



## FP Sign Terms and Conditions

### Francotyp-Postalia Limited

#### 1. Introduction

1.1 **Francotyp-Postalia Limited** (Company number 02445645) is a Limited company registered in England and Wales and our registered office is at 74 Questor, Powdermill Lane, Dartford, Kent DA1 1EF (**we or us**). Our VAT number is [ ].

1.2 If you want to contact us, you can call us on [0344 225 2233] or e-mail us at [ ]. Clause 25 says how to give formal notice about anything relating to the Contract.

1.3 These terms apply to the contract between you and us (**the Contract**) for the provision by us of the FP Sign services as described in the Documentation (**the Services**) to the exclusion of any other terms that you seek to impose or incorporate or which are implied by trade custom, practice or course of dealing.

1.4 Please read them fully and carefully before using the Services. They can be retrieved at any time from the FP Sign Portal.

The services comprise an online electronic signature service provided by Mentana which allows customers to display, deliver, acknowledge, store and electronically sign contracts, notices, disclosures and other documents ("**Documents**"). A person signing a Document must either be an Authorised User or have received a request for signature from an Authorised User. Documents signed using the Services include a digital audit trail that contains transaction history information regarding certain events associated with a Document, such as date, time, and location when the following events occur – document uploaded, document viewed, document removed, document sent, document signed, decline to sign, signer email address updated, signer access code authenticated, and signature request cancelled.

1.5 By accessing or using the Services or otherwise indicating your consent, you agree to be bound by these terms.

1.6 **YOUR ATTENTION IS ESPECIALLY DRAWN TO CLAUSE 14, WHICH LIMITS OUR LIABILITY TO YOU.**

1.7 The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in these terms.

1.8 You confirm that you are more than 18 years of age and that you are entering into the Contract in the course of, and for the purposes of, carrying on a business.

#### 2. Interpretation

2.1 The definitions and rules of interpretation in this clause apply in the Contract.

<b>Authorised Users</b>	those people whom you authorise to use the Services and the Documentation as further described in clause 4.3
<b>Business Day</b>	any day other than a Saturday, Sunday or public holiday in England.
<b>Confidential Information</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures</b>	as defined in the Data Protection Legislation.
<b>Customer Data</b>	the data inputted by you, Authorised Users, your customers or us on your behalf for the purpose of using the Services or facilitating your use of the Services.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other applicable European Union legislation relating to personal data and all applicable other legislation and regulatory requirements in force from time to time which apply to you or us relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>Documentation</b>	the documents from time to time made available to you by us online via the FP Sign Portal or such other web address notified by us to you which sets out a description of the Services and the user instructions for the Services.
<b>Effective Date</b>	has the meaning given to it in clause 7.1.
<b>Fees</b>	the fees for the Services set out in the price list available on the FP Sign Portal on the date when you submit your registration form or as notified by us to you pursuant to clause 5.7.
<b>FP Sign Portal</b>	the secure website provided by us to enable us to provide the Services and by means of which you open your FP Sign account.
<b>Initial Subscription Term</b>	the period of 12 months from the end of the trial period referred to in clause 7.2.
<b>Mentana</b>	Menatana-Claimsoft GmbH a wholly owned subsidiary of Franco-Postalia GmbH.

<b>Normal Business Hours</b>	9.00 am to 5.30 pm local UK time, each Business Day.
<b>Software</b>	the online software applications provided by us as part of the Services.
<b>Support Services Policy</b>	our policy for providing support in relation to the Services as made available at FP Sign@fpmailing.co.uk or such other website address as may be notified to you from time to time.
<b>Term</b>	has the meaning given to it in clause 7.3.
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>User Subscriptions</b>	the User Subscriptions purchased by you pursuant to clause 4.1 which entitle authorised users to access and use the Services and the Documentation under the Contract.
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 2.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 2.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.
- 2.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 2.9 A reference to writing or written includes faxes and e-mail.
- 2.10 References to clauses are to the clauses of these terms; references to paragraphs are to paragraphs of the relevant schedule to the Contract.

### **3. Activation**

- 3.1 You must submit an online registration form through the FP Sign Portal.
- 3.2 If we accept your application, we will confirm your registration in writing by e-mail.
- 3.3 After our acceptance, an FP Sign account shall be created for you. You may only use the Services after that. We will activate the Services as soon as:
- 3.3.1 we have clearly identified you and verified your identity;
  - 3.3.2 you have confirmed in writing that you have accepted these terms;
  - 3.3.3 you have successfully completed the activation link in our confirmation e-mail.
- 3.4 You agree that we are obliged to establish reliably your identity if you agree that we will sign documents on your behalf.
- 3.5 You agree that we may collect and store first and last names, date of birth, address, e-mail address, personal identification, telephone number, mobile number, fax number and e-mail address of you and your authorised users.
- 3.6 You agree that we may verify your identity by using any of the following: checking your email address; electronic or other credit checks; searching against on-line or other public registers.
- 3.7 You warrant that all information which you provide for us to register you and to identify you is complete and accurate.
- 3.8 We do not have to accept your application.

### **4. User subscriptions**

- 4.1 Subject to your purchasing the relevant User Subscriptions in accordance with clause 4.2 and the restrictions set out in these terms, we grant you a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Term solely for your business operations.
- 4.2 You must purchase at least the minimum number of User Subscriptions specified on the FP Sign Portal when you register for the Service and may purchase more then or at any time afterwards.

- 4.3 In relation to the Authorised Users, you undertake that:
- 4.3.1 the maximum number of Authorised Users whom you authorise to access and use the Services and the Documentation shall not exceed the number of User Subscriptions you have purchased from time to time;
  - 4.3.2 you will not allow or permit any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - 4.3.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than [MONTHLY] and that each Authorised User shall keep their password confidential;
  - 4.3.4 you shall maintain a written, up to date list of current Authorised Users and provide such list to us within 5 Business Days of our written request at any time or times;
  - 4.3.5 you shall permit us to audit the Services in order to establish the name and password of each Authorised User and our data processing facilities to audit compliance with this term. Each such audit may be conducted no more than once per quarter, at our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with your normal conduct of business;
  - 4.3.6 if any of the audits referred to in clause 4.3.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to our other rights, you shall promptly disable such passwords and we shall not issue any new passwords to any such individual; and
  - 4.3.7 if any of the audits referred to in clause 4.3.5 reveal that you have underpaid Fees, then without prejudice to our other rights, you shall pay us an amount equal to such underpayment calculated in accordance with our then current prices within 10 Business Days of the date of the relevant audit.
- 4.4 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify us.
- 4.5 The rights provided under clause 4.1 are granted to you only, and shall not be considered granted to any of your subsidiary or holding companies.

## **5. Charges and payment**

- 5.1 You shall pay the Fees in accordance with this clause 5.
- 5.2 Fees for the Services are payable monthly in advance. We may invoice you monthly in arrears, if you increase the number of Authorised Users during a Subscription Period.

- 5.3 When registering for the Services, you shall provide valid, up-to-date and complete credit card details or approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details and, if you provide:
- 5.3.1 your credit card details you hereby authorise us to charge such credit card with Fees as they fall due;
  - 5.3.2 your approved purchase order information we shall invoice you for Fees as they fall due and you shall pay each invoice within 30 days after the date of such invoice. All invoices will be electronic and sent to the e-mail address which you gave us when you registered for the Services.
- 5.4 If we have not received any payment within 30 days after its due date, and without prejudice to any of our other rights and remedies:
- 5.4.1 we may, without liability to you, disable your password, account and access to all or part of the Services and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 5.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of our bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 5.5 All amounts and fees stated or referred to in the Contract:
- 5.5.1 shall be payable in pounds sterling;
  - 5.5.2 are non-cancellable and non-refundable;
  - 5.5.3 are exclusive of value added tax, which shall be added to our invoice(s) at the appropriate rate.
- 5.6 If, at any time whilst using the Services, you exceed the amount of disk storage space specified in the Documentation, we shall charge you, and you shall pay, our then current excess data storage fees.
- 5.7 We may increase the Fees, the support fees payable pursuant to clause 7 and/or the excess storage fees payable pursuant to clause 5.6 at the start of each Renewal Period upon 90 days' prior notice to you.

## **6. Services**

- 6.1 We shall, during the Term, provide the Services and make available the Documentation to you on and subject to the terms of the Contract.
- 6.2 We shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 6.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

6.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you at least 6 Normal Business Hours' notice in advance.

## **7. Term**

7.1 The Contract shall begin when we accept in writing your application for registration (**the Effective Date**).

7.2 You may terminate the Contract on or before the end of three months from the Effective Date (the trial period) by giving us written notice to that effect.

7.3 Subject to clause 7.2, the Contract shall, unless otherwise terminated as provided in clause 15, continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

7.3.1 One of us notifies the other of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

7.3.2 otherwise terminated in accordance with the provisions of the Contract;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Term.

## **8. Customer data**

8.1 You 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. You grant us a non-exclusive, worldwide, royalty free, sub-licensable and transferable license to use, reproduce and modify your Customer Data so far as reasonably necessary to enable us to provide the Services.

8.2 We shall follow our archiving procedures for Customer Data as set out in our back-up policy available at the FP Sign Portal or such other website address as may be notified to you from time to time, as such policy may be amended by us in our sole discretion from time to time. In the event of any loss or damage to Customer Data, your sole and exclusive remedy against us shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by us in accordance with the archiving procedure described in our back-up policy. We 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 us to perform services related to Customer Data maintenance and back-up for which we shall remain fully liable under clause 8.9).

8.3 We shall, in providing the Services, comply with our Privacy Policy relating to the privacy and security of the Customer Data available at the FP Sign Portal or such other website address as may be notified to you from time to time, as such document may be amended from time to time by us in our sole discretion.

- 8.4 Both you and we will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.5 You and we acknowledge that:
- 8.5.1 if we process any personal data on your behalf when performing our obligations under the Contract, you are the controller and we are the processor for the purposes of the Data Protection Legislation.
  - 8.5.2 the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject is described in the Documentation.
  - 8.5.3 the personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the Services and our other obligations under the Contract.
- 8.6 Without prejudice to the generality of clause 8.4, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Contract so that we may lawfully use, process and transfer the personal data in accordance with the Contract on your behalf.
- 8.7 Without prejudice to the generality of clause 8.4, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under the Contract:
- 8.7.1 process that personal data only on your documented written instructions unless we are required by the laws of any applicable law to process personal data. If we are not relying on applicable law as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the applicable law unless the applicable law prohibits us from doing so;
  - 8.7.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - (a) you or us have provided appropriate safeguards in relation to the transfer;
    - (b) the data subject has enforceable rights and effective legal remedies;
    - (c) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (d) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;
  - 8.7.3 assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 8.7.4 notify you without undue delay on becoming aware of a personal data breach;
  - 8.7.5 at your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by applicable law to store the personal data; and
  - 8.7.6 maintain complete and accurate records and information to demonstrate our compliance with this clause 8 and immediately inform you if, in our opinion, an instruction infringes the Data Protection Legislation.
- 8.8 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 8.9 You consent to our appointing Mentana as a processor of personal data under the Contract. We confirm that we have entered into a written agreement with Mentana which incorporates terms which are substantially similar to those set out in this clause 8 and which reflect and will continue to reflect the requirements of the Data Protection Legislation. As between you and us, we shall remain fully liable for all acts or omissions of Mentana.
- 8.10 Either party may, at any time on not less than 30 days' notice, revise this clause 8 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 the Contract).

## **9. Our obligations**

- 9.1 We undertake that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 9.2 Nothing in the Contract shall be construed to make us a party to any document processed by using the Services, and we make no representation or warranty regarding the transactions sought to be effected by any such document.
- 9.3 As between FP and you, you have exclusive control over and responsibility for the content, quality and format of any document stored by us and documents stored by using the Services are maintained in an encrypted form, and we have no control of or access to their contents.
- 9.4 You understand that certain types of agreements and documents may be excepted from electronic signature laws (e.g. wills and agreements pertaining to family law), or may be subject to specific regulations promulgated by various government agencies regarding electronic signatures and electronic records. FP is not responsible for determining whether any particular document is (i) subject to an

exception to any electronic signature laws; (ii) subject to any particular agency promulgations; or (iii) whether it can be legally formed by electronic signatures.

9.5 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than us or our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing, we:

9.5.1 do not warrant that your use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and

9.5.2 are 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 you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.6 We may enter into similar agreements with third parties, and may independently develop, use, sell or license documentation, products and/or services which are similar to those provided under the Contract.

9.7 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

## **10. Your obligations**

10.1 You shall:

10.1.1 provide us with:

(a) all necessary co-operation in relation to the Contract; and

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

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

10.1.2 without affecting your other obligations under the Contract, comply with all applicable laws and regulations with respect to your activities under the Contract;

10.1.3 carry out all your responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 10.1.4 ensure that your employees use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for breach of the Contract by any of your employees;
  - 10.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for you, your contractors and agents to perform their obligations under the Contract, including without limitation the Services;
  - 10.1.6 ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
  - 10.1.7 be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.
- 10.2 You shall not access, store, distribute or transmit any Virus, or any material during the course of your use of the Services that:
- 10.2.1 are harmful, threatening, abusive, harassing, sexually explicit or pornographic, discriminatory, vulgar, profane, obscene, offensive, hate speech, violent or inciteful, violent or objectionable;
  - 10.2.2 violate the rights of third parties (including, without limitation, the rights of privacy, copyright, brand, patent, trade secret or other intellectual property or proprietary rights);
  - 10.2.3 violate federal, state or local laws or regulations;
  - 10.2.4 misidentify, misrepresent or conceal the association with another person or entity.
- 10.3 You shall not:
- 10.3.1 access or use of another person's account without his or her permission;
  - 10.3.2 perform any "hacks" or access another user's confidential records without permission;
  - 10.3.3 attempt to derive source codes from the FP Sign Portal;
  - 10.3.4 remove, bypass, deactivate or otherwise invade security-related features that enforce restrictions on the use of the FP Sign Portal;
  - 10.3.5 do anything (e.g. screen scraping, database scraping) with the aim of obtaining lists of users or other information.
- 10.4 You shall not:

- 10.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between us and except to the extent expressly permitted under the Contract:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 10.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 10.4.3 use the Services and/or Documentation to provide services to third parties; or
  - 10.4.4 subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except your employees, or
  - 10.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 10.5 Certain consumer protection or similar laws or regulations may impose special requirements with respect to electronic transactions involving one or more “consumers,” such as requirements that the consumer consent to the method of contracting or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. We do not and are not responsible to: (i) determine whether any particular transaction involves a “consumer”; (ii) furnish or obtain any such consents or determine if any such consents have been withdrawn; (iii) provide any information or disclosures in connection with any attempt to obtain any such consents; (iv) provide legal review of, or update or correct any information or disclosures currently or previously given; (v) provide any such copies or access, except as expressly provided as part of the normal operation of the Services for all transactions, consumer or otherwise; or (vi) otherwise to comply with any such special requirements. You undertake to determine whether any “consumer” is involved in any document presented by your Authorised Users for processing, and, if so, to comply with all requirements imposed by law on such documents or their formation.

## **11. Proprietary rights**

- 11.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant you 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 or the Documentation.

## **12. Confidentiality**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 12.1.2 was in the other party's lawful possession before the disclosure;
  - 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute our Confidential Information.
- 12.7 We acknowledge that the Customer Data is your Confidential Information.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.9 The above provisions of this clause 12 shall survive termination of the Contract, however arising.

## **13. Indemnity**

- 13.1 You shall defend, indemnify and hold us harmless 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 your use of the Services and/or Documentation.

13.2 We shall defend you, your officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:

13.2.1 We are given prompt notice of any such claim;

13.2.2 you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and

13.2.3 we are given sole authority to defend or settle the claim.

13.3 In the defence or settlement of any claim, we may procure the right for you 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 the Contract on 2 Business Days' notice to you without any additional liability or obligation to pay damages or other additional costs to you.

13.4 In no event shall we, our employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:

13.4.1 a modification of the Services or Documentation by anyone other than us; or

13.4.2 your use of the Services or Documentation in a manner contrary to the instructions given to you by us; or

13.4.3 your use of the Services or Documentation after notice of the alleged or actual infringement from us or any appropriate authority.

13.5 The foregoing and clause 14.4.2 state your sole and exclusive rights and remedies, and us (including our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

#### **14. Limitation of liability**

14.1 We strongly recommend that you check that you have insurance in place which is of the right type and adequate to cover you against any losses which you may incur as a result of using the Services. Under the Terms and Conditions of Use, our liability to you is limited because we cannot assess the level of risk to which you may be exposed from using the Services and limiting our liability enables us to provide the Services at the lowest possible price to you

14.2 Except as expressly and specifically provided in the Contract:

14.2.1 you assume sole responsibility for results obtained from your use of the Services and the Documentation, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you

- in connection with the Services, or any actions taken by us at your direction;
  - 14.2.2 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 the Contract; and
  - 14.2.3 the Services and the Documentation are provided on an "as is" basis.
- 14.3 Nothing in the Contract excludes our liability:
  - 14.3.1 for death or personal injury caused by our negligence; or
  - 14.3.2 for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.1 and clause 14.3:
  - 14.4.1 we 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; and
  - 14.4.2 our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to whichever is the greater of £50 or the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## **15. Term and termination**

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 15.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 15.1.2 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 15.1.3 the other party repeatedly breaches any of the terms of the Contract 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 the Contract;
  - 15.1.4 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, as if the words "it is proved to the satisfaction of

the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- 15.1.5 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;
  - 15.1.6 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;
  - 15.1.7 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;
  - 15.1.8 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;
  - 15.1.9 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;
  - 15.1.10 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;
  - 15.1.11 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 15.1.4 to clause 15.1.10 (inclusive);
  - 15.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.2 On termination of the Contract for any reason:
- 15.2.1 all licences granted under the Contract shall immediately terminate and you shall immediately cease all use of the Services and/or the Documentation;
  - 15.2.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 15.2.3 we may destroy or otherwise dispose of any of the Customer Data and any of your documents which are in our possession in accordance with clause 8.7.5, unless we receive, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to you of the then most recent back-up of the Customer Data and those documents.

We shall use reasonable commercial endeavours to deliver these to the you within 30 days of receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in returning or disposing of Customer Data or your documents; and

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

## **16. Force majeure**

We shall have no liability to you under the Contract if we are prevented from or delayed in performing our obligations under the Contract, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or that of 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 you are notified of such an event and its expected duration.

## **17. Conflict**

If there is an inconsistency between any of these terms and the Documentation, these terms shall prevail.

## **18. Variation**

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

18.2 We may change the Services or these terms and conditions or the Fees. If we do this, we shall notify you in writing not less than 60 days before a change takes effect.

## **19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

## **20. Rights and remedies**

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

## **21. Severance**

- 21.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 21.2 If any provision or part-provision of the Contract is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. Entire agreement**

- 22.1 The Contract 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.
- 22.2 Each party acknowledges that in entering into the Contract 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 the Contract.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 22.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **23. Assignment**

- 23.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.
- 23.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.

## **24. Third party rights**

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

## **25. Notices**

- 25.1 Any notice required to be given under the Contract shall be in writing, shall be sent by email and shall be deemed to have been received at the time of transmission but, if deemed receipt would occur outside business hours in the place of receipt, it shall be deferred until business hours resume.
- 25.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26. Governing law**

The Contract 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.

**27. 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).