

SOFTWARE AS A SERVICE AGREEMENT

FOR SERVICES PROVIDED BY

KANI PAYMENTS LIMITED

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This agreement covers services provided by Kani Payments Limited from 1st April 2023 onwards.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING ANY SERVICES PROVIDED BY KANI PAYMENTS LIMITED, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE ANY SERVICES PROVIDED BY KANI PAYMENTS LIMITED. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.

IF YOU ARE USING ANY SERVICES PROVIDED BY KANI PAYMENTS LIMITED AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORISED TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORISED PERSONNEL.

AGREEMENT

These Terms of Service (“Agreement”) are entered into by and between:

- Kani Payments Limited incorporated and registered in England and Wales with company number 11634828 whose registered office is at Suite 1b 2 Collingwood Street, Newcastle Upon Tyne, United Kingdom, NE1 1JF (“**Supplier**”) and
- the entity or person (other than a Reseller) placing an order for, or accessing, any services provided by Kani Payments Limited (“**Customer**” or “**you**”). This Agreement consists of the terms and conditions set forth below and any attachments, addenda or exhibits referenced in the Agreement, and any Order Forms that reference this Agreement.

The “Effective Date” of this Agreement is the date of the first Order Form referencing this Agreement. This Agreement will govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer through an Order Form that reference this Agreement.

Agreed terms

1. Interpretation

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

API Information: the application interface (if any) and such information concerning the same as may be issued by the Supplier from time to time pursuant to this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

Back-Up Policy: the Supplier’s back-up policy made available to the Customer from time to time or upon request.

Business Day: a day other than a Saturday, Sunday or recognised public holiday in England.

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.

Customer Administrator: an employee of the Customer who is appointed by the Customer to be responsible for granting, revoking or updating User Subscriptions as necessary and varying the Modules and units subscribed to by the Customer from time to time.

Customer's Domain Name: the Internet domain in use by the Customer in the course of its business operations and to which email accounts of Authorised Users shall belong, for example *user@domainname.com* where *domainname.com* is the Customer's Domain Name.

Controller, processor, data subject, personal data, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Approved Third Party: any third party which provides data to the Customer or supplies data to the Supplier on behalf of the Customer in connection with the provision of the Services.

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

Data File Type: a structured data file of type .XML / .CSV / json object or similar that contains data in a consistent and repeatable format, having a documented specification and with structure and content that is consistent over time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Documentation: the documents made available to the Customer by the Supplier from time to time which set out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

Fees: the fees payable by the Customer to the Supplier for the Services in accordance with clause 9.

Initial Subscription Term: the initial term of this agreement – 12 months.

Internet Connectivity Speed: a connection to the Internet capable of consistently supporting 2 Mbps upload and 2 Mbps download speeds as measured by the Internet Connectivity Speed testing service at www.speedtest.net

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

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Record: a collection of fields that uniquely identifies an event or characteristic of a transaction, card, cardholder, account, typically with a unique identifier (such as a transaction reference number, card number, account number or customer number) and stored as a distinct row in the Supplier's database.

Relief Event: the following events:

- a) any failure by the Customer to comply with its obligations under this agreement;
- b) any error or omission in any information, data, instructions or scripts provided to the Supplier by or on behalf of the Customer or by or on behalf of any Customer Approved Third Party in connection with the Services;
- c) any act or omission of the Supplier resulting (directly or indirectly) from a direction made by the Customer or on the Customer's behalf (including by a Customer Approved Third Party);
- d) any failure by the Customer or its agents or contractors (including the Customer Approved Third Parties) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this agreement; or
- e) any of the events listed in clause 12.4.

Renewal Period: the period described in clause 14.1.

Setup Fee: the agreed fee for implementation of the services provided by the Supplier.

Services: the subscription services in the form of the Modules and the Additional Modules (if any) provided by the Supplier to the Customer under this agreement together with the support services provided pursuant to clause 4.3. For the avoidance of doubt, any custom development work carried out by the Supplier for the Customer does not constitute Services for the purposes of this agreement and shall be dealt with under a separate agreement.

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

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Services.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supported Browser: the most up-to-date version of the Google Chrome or Microsoft Edge Internet browser application running on the most up-to-date version of the Microsoft Windows computer operating system, and running with a minimum screen resolution of 1920 x 1080 pixels.

UK Data Protection Legislation: 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.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes email but not faxes.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.11 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

2. User subscriptions

- 2.1 Subject to the Customer paying the Fees in accordance with clause 9, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations (unless expressly agreed by the Supplier in writing).
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer 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;
 - (c) each Authorised User shall be required to use single-factor or multi-factor login methods as specified by the Supplier from time to time and each Authorised User shall keep all passwords required for his use of the Services and Documentation secure, furthermore, such passwords shall be changed no less frequently than every 90 days and that each Authorised User shall keep his password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and shall immediately revoke or ask the Supplier to revoke any User Account assigned to an individual whose employment with the Customer is terminated for any reason;
 - (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Supplier's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;
 - (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the relevant prices set out in in this agreement within 10 Business Days of the date of the relevant audit;

- (h) each Authorised User shall be a named employee of the Customer and each Authorised User's User Subscription will be allocated to a named employee's email account which they use personally in their employment by the Customer;
- (i) no User Subscription will be assigned to an email account which is used by more than one employee of the Customer, is a group email account or is used for distribution lists and the Supplier may decline, suspend or terminate such a User Subscription considered to be in breach of this clause, in its absolute discretion; and
- (j) all Authorised User email accounts must belong to the Customer's Domain Name.

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

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property,

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

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with any part of the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties unless expressly agreed in advance in writing by the Supplier; or

- (d) subject to clause 24.1, 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 the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer. The Customer will appoint one or more Customer Administrators to assign each User Subscription in accordance with this agreement.

3. Additional User Subscriptions & Additional Modules

3.1 The Customer may, from time to time during any Subscription Term, notify the Supplier that it wishes to purchase the right to access and use Additional Modules or to increase the quantity of subscribed modules. If the Supplier agrees to grant access or increase the quantity, the Supplier shall, subject to the Customer paying the relevant Additional Module Fees, grant access to the Additional Modules in accordance with the provisions of this agreement.

3.2 Subject to clause 3.3 and clause 3.4, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

3.3 If the Customer wishes to purchase additional User Subscriptions or increase the quantity of a Module, the Customer shall notify the Supplier. The Supplier shall evaluate such request for additional User Subscriptions or Modules and respond to the Customer with approval or rejection (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall make available the changes requested within 10 days of its approval of the Customer's request.

3.4 The Customer acknowledges and agrees that the Subscription Fees payable may change as a result of additional User Subscriptions or Modules purchased pursuant to clause 6.2 and that (to the extent applicable) revised Subscription Fees shall be payable from the date on which the additional User Subscriptions take effect.

4. Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available, except for:
 - (a) planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am UK time; and
 - (b) unscheduled maintenance which the Supplier will endeavour to perform outside Normal Business Hours if reasonably practicable, provided that the Supplier has used reasonable endeavours to give the Customer at least 48 hours' notice in advance and in writing.
- 4.3 The Supplier will, as part of the Services provide the Customer with the Supplier's standard customer support services during UK Business Hours (9am to 5pm GMT) in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Customer may elect to buy Support Services from the Supplier, at additional cost. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer acknowledges and accepts that it is not automatically entitled to receive support relating to the interpretation of the results and data gathered as a result of its use of the Services or the investigation of any issues arising from those results or data (including in circumstances where a "reconciliation break" is identified).
- 4.4 The Supplier shall use its reasonable endeavours to:
 - (a) wherever possible, acknowledge any bugs notified by the Customer by 5.00pm local UK time the following Business Day; and
 - (b) consider all and any reasonable requests for enhancements to the Services but shall be under no obligation to acknowledge or implement such requests.

5. Customer data

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy and such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-

Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 5.8).

- 5.3 The parties acknowledge and agree that the Customer Data provided by the Customer to the Supplier will be anonymised and does not constitute Personal Data as defined in the Data Protection Legislation.
- 5.4 Notwithstanding the generality of clause 5.3 and to the extent applicable, both parties shall comply with all requirements of the Data Protection Legislation.
- 5.5 The Customer consents to the Supplier appointing Microsoft Corporation as a third-party processor of Customer Data under this agreement. The Supplier may authorise any other third party subcontractor to process the Customer Data on the prior written notice to the Customer.
- 5.6 The Customer acknowledges and accepts that the Supplier has the right to use the Customer Data to develop and provide new and existing functionality and services (including statistical analysis, benchmarking and forecasting services) provided that any Customer Data used in such a way shall be displayed at an aggregated level only and will not be capable of being linked back to the Customer or any living individual.

6. Third party providers

- 6.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 6.2 The Customer may during the Subscription Term request integration with a new Customer Approved Third Party. The Supplier shall evaluate such request and shall respond to the Customer with approval or rejection (at the Supplier's absolute discretion).
- 6.3 The Customer acknowledges that additional integration pursuant to clause 6.2 (**Additional Integration Work**) shall require payment by the Customer of additional charges (**Additional Charges**). The Supplier shall inform the Customer of the Additional Charges at the relevant

time and shall provide the Customer with an estimated timeframe for integration as soon as reasonably practicable following approval pursuant to clause 6.2. The Customer acknowledges and accepts that the Supplier shall not be obliged to undertake any Additional Integration Work unless and until the Customer has paid the Additional Charges in full.

7. Supplier's obligations

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. Customer's obligations

- 8.1 The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;

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

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications for Supported Browsers and Internet Connectivity Speeds and any other requirements communicated by the Supplier and updated from time to time;
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- (h) be solely responsible for vetting any Customer Approved Third Party prior to the integration of the Customer Approved Third Party in the Services and for all acts and omissions of the Customer Approved Third Party; and
- (i) be solely responsible for checking the veracity and completeness of any information provided by a Customer Approved Third Party.

9. Charges and payment

- 9.1 The Customer shall pay the fees defined in the Plans and Pricing section of the Azure Marketplace to the Supplier in accordance with this clause 9, as requested by Microsoft.
- 9.2 Microsoft shall calculate the billing amount in each period and make this available to the Customer via the Azure Marketplace Usage dashboard (<https://learn.microsoft.com/en-us/partner-center/marketplace/usage-dashboard>). The billing amount(s) for this service will be listed by Marketplace Subscription ID.

- 9.3 If the Supplier is notified by Microsoft that Microsoft has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's Authorised Users' passwords, accounts and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank Plc from time to time (but at 3% for any period when that base rate is below 0%), commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.4 at the start of each Renewal Period upon 90 days' prior notice to the Customer.

10. Proprietary rights

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services (including in any enhancements made as a result of a Customer request pursuant to clause 4.4(b)), the API Information and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the API Information or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services, the API Information and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 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 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6 The Customer acknowledges that details of the Services, the API Information and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.9 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. Indemnity

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

- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

12.2 The Supplier shall defend the Customer, its 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 the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

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

12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

13.1 Except as expressly and specifically provided in this agreement and subject to clause 13.2:

- (a) the Customer assumes sole responsibility for:
 - (i) results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use; and

- (ii) loss or damage arising from or relating to any Relief Event;
- (b) the Supplier shall have no liability for any damage caused by errors or omissions in any information, data, instructions or scripts provided to the Supplier by or on behalf of the Customer or by or on behalf of any Customer Approved Third Party in connection with the Services, or any act or omission of the Supplier resulting directly or indirectly from a direction made by the Customer or on the Customer's behalf;
- (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 this agreement; and
- (d) the Services and the Documentation are provided to the Customer on an "as is" basis.

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

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

13.3 Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees paid for the Services during the 12 months immediately preceding the date on which the claim arose.

13.4 Subject to clause 13.2, and notwithstanding any other provision of this agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

14. Term and termination

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

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

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party 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;
- (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 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 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;
- (g) 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;
- (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) 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;
- (j) 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 14.2(c) to clause 14.2(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 Without affecting any other remedy or right available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if there is a change of control of the Supplier.

14.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy, overwrite, randomise or otherwise dispose of any of the Customer Data in its possession within 30 days of termination of this agreement, unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications

network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Warranties

Each party warrants, represents and undertakes that:

- 16.1 it has full capacity and authority to enter into and to perform this agreement; and
- 16.2 this agreement is executed by a duly authorised representative of that party.

17. Further Assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

18. Conflict

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

19. Variation

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

20. Waiver

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

21. Rights and remedies

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

22. Severance

- 22.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 22.2 If any provision or part-provision of this agreement is deemed deleted under clause 22.1 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.

23. Entire agreement

- 23.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 23.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 23.4 Nothing in this clause shall limit or exclude any liability for fraud.

24. Assignment

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

25. No partnership or agency

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

26. Third party rights

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

27. Notices

- 27.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or sent by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
 - (b) sent by prepaid airmail or by reputable international overnight courier (if the notice is to be served by post to an address outside the country from which it is sent).
- 27.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
 - (c) if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00am on the fifth Business Day after posting; or
 - (d) if sent by reputable overnight courier an address outside the country from which it is sent, on signature of a delivery receipt.
- 27.3 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.
- 27.4 For the purpose of this clause 27, all references to time are to local time in the place of deemed receipt.
- 27.5 A notice given under or in connection with this Agreement is not valid if sent by email.

28. Governing law

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

29. Jurisdiction

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