored, in order to recover them where Client's right to possession has terminated in accordance with Clause 7.1 or 7.3. Such access must be pre-agreed by Client in writing, and may not be unreasonably withheld, within 30 days of written request by BDQ.

7.5 Title to any media bearing any Software supplied by BDQ to Client under this agreement will pass to Client in accordance with this Clause 7.

7.6 Title to the Software stored on any media referred to in Clause 7.5 will not pass to Client but will remain with the applicable licensor and Client's rights to use such Software shall be governed by the terms of the applicable end user licence agreement.

8. Confidentiality

8.1 Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it shall receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party ("Confidential Information").

8.2 Confidential Information shall include any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.

8.3 Confidential Information shall exclude information which:

8.3.1 at the time of receipt by the recipient is in the public domain;

8.3.2 subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;

8.3.3 is lawfully received by the recipient from a third party on an unrestricted basis;

8.3.4 is already known to the recipient before receipt hereunder and/or

8.3.5 is independently developed by the recipient.

8.4 Each of the parties undertakes to maintain the confidentiality of the other party's Confidential Information at all times and to keep the other party's Confidential Information secure and protected against theft, damage, loss or unauthorised access. Neither party shall at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations hereunder.

8.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

8.6 Upon the earlier of a written request from the disclosing party or the termination of this Agreement for any reason, each party shall return all of the other party's Confidential Information then in its possession or control and will not retain any copies of the same.

8.7 Neither party shall be in breach of this Clause 8 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that to the extent legally permissible, the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

8.8 The terms of and obligations imposed by this Clause 8 shall survive the termination of this Agreement for any reason.

9 – Warranties

9.1 BDQ warrants that the Services will be carried out with reasonable skill and care in accordance with the terms of this Agreement and to accepted industry standards. If BDQ's performance of the Services is inadequate, BDQ shall perform the Services again at no extra charge. If BDQ fails to rectify any deficient performance of the Services, Client's sole remedy shall be reimbursement of the Fees paid for the Services concerned.

9.2 The express terms of this Agreement are in lieu of all BDQ's warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, including any condition of satisfactory quality or fitness for a particular purpose whether or not any purpose has been notified to BDQ, all of which are hereby excluded to the fullest extent permitted by law.

10 – Liability

10.1 Client shall indemnify BDQ against all liabilities, reasonable costs, damages and expenses incurred by BDQ in respect of (i) any actions for infringement of any intellectual property rights of any third party arising from Client's breach of this Agreement or (ii) other proceedings or claims against BDQ, which result in an injunction or final judgement or any settlement of such claim by Client, in respect of the rights of third parties in specifications, software or other documents or materials provided by Client for the purpose of enabling BDQ to perform its obligations under this Agreement except in so far as the same may result from wilful default, negligence or fraud of BDQ and/or its employees or representatives and subject to the following conditions:

10.1.1 BDQ shall promptly notify Client in writing of any allegations of infringement of which it has notice and in any event within ten (10) working days of BDQ becoming aware of such allegation and will not make any admissions nor compromise any such claim without prior discussion with Client;

10.1.2 BDQ, at Client's request and expense, shall allow Client the sole right to conduct and/or settle all negotiations and litigation resulting from the Claim; and

10.1.3 BDQ shall, at the request of Client, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Client for any reasonable out of pocket expenses incurred in so doing.

10.2 Subject to Clause 10.7, BDQ will indemnify Client against all liabilities, reasonable costs, damages and expenses which the Client may incur as a result of any claim or action by a third party that the use of the Deliverables (services provided) in accordance with this Agreement by Client infringes the Intellectual Property Rights of a third party (a "Claim") and which results in an injunction or final judgment (or any settlement of such Claim by BDQ), subject to the following conditions:

10.2.1 Client shall promptly notify BDQ in writing of any allegations of infringement of which it has notice and in any event within ten (10) working days of Client becoming aware of such allegation and will not make any admissions nor compromise any such claim without BDQ's prior written consent;

10.2.2 Client, at BDQ's request and expense, shall allow BDQ the sole right to conduct and/or settle all negotiations and litigation resulting from the Claim; and

10.2.3 Client shall, at the request of BDQ, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by BDQ for any reasonable expenses incurred in so doing.

10.3 The indemnity given under Clause 10.1 above shall not apply to infringement arising out of the use of the Deliverables in a manner not provided for under this Agreement or in the case of Software any applicable end user licence agreement or third party Software and applicable end user licence agreement.

10.4 Subject to Clauses 10.5 and 10.6, BDQ's or Client's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed 125% of the Fees payable hereunder in respect of the Services and/or Deliverables giving rise to the liability.

10.5 Nothing in this Agreement shall exclude or in any way limit BDQ's or the clients liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

10.6 Subject to Clause 10.5, neither party shall be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts, loss of any benefit or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

10.7 Client shall only be entitled to bring a claim against BDQ arising from the supply of the Services and/or Deliverables if it has previously notified BDQ of such claim not more than two years after the cause of action arose.

11. Publicity Rights

11.1 Client grants BDQ the right to include the Client's name, brand, logo and any feedback either in whole or in part given to BDQ arising from the supply of Services and/or Deliverables in BDQ's promotional and marketing materials, website, collateral and/or other material BDQ as decides.

11.2 Client can opt to have their name, brand, logo and/or feedback excluded from such use by BDQ by emailing marketing@BDQ-cm.com with the subject matter stating "Non-use of Subscriber Name" and indicating which items to remove. BDQ will acknowledge Client within 30 (thirty) days that all Client name or brand, logo and/or feedback has been removed.

11.3 Client may not use BDQ's trading names, trademarks, service marks, logos, domain names or other distinctive brand features without consent from BDQ in writing.

11.3.1 Client acknowledges that BDQ reserve the right to withdraw consent in relation to this Clause 11.3 at any time and without reason. In the event of this Clause 11.3.1 being effected Client will remove all references to BDQ brand features within a period of no more than 30 (thirty) days.

11.3.2 In the event Client has been given consent to use any of the brand features in a separate agreement Client agrees that the use of such features shall be compliant with the terms of that agreement.

12. Term and Termination

12.1 This Agreement shall have effect on and from the Effective Date and, subject to the terms of this Clause 11, shall continue in full force and unless or until terminated by either party in accordance with its terms.

12.2 Each Project shall commence on the date set out in the relevant Statement of Work and shall, subject to earlier termination in accordance with the terms hereof, continue in operation for the term set out therein.

12.3 Either party may terminate this Agreement by giving not less than 60 (sixty) days' written notice to the other without cause.

12.4 Either party may terminate a Statement of Work by giving the other party the period of written notice set out in the relevant Statement of Work.

12.5 Either party may terminate this Agreement immediately upon written notice to the other in the event of:

12.5.1 any material breach of this Agreement by the other party which breach is not remediable or, if remediable, is not remedied within 30 (thirty) days after the service by the party not in default of a written notice on the other party, specifying the nature of the breach and requiring that the same be remedied; or

12.5.2 the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt.

13. Consequences of Termination

13.1 The expiry or termination of this Agreement shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either party at the effective date of termination.

13.2 Termination of a Statement of Work by either party under Clause 12.4 shall not serve to terminate this Agreement which shall continue in full force and effect. This Agreement shall remain in effect for so long as a Statement of Work shall remain in effect.

13.3 Upon termination of this Agreement for any reason:

13.3.1 all outstanding Statements of Work shall also be terminated;

13.3.2 unless otherwise provided in this Clause 13.3, BDQ will be paid Fees on a proportional basis for any Services, Software and / or Deliverables provided up to and including the effective date of termination and all expenses incurred up to and including the effective date of termination;

13.3.3 provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

13.3.4 Client can request, with 30 (thirty) days' notice, to have their name, brand or logo and any feedback either in whole or in part removed from any BDQ promotional material. BDQ will acknowledge, within 30 (thirty) days of being notified, that all client name, brand or logo and any feedback either in whole or in part has been removed.

13.4 If notice to terminate is given by Client under Clause 12.3 or Clause 12.4 and such notice shall expire 10 (ten) or fewer days before the agreed start date for the provision of the Services and/or supply of the Deliverables, Client shall be liable to pay the following Fees to BDQ to the extent that they exceed any Fees payable under Clause 13.3.2:

13.4.1 6 to 10 days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 50% of the full amount of Fees payable for that Project; or

13.4.2 3 to 5 days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 70% of the full amount of Fees payable for that Project; or

13.4.3 2 or fewer days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 90% of the full amount of Fees payable for that Project; and

13.4.4 Client shall pay to BDQ all expenses which have already been incurred by BDQ.

14. Intellectual Property Rights

14.1 Client acknowledges and agrees that all Intellectual Property Rights in the Bespoke Elements of Reports, Software and / or Deliverables, wherever in the world enforceable, shall immediately upon creation vest in and shall be and remain the sole and exclusive property of BDQ subject to the provisions of this Clause 14.

14.2 If and to the extent that any of the Reports, Software and / or Deliverables comprise or include any work the Intellectual Property Rights in which belong to a third party, BDQ shall procure a licence for Client to use such work on the terms of Clause 14.3.

14.3 Provided Client has paid all Fees and Expenses payable in respect of the relevant Services, BDQ hereby grants Client a perpetual, royalty free, non-transferable licence to use the Reports, Software and / or Deliverables for the purposes contemplated hereunder, provided that such use shall be strictly limited to the internal business purposes of the Client.

14.4 Where this agreement applies to Services described in the relevant Statement of Work as 'training' BDQ shall retain all Intellectual Property Rights to the training materials used whether tangible or intangible and under no circumstances without exception will title pass to Client.

14.5 Client shall not be permitted to:

14.5.1 reproduce any tangible training materials. Additional or replacement materials can be purchased from BDQ directly; and

14.5.2 record any training session whether classroom or webinar based. Recordings of training sessions whether classroom or webinar based can be purchased from BDQ directly. Client must inform BDQ in advance of the session if a recording is required.

14.5.3 all training materials whether tangible or intangible are for internal use only and shall not reproduced, sold, copied or quoted whether in whole or in part for Client's own use without prior written consent from BDQ.

14.6 Client understands that all information (including but not exclusively data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which Client may have access to as part of or through the use of the Services including advertisements may be protected by intellectual property rights owned by the sponsors or advertisers providing content to BDQ. Client may not modify, rent, lease, loan, sell, distribute or create derivative works based on such content either in whole or in part without having express agreement from BDQ or the owners in law or in equity of the content.

14.7 The terms of and obligations imposed by this Clause 14 shall survive the termination of this Agreement for any reason.

15. Non-Solicitation

15.1 Each party agrees, for the duration of each Project and for a further period of 6 (SIX) months thereafter, not to solicit or induce any officer, employee, agent or contractor of the other party involved in the relevant Project to terminate their employment or engagement with that party without the prior written consent of that party.

16. Force Majeure

16.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "Force Majeure Event").

16.2 Force Majeure Events shall include but not be limited to the following:

16.2.1 strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any employees of the party seeking to rely on the Force Majeure Event);

16.2.2 civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war;

16.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

16.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

16.2.5 compliance with any law or governmental order, rule, regulation or direction;

16.2.6 breakdown of plant or machinery; and/or

16.3 The party whose performance is affected by a Force Majeure Event shall, within two working days of becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.

16.4 The occurrence of a Force Majeure Event shall not have the effect of discharging or postponing the affected party's payment obligations hereunder.

16.5 If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding two months, the non-affected party shall have the right to terminate this Agreement or the affected Services/Project forthwith on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

17. Notices

17.1 Unless otherwise expressly stated in this Agreement, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed duly served :-

17.1.1 on delivery, if delivered by hand, or two business days after posting, if sent by pre-paid registered post, to the intended recipient at the address set out above, or such other address as either party may notify to the other for this purpose from time to time;

17.1.2 if sent by fax or email;

17.1.3 during normal business hours, immediately on transmission; or

17.1.4 outside normal business hours, on the following business day.

18. Assignment and Sub-Contracting

18.1 BDQ has partners and affiliated legal entities and on occasion these companies may provide to the Client on behalf of BDQ.

18.1.1 BDQ may not assign this Agreement in whole or in part to any third party without prior written agreement from Client.

18.1.2 BDQ shall be entitled to sub-contract its performance of the Services. This shall not relieve BDQ from any liability or obligation under this Agreement and BDQ shall be responsible for the acts, omissions or defaults of any sub-contractor as if they were the acts, omissions or defaults of BDQ.

18.2 Client may not assign, transfer, charge, sub-contract or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of BDQ.

19. Third Party Rights

19.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. General

20.1 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

20.2 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

20.3 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

20.3.1 in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and

20.3.2 its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement, provided that nothing in this Clause 20.3 shall operate to limit or exclude either party's liability for fraud.

20.4 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them.

20.5 Any valid alteration to or variation of this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised officer.

20.6 Where BDQ has provided Client with a translation of the English language version of this Agreement, Client agrees that the translation is provided for convenience only and that the English language version of this Agreement will govern Client's relationship with BDQ.

20.6.1 In the event there is a contradiction between the meaning on any word, phrase or sentence within this Agreement following its translation the English language version shall take precedence.

Atlassian Cloud Terms of Service

Important

The Terms and Conditions (the "Terms") set out in this agreement govern all purchases of Deliverables by you the Client (whether an individual or single legal entity) from Business Data Quality Ltd T/A BDQ (BDQ), 2 Beauchamp Court, 10 Victors Way, Barnet, Herts, EN5 5TZ, United Kingdom, Company Registration Number 4497196 and are effective from 1st June 2016.

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means this written agreement, including the Schedule and Statement of Work arising here from, the terms of which documents are hereby incorporated by this reference;

"Bespoke Elements" means all materials and/or elements included in Reports, Software and / or Deliverables, which are created in the course of the provision of the Services. For the avoidance of doubt, this shall not include any materials and/or elements included in the Reports which were already in existence on the Effective Date or which are the property of a third party;

"Deliverables" means the Reports, Equipment, Software, source code, object code, executables, scripts or other products of the work, delivered to the Client, pursuant to the provision of the Services as specified in the applicable Statement of Work;

"Equipment" means the equipment supplied by BDQ to Client in the course of the Services as specified in the Statement of Work (if any);

"Effective Date" means the date of this Agreement¹;

"Fees" means BDQ's fees for the Services as set out in the Statement of Work;

"Intellectual Property Rights" means the following rights, wherever in the world enforceable: -

- (i) any patents or patent applications;
- (ii) any trade marks (whether or not registered) including any applications for registration of the same;
- (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
- (iv) copyright or design rights (whether registered or unregistered) in respect of drawings, designs, articles, specifications, drawings, mathematical algorithms, research materials, circuit boards, technical documentation or other documents and including rights in any database, any software (including rights in any source codes relating thereto), firmware or hardware;
- (v) any goodwill in any trade or service name, trading style or get-up; and
- (vi) any and all other intellectual or industrial property rights;

"Order" means any order for Deliverables agreed by BDQ and Client including without limitation an electronic purchase order and/or email requesting Deliverables as defined in this Clause 1;

"Project(s)" means any project(s) agreed between the parties from time to time pursuant to which BDQ is to perform Services and supply Deliverables for Client, as more fully described in Clause 2 and the applicable Statement of Work;

"Reports" means any reports and other written materials delivered to Client, on the agreed media, pursuant to the provision of the Services as specified in the applicable Statement of Work;

"Services" means in respect of each Project the services to be provided by BDQ (including the delivery of Reports, Software, Deliverables and / or licences), as more fully described in the applicable Statement of Work (if any) or Order;

“Software” means the BDQ software and/or third party software supplied by BDQ to Client in the course of the Services as specified in the applicable Statement of Work (if any);

“Support” means the support for a specific BDQ or third party vendor software product as defined in the software product support and maintenance terms or an annual BDQ support contract for assistance with CM products as specified in the applicable Statement of Work (if any);

“Statement of Work” or **“SOW”** means a document in the form set out in Schedule 1 as agreed and signed by the parties from time to time containing a description of the Services, Deliverables, Project, Equipment and Fees. 1 Note, if services have already commenced then the date that the services commenced should be inserted and the reference to the date of this Agreement should be deleted.

1.2 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

1.3 References in this Agreement to:

1.3.1 Clauses and Schedules are to the clauses of and schedules to this Agreement;

1.3.2 the parties herein include references to their respective successors in title, permitted assigns and novatees;

1.3.3 any statute or statutory provision include references to that statute or statutory provision as from time to time amended, extended or re-enacted and to any rules, orders, regulations and delegated legislation made thereunder; and

1.3.4 “person(s)” shall include any individual, firm, company, association, corporation or other organisation or entity.

1.4 Where the context so admits or requires words in this Agreement denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.5 The terms and conditions set out hereunder shall be deemed to have been accepted whereby the Client has:

1.5.1 clicked to accept this agreement where the option is made available in the user interface for any Service; or

1.5.2 used the services in which case Client understands BDQ will imply Client has understood and accepted the terms and conditions in this Agreement; or

1.5.3 signed this Agreement and a copy has been returned to BDQ.

1.6 This Agreement may only be executed by (a) a person of legal age to form a legally binding contract with BDQ, (b) a person who is not barred from receiving the Services under the laws of the country in which they are resident or from which they use the Services, or (c) an officer of Client or any person duly authorized to enter Client into this Agreement.

2. Services (where applicable)

2.1 Subject to the terms and conditions of this Agreement, BDQ shall from time to time during the term of this Agreement perform the Services and supply the Deliverables in accordance with the terms hereof. Details of each Project agreed between the parties from time to time shall be set forth in a Statement of Work which shall be prepared by BDQ with such assistance from the Client as BDQ may reasonably require.

2.2 Upon agreement whether by signature or electronically of the Statement of Work by both parties, the terms of the Statement of Work shall be binding upon the parties and incorporated into and form part of this Agreement. In the event of any inconsistency between the terms of this Agreement and the terms of a Statement of Work incorporated herein, the terms of the Statement of Work shall control.

2.3 BDQ shall not be obliged to supply any Services and/or Deliverables specified in a Statement of Work until BDQ has signed or agreed in writing including electronically by an authorised agent of the Client such a Statement of Work and in the case of Software subject to the further provisions of Clause 4.2.

2.4 BDQ shall apply such time, attention, resources, personnel and skill as may be necessary or appropriate for its performance of the Services hereunder to accepted industry standards.

3. Annual BDQ Support (where applicable)

3.1 All work undertaken as part of an annual BDQ support agreement will be charged in 15 minute time blocks which start from the point at which a BDQ support consultant begins investigation of the support ticket and stop when a response is communicated by BDQ to Client.

3.2 Client will nominate up to 5 [five] authorised representatives who can raise support tickets. All other Client staff must use the Client authorised representative to raise support tickets.

3.3 All issues, responses and time taken will be tracked by BDQ and available to Client upon request.

3.4 Support tickets will not be actively worked by BDQ and will not adhere to any agreed Service Level Agreement if all Support hours within the annual BDQ Support agreement have already been used by Client. Additional Support hours can be purchased by Client at any time during the annual BDQ Support agreement and will be charged as described in Clause 6 of this agreement.

3.5 Any on-site assistance by a BDQ consultant or additional materials required to fulfil the annual BDQ support agreement are fully chargeable to Client (including all applicable reasonable expenses).

3.6 Support hours are non-transferable following the expiration of the Support period and may not be exchanged for consulting assignments which will be quoted and delivered separately.

4. Deliverables (where applicable)

4.1 BDQ shall use all reasonable endeavours to deliver the Deliverables by any date(s) agreed pursuant to the Order and/or in the Statement of Work (if any).

4.2 In the event that the parties have agreed by virtue of an Order that BDQ will provide Software to Client, such Software shall be licensed to the Client under a separate end user licence agreement. BDQ shall not be obliged to supply the Software until Client has accepted the applicable end user licence agreement and where necessary the end user licence agreement of third party vendors. BDQ can and will provide these agreements where applicable to Client upon

4.3 BDQ does not provide any warranty relating to Equipment and Software which are subject to the applicable owner's or manufacturer's warranty terms, a copy of which will be provided to Client upon request.

4.3.1 Client acknowledge that as a condition of being entitled to the warranties referred to in this Clause 4.3 it shall be required to produce a copy of BDQ's applicable sales invoice.

4.4 In the event Client acquires Equipment and/or Software for export, Client shall ensure that it complies with all applicable export and import laws in force from time to time, including those of the United States of America.

4.4.1 In relation to this Clause 4.4 Client assumes responsibility for all export and import and/or other duty where applicable.

4.5 The Client shall be able to inspect, test and evaluate the Deliverables to determine whether they satisfy the acceptance criteria in accordance with any procedures and time frame set out in the related Statement of Work. If the Client does not notify BDQ of any problems within the stipulated time frame, then the Client is deemed to have accepted the Deliverables.

4.6 If the Deliverables do not satisfy the acceptance criteria, the Client shall give BDQ written notice stating reasons.

4.7 BDQ shall have 20 days from the receipt of such notice to correct the deficiencies, however BDQ can extend this date by giving written notice to the Client.

4.8 The Customer shall then have 10 days to inspect, test and reevaluate the Software.

5. Client Obligations

5.1 Client shall be responsible for specifying fully and clearly its requirements from the Services and/or Deliverables. Client agrees to provide BDQ promptly with all information, data, reports and other materials that BDQ may reasonably require from time to time to facilitate the performance of the Services. Client warrants that all such

information, representations, data, reports and other materials is/are accurate and complete and that Client is entitled to provide the same to BDQ for BDQ's use without recourse to any third party.

5.2 If any of BDQ's personnel are to perform any Services at Client's premises, Client shall ensure that such personnel are allowed access to such premises upon reasonable prior notice during normal business hours and shall take full responsibility for the safety and security of BDQ's personnel whilst at such premises providing that BDQ personnel comply with the clients Security and Health and Safety regulations.

5.3 If the performance of any Services hereunder requires the use of any equipment belonging to Client:

5.3.1 Client shall ensure that BDQ's personnel are given such access to the equipment as is reasonably necessary to facilitate the performance of the Services;

5.3.2 such equipment, whether used at Client's premises or elsewhere, shall remain at Client's risk and BDQ shall not assume any responsibility or liability for the safety or security of the same excepting damage of such equipment caused by negligence of BDQ staff; and

5.3.3 Client shall take all reasonable precautions to safeguard the health and safety of BDQ's personnel whilst working with such equipment and shall ensure that such equipment at all times complies with all relevant laws, regulations and codes of practice.

5.4 Without prejudice to its rights under this Agreement, BDQ will notify Client promptly in writing if, in its reasonable opinion, it considers Client has failed to provide information, data, reports and/or other materials or assistance or if BDQ has reason to believe that any such information, data, reports, materials and/or assistance is defective or deficient.

5.5 BDQ's ability to perform its obligations under this Agreement may be dependent on Client fulfilling its obligations. To the extent that Client does not fulfill its obligations under this Agreement within a reasonable period, then (without prejudice to BDQ's rights and remedies), BDQ will be relieved of its obligations to Client to the extent that BDQ is prevented from performing the Services in accordance with the Agreement.

5.6 Client undertakes to BDQ to comply with its obligations under each end user licence agreement governing the Client's use of Software including all Software supplied by third parties and the corresponding end user licence agreements.

6. Fees and Expenses

6.1 In consideration of the Services and Deliverables to be supplied by BDQ hereunder, Client shall pay to BDQ the fees specified in the Order and/or applicable Statement of Work incorporated into this Agreement.

6.2 In addition to the Fees, Client shall reimburse BDQ for all reasonable expenses incurred by BDQ in the course of performing the Services. For the avoidance of doubt, reasonable expenses shall include, but not be limited to, expenses incurred in relation to accommodation, subsistence, hire of equipment, travel insurance and travel. BDQ's expenses policy is available on request.

6.3 Expenses will be presented as a single line item on the applicable sales invoice:

6.3.1 A copy of expenses receipts will not be provided unless requested in advance of the issuance of an invoice;

6.3.2 Client will be notified at the time of quotation that BDQ reserve the right to levy an administration charge equivalent to £50 (fifty pounds) per invoice in the event a full and detailed breakdown of expenses is required;

6.3.3 In the event Client requests a full and detailed breakdown of expenses after the issuance of an invoice BDQ reserve the right to levy an administration charge equivalent to £150 (one hundred and fifty pounds) per invoice.

6.4 All work undertaken by a BDQ consultant for Client on a Saturday will be charged at 1.5 [one point five] times standard rate. All work undertaken by a BDQ consultant for Client on a Sunday or Public Holiday will be charged at 2 [two] times standard rate.

6.5 For consulting and training Services BDQ shall invoice Client upon completion of the Services in full as detailed in the applicable Statement of Work in respect of all Fees payable and all expenses incurred in respect of Services performed and Deliverables supplied.

6.6 For annual BDQ Support contracts BDQ shall invoice Client in full in advance for all Fees payable during the relevant term.

6.6.1 Payment of the invoice for all Fees payable during the relevant Support period must be received in line with BDQ's payment terms outlined in Clause 6.8 of this agreement prior to Support hours being made available for use.

6.6.2 Additional Support hours can be purchased at any time throughout the term of the support contract and will likewise be invoiced in advance and payable by Client in full.

6.7 For software products (both BDQ and Third Party) BDQ shall invoice Client in full in advance for all Fees payable during the relevant term (including annual support and maintenance if appropriate). A temporary license key will be issued to activate the software until full payment is received and cleared, BDQ reserve the right not to extend the temporary license further if payment is not received by the end of the temporary period. An assessment will be made on a case by case basis and is at the sole discretion of BDQ. Extensions of temporary licences will not be unreasonably withheld.

6.8 Client shall pay BDQ's invoices within 30 days of the invoice date preferably by transferring the invoiced amount into a bank account nominated by BDQ. Payments not received within 30 days of the invoice date, unless otherwise agreed in writing prior to the issuing of an invoice, will be deemed late and charges will apply as outlined in clause 6.11.

6.8.1 Credit card payments may be accepted in exceptional circumstances following prior approval from BDQ's Finance Director. A processing fee may apply.

6.8.2 All invoices and all payments hereunder shall be in the currency stated on the invoice.

6.9 All sums referred to in this Agreement are payable in full without deduction, withholding or set-off for any reason whatsoever and are exclusive of Value Added Tax and any other duty or tax, which shall (if and to the extent applicable) be payable by Client. Client shall also be responsible for all applicable bank and/or foreign exchange charges.

6.9.1 In the event payment of an invoice is received deductions identified in this Clause 6.9 BDQ reserves the right to withhold the delivery of Software and/or Support until such time payment for all applicable is received; or

6.9.2 In the event deductions are made from the invoice value in respect of an invoice for consulting and/or consulting BDQ may at its sole discretion invoice Client for such deductions.

6.10 Client may stop the project at any point. At the point of termination, the client will be liable to pay for any Services, Software, Support and / or Deliverables rendered up to the date of termination. If the project is a fixed price piece of work, the client will be liable for full agreed costs.

6.11 If Client is overdue with any payment hereunder, then without prejudice to BDQ's other rights or remedies:

6.11.1 BDQ shall have the right to suspend performance of the Services until BDQ has received payment of the overdue amount together with any accrued late payment fees outlined in Clause 6.11.3; and/or

6.11.2 if payment is not made within 30 days of the due date, BDQ shall have the right to terminate this Agreement immediately upon written notice to Client.

6.11.3 BDQ shall apply a 5% (five per cent) late payment fee immediately after the passing of the due date of the invoice and shall continue to add 5% (five per cent) of the accumulated total for each full 30 (thirty) days period that passes until payment is received in full without deduction inclusive of all applicable duty or tax or other charges.

6.12 BDQ reserves the right to increase the Fees (within reason and in good faith) if the cost to BDQ of performing the Services and/or supplying the Deliverables increases as a result of:

6.12.1 any change to the law or any other reason beyond BDQ's reasonable control;

6.12.2 any material breach of this Agreement by Client;

6.12.3 the supply of materially incorrect or inadequate information by Client; or

6.12.4 any change in the timetable for the delivery of the Services and/or Deliverables or a modification of the Services and/or Deliverables requested by Client and accepted by BDQ

6.13 In the event of BDQ increasing its fees pursuant to section 6.12.1 or 6.12.4, Client shall have the right to terminate this agreement. In such case the client will be liable to pay Fees for Services already provided to Client prior to the date of termination.

6.14 If Client requests to move the start day of Services which have been confirmed by both project teams Client shall be liable to pay the following Fees to BDQ:

6.14.1 No less than 11 (eleven) days prior to the confirmed start date for the commencement of the Services the Client shall pay to BDQ £250.00 (two hundred and fifty pounds) for each day of the days initially scheduled up to a maximum of £2,000.00 (two thousand pounds) whichever is the lesser; or

6.14.2 No more than 10 (ten) working days prior to the confirmed start date for the commencement of the Services the Client shall pay to BDQ £450.00 (four hundred and fifty pounds) for each day of the days initially scheduled up to a maximum of £4,500.00 (four thousand five hundred pounds) whichever is the lesser; and

6.14.3 The Client shall also be liable for all expenses already incurred which are directly and/or indirectly in support of the rescheduled Services.

6.14.4 For the avoidance of doubt the Fees outlined in this clause 6.14 will be charged in addition to the total amount payable for the Services to which this agreement is applicable.

(For the cancellation of Services please refer to Clauses 12 and 13 of this agreement.)

6.15 In the event Client requires to return Software and/or cancel a Support contract the following will apply:

6.15.1 Provided a request to return Software is submitted to BDQ in writing within thirty (30) days from the date payment was received by BDQ a credit note for the full invoice amount will be issued to Client.

6.15.2 In the event a request to return Software is made after thirty (30) days from the date payment was received a credit note will not be provided.

6.15.3 Clauses 6.15.1 and 6.15.2 are subject to the return and refund policies of third party vendors where applicable. Accordingly, in the event a return and/or refund cannot be obtained by BDQ from the third party vendor no credit note will be provided.

6.15.4 In the event Client requests the cancellation of a Support contract, a credit note will be provided for the full invoice amount on the submission, in writing, of notice of Client's intention to cancel within a period of no more than thirty (30) days from the date payment was received by BDQ. Deductions for any hours used will apply.

6.15.5 If Client serves notice to cancel a Support contract following a period of no less than thirty (30) days any applicable credit note will be to the value of the remaining duration from the initial twelve (12) months contract with the total overall contracted Support hours evenly apportioned across the twelve (12) months initial Support contract.

6.16 A refund and/or credit note will not be given in relation to Training or Consulting. All disputes must be settled prior to the issuing of an invoice.

7. Title

7.1 Subject to Clause 7.6, title to the Deliverables shall not pass to Client until BDQ has received payment in full of all sums due to it.

7.2 Until title to the Deliverables has passed to Client, Client must:

7.2.1 store the goods separately from all other products of Client or any third party in such a way that they remain readily identifiable as BDQ's property; and

7.2.2 maintain the Deliverables in satisfactory condition and keep them insured on BDQ's behalf for their full price against all insurable risks;

7.3 Client's right to possession of any Deliverables for which full payment has not been received shall terminate immediately if Client becomes subject to any of the events set out in Clause 12.5.2.

7.4 Client grants BDQ, its agents and employees escorted access to any premises where Deliverables are or may be stored, in order to recover them where Client's right to possession has terminated in accordance with Clause 7.1 or 7.3. Such access must be pre-agreed by Client in writing, and may not be unreasonably withheld, within 30 days of written request by BDQ.

7.5 Title to any media bearing any Software supplied by BDQ to Client under this agreement will pass to Client in accordance with this Clause 7.

7.6 Title to the Software stored on any media referred to in Clause 7.5 will not pass to Client but will remain with the applicable licensor and Client's rights to use such Software shall be governed by the terms of the applicable end user licence agreement.

8. Confidentiality

8.1 Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it shall receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party ("Confidential Information").

8.2 Confidential Information shall include any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.

8.3 Confidential Information shall exclude information which:

8.3.1 at the time of receipt by the recipient is in the public domain;

8.3.2 subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;

8.3.3 is lawfully received by the recipient from a third party on an unrestricted basis;

8.3.4 is already known to the recipient before receipt hereunder and/or

8.3.5 is independently developed by the recipient.

8.4 Each of the parties undertakes to maintain the confidentiality of the other party's Confidential Information at all times and to keep the other party's Confidential Information secure and protected against theft, damage, loss or unauthorised access. Neither party shall at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations hereunder.

8.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

8.6 Upon the earlier of a written request from the disclosing party or the termination of this Agreement for any reason, each party shall return all of the other party's Confidential Information then in its possession or control and will not retain any copies of the same.

8.7 Neither party shall be in breach of this Clause 8 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that to the extent legally permissible, the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

8.8 The terms of and obligations imposed by this Clause 8 shall survive the termination of this Agreement for any reason.

9 – Warranties

9.1 BDQ warrants that the Services will be carried out with reasonable skill and care in accordance with the terms of this Agreement and to accepted industry standards. If BDQ's performance of the Services is inadequate, BDQ shall perform the Services again at no extra charge. If BDQ fails to rectify any deficient performance of the Services, Client's sole remedy shall be reimbursement of the Fees paid for the Services concerned.

9.2 The express terms of this Agreement are in lieu of all BDQ's warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, including any condition of satisfactory quality or fitness for a particular purpose whether or not any purpose has been notified to BDQ, all of which are hereby excluded to the fullest extent permitted by law.

10 – Liability

10.1 Client shall indemnify BDQ against all liabilities, reasonable costs, damages and expenses incurred by BDQ in respect of (i) any actions for infringement of any intellectual property rights of any third party arising from Client's breach of this Agreement or (ii) other proceedings or claims against BDQ, which result in an injunction or final judgement or any settlement of such claim by Client, in respect of the rights of third parties in specifications, software or other documents or materials provided by Client for the purpose of enabling BDQ to perform its obligations under this Agreement except in so far as the same may result from wilful default, negligence or fraud of BDQ and/or its employees or representatives and subject to the following conditions:

10.1.1 BDQ shall promptly notify Client in writing of any allegations of infringement of which it has notice and in any event within ten (10) working days of BDQ becoming aware of such allegation and will not make any admissions nor compromise any such claim without prior discussion with Client;

10.1.2 BDQ, at Client's request and expense, shall allow Client the sole right to conduct and/or settle all negotiations and litigation resulting from the Claim; and

10.1.3 BDQ shall, at the request of Client, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Client for any reasonable out of pocket expenses incurred in so doing.

10.2 Subject to Clause 10.7, BDQ will indemnify Client against all liabilities, reasonable costs, damages and expenses which the Client may incur as a result of any claim or action by a third party that the use of the Deliverables (services provided) in accordance with this Agreement by Client infringes the Intellectual Property Rights of a third party (a "Claim") and which results in an injunction or final judgment (or any settlement of such Claim by BDQ), subject to the following conditions:

10.2.1 Client shall promptly notify BDQ in writing of any allegations of infringement of which it has notice and in any event within ten (10) working days of Client becoming aware of such allegation and will not make any admissions nor compromise any such claim without BDQ's prior written consent;

10.2.2 Client, at BDQ's request and expense, shall allow BDQ the sole right to conduct and/or settle all negotiations and litigation resulting from the Claim; and

10.2.3 Client shall, at the request of BDQ, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by BDQ for any reasonable expenses incurred in so doing.

10.3 The indemnity given under Clause 10.1 above shall not apply to infringement arising out of the use of the Deliverables in a manner not provided for under this Agreement or in the case of Software any applicable end user licence agreement or third party Software and applicable end user licence agreement.

10.4 Subject to Clauses 10.5 and 10.6, BDQ's or Client's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed 125% of the Fees payable hereunder in respect of the Services and/or Deliverables giving rise to the liability.

10.5 Nothing in this Agreement shall exclude or in any way limit BDQ's or the clients liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

10.6 Subject to Clause 10.5, neither party shall be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts, loss of any benefit or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

10.7 Client shall only be entitled to bring a claim against BDQ arising from the supply of the Services and/or Deliverables if it has previously notified BDQ of such claim not more than two years after the cause of action arose.

11. Publicity Rights

11.1 Client grants BDQ the right to include the Client's name, brand, logo and any feedback either in whole or in part given to BDQ arising from the supply of Services and/or Deliverables in BDQ's promotional and marketing materials, website, collateral and/or other material BDQ as decides.

11.2 Client can opt to have their name, brand, logo and/or feedback excluded from such use by BDQ by emailing marketing@BDQ-cm.com with the subject matter stating "Non-use of Subscriber Name" and indicating which items to remove. BDQ will acknowledge Client within 30 (thirty) days that all Client name or brand, logo and/or feedback has been removed.

11.3 Client may not use BDQ's trading names, trademarks, service marks, logos, domain names or other distinctive brand features without consent from BDQ in writing.

11.3.1 Client acknowledges that BDQ reserve the right to withdraw consent in relation to this Clause 11.3 at any time and without reason. In the event of this Clause 11.3.1 being effected Client will remove all references to BDQ brand features within a period of no more than 30 (thirty) days.

11.3.2 In the event Client has been given consent to use any of the brand features in a separate agreement Client agrees that the use of such features shall be compliant with the terms of that agreement.

12. Term and Termination

12.1 This Agreement shall have effect on and from the Effective Date and, subject to the terms of this Clause 11, shall continue in full force and unless or until terminated by either party in accordance with its terms.

12.2 Each Project shall commence on the date set out in the relevant Statement of Work and shall, subject to earlier termination in accordance with the terms hereof, continue in operation for the term set out therein.

12.3 Either party may terminate this Agreement by giving not less than 60 (sixty) days' written notice to the other without cause.

12.4 Either party may terminate a Statement of Work by giving the other party the period of written notice set out in the relevant Statement of Work.

12.5 Either party may terminate this Agreement immediately upon written notice to the other in the event of:

12.5.1 any material breach of this Agreement by the other party which breach is not remediable or, if remediable, is not remedied within 30 (thirty) days after the service by the party not in default of a written notice on the other party, specifying the nature of the breach and requiring that the same be remedied; or

12.5.2 the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt.

13. Consequences of Termination

13.1 The expiry or termination of this Agreement shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either party at the effective date of termination.

13.2 Termination of a Statement of Work by either party under Clause 12.4 shall not serve to terminate this Agreement which shall continue in full force and effect. This Agreement shall remain in effect for so long as a Statement of Work shall remain in effect.

13.3 Upon termination of this Agreement for any reason:

13.3.1 all outstanding Statements of Work shall also be terminated;

13.3.2 unless otherwise provided in this Clause 13.3, BDQ will be paid Fees on a proportional basis for any Services, Software and / or Deliverables provided up to and including the effective date of termination and all expenses incurred up to and including the effective date of termination;

13.3.3 provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

13.3.4 Client can request, with 30 (thirty) days' notice, to have their name, brand or logo and any feedback either in whole or in part removed from any BDQ promotional material. BDQ will acknowledge, within 30 (thirty) days of being notified, that all client name, brand or logo and any feedback either in whole or in part has been removed.

13.4 If notice to terminate is given by Client under Clause 12.3 or Clause 12.4 and such notice shall expire 10 (ten) or fewer days before the agreed start date for the provision of the Services and/or supply of the Deliverables, Client shall be liable to pay the following Fees to BDQ to the extent that they exceed any Fees payable under Clause 13.3.2:

13.4.1 6 to 10 days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 50% of the full amount of Fees payable for that Project; or

13.4.2 3 to 5 days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 70% of the full amount of Fees payable for that Project; or

13.4.3 2 or fewer days before the agreed start date for the commencement of the Services, Client shall pay to BDQ 90% of the full amount of Fees payable for that Project; and

13.4.4 Client shall pay to BDQ all expenses which have already been incurred by BDQ.

14. Intellectual Property Rights

14.1 Client acknowledges and agrees that all Intellectual Property Rights in the Bespoke Elements of Reports, Software and / or Deliverables, wherever in the world enforceable, shall immediately upon creation vest in and shall be and remain the sole and exclusive property of BDQ subject to the provisions of this Clause 14.

14.2 If and to the extent that any of the Reports, Software and / or Deliverables comprise or include any work the Intellectual Property Rights in which belong to a third party, BDQ shall procure a licence for Client to use such work on the terms of Clause 14.3.

14.3 Provided Client has paid all Fees and Expenses payable in respect of the relevant Services, BDQ hereby grants Client a perpetual, royalty free, non-transferable licence to use the Reports, Software and / or Deliverables for the purposes contemplated hereunder, provided that such use shall be strictly limited to the internal business purposes of the Client.

14.4 Where this agreement applies to Services described in the relevant Statement of Work as 'training' BDQ shall retain all Intellectual Property Rights to the training materials used whether tangible or intangible and under no circumstances without exception will title pass to Client.

14.5 Client shall not be permitted to:

14.5.1 reproduce any tangible training materials. Additional or replacement materials can be purchased from BDQ directly; and

14.5.2 record any training session whether classroom or webinar based. Recordings of training sessions whether classroom or webinar based can be purchased from BDQ directly. Client must inform BDQ in advance of the session if a recording is required.

14.5.3 all training materials whether tangible or intangible are for internal use only and shall not reproduced, sold, copied or quoted whether in whole or in part for Client's own use without prior written consent from BDQ.

14.6 Client understands that all information (including but not exclusively data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which Client may have access to as part of or through the use of the Services including advertisements may be protected by intellectual property rights owned by the sponsors or advertisers providing content to BDQ. Client may not modify, rent, lease, loan, sell, distribute or create derivative works based on such content either in whole or in part without having express agreement from BDQ or the owners in law or in equity of the content.

14.7 The terms of and obligations imposed by this Clause 14 shall survive the termination of this Agreement for any reason.

15. Non-Solicitation

15.1 Each party agrees, for the duration of each Project and for a further period of 6 (SIX) months thereafter, not to solicit or induce any officer, employee, agent or contractor of the other party involved in the relevant Project to terminate their employment or engagement with that party without the prior written consent of that party.

16. Force Majeure

16.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "Force Majeure Event").

16.2 Force Majeure Events shall include but not be limited to the following:

16.2.1 strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any employees of the party seeking to rely on the Force Majeure Event);

16.2.2 civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war;

16.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

16.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

16.2.5 compliance with any law or governmental order, rule, regulation or direction;

16.2.6 breakdown of plant or machinery; and/or

16.3 The party whose performance is affected by a Force Majeure Event shall, within two working days of becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.

16.4 The occurrence of a Force Majeure Event shall not have the effect of discharging or postponing the affected party's payment obligations hereunder.

16.5 If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding two months, the non-affected party shall have the right to terminate this Agreement or the affected Services/Project forthwith on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

17. Notices

17.1 Unless otherwise expressly stated in this Agreement, all notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed duly served :-

17.1.1 on delivery, if delivered by hand, or two business days after posting, if sent by pre-paid registered post, to the intended recipient at the address set out above, or such other address as either party may notify to the other for this purpose from time to time;

17.1.2 if sent by fax or email;

17.1.3 during normal business hours, immediately on transmission; or

17.1.4 outside normal business hours, on the following business day.

18. Assignment and Sub-Contracting

18.1 BDQ has partners and affiliated legal entities and on occasion these companies may provide to the Client on behalf of BDQ.

18.1.1 BDQ may not assign this Agreement in whole or in part to any third party without prior written agreement from Client.

18.1.2 BDQ shall be entitled to sub-contract its performance of the Services. This shall not relieve BDQ from any liability or obligation under this Agreement and BDQ shall be responsible for the acts, omissions or defaults of any sub-contractor as if they were the acts, omissions or defaults of BDQ.

18.2 Client may not assign, transfer, charge, sub-contract or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of BDQ.

19. Third Party Rights

19.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. General

20.1 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

20.2 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

20.3 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

20.3.1 in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and

20.3.2 its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement, provided that nothing in this Clause 20.3 shall operate to limit or exclude either party's liability for fraud.

20.4 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them.

20.5 Any valid alteration to or variation of this Agreement must be in writing and signed on behalf of each of the parties by a duly authorised officer.

20.6 Where BDQ has provided Client with a translation of the English language version of this Agreement, Client agrees that the translation is provided for convenience only and that the English language version of this Agreement will govern Client's relationship with BDQ.

20.6.1 In the event there is a contradiction between the meaning on any word, phrase or sentence within this Agreement following its translation the English language version shall take precedence.

Zephyr Terms of Use

IMPORTANT - PLEASE READ CAREFULLY:

THIS END USER LICENSE AGREEMENT ("AGREEMENT") CONSTITUTES A VALID AND BINDING AGREEMENT BETWEEN D SOFTWARE, INC. ("D SOFTWARE," "WE" OR "US") AND YOU, AS EITHER AN INDIVIDUAL OR A SINGLE BUSINESS ENTITY ("YOU," "YOUR" OR "USER") FOR THE USE OF THE ZEPHYR 4.6 SOFTWARE, ANY FILES THAT ARE DELIVERED TO YOU BY D SOFTWARE TO MODIFY THE ZEPHYR 4.6 SOFTWARE PRODUCT, ANY ONLINE OR ENCLOSED DOCUMENTATION, AND ANY UPDATES, FIXES AND UPGRADES PROVIDED TO YOU (COLLECTIVELY, THE "SOFTWARE"). YOU MUST FIRST READ AND ACCEPT THE TERMS OF THIS LICENSE AGREEMENT BY CLICKING ON THE "I AGREE" CHECKBOX BELOW IN ORDER TO INSTALL AND USE THE SOFTWARE.

TO ENTER INTO THIS AGREEMENT, YOU MUST BE AN ADULT. IF YOU ARE A MINOR, YOUR PARENT(S) OR GUARDIAN(S) MUST ACCEPT THIS AGREEMENT ON YOUR BEHALF AND TAKE FULL RESPONSIBILITY FOR ALL OBLIGATIONS IMPOSED ON AN END USER PURSUANT TO THE TERMS OF THIS AGREEMENT.

BY CLICKING ON THE "I AGREE" BUTTON AND BY INSTALLING AND USING THE SOFTWARE, YOU REPRESENT THAT YOU ARE AN ADULT AND ARE EITHER ACCEPTING THIS AGREEMENT ON BEHALF OF YOURSELF OR YOUR CHILD. BY CLICKING ON THE "I AGREE" BUTTON AND BY INSTALLING AND USING THE SOFTWARE, YOU ALSO AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT WITH D SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR ARE NOT AN ADULT, DO NOT CONTINUE WITH THE INSTALLATION PROCESS.

BY CLICKING ON THE "I AGREE" BUTTON, YOU EXPRESSLY ACKNOWLEDGE AND AGREE TO, AND TO BE BOUND BY, THE TERMS OF SERVICE AND PRIVACY POLICY APPLICABLE TO THE WEBSITE AND THE CONTENT, SERVICES AND FEATURES PROVIDED ON OR THROUGH THE SOFTWARE, AND ANY NEW VERSIONS OR UPDATES THEREOF. BOTH THE TERMS OF SERVICE AND PRIVACY POLICY CAN BE ACCESSED ON EACH PAGE OF THE WEBSITE.

1. License.

(a) **Grant of License.** Subject to the terms of this Agreement, and subject to your payment of the appropriate licensing fee, D Software hereby grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use the Software in machine readable, object code form only, and only as authorized in this Agreement. The Software is made available through, inter alia, the website www.getzephyr.com (hereafter, the "Website") and is distributed in connection with this Agreement. You may not copy the Software (subject to Section 1(b) below); however, D Software hereby grants you the right to create a single copy of the Software and any documentation accompanying the Software for your own backup purposes. Any such copies of the Software or documentation shall include any copyright or other proprietary notices that were included on such materials when you first received them.

(b) **Scope of Use.** You may use one copy of the Software activated by a license key on a single server (virtual or physical) owned, leased, or otherwise controlled by you, at a single time. For purposes of this Agreement, "use" of the software means loading the Software into the temporary or permanent memory of a computer. Installation of the Software on a network server solely for distribution to other computers is not "use" of the Software, and is permitted, as long as you have a distinct license key for each server (virtual or physical) to which the Software is distributed. The Software may not be used on or distributed to a greater number of computers than you have distinct license keys. If you use or distribute the Software to multiple computers, you must ensure that the number of computers with the installed Software does not exceed the number of distinct license keys you have obtained, or you will be in breach of this Agreement. You acknowledge that any unauthorized copying or use of the Software is a violation of this Agreement and copyright laws and is strictly prohibited and you will use your best efforts to

cooperate and assist D Software in identifying and preventing any unauthorized use, copying, or disclosure of the Software, or any portion thereof. You agree to not remove copyright notices from any version of the Software or documentation. You acknowledge and agree that you have no right to use the Software for any commercial purpose that is not permitted by the terms of this Agreement.

(c) The Software will be available to you for use upon your receipt of one or more license keys. Upon acceptance of this Agreement, you may obtain one or more license keys by paying the requisite license fees, using the procedure set forth on the Website or obtaining the free Zephyr Community Edition. The license fees paid by you are paid in consideration of the license granted under this Agreement. D Software does not refund license fees. By accepting this Agreement you fully understand that once license fee payment is made to D Software you will have no recourse for receiving a refund of any part of the fees.

(d) **Subscription to Zephyr Community Edition.** Subject to your compliance with the terms of this Agreement, Zephyr is making its Zephyr Community Edition service available to you for up to ten (10) Named Users at no charge for 1 year. As a result of the Zephyr Community Edition service being offered at no charge, Zephyr hereby reserves the right to modify, cancel or suspend its offering of the Zephyr Community Edition at any time, in its sole discretion. You shall have no expectation of the continuation or availability of the Zephyr Community Edition.

Subject to the terms of this Agreement, Zephyr hereby grants you a non-sublicensable, non-transferable, non-exclusive subscription to download and use the Zephyr Community Edition by up to ten (10) Named Users in the event that you are using the Zephyr Community Edition in accordance with the Documentation and solely for your internal business purposes of managing its software design, development, testing, maintenance and support.

Access and Security Guidelines: Customer's designated point-of-contact will be provided a ten (10) Named user license if Customer is using the Zephyr Community Edition. Customer shall be responsible for ensuring the security and confidentiality of its User IDs. User IDs may be shared within Customer's organization, provided that User IDs may not be provided to any individual who is not a User (other than the Administrator) and each User ID may be assigned to and used by only one individual User.

1. **Ownership.** You acknowledge that the Software is proprietary to D Software, and the Software is protected under United States copyright law and international treaties. You further acknowledge and agree that, as between you and D Software, D Software owns and shall continue to own all right, title, and interest in and to the Software, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant you any ownership interest in or to the Software, but only a limited right of use that is revocable in accordance with the terms of this Agreement. You acknowledge and agree that you will not take any action to jeopardize, limit or interfere with any of our rights regarding the Software, documentation and intellectual property rights associated therewith. You acknowledge that the Zephyr name, the Zephyr logo, and other Zephyr related properties used in connection with the Software or with the services rendered by D Software are marks of D Software. All other trademarks appearing on the Software are trademarks of their respective owners. This Agreement does not grant you any right, license, or interest in such marks, and you shall not assert any right, license, or interest in such marks or any words or designs that are confusingly similar to such marks.
1. **Technical Support and Upgrades.** We, in our sole discretion, reserve the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Software. You acknowledge and agree that we have no obligation to create subsequent versions of the Software, although subsequent versions of the Software if created will be made available to you through our Website.

Support to Customers using the free Zephyr Community Edition services shall be limited to Zephyr's Community Edition online support resources which Zephyr may modify or terminate in its sole discretion from time to time.

Support services provided by Zephyr and available for additional Fees in connection with the Zephyr Service under this Agreement are set forth at <http://support.yourzephyr.com>. Zephyr reserves the right to modify the support services in its reasonable discretion from time to time, which modifications shall become effective upon posting to the above URL.

1. **No Transfers or Reverse Engineering.** You shall not rent, lease, sell, sublicense, assign, or otherwise transfer the Software or any accompanying printed materials or any license keys to a third party. You may not cause, permit or authorize the reverse engineering, decompiling, or disassembling of the Software, nor will you attempt to recover the source code from the object code of the Software, except to the extent that these restrictions are expressly prohibited by applicable laws. You may not cause, permit or authorize the modification of the Software or manufacture any derivative works based on the Software or any part of it, or otherwise exploit the Software other than for purposes permitted by this Agreement. Furthermore, without our prior written consent, you may not incorporate, or let others incorporate, the Software, in part or in whole, into any other program.

1. **Copyright Infringement**

- (a) D Software respects copyright and other laws. D Software requires all users to comply with copyright and other laws. D Software does not by the supply of the Software authorize you to infringe the copyright or other rights of third parties.
- (b) As a condition to use the Software, you agree that you must not use the Software to infringe the intellectual property or other rights of others, in any way. The unauthorized reproduction, distribution, modification, public display, communication to the public or public performance of copyrighted works is an infringement of copyright.
- (c) You are entirely responsible for your conduct and for ensuring that it complies with all applicable copyright and data-protection laws. In the event that you fail to comply with laws regarding copyrights or other intellectual property rights and data-protection and privacy, you may be exposed to civil and criminal liability, including possible fines and jail time.

1. **Prohibited Activities.** You agree not to use the Software to:

- (a) Transmit or communicate any data that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- (b) Harm minors in any way;
- (c) Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (d) Forge headers or otherwise manipulate identifiers in order to disguise the origin of any data transmitted to other users;
- (e) Transmit, access or communicate any data that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements);
- (f) Transmit, access or communicate any data that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;

- (g) Transmit or communicate any data that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (h) Disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- (i) Interfere with or disrupt the Software;
- (j) Intentionally or unintentionally violate any applicable local, state, national or international law, including securities exchange and any regulations requirements, procedures or policies in force from time to time relating to the Software;
- (k) Monitor traffic or make search requests in order to accumulate information about individual users;
- (l) "Stalk" or otherwise harass another or
- (m) Modify, delete or damage any information contained on the personal computer of any other user.

1. **Third Party Consents.** It is your responsibility to ensure that you obtain all consents, authorizations and clearances in any data owned or controlled by third parties that you transmit, access or communicate to others using the Software.

1. Term

This Agreement will be effective as of the date on which a license key is sent to you to enable your use of the Software. This Agreement expires by termination only or, alternatively, if the Software was provided for limited term use, this Agreement will automatically expire at the end of the authorized term. You may terminate this Agreement at any time by ceasing all use of the Software, documentation and intellectual property rights associated therewith, and removing all copies of the Software from all hard drives networks and other storage media. If you prematurely terminate your use of the Software, D Software will be under no obligation to refund any portion of your license fee. We have the right to terminate this Agreement with immediate effect at any time in the event in which we establish that you are not adhering to one or more of the stipulations of this Agreement. Furthermore you acknowledge that upon termination all licenses and rights to use the Software shall terminate. All stipulations regarding intellectual property rights survive the termination of this Agreement and will therefore remain in full force. We will not be liable in relation to any damage caused by the termination of this Agreement. Upon the expiration or termination of this Agreement, you shall cease use of the Software and, upon request, promptly return to D Software, or certify destruction of, the Software and related documentation.

1. Governing Law

This Agreement as well as all disputes arising out of or in connection with this Agreement shall be governed by the laws of the State of California, without regard to or application of choice of law rules or principles. Any dispute arising out of or in connection with this Agreement, or in future agreements resulting therefrom, shall be exclusively resolved before the state or federal courts located in Los Angeles, California. You further agree not to bring claims on a representative, class member basis, or as a private attorney general, and agree not to assert any claims against us unless such claims are asserted by you in the forum required by this Agreement no later than one year following the date that your claim or cause of action arose.

1. Disclaimer of Warranty

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE IS AT YOUR SOLE RISK. THE SOFTWARE IS SUPPLIED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES, CLAIMS AND REPRESENTATIONS EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES IN

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