



FoCul SaaS and Hybrid SaaS Terms and Conditions

07.10.2019 Rev B

1.	Definitions	4
2.	Term.....	8
3.	Set Up Services	9
4.	Acceptance procedure.....	9
5.	Hosted Services	10
6.	Customisations	11
7.	Maintenance Services.....	12
8.	Support Services	12
9.	Customer obligations.....	12
10.	Customer Systems	13
11.	Customer Data.....	13
12.	Integrations with Third Party Services.....	13
13.	Mobile App.....	14
14.	No assignment of Intellectual Property Rights.....	15
15.	Representatives	15
16.	Management	15
17.	Change control	15
18.	Charges.....	16
19.	Expenses.....	16
20.	Timesheets	17
21.	Payments.....	17
22.	Confidentiality obligations	17
23.	Publicity.....	19
24.	Data protection.....	19
25.	Warranties.....	21
26.	Acknowledgements and warranty limitations.....	23
27.	Indemnities.....	23
28.	Limitations and exclusions of liability	24
29.	Force Majeure Event.....	25
30.	Termination.....	26
31.	Effects of termination	27
32.	Non-solicitation of personnel	27
33.	Notices	27
34.	Subcontracting.....	28
35.	Assignment.....	29

36.	No waivers.....	29
37.	Severability.....	29
38.	Third party rights.....	29
39.	Variation.....	29
40.	Entire agreement.....	29
41.	Law and jurisdiction.....	30
42.	Interpretation.....	30
43.	Schedules 1 – 6.....	30
43.1.	Schedule 1 (Acceptable Use Policy).....	30
43.2.	Schedule 2 (Availability SLA).....	30
43.3.	Schedule 3 (Maintenance SLA).....	30
43.4.	Schedule 4 (Support SLA).....	31
43.5.	Schedule 5 (Not Used).....	31
43.6.	Schedule 6 (Data processing information).....	31
43.7.	Example Services Order Form.....	31

SaaS and Hybrid SaaS Terms and Conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services shall be governed by these Terms and Conditions, and the Provider will ask the Customer for the Customer's express written acceptance of these Terms and Conditions before providing any such services to the Customer.

In the context of this document Hybrid SaaS describes a model whereby some or all of the services are hosted on the Customer premises or on third party cloud services which are ultimately controlled by the Customer although the Provider may have been given some degree of administration access. Any use of Hybrid SaaS will be set out in the Services Order Form.

These Terms & Conditions must be read in conjunction with the Services Order Form.

1. Definitions

Except to the extent expressly provided otherwise, in these Terms and Conditions:

"Acceptance Criteria" means:

- (a) the Platform and Hosted Services conforming in all respects with the Hosted Services Specification; and
- (b) the Hosted Services being free from Hosted Services Defects;

"Acceptance Period" means a period of 10 Business Days following the making available of the Hosted Services to the Customer for the purposes of testing in accordance with Clause 4 or any repeated making available of the Hosted Services to the Customer for the purposes of testing in accordance with Clause 4, or such other period or periods as the parties may agree in writing;

"Acceptance Tests" means a set of tests designed to establish whether the Hosted Services meet the Acceptance Criteria as agreed and documented by the parties acting reasonably in advance of the first Acceptance Period;

"Account" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"CCN" means a change control notice issued in accordance with Clause 17;

"CCN Consideration Period" means the period of 10 Business Days following the receipt by a party of the relevant CCN from the other party;

"Change" means any change to the scope of the Services OR any change to the Agreement;

"Charges" means the following amounts:

- (A) such amounts as may be agreed in writing by the parties from time to time;

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer" means the person or entity identified as such in Section 1 of the Services Order Form;

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 27.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement, but excluding *personal data* with respect to which the Provider is a data controller;

"Customer Representatives" means the person or persons identified as such in Section 6 of the Services Order Form, and any additional or replacement persons that may be appointed by the Customer giving to the Provider written notice of the appointment;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Customisation" means a customisation of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date upon which the parties have agreed that the service will begin.

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means the Hosted Services as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet or a Hybrid SaaS Service in accordance with these Terms and Conditions;

"Hosted Services Defect" means a defect, error or bug in the Platform having an a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or

- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Section 3 of the Services Order Form and in the Documentation;

"Hybrid SaaS" means that some of the services are delivered using Customer on-premises services or Third Party Services in the cloud which are ultimately managed by the customer. The Provider may have been given some administration access to these resources but the resources are ultimately controlled by the Customer.

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of the Agreement, the period of 12 months beginning on the Effective Date;

"Mobile App" means the mobile application known as the "FoCul App" that is made available by the Provider through the *Google Play Store*, the *Apple App Store* or *directly*;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider" means FoCul Ltd, a company incorporated in England and Wales (registration number 4014994) having its registered office at FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE having its principal place of business at FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE;

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and

(b) the terms of the Agreement;

"Provider Indemnity Event" has the meaning given to it in Clause 27.1;

"Provider Representatives" means the person or persons identified as such in Section 6 of the Services Order Form, and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;

"Remedy Period" means a period of 20 Business Days following the Customer giving to the Provider a notice that the Hosted Services have failed the Acceptance Tests, or such other period as the parties may agree in writing;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Services Order Form" means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

"Set Up Services" means the configuration, implementation and integration of the Hosted Services in accordance with Section 2 of the Services Order Form;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Terms and Conditions" means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"Third Party Services" means any hosted or cloud services provided by any third party that may transmit data to and/or from the Hosted Services;

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

2. Term

2.1 The Agreement shall come into force upon the Effective Date.

- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 30.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

3. Set Up Services

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use all reasonable endeavours to ensure that the Set Up Services are provided in accordance with the timetable set out in Section 2 of the Services Order Form
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 28.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4. Acceptance procedure

- 4.1 During each Acceptance Period, the Customer shall carry out the Acceptance Tests.
- 4.2 The Provider shall provide to the Customer at the Provider's own cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as the Customer may reasonably request.
- 4.3 Before the end of each Acceptance Period, the Customer shall give to the Provider a written notice specifying whether the Hosted Services have passed or failed the Acceptance Tests.
- 4.4 If the Customer fails to give to the Provider a written notice in accordance with Clause 4.3, then the Hosted Services shall be deemed to have passed the Acceptance Tests.
- 4.5 If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests, then the Customer must provide to the Provider, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.
- 4.6 If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests:
 - (a) if the Provider acting reasonably agrees with the Customer that the Hosted Services have not passed the Acceptance Tests, then the

Provider must correct the issue and make available the corrected Hosted Services to the Customer before the end of the Remedy Period for a further round of Acceptance Tests; or

- (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Hosted Services have not passed the Acceptance Tests, and if appropriate a plan of action reasonably satisfactory to both parties, and they must record any agreement reached in writing.

4.7 Notwithstanding the other provisions of this Clause 4, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 4 shall be 3, and if the final round of Acceptance Tests is failed, the Provider shall be deemed to be in material breach of the Agreement.

4.8 A notification by the Customer that the Hosted Services have passed the Acceptance Tests will not prejudice the Customer's rights in the event of a breach of any warranty given by the Provider to the Customer in the Agreement in relation to the Hosted Services; nor will any deemed passing of the Acceptance Tests under this Clause 4.

5. Hosted Services

5.1 The Provider shall create an Account for the Customer Administrator and shall provide to the Customer login details for that Account upon the acceptance of the Hosted Services by the Customer in accordance with Clause 4.

5.2 The Provider hereby grants to the Customer a worldwide, non-exclusive license to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation during the Term.

5.3 The license granted by the Provider to the Customer under Clause 5.2 is subject to the following limitations:

- (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
- (b) the Hosted Services must not be used at any point in time by more than the number of named users specified in the Services Order Form. Named users must be identified by their first name and last name.

5.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:

- (a) the Customer must not sub-license its right to access and use the Hosted Services;
- (b) the Customer must not permit any unauthorized person to access or use the Hosted Services;

- (c) the Customer must not use the Hosted Services to provide services to third parties;
 - (d) the Customer must not republish or redistribute any content or material from the Hosted Services;
 - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
 - (f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.
- 5.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to the administrator Account access details, to ensure that no unauthorized person may gain access to the Hosted Services using an administrator Account.
- 5.6 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.
- 5.7 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).
- 5.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 5.9 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 5.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

6. Customisations

- 6.1 The Provider and the Customer may agree that the Provider shall design, develop and implement a Customisation or Customisations in accordance with a specification and project plan agreed in writing by the parties
- 6.2 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider (unless the parties agree otherwise in writing).
- 6.3 From the time and date when a Customisation is first delivered or made available by the Provider to the Customer, the Customisation shall form part of

the Platform, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by Clause 5.

- 6.4 The Customer acknowledges that the Provider may make any Customisation available to any of its other customers or any other third party unless formally agreed otherwise in writing.

7. Maintenance Services

- 7.1 The Provider shall provide the Maintenance Services to the Customer.
- 7.2 The Provider shall provide the Maintenance Services with reasonable skill and care.
- 7.3 The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).
- 7.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

8. Support Services

- 8.1 The Provider shall provide the Support Services to the Customer.
- 8.2 The Provider shall provide the Support Services with reasonable skill and care
- 8.3 The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).
- 8.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

9. Customer obligations

- 9.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
- (a) co-operation, support and advice;
 - (b) information and documentation; and
 - (c) governmental, legal and regulatory licences, consents and permits,
- as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

- 9.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement.

10. Customer Systems

- 10.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of Section 4 of the Services Order Form in all material respects, subject to any changes agreed in writing by the Provider.

11. Customer Data

- 11.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.
- 11.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 11.3 The Provider shall create a back-up copy of the Customer Data in accordance with the schedule set out in the Services Order Form, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 11.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 11.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

12. Integrations with Third Party Services

- 12.1 The Provider may integrate Third Party Services with the Hosted Services at any time.
- 12.2 The Provider may remove, suspend or limit any Third Party Services integration at any time in its sole discretion.
- 12.3 The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract to supply the Third Party Services and is not a party to any

contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.

12.4 The Customer acknowledges that:

- (a) the integration of Third Party Services may entail the transfer of Customer Data from the Hosted Services to the relevant Third Party Services

12.5 Without prejudice to its other obligations under this Clause 12, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:

- (a) the transfer of relevant Customer Personal Data to a provider of Third Party Services is lawful; and
- (b) the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.

12.6 The Customer shall have the opportunity to consent to transfers of Customer Data to any Third Party Services operator. The Provider must ensure that such transfers shall not take place without the consent of the Customer.

12.7 The Customer hereby consents to the transfer of the Customer Data to the Third Party Services.

12.8 The use of some features of the Hosted Services may depend upon the Customer enabling and agreeing to integrations between the Hosted Services and Third Party Services.

12.9 The Customer warrants to the Provider that the transfer of Customer Data by the Provider to a provider of Third Party Services in accordance with this Clause 12 will not infringe any person's legal or contractual rights and will not put the Provider in breach of any applicable laws.

12.10 Additional Charges may be payable by the Customer to the Provider in respect of a Third Party Services integration.

12.11 Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 28.1:

- (a) the Provider gives no warranties or representations in respect of any Third Party Services; and
- (b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third Party Services or any provider of Third Party Services.

13. Mobile App

13.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to

separate terms and conditions, and accordingly these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

14. No assignment of Intellectual Property Rights

14.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

15. Representatives

15.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in the Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:

- (a) may treat all such instructions as the fully authorised instructions of the Provider; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

15.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in the Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

16. Management

16.1 The parties shall hold management meetings at each party's offices, by telephone conference or using internet-based conferencing facilities:

- (a) once per six months during the Term; and
- (b) at the reasonable request of either party.

16.2 A party requesting a management meeting shall give to the other party at least 10 Business Days written notice of the meeting.

16.3 Wherever necessary to enable the efficient conduct of business, the Provider shall be represented at management meetings by at least 1 Provider Representative and the Customer shall be represented at management meetings by at least 1 Customer Representative.

17. Change control

17.1 The provisions of this Clause 17 apply to each Change requested by a party.

- 17.2 Either party may request a Change at any time.
- 17.3 A party requesting a Change shall provide to the other party with written information on the change required. This will be known as a Change Control Note.
- 17.4 The Provider will determine if the change is allowable and on what cost basis it should be made.

18. Charges

- 18.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 18.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 18.2.
- 18.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 18.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation providing that the sum of variations to the element of the charges over a 12 month period shall not exceed 5% over the annual percentage increase of the most recent variation of the "Private Sector Earnings series" published by the UK Office for National Statistics.

19. Expenses

- 19.1 The Customer shall reimburse the Provider in respect of any Expenses, providing that the Provider must obtain the prior written authorisation of the Customer before incurring any Expenses exceeding such limitations as may be agreed in writing by the parties from time to time.
- 19.2 The Provider must collect and collate evidence of all Expenses, and must retain such evidence during the Term and for a period of 90 days following the end of the Term.
- 19.3 Within 10 Business Days following receipt of a written request from the Customer to do so, the Provider must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Provider as the Customer may specify in that written request.

20. Timesheets

20.1 The Provider must:

- (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
- (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.

20.2 Within 10 Business Days following receipt of a written request, the Provider shall supply to the Customer copies of such of the timesheets referred to in Clause 20.1 and in the Provider's possession or control as the Customer may specify in that written request.

21. Payments

21.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.

21.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 21

21.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).

21.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

22. Confidentiality obligations

22.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's

own confidential information of a similar nature, being at least a reasonable degree of care;

- (d) act in good faith at all times in relation to the Customer Confidential Information; and

22.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality approved in writing by the Provider;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information;

22.3 Notwithstanding Clauses 22.1 and 22.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

22.4 No obligations are imposed by this Clause 22 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the other party;
- or

22.5 The restrictions in this Clause 22 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

22.6 Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information.

22.7 Following the termination of the Agreement, and within 30 Business Days following the date of receipt of a written request from the other party following the date of termination of the Agreement, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.

22.8 The provisions of this Clause 22 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

23. Publicity

23.1 Neither party may make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

23.2 Nothing in this Clause 23 shall be construed as limiting the obligations of the parties under Clause 22.

24. Data protection

24.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

24.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

24.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement:

- (a) the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 6 (Data processing information) (or such other categories as may be agreed by the parties in writing); and
- (b) Personal Data of the types specified in Part 2 of Schedule 6 (Data processing information) (or such other types as may be agreed by the parties in writing).

24.4 The Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 6 (Data processing information).

24.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 24.

24.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.

24.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:

- (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities providing that such transfers must be protected by appropriate safeguards;

- (b) the Provider may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in Part 5 of Schedule 6 (Data processing information), providing that such transfers must be protected by any appropriate safeguards identified therein; and
 - (c) the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the European Commission has decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 24.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 24.9 Notwithstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 24.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 24.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Schedule 6 (Data processing information).
- 24.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 24.
- 24.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Part 5 of Schedule 6 (Data processing information).
- 24.14 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 24.15 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the

notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.15.

24.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after the Provider becomes aware of the breach.

24.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 24 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.17, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.

24.18 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

24.19 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 24. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of the Agreement or any security breach affecting the systems of the Provider.

24.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

25. Warranties

25.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the

fulfilment of the Provider's obligations under these Terms and Conditions;
and

- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

25.2 The Provider warrants to the Customer that:

- a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs;
and
- (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

25.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

25.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

25.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Hosted Services in accordance with these Terms and Conditions.

25.6 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

25.7 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

26. Acknowledgements and warranty limitations

- 26.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 26.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 26.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 26.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy, Engineering, Operations or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

27. Indemnities

- 27.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions OR (a "**Provider Indemnity Event**").
- 27.2 The Customer must:
- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
 - (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
 - (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
 - (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

27.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

27.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

27.5 The indemnity protection set out in this Clause 27 shall be subject to the limitations and exclusions of liability set out in the Agreement.

28. Limitations and exclusions of liability

28.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

28.2 The limitations and exclusions of liability set out in this Clause 28 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 28.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

28.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

- 28.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 28.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 28.6 Neither party shall be liable to the other in respect of any loss of use or production.
- 28.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 28.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.
- 28.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 28.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.
- 28.11 The aggregate liability of each party to the other party under the Agreement shall not exceed the greater of:
- (a) GBP 100,000 ; and
 - (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

29. Force Majeure Event

- 29.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 29.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 29.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

30. Termination

- 30.1 The Provider may terminate the Agreement by giving to the Customer not less than 30 days' written notice of termination after the end of the Minimum Term. The Customer may terminate the Agreement by giving to the Provider not less than 30 days written notice of termination after the end of the Minimum Term.
- 30.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any breach of the Agreement, and the breach is not remediable;
 - (b) the other party commits a breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 30.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
- 30.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:
- (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 30.4.

31. Effects of termination

- 31.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.8, 5.10, 12.11, 13, 19.2, 19.3, 20, 21.2, 21.4, 22, 23, 24.1, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 24.10, 24.11, 24.12, 24.13, 24.14, 24.15, 24.16, 24.17, 24.18, 24.19, 24.20, 27, 28, 31, 32, 35, 36, 37, 38, 39, 40, 41 and 42.
- 31.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.
- 31.3 Within 30 days following the termination of the Agreement for any reason:
 - (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
 - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,without prejudice to the parties' other legal rights.

32. Non-solicitation of personnel

- 32.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.
- 32.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of the Agreement.

33. Notices

- 33.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.
- 33.2 Any notice given by the Customer to the Provider under these Terms and Conditions must be:

- (a) sent by recorded signed-for post;
- (b) sent by email;

or using the relevant contact details set out in Section 7 of the Services Order Form.

33.3 Any notice given by the Provider to the Customer under these Terms and Conditions must be:

- (a) sent by recorded signed-for post;
- (b) sent by email;

or using the relevant contact details set out in Section 7 of the Services Order Form.

33.4 The addressee and contact details set out in Section 7 of the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 33.

33.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

33.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

- (a) in the case of notices sent by post, 48 hours after posting;
- (b) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent);

34. Subcontracting

34.1 The Provider must not subcontract any of its obligations under the Agreement without the prior written consent of the Customer, providing that the Customer must not unreasonably withhold or delay the giving of such consent.

34.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

34.3 Notwithstanding the provisions of this Clause 34 but subject to any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

35. Assignment

- 35.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under these Terms and Conditions.
- 35.2 The Provider hereby agrees that the Customer may assign, transfer or otherwise deal with the Customer's contractual rights and obligations under these Terms and Conditions.

36. No waivers

- 36.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 36.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

37. Severability

- 37.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 37.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

38. Third party rights

- 38.1 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 38.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

39. Variation

- 39.1 The Agreement may not be varied except by means of a written document signed by or on behalf of each party, without prejudice to the requirements of Clause 17.

40. Entire agreement

- 40.1 The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all

previous agreements, arrangements and understandings between the parties in respect of that subject matter.

40.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

40.3 The provisions of this Clause 40 are subject to Clause 28.1.

41. Law and jurisdiction

41.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

41.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

42. Interpretation

42.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

42.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

42.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

42.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

43. Schedules 1 – 6

43.1. *Schedule 1 (Acceptable Use Policy)*

See Schedule 1

43.2. *Schedule 2 (Availability SLA)*

See Schedule 2

43.3. *Schedule 3 (Maintenance SLA)*

See Schedule 3

43.4. Schedule 4 (Support SLA)

See Schedule 4

43.5. Schedule 5 (Not Used)

See Schedule 5

43.6. Schedule 6 (Data processing information)

See Schedule 6

43.7. Example Services Order Form

See Services Order Form

Schedule 1 (Acceptable Use Policy)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
 - (a) the use of any web sites provided by FoCul Ltd (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to *FoCul Ltd* (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
 - (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Monitoring

- 3.1 You acknowledge that we may monitor the Content and the use of the Services.

Schedule 2 (Availability SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least that set out in Section 3 of the Services Order Form during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.

3. Service credits

- 3.1 In respect of each calendar month during which the Hosted Services uptime is less than the commitment specified in Section 3 of the Services Order Form, the Customer shall earn service credits in accordance with the provisions of this Part 3.
- 3.2 The service credits earned by the Customer shall be as follows: For services not meeting the SLA a credit as set out in the Services Order Form will be available. This credit must be claimed within 60 days of the event.
- 3.3 Upon receipt and verification of the claim the Provider shall deduct an amount equal to the service credits due to the Customer under this Part 3 from amounts invoiced in respect of the Charges for the Hosted Services. All remaining service credits shall be deducted from each invoice issued following the reporting of the relevant failure to meet the uptime commitment, until such time as the service credits are exhausted.
- 3.4 Service credits shall be the sole remedy of the Customer in relation to any failure by the Provider to meet the uptime guarantee in Paragraph 2.1, except where the failure amounts to a material breach of the Agreement.
- 3.5 Upon the termination of the Agreement, the Customer's entitlement to service credits shall immediately cease, save that service credits earned by the Customer shall be offset against any amounts invoiced by the Provider in respect of Hosted Services following such termination.

4. Exceptions

- 4.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:

- (a) a Force Majeure Event;
- (b) a fault or failure of the internet or any public telecommunications network;
- (c) a fault or failure of the Provider's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between the Provider and that company;
- (d) a fault or failure of the Customer's computer systems or networks;
- (e) any breach by the Customer of the Agreement; or
- (f) scheduled maintenance carried out in accordance with the Agreement.

Schedule 3 (Maintenance SLA)

1. Introduction

- 1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

- 2.1 The Provider shall where practicable give to the Customer at least 1 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

3. Updates

- 3.1 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and prior written notice of the application of any non-security Update to the Platform.
- 3.2 The Provider shall apply Updates to the Platform as follows:
- (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
 - (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
 - (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

4. Upgrades

- 4.2 The Provider shall give to the Customer at least 10 Business Days' prior written notice of the application of an Upgrade to the Platform.

Schedule 4 (Support SLA)

1. Introduction

1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

3.1 Issues raised through the Support Services shall be categorised as follows:

- (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
- (b) serious: a core function of the Hosted Services is significantly impaired;
- (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
- (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 Business Hour;
- (b) serious: 4 Business Hours;
- (c) moderate: 1 Business Day; and
- (d) minor: 5 Business Days.

- 3.4 The Provider shall ensure that its response to a request for Support Services shall include an acknowledgement of receipt and a ticket number.
- 3.5 The Provider shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:
 - (a) critical: 4 Business Hours;
 - (b) serious: 12 Business Hours;
 - (c) moderate: 5 Business Days; and
 - (d) minor: a commitment to fix the issue.

4. Provision of Support Services

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

- 5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed 15 hours then for non bug related support requests :
 - (a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
 - (b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:
 - (a) the improper use of the Hosted Services by the Customer; or
 - (b) any alteration to the Hosted Services made without the prior consent of the Provider.

Schedule 5 (Not Used)

Schedule 6 (Data processing information)

1. Categories of data subject

The Customer's employees (including temporary or casual workers)

The Customer's suppliers and sub-contractors.

2. Types of personal data

Names, postal addresses, email addresses and telephone numbers

3. Purposes of processing

To co-ordinate customer activities

Example Services Order Form

A copy of this form will be completed for each service provision.

1. Customer details

The Customer is *[company name]*, a company incorporated in [England and Wales] (registration number *[registration number]*) having its registered office at *[address]* OR *[partnership name]*, a partnership established under the laws of [England and Wales] having its principal place of business at *[address]*.

2. Set Up Services

[Specify Set Up Services and timetable]

3. Specification of Hosted Services

[Specify Hosted Services and any relevant usage limitations]

[Specify Site / Users]

[Hybrid Hosting Provisions]

4. Customer Systems

[Identify Customer Systems requirements]

5. Financial provisions

The Effective Start Date for the agreement is [DDMMYY]

[Annual Increment on anniversary or 1/9/YY]

The Client shall pay to the Provider the Fees on either monthly (1 month) or annual (12 months) basis in advance. Payment will be due on the date as specified on the invoice.

All charges of the Company are exclusive of any taxes, for which the Client shall be additionally liable at the applicable rate from time to time. If any federal, state or local governmental entity with taxing authority over the services provided under this agreement imposes a tax directly on the services provided by provider to Client under this agreement, then Provider may pass the direct amount of such cost on to Client, and Client shall promptly pay such cost.

6. Representatives

The Provider Representatives are: *Sean Cull or Martin Davies*

The Customer Representatives are: *[identify representatives]*.

7. Contractual notices

Provider contractual notices address details

FoCul Ltd, 132-134 Great Ancoats Street, Manchester, M4 6DE

[Customer contractual notices address details]

The parties have indicated their acceptance of the Agreement by signing below.

SIGNED BY _____ on _____

the Provider, duly authorised for and on behalf of the Provider:

SIGNED BY _____ on
, the Customer, duly authorised for and on behalf of the Customer]:

- End of document -