

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of Digital Asset Management, Online Proofing, Job Management, Publication tools and Product database (PIM). The Customer wishes to use the Supplier's service in its business operations.
- (B) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed terms

1. Interpretation

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

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7

Customer Data: the data inputted by the Customer or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter:

- a) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, 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 1998.

Effective Date: the date of acceptance of the Purchase Order.

Initial Subscription Term: twelve months.

Normal Business Hours: 8:30am-5:30pm local UK time, each Business Day.

Purchase Order: the purchase order signed by the Customer which included a description of the Services and by which the Customer agreed to subscribe for the Services.

Renewal Period: the 12 month period as further described in clause 13.1.

Service Level Agreement: the Supplier's policy for providing support in relation to the Services as made available at www.ec2i.biz/termservice or such other website address as may be notified to the Customer from time to time.

Services: the subscription services provided by the Supplier to the Customer under this agreement via www.ec2i.biz/termservice or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Purchase Order.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Purchase Order.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscription: the user subscription purchased by the Customer pursuant to the Purchase Order and payable in accordance with clause 8.1 which entitles the Customer to access and use the Services in accordance with this agreement.

Virus: anything 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) and that person's legal and personal representatives, successors or permitted assigns.
- 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.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 References to clauses are to the clauses of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscription in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Customer undertakes to keep a secure password for its use of the Services, that such password shall be changed no less frequently than Bi annually and that it shall keep such password confidential;
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) 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.

- 2.4 The Customer shall not:
- (a) 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:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
 - (c) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
 - (d) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Services

- 3.1 The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this agreement and the Service Level Agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available in accordance with the Service Level Agreement.
- 3.3 The Supplier will, as part of the Services provide the Customer with the Supplier's standard customer service level during Normal Business Hours in accordance with the Supplier's Service Level Agreement in effect at the time that the Services are provided. The Supplier may amend the Service Level Agreement in its sole and absolute discretion from time to time. The Customer may purchase enhanced service levels separately at the Supplier's then current rates as set out in the

Professional Services Matrix annexed to the Purchase Contract as amended from time to time.

4. Customer data

- 4.1 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.
- 4.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 4.9).
- 4.3 The Supplier shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at www.ec2i.biz/termservice or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 4.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.5 The parties acknowledge that:
- (a) 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 **Personal Data**, **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
 - (b) the Customer acknowledges and agrees that 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 Services and the Supplier's other obligations under this agreement.

- 4.6 Without prejudice to the generality of clause 4.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to 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.
- 4.7 Without prejudice to the generality of clause 4.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) 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 of the European Union 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;
 - (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) 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
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (d) 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;
 - (e) notify the Customer without undue delay on becoming aware of a Personal Data breach; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Customer or the Customer's designated auditor.

- 4.8 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, 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).
- 4.9 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under this agreement.
- 4.10 Either party may at the cost of the Customer for both parties, at any time on not less than 30 days' notice, revise this clause 4 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).

5. Third party providers

The Customer acknowledges that the 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. 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 such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. 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 website made available via the Services.

6. Supplier's obligations

- 6.1 The Supplier undertakes that the Services will be provided with reasonable skill and care and in accordance with the Service Level Agreement.

- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. The Supplier's obligations to maintain the Services pursuant to the Service Level Agreement constitute the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) 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 Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 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.
- 6.4 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.

7. Customer's obligations

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) 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;

- (d) use the Services in accordance with the terms and conditions of this agreement;
- (e) 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;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's systems 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.

8. Charges and payment

- 8.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 8 and the support fees are inclusive of the monthly SaaS costs
- 8.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved Purchase Contract information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details
- 8.3 Monthly billings will be by Standing Order, Direct Debit mandate, Credit card payment or direct online payment into EC2i's account only on a fixed monthly date – Yearly upfront payments will be accepted via the Purchase Contract with 30 day terms, however the Services will not be activated until the first payment is received
- 8.4 If the Supplier has not received payment within 7 days after the due date after the first payment, and without prejudice to any other rights and remedies of the Supplier:
 - (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) 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 Barclays Bank Plc's base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 8.5 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 12.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.6 The Supplier will review each account monthly and advise the client if they have exceeded the data storage allowance we would then give the client 5 working days to fall into the allowance or automatically invoice for the additional storage usage if not rectified in that time.
- 8.7 The Supplier shall be entitled to increase the Subscription Fees and any additional support fees payable pursuant to clause 3.3.

9. Proprietary rights

- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services. 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 Services.
- 9.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. Confidentiality and compliance with policies

- 10.1 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:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, 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 implementation of this agreement.

- 10.3 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.
- 10.4 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 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.8 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.
- 10.9 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

11. Indemnity

- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
 - (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, any breach of Data Protection Legislation to the extent it is caused by the supplier, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become 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.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than the Supplier; or
 - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5 The foregoing and clause 12.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. Limitation of liability

- 12.1 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the

Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and clause 12.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) each parties' total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscription during the 12 months immediately preceding the date on which the claim arose.

13. Term and termination

13.1 This agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and any further Subscription Term unless otherwise terminated in accordance with the provisions of this agreement. In the event that the Supplier is willing to continue to supply the Services to the Customer beyond the current Subscription Term it will not later than 60 days prior to the end of that Subscription Term provide the Customer with renewal terms to extend the term of this agreement by way of a deed of variation for agreement and signature by the Customer, for a Renewal Period of 12 months and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term **PROVIDED THAT:**

- (a) if the Supplier does not offer renewal terms to the Customer within the period stated above; or
- (b) the Supplier and the Customer fail to agree such renewal terms; or

(c) the Supplier and Customer do not complete the deed of variation setting out the renewals terms before the end of the applicable Subscription Term

this agreement shall terminate upon the expiry of the applicable Subscription Term

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (b) 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;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(d) to clause 13.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) any warranty given by the Supplier in clause 6.4 of this agreement is found to be untrue or misleading.

13.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) 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;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession 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. This would be charged at £1000 per day (min 1 day charge) for data delivery on disks supplied by the supplier which would need to be returned within 14 days of delivery. Data returned would be physical files and would not necessarily contain any descriptive metadata information; and
- (d) 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.

14. 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 sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. Conflict

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

16. Variation

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

17. Waiver

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.

18. Rights and remedies

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.

19. Severance

19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. Entire agreement

- 20.1 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.
- 20.2 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.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 21.2 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.

22. No partnership or agency

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).

23. Third party rights

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.

24. Notices

- 24.1 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, or sent by email to the other party's email address as set out in this agreement.
- 24.2 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. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. 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.

26. 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).