

## **Terms & Conditions of Agreement**

### **1. Definitions**

In these terms and conditions the following words and phrases have the following meanings, except where this is inconsistent with the context or otherwise specified:

- 1.1 “We” “Us” and “Our”** means Netalogue Procurement Limited, a company incorporated and registered in England and Wales with company registration number 03662910 whose registered office is at 27/28 Eastcastle Street, London, W1W 8DH.
- 1.2 “You” and “Yours”** means the customer whose name is specified on the Order.
- 1.3 “Annual Support Fee”** means the annual fee payable by You for the Support Service in the sum as set out in the Order and as amended from time to time in accordance with these Terms and Conditions.
- 1.4 “Consultancy Services”** shall mean any consultancy services requested by You in the Order and which We agree in writing to provide.
- 1.5 “Contract”** means the contract between You and Us for the grant of the Licence and / or the supply of the Services in accordance with these Terms and Conditions.
- 1.6 “Customer Content”** shall mean all text, information, data (which shall include “personal data” as defined by the Data Protection Act 1998), images, audio or video material, in whatever medium or form, inputted by You or Us on Your behalf for the purpose of Your using the Software or facilitating Your use of the Services.
- 1.7 “Designated Hardware”** shall mean:  
(i) all hardware onto which You have instructed Us to install the Licensed Materials; **OR**  
(ii) (where We are not providing installation services to You) all hardware onto which You have informed us in the Order that You intend to install the Licensed Materials.  
For clarity, You and We shall agree in writing the name / number / address (or some other equivalent unique identification procedure) of the hardware that shall comprise the Designated Hardware for the purposes of the Contract.
- 1.8 “Design Services”** shall mean any graphical design services that are requested by You in the Order and which We agree in writing to provide.
- 1.9 “Development Services”** shall mean any analysis and programming services requested by You in the Order and which We agree in writing to provide.
- 1.10 “Documentation”** means operating manuals, user instructions and other related items (if any) supplied to You by Us (whether in hardcopy or electronic form ) for aiding the use of the Software and / or Services, including any part or copy of it/them.
- 1.11 “Domain Name”** means a human-readable web address that is linked to a single internet protocol network address that can be typed into a web browser.
- 1.12 “Excluded Services”** means those services that are expressly excluded from and shall not therefore form part of the Contract. Such excluded services shall include those stated in clause 7.8 and 7.9 of these Terms and Conditions together with those services (if any) expressly said to be “Excluded Services” in the Proposal.

1.13	<b>“External Licence”</b>	means a licence to permit You to sub-let the Licensed Materials to a designated client of Yours on the terms set out in clause 3.4 of these Terms and Conditions. For the avoidance of doubt it is possible to purchase one or more External Licences and the number of External Licences to be purchased shall be as stated in the Order. You must have the benefit of either a Perpetual Licence or a Rental Licence to have the benefit of an External Licence. An External Licence and Sub-Licensee and Replacement Sub-Licensee will not receive the benefit of the Support Service.
1.14	<b>“Group Company”</b>	means a "holding company" and/or "subsidiary" as defined in section 1159 of the Companies Act 2006 .
1.15	<b>“Group Purpose”</b>	means use of the Licensed Materials: <ul style="list-style-type: none"> <li>(i) by the Group Company specified in the Order as having the benefit of the sub-licence to be granted by You pursuant to the Internal Licence;</li> <li>(ii) solely for the purposes of the single Domain Name (belonging to the said Group Company) that is set out in the Order;</li> <li>(iii) solely for the purpose of online sales of Your Group Company’s products to Your Group Company’s customers and for Your Group Company’s customers to access information regarding their account with Your Group Company.</li> </ul>
1.16	<b>“High Priority Level”</b>	means priority level 1 as defined in clause 7.16 of these Terms and Conditions.
1.17	<b>“Initial Subscription Term”</b>	means the initial term of the Rental Licence as set out in the Proposal and confirmed in the Order.
1.18	<b>“Intellectual Property Rights”</b>	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
1.19	<b>“Internal Licence”</b>	means a licence to permit You to: <ul style="list-style-type: none"> <li>(i) use the Software for the benefit of the additional Domain Name of Yours stated in the Order as having the benefit of the Internal Licence; <b>OR</b></li> <li>(ii) sub-let the Licensed Materials to a Group Company of Yours solely for the Group Purpose.</li> </ul> An Internal Licence is subject to the provisions of clause 3.3 of these Terms and Conditions. For the avoidance of doubt it is possible to purchase one or more Internal Licences and the number of Internal Licences to be purchased shall be as stated in the Order. You must have the benefit of either a Perpetual Licence or a Rental Licence to have the benefit of an Internal Licence.
1.20	<b>“Licence”</b>	means a licence to use the Licensed Materials. The said licence will be either a Perpetual Licence or a Rental Licence and may also consist of an Internal Licence(s) and/or External Licence(s). For the duration of the Perpetual Licence and / or the Rental Licence (as appropriate) the term “Licence” will also include a Testing Licence. The nature of the licences to be purchased will be as stated on the Order.
1.21	<b>“Licence Fee”</b>	means the one-off payment that is due from You for the Perpetual Licence in the sum as set out in the Order.
1.22	<b>“Licensed Materials”</b>	means the Software together with any accompanying Documentation.

1.23	<b>“Maintenance Releases”</b>	means a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.
1.24	<b>“Netalogue Extranet”</b>	means the online system that We use to organise Our Support Service. The Netalogue Extranet is accessible via <a href="https://www.netalogue.com/extranetlogin.aspx">https://www.netalogue.com/extranetlogin.aspx</a> .
1.25	<b>“New Version”</b>	means a new version of the Software which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product. For the avoidance of doubt a New Version would be the subject of another contract between You and Us.
1.26	<b>“Order”</b>	means the order form(s) attached to the Proposal that have been signed by You and returned to Us to request the grant of the Licence and the supply (if any) of the Services stated therein.
1.27	<b>“Outages”</b>	means any period during which the Software and / or Services are unavailable for reasons outside Our control.
1.28	<b>“Perpetual Licence”</b>	means a non-exclusive licence to use the Licensed Materials indefinitely in accordance with these Terms and Conditions.
1.29	<b>“Powered by Netalogue Logo”</b>	means the logo which We use to communicate that it is Our and / or Our licensor’s Licensed Materials that are being used / operated.
1.30	<b>“Proposal”</b>	means the business to business (B2B) proposal submitted by Us to You. For the avoidance of doubt this proposal shall not constitute an offer by Us to provide the Licence or Services stated therein.
1.31	<b>“Purpose”</b>	means: <ul style="list-style-type: none"> <li>(i) <b>in the case of the Software:</b> the use of a single copy of the Software stored on the Designated Hardware configured to operate on one Domain Name (such Domain Name being that stated in the Order). Your use of the Software shall be restricted to use of the Software in object code form for the purposes of online sales of Your products to Your customers and for Your customers to access information regarding their account with You. Save as expressly provided under these Terms and Conditions use of the Software shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of Yours. For the avoidance of doubt, but without prejudice to the foregoing, where Internal Licence(s) and/or External Licence(s) are granted, the single copy of the object code of the Software stored on the Designated Hardware will be configured by Us to operate on a number of additional Domain Names (provided that such use does not exceed the total number of Licences granted at any time and further provided that such use is in accordance with these Terms and Conditions); and</li> <li>(ii) <b>in the case of the Documentation:</b> the Documentation may only be used for purposes ancillary to the use of the Software and/or Services.</li> </ul>

1.32	<b>“Renewal Periods”</b>	means the periods for which the Rental Licence shall be automatically renewed as stated in the Proposal and as confirmed in the Order (each a <b>Renewal Period</b> ), unless: <ul style="list-style-type: none"> <li>(i) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Rental Licence and all licences deriving therefrom shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or</li> <li>(ii) the Rental Licence is otherwise terminated in accordance with the provisions of these Terms and Conditions.</li> </ul>
1.33	<b>“Rental Licence”</b>	means a non-exclusive licence to use the Licensed Materials during the Subscription Term in accordance with these Terms and Conditions.
1.34	<b>“Rental Licence Fee”</b>	means the payments to be made by You to Us during the Subscription Term for the Rental Licence. <ul style="list-style-type: none"> <li>(i) <b>In relation to the Initial Subscription Term</b>, the: <ul style="list-style-type: none"> <li>(a) amounts to be paid; and</li> <li>(b) the dates on which payment is to be made; and</li> <li>(c) the manner in which payment is to be made will be as specified in the Order.</li> </ul> </li> <li>(ii) <b>In relation to any Renewal Period</b>, the: <ul style="list-style-type: none"> <li>(a) amounts to be paid; and</li> <li>(b) the dates on which payment is to be made; and</li> <li>(c) the manner in which payment is to be made shall be as specified in the Order or as subsequently agreed by You and Us in writing. For the avoidance of doubt We shall have the right to increase the amount of the Rental Licence Fee payable in relation to any Renewal Period.</li> </ul> </li> </ul>
1.35	<b>“Services”</b>	means the Consultancy Services and/or Design Services and/or Development Services and/or Support Service (if any) as set out in the Order.
1.36	<b>“Software”</b>	means the software described in the Proposal and as referenced in the Order.
1.37	<b>“Sub-Licensee”</b>	means the client that You have specified in the Order as receiving the benefit of the sub-licence to be granted by You pursuant to the External Licence. Where You do not know the identity of the client that will benefit from the intended sub-licence at the time the External Licence is granted to You, the Sub-Licensee will be such entity as agreed by Us under clause 3.4.5.
1.38	<b>“Subscription Term”</b>	means the Initial Subscription Term together with any subsequent Renewal Periods.
1.39	<b>“Support Service”</b>	means the services referred to in clause 7 of these Terms and Conditions to which You must subscribe in order to be able to use the same.
1.40	<b>“Terms and Conditions”</b>	shall mean the terms and conditions as set out in this document as may be varied by agreement between the parties in writing from time to time.
1.41	<b>“Testing Licence”</b>	means a licence to permit You to use two additional copies of the Software for the sole purpose of testing the Software. A Testing Licence is subject to the provisions of clause 3.5 of these Terms and Conditions. You must have the benefit of either a Perpetual Licence or a Rental Licence to have the benefit of a Testing Licence.
1.42	<b>“Third Party Provided Service”</b>	shall mean any third party provided service (for example website hosting services, content or data provider, Postcode lookup services, SSL certificate providers, live chat services) that is identified in the Proposal.

- 1.43 **“Use the Licensed Materials” and “Use of the Licensed Materials”** means:
- (i) **in the case of the Software:** as defined in clause 1.44 below; and
  - (ii) **in the case of the Documentation:** to access and use the Documentation solely for purposes ancillary to the use of the Software and/or Services.
- 1.44 **“Use the Software” and “Use of the Software”** means to access and use the Software in object code form that is installed on the Designated Hardware solely for the purposes expressly authorised by these Terms and Conditions and in accordance with these Terms and Conditions.
- 1.45 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.
- 1.46 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.47 A reference to one gender shall include a reference to the other genders.
- 1.48 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. **Basis of Contract**

- 2.1 The Order constitutes an offer by You to purchase the Licence and (if any) Services on the basis of these Terms and Conditions.
- 2.2 The Order shall only be deemed to be accepted when We (in our absolute discretion) issue written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 These Terms and Conditions apply to the Contract to the exclusion of any other terms that either You or We may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Us and any descriptions of Our software or illustrations or descriptions of the Services contained in any of Our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the software and/or services described in them. They shall not form part of the Contract or have any contractual force.

## 3. **Grant of Licence**

### **Perpetual Licence**

- 3.1 Where a Perpetual Licence has been specified in the Order, the terms of this clause 3.1 shall apply:
- 3.1.1 Subject to You paying the Licence Fee and complying with the restrictions in this clause 3.1 and clause 6 below and the other provisions of these Terms and Conditions, We grant to You a non-exclusive, non-transferrable perpetual licence to use the Licensed Materials for the Purpose on the Designated Hardware only;
- 3.1.2 For the avoidance of doubt:
- (a) the licence referred to at clause 3.1.1 is personal to You and may not be transferred or assigned or otherwise dealt with; and
  - (b) You may only use the Licensed Materials for the Purpose;
- 3.1.3 Your use of the Licensed Materials is subject at all times to the End User Licence Agreement that is annexed to these Terms and Conditions. By using the Licensed Materials You confirm that You agree to the End User Licence Agreement. For the avoidance of doubt but without prejudice to the foregoing, You may be required to give electronic confirmation that You agree to the terms of the End User Licence Agreement prior to using the Software for the first time (and again following any update to the Software);
- 3.1.4 A Perpetual Licence shall not entitle You to have access to any preparatory design material that may be created by Us or the source code of the Software.

### **Rental Licence**

- 3.2** Where a Rental Licence has been specified in the Order, the terms of this clause 3.2 shall apply:
- 3.2.1 Subject to You paying the Rental Licence Fee and complying with the restrictions in this clause 3.2 and clause 6 below and the other provisions of these Terms and Conditions, We grant to You a non-exclusive, non-transferrable licence during the Subscription Term to use the Licensed Materials for the Purpose on the Designated Hardware only;
- 3.2.2 For the avoidance of doubt:
- (a) the licence referred to at clause 3.2.1 is personal to You and may not be transferred or assigned or otherwise dealt with; and
  - (b) You may only use the Licensed Materials for the Purpose;
- 3.2.3 Your use of the Licensed Materials is subject at all times to the End User Licence Agreement that is annexed to these Terms and Conditions. By using the Licensed Materials You confirm that You agree to the End User Licence Agreement. For the avoidance of doubt but without prejudice to the foregoing, You may be required to give electronic confirmation that You agree to the terms of the End User Licence Agreement prior to using the Software for the first time (and again following any update to the Software);
- 3.2.4 A Rental Licence shall not entitle You to have access to any preparatory design material that may be created by Us or the source code of the Software.

### **Internal Licence**

- 3.3** If an Internal Licence has been specified in the Order, the terms of this clause 3.3 shall apply:
- 3.3.1 An Internal Licence shall be treated as having derived from the Perpetual Licence or Rental Licence granted to You in accordance with clauses 3.1 and 3.2 above. Accordingly, save as provided for under this clause 3.3, the Internal Licence shall be deemed to automatically expire or terminate when the Perpetual Licence or Rental Licence from which it is derived expires or terminates;
- 3.3.2 Subject to You paying the fee(s) for the Internal Licence(s) as set out in the Order and complying with the restrictions in this clause 3.3 and clause 6 below and the other provisions of these Terms and Conditions, We grant to You (as appropriate and as confirmed in the Order) a non-exclusive, non-transferrable licence for the period referred to at clause 3.3.1 above to:
- (a) use the Software for the additional Domain Name of Yours specified in the Order as having the benefit of the Internal Licence; **OR**
  - (b) sub-let the Licensed Materials to the Group Company of Yours specified in the Order solely for the Group Purpose PROVIDED THAT at all times You ensure compliance with clause 3.3.5 below;
- 3.3.3 Where Internal Licence(s) are granted, the single copy of the object code of the Software stored on the Designated Hardware will be configured by Us to operate on the applicable additional Domain Name(s). You agree to give us such access and assistance as We may require to carry out this task;
- 3.3.4 Where clause 3.3.2(a) takes effect:
- (a) You must not use the Licensed Materials for any reason other than the additional Domain Name for which the Internal Licence is designated in the Order; and
  - (b) You must not use the Software for any reason other than for the purposes of online sales of Your products to Your customers and for Your customers to access information regarding their account with You; and
  - (c) Your use of the Licensed Materials is subject at all times to the End User Licence Agreement that is annexed to these Terms and Conditions;
- 3.3.5 Where clause 3.3.2(b) takes effect:
- (a) You must not permit or suffer the Licensed Materials to be used by anyone other than the Group Company specified in the Order as having the benefit of the sub-licence to be granted by You pursuant to the Internal Licence;
  - (b) You must not permit or suffer to be used the Licensed Materials for any purpose other than the Group Purpose;
  - (c) You must ensure that the Licensed Materials remain hosted solely on the Designated Hardware and that any use Your Group Company wishes to make of the Licensed Materials is via the Designated Hardware only;
  - (d) You must not provide Your Group Company directly with a copy of the Licensed Materials;
  - (e) You must ensure that the Licensed Materials remain under Your direct control;
  - (f) Prior to permitting or enabling Your Group Company to use the Licensed Materials You must ensure that the Group Company has signed the Sub-User Direct Undertakings annexed to these Terms and Conditions and You must return the same to Us. For the avoidance of doubt but without prejudice to the

foregoing, Your Group Company may be required to give electronic confirmation that it agrees to the terms of the Sub-User Direct Undertakings prior to using the Software for the first time (and again following any update to the Software); and

- (g) Without prejudice to Our rights to take action directly against Your Group Company, You remain responsible to Us at all times for any actions or omissions on the part of Your Group Company that would amount to a breach of this clause 3.3.

3.3.6 In the event a Group Company that has the benefit of a sub-licence granted by You pursuant to an Internal Licence ceases to be a "holding company" or "subsidiary" of Yours as defined in section 1159 of the Companies Act 2006 the Internal Licence shall terminate immediately;

3.3.7 The Internal Licence is at all times subject to these Terms and Conditions. Without prejudice to any other right or remedy that We may have, breach of this clause 3.3 may result in Our terminating any Perpetual Licence or Rental Licence and/or Internal Licence and/or External Licence and/or Testing Licence that may have been granted to You.

3.3.8 An Internal Licence shall not entitle You or any Group Company of Yours to have access to any preparatory design material that may be created by Us or the source code of the Software.

#### **External Licence**

3.4 If an External Licence has been specified in the Order, the terms of this clause 3.4 shall apply:

3.4.1 An External Licence shall be treated as having derived from the Perpetual Licence or Rental Licence granted to You in accordance with clauses 3.1 and 3.2 above. Accordingly, save as provided for under this clause 3.4, the External Licence shall be deemed to automatically expire or terminate when the Perpetual Licence or Rental Licence from which it is derived expires or terminates;

3.4.2 Subject to You paying the fee(s) for the External Licence(s) as set out in the Order and complying with the restrictions in this clause 3.4 and clause 6 below and the other provisions of these Terms and Conditions, We grant to You a non-exclusive, non-transferrable licence for the period referred to at clause 3.4.1 above to sub-let the Licensed Materials to the Sub-Licensee for use solely in relation to the single Domain Name (owned by the Sub-Licensee) as stated in the Order **SAVE THAT** where the identity of the said Domain Name is not known at the time the External Licence is granted to You, the said Domain Name shall be that agreed by Us in accordance with clause 3.4.5 below;

3.4.3 Where External Licence(s) are granted, the single copy of the object code of the Software stored on the Designated Hardware will be configured by Us to operate on the applicable additional Domain Name(s). You agree to give us such access and assistance as We may require to carry out this task;

3.4.4 You must not permit or suffer the Licensed Materials to be used by anyone other than the Sub-Licensee unless we have given Our permission in writing for You to assign the benefit of the sub-licence in its entirety to another client of Yours ("**Replacement Sub-Licensee**"), in which case the Sub-Licensee shall no longer have any right to access or use the Licensed Materials. We may agree or reject any request for assignment in our absolute discretion and We may impose any conditions and/or restrictions that We consider reasonable on any consent that We may give;

3.4.5 Where You do not know:

- (a) the identity of the Sub-Licensee at the time the External Licence is granted to You (so the identity of the Sub-Licensee is not specified in the Order); and/or
- (b) the identity of the Domain Name referred to at clause 3.4.2 above at the time the External Licence is granted to You (so the Domain Name is not specified in the Order),

upon becoming aware of the identity of the proposed Sub-Licensee and / or proposed Domain Name (as applicable) You shall notify Us in writing of the same. We shall have the absolute discretion to accept or reject the grant of a sub-licence by You to the proposed Sub-Licensee for the proposed Domain Name notified to Us under this clause 3.4.5 and We may impose any conditions and/or restrictions that We consider reasonable on any consent to the grant of the sub-licence by You that We may give.

3.4.6 Prior to permitting or enabling the Sub-Licensee or Replacement Sub-Licensee to use the Licensed Materials You must ensure that (notwithstanding any other agreement that You may have with the Sub-Licensee and any Replacement Sub-Licensee) the Sub-Licensee and any Replacement Sub-Licensee has signed the Sub-User Direct Undertakings annexed to these Terms and Conditions and that the same have been returned to Us. For the avoidance of doubt but without prejudice to the foregoing, the Sub-Licensee and Replacement Sub-Licensee may be required to give electronic confirmation that it agrees to the terms of the Sub-User Direct Undertakings prior to using the Software for the first

- time (and again following any update to the Software);
- 3.4.7 You must:
- (a) not permit or suffer the Licensed Materials to be used by anyone other than the Sub-Licensee and any Replacement Sub-Licensee;
  - (b) not permit or suffer to be used the Licensed Materials for any purpose other than the Domain Name (owned by the Sub-Licensee) that is set out in the Order as having the benefit of the sub-licence to be granted by You pursuant to the External Licence or (as applicable) as subsequently agreed to by Us under clause 3.4.5 above or as otherwise agreed in writing by Us;
  - (c) not permit or suffer to be used the Software for any purpose other than online sales of the Sub-Licensee's / Replacement Sub-Licensee's products to the Sub-Licensee's / Replacement Sub-Licensee's customers and for the Sub-Licensee's / Replacement Sub-Licensee's customers to access information regarding their account with the Sub-Licensee / Replacement Sub-Licensee;
  - (d) ensure that the Licensed Materials remain hosted solely on the Designated Hardware and that any use the Sub-Licensee or Replacement Sub-Licensee wishes to make of the Licensed Materials is via the Designated Hardware only;
  - (e) not provide the Sub-Licensee or Replacement Sub-Licensee directly with a copy of the Licensed Materials; and
  - (f) ensure that the Licensed Materials remain under Your direct control.
- 3.4.8 Without prejudice to Our rights to take action directly against the Sub-Licensee or Replacement Sub-Licensee, You remain responsible to Us at all times for any actions or omissions on the part of the Sub-Licensee and Replacement Sub-Licensee that would amount to a breach of this clause 3.4.
- 3.4.9 The External Licence is at all times subject to these Terms and Conditions. Without prejudice to any other right or remedy that We may have, breach of this clause 3.4 may result in Our terminating any Perpetual Licence or Rental Licence and/or External Licence and/or Internal Licence and/or Testing Licence that may have been granted to You;
- 3.4.10 An External Licence shall not entitle You or any Sub-Licensee or Replacement Sub-Licensee to have access to any preparatory design material that may be created by Us or the source code of the Software.

### **Testing Licence**

- 3.5 For the duration only of any Perpetual Licence or Rental Licence granted to You, We also grant to You the non-exclusive, non-transferable right to use up to two additional copies of the Software for the purposes of testing the Software on the terms set out in this clause 3.5:
- 3.5.1 It is a condition of the Testing Licence that the Software is not used for commercial transactions. This means that You may not use the Software for the purposes of processing payments or to conclude transactions that involve the shipping of goods;
- 3.5.2 You may use the Software to conduct test purchases;
- 3.5.3 You may use the Software to test the functionality of the Software;
- 3.5.4 You are not permitted to use or store the Software on anything other than the Designated Hardware;
- 3.5.5 The Testing Licence is personal to You and may not be transferred or assigned or otherwise dealt with;
- 3.5.6 Your use of the Software pursuant to the Testing Licence is subject at all times to the End User Licence Agreement that is annexed to these Terms and Conditions. By using the Software You confirm that You agree to the End User Licence Agreement;
- 3.5.7 A Testing Licence shall not entitle You to have access to any preparatory design material that may be created by Us or the source code of the Software.
- 3.5.8 The Testing Licence is at all times subject to these Terms and Conditions. Without prejudice to any other right or remedy that We may have, breach of this clause 3.5 may result in Our terminating any Perpetual Licence or Rental Licence and/or Testing Licence and/or External Licence and/or Internal Licence that may have been granted to You;
- 3.6 If use of the Licensed Materials outside the United Kingdom is authorised by Us in writing, You will be responsible at Your own expense for complying with all applicable export and import laws and regulations. You shall indemnify and hold Us harmless against any loss or damage which We may suffer or incur as a result of Your failure to comply with the provisions of this clause 3.6.

## **4. Delivery, Installation & Acceptance of Licensed Materials**

- 4.1 If it has been agreed that the Licensed Materials are to be installed by Us, We will prepare and install:
- (a) one copy of the Licensed Materials onto the Designated Hardware to satisfy any Perpetual Licence or Rental Licence and any External Licence(s) and any Internal Licence(s) that We may have granted to You; and



- (b) two additional copies of the Software onto the Designated Hardware to satisfy any Testing Licence that We may have granted to You.

This installation process will be carried out by an engineer located at Our premises by remote installation. You will be required to facilitate Our access to the Designated Hardware to enable installation to take place.

- 4.2 It shall be Your responsibility to ensure that the Designated Hardware is compatible with the Licensed Materials at all times.
- 4.3 Save where clause 12 (Warranty) applies, You are responsible for any re-installation charges that may be applicable should the Licensed Materials require re-installation at any time.
- 4.4 We will use all reasonable endeavours to achieve delivery and, if applicable, installation of the Licensed Materials by any date requested in the Order. We do not guarantee that We will be able to meet any such requested date and You agree that the time of delivery and, if applicable, installation is not of the essence.
- 4.5 Risk in any tangible media on which the Licensed Materials are delivered shall pass on delivery.
- 4.6 To enable delivery and, if applicable, installation to take place You agree to:
  - (a) make sure someone is available from Your organisation to co-ordinate with Us at all reasonable times; and
  - (b) provide all information (including data, documentation, images and access to third party solutions and support services) reasonably required by Us in an expedient manner and ensure that such information is complete and accurate in all material respects.
- 4.7 If You do not supply the information and / or assistance that We reasonably require to complete delivery and, if applicable, installation of the Licensed Materials We will charge You a reasonable proportion of the full amount stated in the Order as being delivery and installation costs even though We have not been able to complete delivery and, if applicable, installation of the Licensed Materials. Further when such information and / or assistance is supplied by You We reserve the right to invoice for additional time and reasonable costs incurred due to the overrun in delivery and, if applicable, installation.
- 4.8 Acceptance of the Licensed Materials will be deemed to take place when the Licensed Materials have been made available to You and not necessarily when they are installed if there are circumstances beyond Our reasonable control which prevent Us from delivering and / or (if applicable) installing the Licensed Materials. For the avoidance of doubt acceptance shall not be linked in any way to any go live or other date which You are in control of and which is not expressly stated in the Order and subsequently agreed to by Us in writing.

## 5. **Development Services**

If We agree to provide You with Development Services, the provisions of this clause 5 shall apply:

- 5.1 You must pay to Us the fee set out in the Order for the Development Services;
- 5.2 You must pay the fee referred to at clause 5.1 above in the manner specified in the Order;
- 5.3 You agree that the time of delivery of the Development Services is not of the essence;
- 5.4 During the term of Your Perpetual Licence or Rental Licence You may at any time request new developments and/or alterations to the Licensed Materials by submitting Your request to Us in writing. We are not obliged to agree to such requests. You acknowledge that a variation (when agreed by Us) may result in additional costs and expenses becoming due from You. If this is likely to be the case we shall advise You in writing. In the event You subsequently instruct Us to carry out the work You agree to pay to Us all such additional costs and expenses.
- 5.5 You acknowledge that the Excluded Services shall not form part of the Services. In the event You wish for Us to provide any or all of the Excluded Services then You must submit Your request to Us in writing. We are not obliged to agree to such requests. Provision of any Excluded Services shall be subject to additional costs and will not be provided until such time as those costs have been agreed in writing.

## **6. Permitted Use**

- Regarding Your use of the Licensed Materials and / or Services You agree as follows:
- 6.1 Your use of the Software shall be restricted to use of the Software in object code form;
  - 6.2 Your use of the Software shall be restricted to use of the Software for the purposes of online sales of Your products to Your customers and for Your customers to access information regarding their account with You;
  - 6.3 We shall not be required to keep a back-up copy of the Licensed Materials or any materials provided or used by You in connection with the Software including any information contained within any supplemental files and/or database which forms part of the Software;
  - 6.4 You may make backup copies of the Licensed Materials as may be necessary for Your lawful use. You shall record the number and location of all copies of the Licensed Materials and take steps to prevent unauthorised copying;
  - 6.5 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between You and Us:
    - (a) and except to the extent expressly permitted under these Terms and Conditions, You shall not 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; and
    - (b) You shall not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - 6.6 You shall not access, store, distribute or transmit any viruses, or any material during the course of Your use of the Software and / or 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) in a manner that is otherwise illegal or causes damage or injury to any person or property;
  - 6.7 You shall not access all or any part of the Licensed Materials and Services in order to build a product or service which competes with the Licensed Materials and/or Services;
  - 6.8 Save as expressly provided under these Terms and Conditions You shall not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Materials and/or Services available to any third party;
  - 6.9 Save as expressly provided under these Terms and Conditions You shall not use the Licensed Materials and/or Services to provide services to third parties;
  - 6.10 Save as expressly provided under these Terms and Conditions You shall not attempt to obtain, or assist third parties in obtaining, access to the Licensed Materials and/or Services; and
  - 6.11 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Licensed Materials and/or Services and, in the event of any such unauthorised access or use, You shall promptly notify Us.

## **7. Support Service**

- 7.1 The Support Service is an optional service provided by Us to You to rectify reported errors/bugs that prevent the Licensed Materials from functioning correctly or to answer any queries that You may have as to the operation of the Software.
- 7.2 Subject to You subscribing to the Support Service and paying the Annual Support Fee, We will provide You with access to our Support Service on the terms set out in this clause 7.
- 7.3 Unless otherwise agreed in writing between You and Us, the Support Service will be operated between the hours of 08:00GMT and 17:00GMT Monday to Thursday and 08:00GMT to 16:30GMT on Friday, except for bank holidays and other public holidays in the United Kingdom when the Support Service will be unavailable.
- 7.4 The Netalogue Extranet is the primary point of contact for the Support Service. All Support Service requests must be logged in the Netalogue Extranet as Extranet Tickets. To log Your own Extranet Ticket You will login to the Netalogue Extranet using the username and password supplied to You. If the request is a High Priority Level request You may contact Us via the telephone number +44 (0)1639 816130 during the hours stated at clause 7.3 above (Option 1). If You are unable to access the Netalogue Extranet the support email is [support@netalogue.com](mailto:support@netalogue.com).
- 7.5 Support Service requests can be submitted via the Netalogue Extranet or via the support

email 365 days a year and 24-hours a day. However, they will not be actioned upon by Us outside the hours stated in clause 7.3 above unless We deem the reported issue to be a High Priority Level request in which case we will use reasonable endeavours to action the Support Service request even though it may have been submitted outside the hours stated in clause 7.3.

- 7.6 Termination or expiry of Your access to the Support Service will not of itself affect Your right to continue to use the Licensed Materials in accordance with any licence granted to You under clause 3 above. At the end of any period in which the Support Service is provided to You we shall be under no obligation to offer any further support services to You.
- 7.7 Any corrected or modified versions of the Software or Documentation including any Maintenance Releases supplied to You pursuant to the Support Service will be deemed to form part of the Licensed Materials and will be subject to these Terms and Conditions.
- 7.8 The Support Service does not cover support of: any third party software applications; operating systems; general local area network configurations; Internet connection problems; reconfiguration work of original Licensed Materials setup; support for personal computers, file servers, hubs, routers, switches, firewalls, uninterruptable power supplies, backup devices, printers, scanners or any other hardware associated with Your use of the Licensed Materials.
- 7.9 Requests for Us to make modifications and / or additions to the functionality of the Licensed Materials are not included in the Support Service.
- 7.10 In the event a Maintenance Release adds optional functionality, such optional functionality may be subject to additional charge. Where this is the case You will not be given access to the optional functionality until such time as You have agreed to pay (and where appropriate have paid) for such optional functionality.
- 7.11 Whilst We may on occasion try and assist and advise on any problems You may encounter with a Third Party Provided Service, the resolution of such issues will ultimately be the responsibility of the third party and We reserve the right to charge You for time incurred dealing with such problems at our standard daily rate then in force.
- 7.12 It is Your sole responsibility to perform regular backups of the Software and Customer Content and to restore the backups and check the correctness of these backups.
- 7.13 All Support Service requests should clearly indicate the nature of the problem or question including as much information as possible. If the problem manifests itself by following a specific sequence of events You must provide / specify step-by-step instructions and include error messages, screenshots or browser address bars.
- 7.14 Prior to making a Support Service request You must take reasonable steps to ensure the request is not a repeat of a previously made request that has been previously resolved. Prior to making a Support Service request You must also ensure the request does not relate to Your own network or Internet connection issues; or to any rudimentary data anomalies/inconsistencies which lead to failure of the Licensed Materials.
- 7.15 We will maintain records of all Support Service requests submitted by You and will use reasonable endeavours to ensure they are dealt with in accordance with Our target response times set out in clause 7.16 below by an appropriate member of Our Support Service team.
- 7.16 Pursuant to clause 7.3 and unless otherwise agreed in writing between You and Us, We will seek to adopt the target response times set out in this clause 7.16 when prioritising requests to support Your live environment and We will use reasonable endeavours to begin work on the request within these target timelines. Support Service requests will be processed on a first-come, first-served basis in relation to the target response times set out below. We reserve the right to assign different priority levels for each Support Service request. Actual response times may be quicker or longer depending on the volume of client requests at any one time.

<u>Priority Level</u>	<u>Definition</u>	<u>Target Response Time</u> (subject at all times to clause 7.3)
1	Issue making critical product functionality unavailable causing a severe impact on services (e.g. unable to process any sales).	Senior technicians will be informed immediately and You should receive an initial response within 30 minutes
2	Issue affecting some critical features of the product but not preventing the processing of all sales.	An appropriate technician will be informed immediately and You should receive an initial response within 1 hour.
3	Issue affecting a non critical feature of the product where it is unusable or hard to use and having an operational impact, but with no impact on critical services.	An appropriate technician will be informed immediately and You should receive an initial response within 4 hours.

4	Issue affecting a non critical feature of the product where only a small number of users are affected or a workaround is available.	An appropriate technician will be informed immediately and You should receive an initial response within 1 working day.
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If the target response time is not met on any Netalogue Extranet request You should telephone or email the support desk to expedite it, in case the Support Service request has not reached the intended support technician.

7.17 The following reasons can delay or abort action on a Support Service request:

- (a) You have not provided or are unable to provide enough information for Us to identify the reported error/bug in the Licensed Materials;
- (b) We cannot reproduce the reported error/bug in the Licensed Materials;
- (c) Resolution to the request requires analysis, programming, enhancements or unplanned update to the Licensed Materials;
- (d) Other Support Service requests have been raised by You which are in the process of being resolved and/or are of a higher priority level;
- (e) The request is beyond the scope of the Support Service.

7.18 We will conduct periodic analysis of Your use of the Support Service. We reserve the right, where We deem Your use of the Support Service to be excessive, to take the following action:

- (a) recommend that You purchase training services;
- (b) recommend that You make procedural changes in relation to how the Licensed Materials are operated and/or administered;
- (c) amend in our absolute discretion the Annual Support Fee and/or the terms on which You may access the Support Service. Prior to taking any such action We shall contact You in the first place to make You aware of the planned changes and shall, where reasonably possible, seek to agree the same with You prior to implementation.

7.19 Without prejudice to clause 7.18(c), We reserve the right (on giving not less than two calendar months' notice to You) to amend the Annual Support Fee each year, such amendment to take effect at the start of the next relevant 12 month Support Service period.

7.20 We reserve the right at all times to terminate Your rights to renew the Support Service on an annual basis.

## **8. Data**

8.1 Without prejudice to clause 10, as between You and Us, You shall own all Intellectual Property Rights in all Customer Content. You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.

8.2 Without prejudice to the generality of clause 8.1 above, as between You and Us, for the purposes of all relevant data protection legislation You shall be the Data Controller (as defined in the Data Protection Act 1998). It shall be Your responsibility to ensure compliance with all relevant data protection legislation at all times.

8.3 You hereby grant to Us a non-exclusive right for the duration of the Perpetual Licence or Subscription Term as the case may be to carry out any act that would otherwise be restricted by any of Your Intellectual Property Rights in the Customer Content for the purpose of enabling Us to provide the Services to You in accordance with these Terms and Conditions. Save as expressly stated in this clause 8.3 and without prejudice to clause 10 We acknowledge that We shall not acquire any rights in or to the Customer Content.

8.4 This clause 8 shall be deemed to be amended as appropriate to take into account the circumstances surrounding the grant of any Internal Licence and/or External Licence.

## **9. Payment Terms**

- 9.1 You will pay to Us:
- (a) the Licence Fee;
  - (b) the Rental Licence Fee;
  - (c) the Annual Support Fee;
  - (d) all fees relating to any Internal Licence and / or External Licence that may be granted pursuant to these Terms and Conditions;
  - (e) all fees due in relation to the Services; and
  - (f) all other charges which fall due under these Terms and Conditions
- in accordance with the terms of payment stated in the Proposal and/or Order (as appropriate) or as subsequently agreed by You and Us in writing from time to time or in accordance with clause 9.3 in any other case. Where applicable, VAT and any other taxes, duties or levies will be paid additionally by You at the then prevailing rate.
- 9.2 We may raise invoices in respect of the whole or part of any Licence Fee, Rental Licence Fee, Annual Support Fee, any fees relating to any Internal Licence and External Licence, any fees in relation to the Services and any other charges upon Our acceptance of the Order. Where we raise such an invoice You agree that we will not grant the Licence and (if applicable) commence providing the Services until such time as we have received payment of Our invoice in full.
- 9.3 All sums due under these Terms and Conditions will be paid by You in full within 30 calendar days of the invoice being issued unless otherwise specified by Us in writing.
- 9.4 If any sum payable to us under these Terms and Conditions is in arrears for more than 30 calendar days after the due date for payment, we reserve the right without prejudice to any other right or remedy to:
- 9.4.1 charge interest on such overdue sum on a day to day basis from the original invoice due date until the date on which We are paid in full at a rate of 2% above The Bank of England base interest rate in force from time to time or the prevailing rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; and / or
- 9.4.2 suspend any Perpetual Licence, Rental Licence, External Licence, Internal Licence, Testing Licence and/or any Services until such time as payment is made.
- 9.5 You will notify Us in writing within 14 calendar days of receipt of an invoice if You consider such invoice to be incorrect or invalid for any reason and the reasons for withholding payments, failing which You will raise no objection to any such invoice and will make full payment in accordance with it.

## **10. Proprietary Rights**

- 10.1 You acknowledge and agree that We and/or Our licensors own all Intellectual Property Rights in:
- (a) the Licensed Materials and any Maintenance Releases;
  - (b) the Consultancy Services and the products of the Consultancy Services;
  - (c) the Development Services and the products of the Development Services;
  - (d) the Support Service and the products of the Support Service
- including all Intellectual Property Rights in any copies that You may make thereof in accordance with these Terms and Conditions.
- Except as expressly stated in these Terms and Conditions, You are not granted any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Licensed Materials, Maintenance Releases, Consultancy Services, Development Services and Support Service.
- 10.2 You acknowledge and agree that unless otherwise agreed in writing, We and/or Our licensors own all Intellectual Property Rights in the Design Services and the products of the Design Services.
- 10.3 You agree not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Licensed Materials and/or the products of the Services. You shall incorporate such proprietary markings in any back-up copies.
- 10.4 You acknowledge that We have the right to designate a Powered by Netalogue Logo in the bottom right hand corner of the Software. You further acknowledge You have no rights, title or interest in or to the Powered by Netalogue Logo. We reserve the right to periodically review and approve prior to publication and amend the form and content of the Powered by Netalogue Logo. We reserve the right to terminate the designation of the Powered by Netalogue Logo at any time. Where we provide the Support Service You irrevocably agree that We may directly access the Designated Hardware to amend the designation of the Powered by Netalogue Logo at any time.

- 10.5 You shall notify us immediately if You become aware of any unauthorised access to, use or copying of the whole or any part of the Licensed Materials and/or Services and/or products of the Services by any person.
- 10.6 You shall permit Us to check the use of the Licensed Materials and/or Services and/or products of the Services by You at all reasonable times. We may upon reasonable notice and at a reasonable time send Our representatives to any of Your premises to verify compliance with these Terms and Conditions and You consent to Our representatives entering any of Your premises and accessing Your servers and other relevant equipment for this purpose. Where We have remote access to Your servers (because for example We are providing the Support Service to You) You also irrevocably consent to Our representatives remotely accessing Your servers for the purposes of verifying Your compliance with these Terms and Conditions.

## **11. Confidentiality**

- 11.1 You acknowledge that the Licensed Materials and the Services (including the products of the Services) contain confidential information relating to Us and/or third parties (including Our licensors). You undertake to treat as confidential and keep secret all information contained in or otherwise received from Us in connection with the Licensed Materials and the Services and the products of the Services (collectively referred to as “the Confidential Information”) and shall not use the same for purposes other than in relation to use of the Licensed Materials and Services in accordance with these Terms and Conditions.
- 11.2 You shall not without Our prior written consent communicate or disclose any part of the Confidential Information to any person except:
- 11.2.1 only to those employees on a need to know basis who are directly involved in the use of the Licensed Materials and/or the Services;
- 11.2.2 Your auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the confidential Information in connection with Your business.
- 11.3 You undertake to ensure, prior to disclosure of any Confidential Information, that all persons and bodies mentioned in clause 11.2 are aware that the Confidential Information is confidential and that they owe a duty of confidence to Us.
- 11.4 You shall indemnify and keep Us and our licensors fully indemnified at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other costs and expenses suffered or incurred by Us and / or Our licensors) arising from any breach of this clause 11 by You and from the actions or omissions of those persons and bodies mentioned in clause 11.2.
- 11.5 The provisions of this clause 11 will not apply to any Confidential Information which:
- 11.5.1 is or becomes public knowledge other than as a result of Your conduct or the conduct of those persons to whom You have disclosed the Confidential Information pursuant to clause 11.2; or
- 11.5.2 is independently developed without access to or use of the Licensed Materials and Services.
- 11.6 This clause 11 will continue in force notwithstanding the expiry or termination for any reason of the Contract.

## **12. Warranty**

- 12.1 We warrant for a period of 90 calendar days beginning on the date of delivery of the Licensed Materials (“**Warranty Period**”) that:
- (a) the Software when properly used by You will provide in all material respects the facilities and functions as described in the Proposal and as referred to in the Order; and
- (b) the media on which the Licensed Materials are furnished will be free from defects in materials and workmanship under normal use.
- 12.2 In the event You have subscribed to the Support Service, the Warranty Period referred to at clause 12.1 will be extended for the warranty given at clause 12.1(a) for the duration of Your subscription to the Support Service and the definition of “Warranty Period” will be amended accordingly.
- 12.3 If, within the Warranty Period, You notify Us in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects with the facilities and functions as described in the Proposal and as referred to in the Order, and:
- (i) such defect or fault does not result from You, or anyone acting with Your authority, having amended the Software or used it outside the terms of the licence granted under clause 3 for a purpose or in a context other than the purpose or context for which it was designed or intended or in combination with any other software not provided by Us; and/or
- (ii) such defect or fault does not result from You or anyone acting with Your authority having loaded the Software onto equipment that is not suitably configured,

We shall, at Our option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate the Contract immediately by notice in writing to You and refund any of the fees paid by You to Us as at the date of termination (less a reasonable sum in respect of Your use of the Software and Services to the date of termination) on deletion of the Software and all copies thereof,

provided You provide all the information that may be reasonably necessary to assist Us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Us to re-create the defect or fault. We shall use reasonable endeavours to notify You of the action that We intend to take under this clause 12.3 within 7 days' of Our receipt of Your notification referred to above.

12.4 If, within the Warranty Period, You notify Us in writing of any defect or fault in the media on which the Licensed Materials are furnished, We shall, at Our option, promptly do one of the following:

- (a) repair the media; or
- (b) replace the media.

12.5 Save as provided at clause 12.1 above:

- (a) You assume sole responsibility for results obtained from the use of the Licensed Materials and the Services by You and for conclusions drawn from such use; and
- (b) 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 Licensed Materials and / or Services, or any actions taken by Us at Your direction; and
- (c) 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
- (d) the Licensed Materials are provided to You on an "as is" basis; and
- (e) We do not warrant that Your use of the Licensed Materials and/or Services will be uninterrupted or error-free; or that the Licensed Materials and/or Services and/or the information obtained by You through the Licensed Materials and/or Services will meet Your requirements; and
- (f) We 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 Licensed Materials and/or Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- (g) We are not responsible for any delays, errors or interruptions that may be suffered by You as a result of any matters or events affecting the Designated Hardware and/ or any Third Party Provided Service and/or any third party platforms, cloud and/or communication networks; and
- (h) Without prejudice to the generality of the preceding provisions of this clause 12.5 We shall not be responsible for any Outages.

12.6 Without prejudice to clause 12.5 You acknowledge the Licensed Materials have not been prepared to meet Your individual requirements and that it is Your responsibility to ensure that the facilities and functions of the Licensed Materials meet Your requirements.

12.7 In the event You seek to make a claim under the warranty at clause 12.1 and the cause of any issue / problem is subsequently found on investigation not to be Our responsibility, We may charge You for all reasonable costs and expenses incurred by Us in the course of or in consequence of such investigation.

### **13. Limitation of Liability**

13.1 Except as expressly stated in clause 13.2:

- (a) We shall not in any circumstances have any liability for any losses or damages which You may suffer (or any person claiming under or through You may suffer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract (including under the indemnity at clause 14), tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - i. special damage even if We were aware of the circumstances in which such special damage could arise;
  - ii. loss of profits;
  - iii. loss of anticipated savings;
  - iv. loss of business opportunity;
  - v. loss of goodwill;
  - vi. loss or corruption of data,

provided that this clause 13.1(a) shall not prevent claims for loss of or damage to

- Your tangible property that fall within the terms of clause 13.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 13.1(a);
- (b) Our total liability, whether in contract (including under the indemnity at clause 14), tort (including negligence) or otherwise and whether in connection with these Terms and Conditions, the Contract or any collateral contract, shall in no circumstances exceed a sum equal to the aggregate of the licence fees payable under clause 3 of these Terms and Conditions together with any fees payable by You for the Services; and
  - (c) You agree that, in entering into the Contract, You did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in these Terms and Conditions or (if You did rely on any representations, whether written or oral, not expressly set out in these Terms and Conditions) that You shall have no remedy in respect of such representations and (in either case) We shall have no liability in any circumstances otherwise than in accordance with the express terms of these Terms and Conditions.
- 13.2 The exclusions in clause 12 and clause 13.1 shall apply to the fullest extent permissible at law, but We do not exclude liability for:
- (a) death or personal injury caused by Our negligence or that of our officers, employees, contractors or agents;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any other liability which may not be excluded by law.
- 13.3 All dates supplied by Us for the delivery of the Licensed Materials and/or the provision of Services shall be treated as approximate only. We shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 13.4 All references to "We" or "Our" in this clause 13 shall, for the purposes of this clause and clause 24 only, be treated as including all of Our employees, subcontractors and suppliers, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 24.
- 14. Copyright Indemnity & Your Indemnity to Us**
- 14.1 Subject to clause 13, We undertake at Our own expense to defend You or, at Our option, settle any claim or action brought against You alleging that the possession or use of the Software (or any part thereof) in accordance with these Terms and Conditions infringes the UK patent, UK copyright, UK trade marks or trade secrets of a third party (**Claim**) and shall be responsible for Your reasonable costs (including legal fees) and any costs and damages awarded against You as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 14.1 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by You other than in accordance with these Terms and Conditions, use of the Software in combination with any hardware or software not supplied or specified by Us if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 14.2 If any third party makes a Claim, or notifies an intention to make a Claim against You, Our obligations under clause 14.1 are conditional on You:
- (a) as soon as reasonably practicable, giving written notice of the Claim to Us, specifying the nature of the Claim in reasonable detail;
  - (b) not making any admission of liability, agreement or compromise in relation to the Claim without Our prior written consent;
  - (c) giving Us and Our professional advisers access at reasonable times (on reasonable prior notice and at Our own expense) to Your premises and Your officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within Your power or control, so as to enable Us and Our professional advisers to examine them and to take copies (at Our expense) for the purpose of assessing the Claim; and
  - (d) subject to Us providing security to You to Your reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as We may reasonably request to avoid, dispute, compromise or defend the Claim.
- 14.3 If any Claim is made, or in Our reasonable opinion is likely to be made, against You, We may at Our sole option and expense:



- (a) procure for You the right to continue to use the Software (or any part thereof) in accordance with these Terms and Conditions;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate the Contract immediately by notice in writing to You and refund any of the fees paid by You for the licences granted to You under clause 3 as at the date of termination (less a reasonable sum in respect of Your use of the Software and the Services to the date of termination) on return of the Software and all copies thereof,

provided that if We modify or replace the Software, the modified or replacement Software must comply with the warranties contained in clause 12 and You shall have the same rights in respect thereof as You would have had under those clauses had the references to any dates in clause 12 been references to the date on which such modification or replacement was made.

14.4 Notwithstanding any other provision in these Terms and Conditions, clause 14.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through:

- (a) Your use or combination of the Software with any third party software or data; or
- (b) Your refusal to use modified or replacement Software supplied or offered to be supplied pursuant to clause 14.3.

14.5 This clause 14 constitutes Your exclusive remedy and Our only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 13.

14.6 Without prejudice to clause 14.1, You shall defend Us, indemnify Us 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 Licensed Materials and/or Services. Without prejudice to the generality of the foregoing You shall indemnify Us against any and all claims brought against Us by third parties relating to breach of data protection legislation by You. For the purposes of this clause 14.6, reference to "Us" shall also include reference to every Group Company of Ours. This clause 14.6 shall survive termination or expiry of the Contract.

14.7 You shall defend Us, indemnify Us 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 any use of the Licensed Materials and/or Services by a Group Company of Yours, the Sub-Licensee and Replacement Sub-Licensee. Without prejudice to the generality of the foregoing You shall indemnify Us against any and all claims brought against Us by third parties relating to breach of data protection legislation by a Group Company of Yours, the Sub-Licensee and/or Replacement Sub-Licensee. For the purposes of this clause 14.7, reference to "Us" shall also include reference to every Group Company of Ours. This clause 14.7 shall survive termination or expiry of the Contract.

## 15. Termination

15.1 Without prejudice to clause 15.2, where We have granted to You a Rental Licence, either party to the Contract may terminate the Contract by giving written notice of termination to the other party to the Contract at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Rental Licence and all licences deriving therefrom shall terminate upon expiry of the applicable Initial Subscription Term or Renewal Period.

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

- (a) the other party fails to pay any amount due under these Terms and Conditions on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of these Terms and Conditions 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 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

- (d) 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 (being a company) 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;
- (e) 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 (being a company) 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) 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 (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) 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;
- (i) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (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 15.2(c) to clause 15.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **16. Post Termination**

- 16.1 Any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms and Conditions which existed at or before the date of termination or expiry.
- 16.3 On expiry or termination of the Contract for any reason:
  - (a) all rights granted to You under these Terms and Conditions (including without limitation the Licences referred to at clause 3) shall cease;
  - (b) You shall cease all activities authorised by these Terms and Conditions;
  - (c) without prejudice to the generality of clauses 16.3(a) and 16.3(b) above, You shall ensure that every Group Company of Yours and any and all Sub-Licensees and Replacement Sub-Licensees immediately cease using the Licensed Materials;
  - (d) You shall immediately pay to Us any sums due to Us under these Terms and Conditions;
  - (e) You shall immediately destroy or return to Us (at Our option) all copies of the Licensed Materials then in Your possession, custody or control and, in the case of destruction, certify to Us that You have done so;
  - (f) all rights granted to Us under clause 8.3 of these Terms and Conditions shall cease; and
  - (g) if requested by You, We shall return to You any Customer Content in Our possession.

## **17. Force Majeure**

We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of Our obligations under the Contract if such delay or failure results from events, circumstances or causes beyond Our reasonable control. In such circumstances We shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, We may terminate the Contract by giving 21 days' written notice to You (and vice versa).

**18. Assignment**

18.1 The Licences granted under clause 3 are personal to You and You may not assign or otherwise transfer Your rights or obligations under the Contract without Our prior written consent.

18.2 We reserve the right to:

- (a) assign Our rights or obligations under the Contract (and if We do so We shall give You notice of the same); and
- (b) appoint a sub contractor or agent to perform any of the Services forming a part of the Contract.

**19. Representations**

Neither party shall without the prior written consent of the other party refer to itself as an authorised representative of the other party, nor use the other party's logos, trade or service marks. Notwithstanding the foregoing, We are hereby authorised to identify You for reasonable financial reporting, marketing and/or publicity announcements.

**20. Notices**

20.1 All notices which are required to be given under these Terms and Conditions will be in writing and will be sent to the address of the recipient set out on the front page of the Order or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally, by first class pre-paid letter or facsimile transmission or by e-mail and will be deemed to have been received:

20.2 by hand delivery—at the time of delivery;

20.3 by first class post—the second working day after the date of mailing;

20.4 by facsimile transmission or by e-mail—immediately upon transmission provided a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day SAVE THAT in so far as notices relating to payments due from You to Us are concerned, it shall not be necessary for Us to provide confirmatory copies by post or by hand.

**21. Severability**

If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.

**22. Waiver**

No delay or failure by either party to exercise any of its powers, rights or remedies under the Contract will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. Unless otherwise expressly stated, the remedies provided in these Terms and Conditions are cumulative and not exclusive of any remedies provided by law.

**23. Entire Agreement**

These Terms and Conditions (and the documents referred to in these Terms and Conditions) contain the whole agreement between You and Us and supersedes and replaces any prior written or oral agreements, representations or understandings between Us. You confirm that You have not entered into the Contract on the basis of any representation which is not expressly incorporated into these Terms and Conditions.

**24. Third Party Rights**

- 24.1 We and the entities referred to in clause 13.4 may enforce the terms of clause 13 subject to and in accordance with this clause 24, these Terms and Conditions and the Contracts (Rights of Third Parties) Act 1999.
- 24.2 It is agreed that it is intended to confer a benefit on Us and Our employees, subcontractors and suppliers by making the exclusions and limitations of liability available to them in accordance with these Terms and Conditions. We will owe no duty to Our employees, subcontractors and suppliers to enforce such rights and We may conduct or compromise any relevant proceedings as We see fit.
- 24.3 Our licensors may enforce the terms of clause 11 of these Terms and Conditions. Any Group Company of Ours may enforce the terms of clause 14.6 and/or 14.7 of these Terms and Conditions.
- 24.4 Save as provided for at clauses 24.1 and 24.3 above, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**25. Governing Law**

Any agreement of which these Terms and Conditions form part shall be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and shall not be used in construing any provision in these Terms and Conditions.