EVO Subscription Terms & Conditions
As of 1 April 2020

TERMS & CONDITIONS

1. Interpretation

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

Acceptance: has the meaning given in clause 3.2.

Authorised Users: means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Subscription Services and the Documentation, as further described in clause 4.

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.

Customer Data: means the data inputted or provided by the Customer, the Customer's customers (e.g. residents, properties, trades), and/or Authorised Users or any other users using the Software in relation to this Agreement.

Data Protection Legislation: means:

(a) the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then

(b) any successor legislation to the GDPR or the Data Protection Act 2018.

Deployment Services: means the deployment services set out in clause 2 of the Order Form.

Documentation: means the document made available to the Customer by the Supplier from time to time which sets out a description of the Subscription Services and the user instructions for the Subscription Services.

Effective Date: means the date of this Agreement.

Fees: means the Subscription Fees, Deployment Fees and any other fees payable by the Customer to the Supplier as set out in the Order Form or otherwise agreed between the parties under this Agreement;

Functional Specification: means the [property linking, service history, repair reporting,, key queries etc etc] as agreed between the parties in accordance with clause 2;

Initial Subscription Term: has the meaning given in the Order Form, being the initial term of this Agreement.

Normal Business Hours: means 9.00 am to 5.00 pm UK time, each Business Day.

Software: means the Supplier's digital platform, living app, resident apps, and trades app or other communication channel(s) provided by the Supplier as part of the Subscription Services.

Services: means all the services, including but not limited to the Subscription Services, Deployment Services, and all other services set out in the Order Form.

Subscription Fees: means the subscription fees payable by the Customer to the Supplier for the Subscription Services, as set out in the Order Form.

Subscription Services: means the subscription services referenced in clause 4 and the Order Form that are purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Software and the Documentation in accordance with this Agreement.

Subscription Term: unless agreed otherwise between the parties in writing, means the term that will begin three months following the Effective Date or at the end of the Deployment Period as set out in the Order Form, whichever is sooner.

Support Services: means, in respect of the relevant Subscription Services, the support services provided by the Supplier to the Customer as described in the Order Form.

Virus: means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

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

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.7 A reference to writing or written includes faxes but not email.

1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. Deployment Services

2.1 Subject to the Customer paying the Deployment Fees in accordance with clause 10.1, the Supplier shall provide the Deployment Services which shall consist of:

2.1.1 providing an initial draft Functional Specification which it is developing (or parts of such Functional Specification) and making one round of changes following the Customer's review and comments;

2.1.2 configuration and development the Software to meet the Functional Specification; and

2.1.3 performance of the Acceptance Tests in accordance with clause 3.

2.2 The Customer shall provide the Supplier with reasonable co-operation during the Deployment Services, including the iterative development process referred to in sub-clause 2.1.1, and the Supplier shall take reasonable account of the Customer's comments during this process.

3. Acceptance Tests

3.1 This clause 3 shall apply where Acceptance Tests of the Software are to be conducted in accordance with the Order Form. The timing of the parties' respective obligations under this clause shall be as set out in the Order Form. [The parties shall work together to agree a set of Acceptance Tests which shall be sufficient to test whether or not the Software has the facilities and functions specified in, and perform in accordance with, the Order Form, with such agreement not to be unreasonably withheld or delayed.]

3.2 The Customer's Acceptance of the Deployment Services shall occur at the earliest of:

3.2.1 the Customer providing written notice of acceptance of the Deployment Services to the Supplier;

3.2.2 the Software Services (for the avoidance of doubt, this includes the Software) being used in a live environment or in commercial use (other than solely for testing purposes); and

3.2.3 the expiry of the Test Period and of the Extended Test Period (if any) in circumstances where the Customer has failed to complete the Acceptance Tests, unless the Customer's failure or inability to complete the Acceptance Tests during such Test Period or Extended Test Period (if any) is attributable to some act or default of the Supplier.

3.3 The Customer shall perform the Acceptance Tests within the agreed period for testing set out in the Order Form.

3.4 If the Software performs in accordance with the agreed Specification or other agreed test standards and meets the agreed testing criteria for the Acceptance Tests, it shall be deemed to have passed the Acceptance Tests. If the Software fails to pass the Acceptance Tests, the Customer shall cooperate with the Supplier in identifying in what respects the Software failed to conform to the Specification or otherwise failed to pass the Acceptance Tests. The Software shall not be deemed to have failed the Acceptance Tests by reason of any failure to provide any facility or function not specified in the Order Form or any other minor non-conformity. For the purposes of this clause, 'minor non-conformity' means a cosmetic defect or a failure of the Website [or the Software] to conform with the Specification but which does not have a material effect on any specified functionality.

3.5 The Supplier shall use its reasonable endeavours in accordance with Good Industry Practice to rectify such non-conformity within a further test period agreed by the parties in writing (Extended Test Period).

3.6 The Customer shall not unreasonably delay its Acceptance of the Software. A written statement of Acceptance shall be promptly issued by the Customer when the Software has passed the Acceptance Test.

3.7 Following Customer's Acceptance, the Supplier reserves the right to charge additional fees for further services that do not fall within the agreed Support Services or the Subscription Services set out in the Order Form. Any changes to the Functional Specification may be charged at the Supplier's standard rates, from time to time.

4. Subscription Services

4.1 Subject to the Customer paying the Subscription Fees set out in the Order Form, the Supplier shall, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for:

4.2.1 prevented to do so by downtime of related third-party platforms for example, but not limited to, web messaging platforms, and cloud services;

4.2.2 planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and

4.2.3 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 3 Normal Business Hours' notice in advance.

4.3 Subject to the Customer paying the Subscription Fees in accordance with clause 10.1, the restrictions set out in this clause 4 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Subscription Services and the Documentation during the Subscription Term solely to the extent necessary in order for the Customer to receive the benefit of the Subscription Services as described under this Agreement.

4.4 In relation to the Authorised Users, the Customer undertakes that:

4.4.1 each Authorised User shall keep a secure password for his use of the Subscription Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential; and

4.4.2 each Authorised User will comply with the Supplier's terms of use for the Software and/or services in force from time to time at evo.pm

4.5 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Subscription Services that:

4.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.5.2 facilitates illegal activity;

4.5.3 depicts sexually explicit images;

4.5.4 promotes unlawful violence;

4.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.5.6 is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.6 The Customer shall not:

4.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

4.6.2 access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation; or

4.6.3 use the Subscription Services and/or Documentation to provide services to third parties; or

4.6.4 subject to clause 17.8, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and related Software Services and/or Documentation available to any third party except the Authorised Users, or

4.6.5 attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 4.

4.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services (for the avoidance of doubt, this includes the Software) and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

4.8 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5. Support Services

5.1 Support Services shall be available for the Subscribed for the duration of the Subscription Services, to the extent and in the manner specified in the Order Form.

5.2 The Supplier will use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

5.3 Where applicable the Supplier will provide the Customer with Support Services during Normal Business Hours. The Customer may purchase enhanced support services (including bespoke reporting services) separately at the Supplier's then current rates.

6. Customer data

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6.2 The Customer grants the Supplier a worldwide, perpetual, royalty free, transferable licence to use the Customer Data (that is not personal data) for the Supplier's business purposes.

6.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

6.4 The parties acknowledge that:

6.4.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

6.4.2 the Order Form sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.

6.4.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Subscription Services and the Supplier's other obligations under this Agreement.

6.5 Without prejudice to the generality of clause 6.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf.

6.6 Without prejudice to the generality of clause 6.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

6.6.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before

performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

6.6.2 not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

(a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(b) the data subject has enforceable rights and effective legal remedies;

(c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

6.6.3 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

6.6.4 notify the Customer without undue delay on becoming aware of a Personal Data breach;

6.6.5 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

6.6.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 6.

6.7 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

6.8 The Customer consents to the Supplier appointing third-party processors of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.

6.9 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming

part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

7. Third party providers

7.1 The Customer acknowledges that the Subscription Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk.

7.2 The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any third-party website, service, or any transactions completed, and any contract entered into by the Customer, with any such third party.

7.3 Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the Subscription Services.

7.4 The Customer acknowledges that the Services provided by the Supplier under this Agreement, will utilise the software and services of third parties and that the use of such third-party software and services is:

7.4.1 at the Customer's own risk; and

7.4.2 subject to the standard licence terms provided and made available by the relevant third parties stated in the Order Form, and the Customer agrees to be bound to the relevant third parties by such licence terms.

8. Supplier's obligations

8.1 The Supplier undertakes that the Subscription Services will be performed substantially in accordance with the terms of this Agreement and with reasonable skill and care.

8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Supplier's instructions, or modification or alteration of the Subscription Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Subscription Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

8.3 Notwithstanding the foregoing, the Supplier:

8.3.1 does not warrant that the Customer's use of the Subscription Services will be uninterrupted or error-free; or that the Subscription Services, Documentation and/or the information obtained by the Customer through the Subscription Services will meet the Customer's requirements; and

8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Subscription Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

8.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9. Customer's obligations

9.1 The Customer shall:

9.1.1 provide the Supplier with:

(a) all necessary co-operation in relation to this Agreement; and

(b) all necessary access to such information as may be required by the Supplier;

in order to provide the Deployment Services and Subscription Services (including Support Services), including but not limited to Customer Data, security access information and configuration services;

9.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

9.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use the Subscription Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

9.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

10. Charges and payment

10.1 The Fees for each of the Services shall be payable in accordance with the relevant dates and amounts set out in the Order Form.

10.2 The Customer shall pay all invoices:

10.2.1 in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice; and

10.2.2 to the bank account nominated by the Supplier.

10.3 The Customer shall pay to the Supplier, in accordance with this clause 10, the:

10.3.1 Deployment Fees, in accordance with the Order Form;

10.3.2 Subscription Fees, in accordance with Order Form; and

10.3.3 any other additional fees agreed in writing between the parties in accordance with this Agreement.

10.4 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

10.4.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Subscription Services (including the Software) and the Supplier shall be under no obligation to provide any or all of the Subscription Services while the invoice(s) concerned remain unpaid; and

10.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.5 All amounts and Fees stated or referred to in this Agreement:

10.5.1 shall be payable in pounds sterling;

10.5.2 are non-cancellable and non-refundable;

10.5.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

10.6 The Supplier shall be entitled to increase the Subscription Fees (but not the Deployment Fees) payable upon 90 days' prior notice to the Customer and the Order Form shall be deemed to have been amended accordingly.

11. Proprietary rights

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Documentation.

11.2 The Supplier confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. Confidentiality

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

12.1.2 was in the other party's lawful possession before the disclosure;

12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the performance of this Agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.6 The Customer acknowledges that details of the Subscription Services, and the results of any Acceptance Tests or other performance analysis in relation to the Software (except where such details are Customer Data), constitute the Supplier's Confidential Information.

12.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

12.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory

authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.9 The above provisions of this clause 12 shall survive termination of this Agreement, however arising.

13. Indemnity

13.1 The Supplier shall defend the Customer against any third-party claim that the Software or Documentation infringes any patent effective as of the Effective Date, copyright, or trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

13.1.1 the Supplier is given prompt notice of any such claim;

13.1.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

13.1.3 the Supplier is given sole authority to defend or settle the claim.

13.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Software or the Documentation, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.3 In no event shall the Supplier, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:

13.3.1 a modification of the Software or Documentation by anyone other than the Supplier; or

13.3.2 the Customer's use of the Software or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

13.3.3 the Customer's use of the Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

13.4 The foregoing clause 13 and clause 14.1 sets out the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, or database right.

14. Limitation of liability

14.1 The extent of the Supplier's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 14

14.2 Subject to clauses 13.4 and 14.5, the Supplier's total aggregate liability howsoever arising under or in a connection with this Agreement shall be limited to the higher of:

14.2.1 the total Fees paid by the Customer to the Supplier up until immediately preceding the date on which the breach giving rise to the claim arose; or

14.2.2　£5,000.

14.3　Subject to clause 14.5 the Supplier shall not be liable for consequential, indirect or special losses.

14.4　Subject to clause 14.5 the Supplier shall not be liable for any of the following (whether direct or indirect):

14.4.1　loss of profit;

14.4.2　destruction, loss of use or corruption of data;

14.4.3　loss or corruption of software or systems;

14.4.4　loss or damage to equipment;

14.4.5　loss of use;

14.4.6　loss of production;

14.4.7　loss of contract;

14.4.8　loss of opportunity;

14.4.9　loss of savings, discount or rebate (whether actual or anticipated); and/or

14.4.10　harm to reputation or loss of goodwill

14.5　Notwithstanding any other provision of this Agreement, the Supplier's liability shall not be limited in any way in respect of the following:

14.5.1　death or personal injury caused by negligence;

14.5.2　fraud or fraudulent misrepresentation; or

14.5.3　any other losses which cannot be excluded or limited by applicable law.

14.6　This clause 14 shall survive the termination or expiry of this Agreement

15. Termination

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

15.1.1　the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

15.1.2　the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

15.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 On termination of this Agreement for any reason:

15.2.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Subscription Services and/or the Documentation;

15.2.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

15.2.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 6.6.3, unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; or

15.2.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. Force majeure

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

17. General

17.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

17.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.4 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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

17.6 If any provision or part-provision of this Agreement is deemed deleted under clause 17.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

17.8 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

17.9 The Customer shall not, without the prior written consent of the Supplier, not to be unreasonably withheld, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

17.10 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

18. Entire agreement

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

18.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

18.4 Nothing in this clause shall limit or exclude any liability for fraud.

19. Notices

19.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

19.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

20. Governing law

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

21. Jurisdiction

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