

GENERAL

1. Definitions

1.1. In this Agreement, the following terms shall have the following meanings:

“Affiliate” means any company which at the relevant time is the ultimate holding company of a party or a subsidiary (whether direct or indirect) of that party’s ultimate holding company (as those terms are defined under section 1159 of the Companies Act 2006);

“Agreement” means these Terms and Conditions together with the SLA, each Order Form, the DPA and any Statement of Work;

“Authorised Users” means employees, agents, consultants, brokers, suppliers, funders or independent contractors of the Customer or an Affiliate who have been expressly authorised by the Customer or an Affiliate to receive a password in order to access the Solution or Services online;

“Bug” means an unwanted or unintended property of the Solution that can be reproduced and causes the Solution to malfunction but does not affect the availability of the Solution;

“Business Day” means Monday to Friday excluding any national holiday in the UK;

“Business Hours” means 9.00 – 17.00 UK local time on a Business Day;

“Client” means any entity or persons to whom the Customer provides its services;

“Company” means Quotevine Limited;

“Confidential Information” means any and all information in any form whatsoever relating to the Company, its Affiliates or the Customer, or the business, prospective business, finances, technical process, computer software (both source code and object code), IPR or finances of the Company or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which is in a party’s possession, or comes into a party’s possession as a result of this Agreement or provision of the Solution or Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;

“Consequential Loss” means pure economic loss, losses incurred by any Client or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time;

“Current Version” means the version of the Solution available to the Customer on the Effective Date or subsequently any new version which replaces it during the Term;

“Customer Data” means all data imported into the Solution or Services by the Customer, an Affiliate or Authorised User for the purpose of using the Solution and Services or facilitating the Customer’s or an Affiliate’s use of the Solution and Services;

“Customer” means the company or person named in each Order Form and who signs each Order Form;

“Deliverables” means the customised software to be specifically developed for the Customer as set out in the Statement of Work;

“Development Fee” means the development fees set out in each Order Form payable by the Customer to the Company for the development and delivery of the Deliverables;

“Disaster” means the data centre where the Solution is hosted becomes unusable, with little chance of a short term recovery;

“Documentation” means the training materials and user manuals relating to the use of the Solution, Services and Deliverables, as well as any additional documentation that the Company specifically creates for the Customer or otherwise provides to the Customer to assist in the correction of any issue with the Services;

“DPA” means the data processing agreement set out in Schedule 4 of this Agreement;

“Effective Date” means the date on which the Agreement starts which shall be set out in the first signed Order Form;

“Emergency Maintenance” means maintenance, upgrades, Updates, repairs to hardware and software related to resolving immediate problems causing instability in the Solution or Services;

“Escrow Agent” means SES Software Escrow Solutions (registered number 3551656) whose registered office is at Landmark House, Station Road, Cheadle Hulme, Cheshire, SK8 7BS, United Kingdom;

“Feedback” means feedback, innovations or suggestions created by the Customer, an Affiliate, Authorised Users or Clients regarding the attributes, performance or features of the Solution and Services;

“Fees” means the fees set out in each Order Form payable by the Customer during the term of each Order Form;

“Force Majeure” means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, inability to access or use the Internet, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;

“Functional Description” means the description of the Solution set out in Schedule 3;

“Hosting Services” means the hosting services set out in section 1 of the SLA for the Company hosting the Solution;

“Illegal Content” means any data or content which is defamatory, or constitutes a breach of the IPR or legal rights of any third party;

“Incident” means a malfunction of the Solution which can be reproduced, is not a Bug and whose root cause is found in the hosting service, network, hardware or third party software components;

“Initial Term” means the initial term set out in each Order Form;

“IPR” means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar and equivalent proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;

“Maintenance and Support Services” means the maintenance and support services set out in the SLA for the company maintaining and supporting the Solution;

“Order Form” means each order form completed by the Customer and Company relating to the purchase of Services, the Solution and/or the Deliverables;

“Other Fees” means any additional fees payable by the Customer during the Term of this Agreement and set out in the Order Form;

“Other Services” means any additional services to be provided to the Customer during the Term of this Agreement set out in any subsequent order form signed by the parties and added to this Agreement after the Effective Date;

“Planned Maintenance” means maintenance, upgrades, Updates, installation of new versions and repairs which are non-critical and not urgent, to hardware and software;

“Company Materials” means the IPRs in any software, source code, specifications, materials, procedures, data or intellectual property of the Company used in the preparation of, or which is embedded within the Deliverables;

“Project Plan” means the detailed project plan agreed between the parties for the development of the Deliverables and attached to the Statement of Work after the Effective Date;

“Release” means a modification in the functionality of the Solution which results in a change in the version number of the Solution;

“Renewal Term” means any renewal term set out in an Order Form;

“Services” means the Hosting Services, Maintenance and Support Services plus any Other Services added to this Agreement during the Term;

“SLA” means the service level agreement set out in Schedule 1 of this Agreement;

“Solution” means the Quotevine Finance Business Platform suite described in more detail in the Functional Description and any updates or patches thereto;

“Statement of Work” means the statement of work describing the development and delivery of the Deliverables set out in Schedule 2 of this Agreement;

“Subscription Fee” means the user subscription fees set out in each Order Form payable for use of the Solution and Services;

“Term and Conditions” means these terms and conditions, excluding all Order Forms and Schedules;

“Term” means the term of this Agreement which commences on the Effective Date and continues until all Order Forms are terminated or expire as set out in clause 6 of these Terms and Conditions;

“Time and Materials Basis” means the Company’s daily rates set out in the Order Form;

“Travel Fees” means all reasonable costs associated with any travel and subsistence expenses incurred by the Company (or its employees, permitted subcontractors or agents) in performing its obligations under this Agreement;

“Updates” means any new or updated applications, services or tools (including any software programmes) made available by the Company as part of the Solution or Services during the Term.

2. Services, Solution and Deliverables

2.1. From the Effective Date and in consideration of payment of the Fees:

2.1.1. the Company shall provide the Solution and Services to the Customer; and

2.1.2. the Company shall develop and then licence the Deliverables to the Customer, all as set out in and in accordance with this Agreement;

2.1.3. Each Order Form will be subject to the terms of this Agreement and shall be incorporated into the terms of this Agreement upon completion by both parties.

3. Licence to use the Solution and Services

- 3.1. Subject to the Customer's payment of the Subscription Fees, the Customer and its Affiliates are granted a non-exclusive, non-transferable licence to permit Authorised Users to use the Solution and Services (including any associated IPR and Confidential Information) from the Effective Date for the Term. Such licence permits the Customer to make copies of software or other information necessary for the Customer to receive the Solution and Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.
- 3.2. Save for the Customer's statutory rights, or any rights that may be granted to the Customer under an escrow agreement, no right to modify, adapt, or translate the Solution or Services or create derivative works from the Solution or Services is granted to the Customer.
- 3.3. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Solution or Services. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Solution or Services is prohibited, save as set out in Section 50B of the Copyright Designs and Patents Act 1988, as may be subsequently amended or re-enacted.
- 3.4. Unless otherwise specified in this Agreement, the Solution and Services are provided and may only be used in conjunction with:
 - 3.4.1. The Customer's existing systems and applications in order to facilitate the Customer's transactions with Clients;
 - 3.4.2. Providing access to the Solution and Services solely to Authorised Users; and
 - 3.4.3. Accessing and using the Documentation as necessary to enable use of the Solution and Services.
- 3.5. The Customer may not:
 - 3.5.1. Lease, loan, resell, assign, licence, distribute or otherwise permit access to the Solution and Services; or
 - 3.5.2. Use the Solution or Services to provide ancillary services related to the Solution or Services; or
 - 3.5.3. Permit access to or use of the Solution or Services by or on behalf of any third party; except as permitted in this Agreement.
- 3.6. The Company reserves the right to electronically monitor the Customer's use of the Solution and Services.
- 3.7. After countersignature of this Agreement by the Customer, the Customer may contact the Escrow Agent and arrange to have the source code of the Solution and the Deliverables (once they are delivered) put into escrow on behalf of the Company and Customer. The Customer shall pay all costs and expenses of the parties incurred in having any source code held in escrow (other than the Company's legal fees incurred in obtaining advice on the escrow agreement and any related documentation), including all renewal fees and ongoing escrow costs

4. Intellectual Property Rights

- 4.1. All IPR and title to the Solution, Services, Deliverables, Company Materials and Documentation (save to the extent these incorporate any Customer Data, Customer IPR or third party owned item) shall remain with the Company and/or its licensors and subcontractors and no interest or ownership in the Solution, Services, Deliverables, Company Materials, Documentation, IPR or otherwise is transferred to the Customer under this Agreement.

- 4.2. The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and any IPR created by it, its Affiliates or its third party contractors (excluding the Company) and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants the Company a non-exclusive, non-transferable licence to use Customer Data, any necessary Customer IPR and any necessary third party owned item from the Effective Date for the Term solely to the extent required for the provision of the Solution and Services.
- 4.3. The Customer is not allowed to remove any proprietary marks or copyright notices from the Solution or Services.
- 4.4. Subject to payment of the Development Fee in full, the Company grants the Customer and its Affiliates a non-exclusive, non-transferable licence to use the Deliverables, including any Company Materials incorporated therein to the extent required for the Customer and its Affiliates to be able to use the Deliverables for its own internal business purposes.
- 4.5. The Customer grants the Company a non-exclusive, non-transferable, revocable licence to display the Customer's name, logo and trademarks, as designated and/or amended by the Customer from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of the Solution and Services.
- 4.6. The Customer assigns all rights, title and interest in any Feedback to the Company. If for any reason such assignment is ineffective, the Customer shall grant the Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.
- 4.7. The Company may take and maintain technical precautions to protect the Solution and Services from improper or unauthorised use, distribution or copying.

5. Authorised Users

- 5.1. The Services and Solution are provided on a user subscription basis and may only be used by the number of Authorised Users stated in each Order Form.
- 5.2. The number of Authorised Users may be increased during the Term and further Subscription Fees will be charged for each additional user for the remainder for the Term.
- 5.3. The number of Authorised Users may only be reduced during the Term at the start of any Renewal Term. If the Customer wishes to reduce the number of Authorised Users it must notify the Company in writing of its request prior to the start of any Renewal Term and the parties will then agree on the reduction and the Company apply an appropriate reduction to the applicable Fee.
- 5.4. User subscriptions cannot be shared or used by more than one Authorised User but Authorised Users can be replaced by a new user if an Authorised User ceases to use the Solution and Services.
- 5.5. The Customer is responsible for all Affiliate and Authorised User use of the Solution and Services.

6. Term and Termination

- 6.1. This Agreement commences on the Effective Date. This Agreement shall continue until all Order Forms are terminated or expire. Neither party may terminate the Agreement without cause prior to the expiry of the Initial Term of each Order Form.
- 6.2. Each Order Form shall commence on the Effective Date set out in each Order Form. At the expiry of the Initial Term of each Order Form, each Order Form will automatically renew

for Renewal Terms and continue until either party terminates the Order Form by giving the other at least 90 days notice in writing prior to a Renewal Term. Neither party may terminate an Order Form without cause during the Initial Term of that Order Form.

- 6.3.** Either party may terminate an Order Form without cause, by giving the other at least 90 days notice in writing prior to the start of a Renewal Term, where such notice shall take effect no earlier than the end of the Initial Term set out on such Order Form.
- 6.4.** Termination of any individual Order Form, in whole, or in part shall not affect the Term of the Agreement which shall continue unaffected until all Order Forms are terminated or expire.
- 6.5.** The Company may terminate the Agreement or any Order Form, in whole, or in part or the provision of any Services or Solution with cause, with immediate effect if:
 - 6.5.1.** The Customer, Affiliate or an Authorised User has used or permitted use of the Services or Solution other than in accordance with the terms of this Agreement; or
 - 6.5.2.** The Company is prohibited under applicable law, or otherwise from providing the Services or Solution.
- 6.6.** Either party may terminate this Agreement and all Order Forms immediately, with cause, if the other party:
 - 6.6.1.** Ceases or threatens to cease or carry on business; or
 - 6.6.2.** Is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or
 - 6.6.3.** Convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or
 - 6.6.4.** Has an administrator, receiver, manager or similar official appointed; or
 - 6.6.5.** Is affected by a similar event under the law of any other jurisdiction; or
 - 6.6.6.** A Force Majeure event lasts for more than 28 days.
- 6.7.** Either party may terminate this Agreement or any Order Form, in whole, or in part for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice shall only be effective if the breaching party fails to remedy the breach within 10 days of receipt of the notice.
- 6.8.** Termination of the Agreement or any Order Form for any reason shall not affect the accrued rights of the parties arising under the Agreement and in particular without limitation the right to recover damages against the other.
- 6.9.** Upon termination of the Agreement all Order Forms shall automatically terminate.
- 6.10.** Termination (or expiry of any individual Order Forms) shall not affect the Term of the Agreement or any other Order Forms which have not expired or terminated and the Agreement and remaining Order Forms shall continue unaffected.
- 6.11.** Following termination of the Agreement, the Customer shall remain liable to pay any Fees set out in all Order Forms for the remainder of the current Initial Term or Renewal Term, unless the Company has terminated the Agreement under clauses 6.5 or 6.6 or the Customer has terminated the Agreement under clause 6.7. All licences granted under the Agreement shall terminate on the effective date of termination and the Company shall:
 - 6.11.1.** Cease providing the Solution and Services to the Customer and immediately deactivate all Customer accounts;

6.11.2. Within 30 days return all Customer Data stored in the Company's database in its then current format, free of charge, if requested to do so by Customer. If Customer requires any Customer Data to be returned in a different format, Company reserves the right to charge for this additional service on a Time and Materials Basis; and

6.11.3. Be entitled to delete all Customer Data from its live systems 30 days after the effective date of termination of the Agreement.

7. Fees and Invoicing

7.1. The Company shall invoice the Customer the Fees.

7.2. All invoices shall be issued in the currency set out in the Order Form. All Fees exclude any Value Added Tax legally payable on the date of the invoice, which shall be paid by the Customer in addition, where applicable.

7.3. Development Fees shall be invoiced in instalments as set out in the Order Form.

7.4. Subscription Fees shall be invoiced during the Term as set out in the Order Form(s).

7.5. All Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise.

7.6. All Other Fees shall be invoiced as set out in the Order Form(s). These shall include any training provided by the Company, which is not included in the Statement of Work. Such training fees shall be calculated on a Time and Materials Basis plus Travel Fees and if such training does not take place at the Customer's premises, a separate fee to cover the cost (without any mark up) of hiring external training rooms shall be payable by the Customer subject to agreement in advance of the amount.

7.7. The Company may increase the Fees payable under the Agreement annually by giving the Customer at least 60 days written notice. No Fee increase will apply during the first 12 months of the Term. If notice of a Fee Increase is given during the first 12 months of the Term, the Fee increases shall only be effective from the first anniversary of the Effective Date.

8. Payment Terms

8.1. The Customer shall pay the Company the Fees set out in the Order Form(s) for the provision of the Solution, Services and Deliverables under this Agreement.

8.2. Unless stated otherwise in an Order Form, payment of all Fees is due immediately upon issue of invoices and shall be without prejudice to any claims or rights which the Customer may have against the Company. If the Customer believes that any invoice is incorrect, it must notify the Company in writing within 30 days of the invoice date.

8.3. Where payment of Fees is not received within 14 days of the due payment date, upon giving the Customer 7 days prior written notice the Company reserves the right to suspend the provision of the Solution, Services or Deliverables until payment is received in full.

8.4. The Company reserves the right to charge interest on overdue Fees at the applicable statutory rate and may also recover in addition all costs and reasonable legal fees incurred in recovering overdue payments.

9. Confidential Information

9.1. Each party may use the Confidential Information of the other only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the

Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject, subject to compliance with clause 9.5.

- 9.2.** Each party may disclose the Confidential Information of the other party to those of its employees and agents and Affiliates who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- 9.3.** Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to a disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.
- 9.4.** The obligations of confidentiality under this Agreement do not extend to information that:
 - 9.4.1.** Was in the other party's lawful possession before the negotiations leading to this Agreement; or
 - 9.4.2.** Is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
 - 9.4.3.** Is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 9.4.4.** Is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 9.4.5.** Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.5.** If either party is required to disclose any Confidential Information pursuant to clause 9.4.5 such party shall, where lawfully permitted to do so:
 - 9.5.1.** Promptly consult with and take into account any comments from the other party prior to making any disclosure; and
 - 9.5.2.** Work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 9.6.** The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 9 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is:
 - 9.6.1.** Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or
 - 9.6.2.** A trade secret of the disclosing party; and
 - 9.6.3.** Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

10. Data Protection

- 10.1.** Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 10.2.** To the extent that personal data is processed when Customers, Affiliates or Authorised Users use the Solution and Services, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply with their respective statutory data protection obligations and their contractual obligations set out in the DPA (Schedule 4).

- 10.3.** If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

11. Representations and Warranties

- 11.1.** Each party warrants and represents that:

11.1.1. It has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;

11.1.2. Its execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and

11.1.3. It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.

- 11.2.** The Company warrants to the Customer that it has the right to licence the Solution, Services and Deliverables to the Customer and that use of the Solution, Services and Deliverables by the Customer and its Affiliates does not infringe the IPR of any third party.

- 11.3.** The Company warrants to the Customer that the Key Person shall be engaged in the provision of the Services, the Solution and the Deliverables for the Term, subject to the Key Person remaining in the employment of the Company for the Term, over which the Company has no control.

- 11.4.** The Company warrants and represents that the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice and that the Services will be provided in accordance with the SLA.

- 11.5.** The Company warrants to the Customer that: (i) the Solution will during the Term; and (ii) the Deliverables will after acceptance for a period of 1 year operate to provide in all material respects the facilities and functions set out in the Functional Description or Statement of Work, as applicable. If there is a breach of this warranty and without prejudice to any other rights or remedies available to the Customer, the Company shall use all reasonable endeavours, to promptly correct any material defect or to replace the defective Deliverable or Solution. Notwithstanding the aforesaid, the Company shall only be obliged to remedy any material defect if:

11.5.1. The Customer notifies the Company in writing as soon as possible upon discovering the defect; and

11.5.2. Following the Company's prompt examination of the Deliverables or Solution, it is established by both parties acting reasonably that such a defect exists.

- 11.6.** The warranties in clauses 11.2 to 11.4 inclusive shall not cover deficiencies or damages caused by :

11.6.1. Any third party components not provided by the Company; or

11.6.2. Any third party provided connectivity necessary for the provision or use of the Solution or Deliverables; or

11.6.3. Compliance with third party software or products, non-Company programmes or data used in combination with the Solution or Deliverables except as set out in the Statement of Work or otherwise agreed in writing by the Company; or

11.6.4. A failure of the Deliverables to conform with the Statement of Work caused by the use or operation of the Deliverables by the Customer with an application or in an environment other than that set out in the Statement of Work; or

- 11.6.5.** Modifications made to the Deliverables or Solution not carried out by the Company.
- 11.7.** Subject to the warranty given in clause 11.5 and the terms of the SLA, no warranty is made regarding the results the Customer can achieve from using the Solution, Services and Deliverables or that the Solution, Services or Deliverables will operate uninterrupted or error free.
- 11.8.** The Customer warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.
- 11.9.** The Customer warrants and represents that it and its Affiliates and Authorised Users shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Solution and Services granted under this Agreement is limited as set out under this Agreement. In particular the Customer, Affiliates and Authorised Users shall treat any identification, password or username or other security device for use of the Solution and Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing. The Customer shall be liable for any breach of this Agreement by an Affiliate or Authorised User.
- 11.10.** The Customer warrants and represents that it shall ensure that its network and systems comply with the relevant specification provided by the Company in writing from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's systems to all Company utilised data centres. The Customer acknowledges that the Company has no liability whatsoever for any problems, conditions, delays, delivery failures or any loss or damage arising from or relating to the Customer's network connections or telecommunications links, in particular losses caused by unavailability or problems with the Internet.
- 11.11.** All third party content or information provided by the Company via the Solution or Services, for example prices, is provided "as is". The Company provides no warranties in relation to such third-party created content or information and shall have no liability whatsoever to the Customer for its use or reliance upon such content or information.
- 11.12.** Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

12. Liability

- 12.1.** Neither party excludes or limits its liability to the other for fraud, death or personal injury caused by its negligent act or omission or wilful misconduct.
- 12.2.** Neither party shall be liable for any Consequential Loss arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.
- 12.3.** Neither party shall be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 12.4.** Subject to clauses 12.1 to 12.3 inclusive the total liability of each party to the other in aggregate (whether in contract, tort or otherwise, but excluding any claim under any indemnity) for any and all claims relating to or arising under this Agreement shall be limited to 50% of the total Fees paid for the applicable Deliverables, Solution or Services

(excluding taxes) under the relevant Order Form during the 12 month period prior the date on which any such claim arose.

- 12.5.** The Customer shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Affiliates or Authorised Users who access the Services and Solutions as if such acts, omissions or negligence had been committed by the Customer itself.
- 12.6.** The Company shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any of its Affiliates as if such acts, omissions or negligence had been committed by the Company itself.
- 12.7.** The Customer shall not raise any claim under this Agreement more than 1 year after the discovery of the circumstances giving rise to a claim.
- 12.8.** The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

13. Indemnities

- 13.1.** The Company shall at its own expense defend, indemnify and hold the Customer, its Affiliates, employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:
 - 13.1.1.** An infringement of any IPR by the Solution, Services or Deliverables (excluding any claim deriving from any Customer provided item) and pay any final judgement entered against the Customer or Affiliates on such issue or any settlement thereof;
 - 13.1.2.** Any access to or use of the Solution or Services by a Company Affiliate or a third party authorised by the Company in breach of the terms of this Agreement, as if such breach had been caused by the Company itself;
 - 13.1.3.** The Company or its Affiliates breaching their obligations as a data processor under applicable data protection law and regulations or the Company's obligations under the DPA, provided that: (i) the Customer notifies the Company promptly of each such claim; (ii) the Company is given sole control of the defence and/or settlement; and (iii) the Customer at the expense of the Company fully co-operates and provides all reasonable assistance to the Company in the defence or settlement; and the Customer shall be entitled to take reasonable measures in order to prevent breaches of third party rights from continuing.
- 13.2.** If all or part of the Solution, Services or Deliverables becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company shall at its own expense and sole discretion:
 - 13.2.1.** Procure for the Customer the right to continue to use the Solution, Services or Deliverables or the affected part thereof;
 - 13.2.2.** Replace the Solution, Services or Deliverables or affected part with another suitable non-infringing service or software;
 - 13.2.3.** Modify the Solution, Services or Deliverables or affected part to make the same non-infringing.
- 13.3.** The Company shall have no obligations under clauses 13.1 and 13.2 above to the extent that a claim is based on:
 - 13.3.1.** A modification of the Solution, Services or Deliverables by anyone other than the Company;
 - 13.3.2.** The combination, operation or use of the Solution, Services or Deliverables by the Customer or its Affiliates with other services or software not provided by the

Company if such infringement would have been avoided in the absence of such combination, operation or use; or

- 13.3.3.** Use of the Solution, Services or Deliverables in any manner inconsistent with this Agreement; or
 - 13.3.4.** The negligence or wilful misconduct of the Customer, its Affiliates or Authorised Users.
- 13.4.** The Customer shall at its own expense defend, indemnify and hold the Company, its Affiliates, employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:
- 13.4.1.** Any claimed infringement or violation by the Customer, an Affiliate, an Authorised User or a Client of any IPR with respect to use of the Solution, Services or Deliverables outside of the scope of this Agreement; or
 - 13.4.2.** Use by the Company of any Customer Data or Customer, Affiliate, Authorised User or Client provided item, in particular storage or publication on the Internet by the Customer, Affiliate or Authorised User of any Illegal Content; or
 - 13.4.3.** Any access to or use of the Solution or Services by an Affiliate, Authorised User or a Client which is not envisaged by this Agreement;
 - 13.4.4.** The Customer, its Affiliates, Authorised Users or Clients breaching their obligations under applicable data protection law and regulations or the Customer's obligations under the DPA; and
 - 13.4.5.** Any access to or use of the Solution or Services by the Customer's Affiliates, Authorised Users or Clients in breach of the terms of this Agreement, as if such breach had been caused by the Customer itself; and
 - 13.4.6.** The Company shall be entitled to take reasonable measures in order to prevent breaches of third party rights from continuing.
- 13.5.** Clauses 13.1 to 13.4 state the parties sole and exclusive rights, remedies and entire obligations and liability to each other for any claims made under these clauses.

14. Security

- 14.1.** The Company shall permit the Customer to specify which Authorised Users may access the Services and Solution through its standard application security options.
- 14.2.** The Customer, Affiliates and Authorised Users must ensure that each password is only used by the user to which it has been assigned. The Customer is responsible for any and all activities that occur under the Customer's account and via the Customer's passwords. The Customer will immediately notify the Company if the Customer becomes aware of any unauthorised use of the Customer's account, the Customer's passwords or breach of security known to the Customer. The Company shall have no liability for any loss or damage arising from the Customer's failure to comply with these requirements.
- 14.3.** The Company may suspend access to the Solution and Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the Services or Solution is in danger of being compromised by acts of the Customer, an Affiliate or an Authorised User. The Company shall where possible give the Customer 24 hours prior written notice, before suspending access to the Services and Solution, giving specific details of its reasons.

15. Assignment

15.1. No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however either party (the "Assignor") shall be entitled to assign the Agreement to:

15.1.1. Any company in the Assignor's group of companies; or

15.1.2. Any entity that purchases the shares or assets of the Assignor as the result of a merger, takeover or similar event.

16. Contacts

16.1. Each party shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions.

16.2. The Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding the Solution and Services.

17. Prevention of Bribery and Corruption

17.1. Each party shall comply with, and the Solution, Services and Deliverables will be supplied in accordance with the Bribery Act 2010 ("**Bribery Act**").

17.2. Neither party shall do, or omit to do, any act that will lead to the other being in breach of the Bribery Act.

17.3. The Company shall not, and shall procure that any employee or contractor used to provide the Solution, Services or Deliverables shall not:

17.3.1. Directly or indirectly offer, promise or give any person working for or engaged by the Company a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

17.3.2. Directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;

17.3.3. Commit any offence under the Bribery Act 2010.

17.4. The Company is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of the Agreement.

17.5. The Company shall immediately notify the Customer if it suspects or knows that there may be a breach of clauses 17.3 or 17.4 and shall respond promptly to the Customer's enquiries and co-operate with any investigation.

17.6. The Company shall if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

17.7. If the Company, its employees or contractors engage in conduct prohibited by clauses 17.3 or 17.4, the Customer may terminate the Agreement upon giving 14 days written notice.

17.8. In exercising its rights or remedies under clause 17.7 the Customer shall:

17.8.1. Act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses 17.3 or 17.4;

17.8.2. Give all due consideration, where appropriate, to action other than termination of the Agreement.

18. Miscellaneous

18.1. Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

18.2. Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure event. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.

18.3. In the event of any inconsistency between the content of the Terms and Conditions, an Order Form, the SLA, the DPA, the Functional Description and a Statement of Work, the following order of prevalence shall apply:

- Order Form
- SOW
- Functional Description
- SLA
- DPA
- Terms and Conditions

18.4. If after the Effective Date any subsequent Order Form is countersigned by the Customer and added to this Agreement during the Term and there is a conflict between the terms of such subsequent Order Form, its attachments and the other terms of the Agreement, the terms of the last Order Form shall prevail over the terms of any previous order form(s) and their attachments, unless specifically stated otherwise in the Order Form.

18.5. This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

18.6. Notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post or acknowledged email to a party at the address given for that party in the Order Form. Notwithstanding the aforesaid, the Company may change or modify the terms of this Agreement in order to comply with a change in applicable law upon giving the Customer 30 days notice via email. All changes shall be deemed to have been accepted by the Customer unless the Customer terminates the Agreement prior to the expiry of the 30 day period.

18.7. Neither party shall make any public statement, press release or other announcement relating to the terms or existence of this Agreement, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Company may use the Customer's name and trademarks (logo only) to list the Customer as a client of the Company on its website and in other marketing materials and information, subject to obtaining the Customer's prior consent.

18.8. Nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or by any third party pursuant to rights that a third party may have under any applicable law. Notwithstanding the aforesaid, the Company and Customer Affiliates shall have the right to enforce their rights against each other in relation to any Order Form signed by a Customer Affiliate.

19. Dispute Resolution

19.1. The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.

- 19.2.** If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to the Chief Technology Officer of the Company and the Chief Financial Officer of the Customer who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 21 below.

20. Governing Law and Jurisdiction

- 20.1.** This Agreement shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.

DEVELOPMENT SERVICE

21. Provision of Development Services

- 21.1.** The Company shall develop the Deliverables in accordance with the terms of the Statement of Work.
- 21.2.** The term of the Project Plan may be extended by the length of any delay in the development process if:
- 21.2.1.** The Customer changes its requirements after the Statement of Work has been agreed; or
 - 21.2.2.** The Company's ability to comply with the Statement of Work is materially impaired by any act or omission of the Customer or breach of this Agreement, which shall include but not be limited to the Customer failing to provide timely support and resources or having a lack of bandwidth or other technical requirements; or
 - 21.2.3.** The parties agree to extend the term of the Project Plan; or
 - 21.2.4.** A Force Majeure event occurs.
- 21.3.** The Company may increase the Development Fees after consultation with the Customer should the Project Plan be extended for any of the reasons set out in clause 21.2.
- 21.4.** The Customer shall test the Deliverables for defects and compliance with the Statement of Work. Such tests shall include testing the material software programme features. Any defects that are discovered shall be notified to the Company in accordance with the Statement of Work.
- 21.5.** The Customer shall provide the Company with all appropriate test data in accordance with the Statement of Work.

INTEGRATION SERVICES

22. Interfaces

- 22.1.** If the Order Form or Statement of Work includes the provision of interfaces or integrations to any third party provider or system to the Customer, the Company shall make all reasonable efforts to ensure the successful operation of the interface or integration. However, the successful operation of any interface or integration is dependent upon the technical set up of the third party systems, and the Customer accepts that:
- 22.1.1.** The Company cannot be held liable for any failures in the operation of the interface or integration, as the Company has no control over the technical operation or changes made to the third party system; and

- 22.1.2.** The services offered by any third party provider on their system may not be complete or available on the same terms as these Terms and Conditions.
- 22.2.** In the event of an issue arising with the effective operation of an interface or integration the Company will use all reasonable efforts, in line with the business impact on the Customer, to resolve the issue at the earliest opportunity.
- 22.3.** The Customer acknowledges that:
- 22.3.1.** It is responsible for ensuring that it has paid and instructed the third party to cooperate with the Company; and
- 22.3.2.** The Company has no liability whatsoever to the Customer for any problems with any interface or integration resulting from actions or omissions of the Customer or the third party.