

December 2017 Edition

GENEO SOFTWARE LICENCE AGREEMENT

TERMS AND CONDITIONS OF USE: CLOUD HOSTED

Your attention is specifically drawn to clause 13 which limits our liability to you.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms and Conditions of Use.

Active Account: an individual user account within the Software allocated to the Customer and which is accessible by the Customer at any given time.

Affiliate: each and any subsidiary or holding company of the Customer and each and any subsidiary of a holding company of the Customer, and the terms "holding company" and "subsidiary" shall have the meaning given to them by section 1159 of the Companies Act 2006.

Annual Licence: a licence granted to a Customer pursuant to clause 2.1 of these Terms and Conditions that has a twelve month notice period as specified in the Key Information Sheet.

Archived Account: an individual user account within the Software allocated to the Customer and which has been deactivated either by the Customer or at the Customer's request.

Authorised Users: the Customer and those directors, employees and independent contractors of the Customer (if any) who are entitled to use the Software pursuant to these Terms and Conditions of Use.

Backup Services: means the back-up services (if any) to be provided by the Supplier as described in the Service Level Agreement applicable to the Customer.

Business Day: any day which is not a Saturday, Sunday or public holiday in England.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression Change of Control shall be construed accordingly.

Customer Data: the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by the Supplier or Affiliates or contractors of the Supplier on the Customer's behalf.

Effective Date: the Start Date specified in the Key Information Sheet.

Fees: the aggregate of all fees payable to the Supplier, as described in the Key Information Sheet.

Hosting Fees: the fees payable to the Supplier for the provision of Hosting Services Specified in the Key Information Sheet.

Hosting Services: The services that the Supplier provides to allow Authorised Users to access and use the Software, as more particularly described in the Supplier's Hosting Policy from time to time, a copy of which is available in the client information section on the Supplier's

website (www.geneo.co.uk) or at such other website address as the Supplier may notify to the Customer from time to time. Where the Hosting Policy conflicts with these Terms and Conditions of Use and/or any Service Level Agreement, the provisions of the Hosting Policy shall prevail to the extent they are lawful.

Key Information Sheet: means the key information sheet issued by the Supplier to the Customer, pursuant to which the Customer agrees or is deemed to have agreed to be bound by these Terms and Conditions of Use and which forms part of these Terms and Conditions of Use.

Licence Fee: the Fees payable to the Supplier for use of the Software.

Licence Term: means the period commencing on the Effective Date and ending on the date at which this Licence is terminated in accordance with its terms.

Maintenance Fee: the fee (if any) payable by the Customer for the Support Services as specified in the Key Information Sheet.

Maintenance: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Hosting Services under the application Service Level Agreement.

Nominated Contact: the person details in the Key Information Sheet, or such other or additional person as the Customer may nominate in writing to the Supplier from time to time.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Notice to the Customer: any reference in these Terms and Conditions of Use to notice being provided to the Customer shall be to a notice sent by e-mail or post (at the Supplier's discretion) to the Nominated Contact at the address or e-mail address set out on the Key Information Sheet or notified to the Supplier from time to time by the Customer.

Service Level Agreement: the service level agreement selected by the Customer, as detailed in the Key Information Sheet. Details of the Service Level Agreements (as amended from time to time by the Supplier) are available in in the client information section on the Supplier's website (www.geneo.co.uk) or at such other website address as the Supplier may notify to the Customer from time to time.

Services: the Hosting Services and/or Support Services as applicable, given the context in which the term **Services** is used.

Software or GENEIO Software: the Supplier's proprietary software in machine-readable object code form, with the Software Specification, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under these Terms and Conditions of Use or the Service Level Agreement (as applicable).

Software Specification: the minimum level of functionality and performance specifications for the Software selected by the Customer, as set out the Key Information Sheet.

Start Date: the start date specified in the Key Information Sheet.

Supplier: GENEIO Software Limited, a private limited company incorporated in England and Wales with registered number 06082371 (or, where the context requires, its successors and assigns) whose registered office is Dalton House, Dalton Square, Lancaster LA1 1WD.

Support Services: Maintenance and any other support and training services agreed to be

provided by the Supplier (or any member of the Supplier's group), as described in the Service Level Agreement and/or the Key Information Sheet.

Terms and Conditions: these Terms and Conditions of use (as amended or replaced by the Supplier from time to time) and any other document referred to herein or, where the context requires, the licence granted to the Customer at clause 2.

User Site Population: the total number of directors, employees, and contractors of the Customer or, where the Key Information Sheet specifies that the Licence shall only apply to the Authorised Users working at a particular Customer location, the total number of directors, employees and contractors of the Customer working at that location.

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 these Terms and Conditions of Use.
- 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 Words in the singular shall include the plural and vice versa.
- 1.6 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 for the time being, taking account of any amendment, extension, or re- enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of these Terms and Conditions of Use.

2. Software Licence

- 2.1 The Supplier hereby grants to the Customer for the duration of the Licence Term and subject to these Terms and Conditions of Use a non-exclusive, non-transferable licence to allow Authorised Users to use the Software solely for the Customer's internal business purposes. The Supplier also hereby grants the Customer for the duration of the Licence Term the right to access the Software through the Hosting Services.
- 2.2 The licence granted to the Customer pursuant to clause 2.1 is granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer.
- 2.3 The Customer shall have sole responsibility for ensuring that the Software is suitable and adequate for the Customer's purposes and that the Customer's computer system

is compatible with use or access (as applicable) to Software and the Services. Details of the applications required to access the Software and the Services are detailed at the Supplier's website (www.geneo.co.uk) or such other website address and the Supplier may notify to the Customer from time to time.

2.4 The Customer undertakes that it shall not:

- (a) store, distribute or transmit any Viruses, or any material through the Hosting Services that is unlawful, harmful (to any person or property), threatening, defamatory, obscene, infringing illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activities (and the Supplier reserves the right, without liability or prejudice to its other rights against the Customer, to restrict or disable the Customer's access to any material that breaches the provisions of this clause 2.4(a));
- (b) attack the Software or Hosting Services via a denial-of-service attack or a distributed denial-of-service attack;
- (c) attempt to copy, duplicate, modify, create derivative works from frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software in any form or media or by any means, except to the extent expressly set out in these Terms and Conditions of Use or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- (d) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- (e) access all or any part of the Software or Hosting Services in order to build a product or service which competes or is intended to compete with the Software and/or the Services;
- (f) use the Software or Hosting Services to provide services to third parties;
- (g) licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or make available to any third party the Services;
- (h) transfer, temporarily or permanently, any of its rights under these Terms and Conditions of Use; or
- (i) attempt to obtain, or assist any persons who are not Authorised users in obtaining, access to the Software.

2.5 In relation to the Customer's use of the Software and the Services:

- (a) the Customer's access to the Software and Hosting Services shall be limited to the directors, employees or independent contractors of the Customer;
- (b) the Customer undertakes to ensure that the number of Authorised Users that it authorises to access and use the Software and the Services shall not exceed the User Site Population specified in the Key Information Sheet or such greater User Site Population as has been notified to the Supplier pursuant to clause 2.9;
- (c) the Customer shall ensure that each Authorised User is allocated a separate

Active Account, keeps a secure password for his use of the Software via his Active Account, that such password is changed no less frequently than quarterly and that each Authorised User keeps his password confidential and does not permit any other individual to use his allocated Active Account; and

- (d) the Customer shall ensure that access to the super user administrative functionality within the Software is only provided to the Nominated Contact and those Authorised Users who are at a coordinator level and who have received specific training on the functionality of such access.
- 2.6 The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Software and shall notify the Supplier promptly of any such unauthorised access or use.
- 2.7 The Customer agrees and acknowledges that the Supplier may monitor the Customer's use of the Hosting Services in order to determine the number of Active Accounts and the use of those Active Accounts in accordance with clause 2.4 and 2.5, providing that such monitoring shall be conducted at the Supplier's expense and shall be conducted in a manner so as to not substantially interfere with the Customer's normal conduct of business.
- 2.8 If any monitoring carried out pursuant to clause 2.7 or otherwise reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to the Supplier's other rights, the Supplier may promptly disable such passwords and the Customer shall not issue any new passwords to such individuals.
- 2.9 The Customer shall notify the Supplier within 5 Business Days if its User Site Population exceeds the User Site Population specified in the Key Information Sheet, or exceeds the User Site Population previously notified to the Supplier pursuant to this clause 2.9.
- 2.10 If the Supplier is notified of an increase in the relevant User Site Population pursuant to clause 2.9 or it becomes aware of such an increase as a result of monitoring undertaken pursuant to clause 2.7 or otherwise and the increase is more than 10% of the User Site Population at the Start Date or any User Site Population previous notified pursuant to clause 2.9 the Supplier shall recalculate the Licence Fee accordingly and notify the Customer of the revised Licence Fee payable. Save where the Customer holds an Annual Licence, the revised Licence Fee shall apply from the end of the month in which the increased User Site Population is notified by the Customer or discovered by the Supplier. Where the Customer holds an Annual Licence the revised Licence Fee shall apply from the next anniversary of the Start Date.

3. Hosting Services

- 3.1 If the Supplier is notified of an increase in the relevant User Site Population pursuant to clause 2.9 or it becomes aware of such an increase as a result of monitoring undertaken pursuant to clause 2.7 or otherwise, it shall recalculate the Licence Fee accordingly and notify the Customer of the revised Licence Fee payable. The revised Licence Fee shall apply from the end of the month in which the increased User Site Population is notified by the Customer or discovered by the Supplier.
- 3.2 Subject to the Customer's continued compliance with its obligations under these Terms and Conditions of Use, the Supplier shall perform the Hosting Services for the duration of the Licence Term in accordance with the Hosting Policy.
- 3.3 The Supplier may amend or replace the Hosting Policy in its sole discretion from time to time by notifying the Customer not less than 30 days prior to such amendment or replacement taking effect, whereupon the amended and replaced Hosting Policy shall

bind the Customer.

- 3.4 In the event that the Supplier amends or replaces the Hosting Policy pursuant to clause 3.2, the Customer may serve notice on the Supplier to end the Licence Term on the effective date of such amendment or replacement, provided that any such notice is served by the customer on the Supplier not less than 1 days prior to such effective date.
- 3.5 Where the Hosting Policy makes reference to the terms and conditions of a third party supplier, the Hosting Policy shall be deemed to be automatically amended if and to the extent that such referenced terms and conditions are amended by the third party supplier. No notice of such an automatic amendment is required to be given by the Supplier to the Customer and no right of termination shall arise on the part of the Customer in respect of any such automatic amendment.

4. Support Services

- 4.1 Subject to the Customer's continued compliance with its obligations under these Terms and Conditions of Use of Use, the Supplier shall perform the Support Services for the duration of the Licence Term in accordance with the applicable Service Level Agreement and any special terms specified in the Key Information Sheet.
- 4.2 The Supplier may amend or replace the Service Level Agreement in its sole discretion from time to time by notifying the Customer not less than 30 days prior to such amendment or replacement taking effect, whereupon the amended and replaced Service Level Agreement shall bind the Customer.
- 4.3 In the event that the Supplier amends or replaces the Service Level Agreement pursuant to clause 4.2, the Customer may serve notice on the Supplier to end the Licence Term on the effective date of such amendment or replacement, provided that any such notice is served by the Customer on the Supplier not less than 14 days prior to such effective date.

5. Customer Data

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality , reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as described in the relevant Service Level Agreement or the Supplier's Hosting Policy (as applicable). The Supplier may, without obligation to the Customer, make such additional backup or archiving arrangements as it sees fit.
- 5.3 In the event of any loss or damage to Customer Data during the Licence Term, the Customer's sole and exclusive remedy 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 the relevant Service Level Agreement or the Supplier's Hosting Policy (as applicable).
- 5.4 The Supplier shall not be required to maintain, back-up, protect or retrieve any Customer Data after the expiry of the Licence Term.
- 5.5 If the Customer utilises the customer service icon provided within the Software, the Customer acknowledges that any Customer Data uploaded via such service will be subject to the relevant third-party supplier's security policy. The Supplier currently utilises the Fresh Desk application. For a copy of the Fresh Desk Security Policy see

<http://freshdesk.com/security>. The Supplier accepts no liability for any Customer Data transferred through the customer service icon provided within the Software.

- 5.6 The Supplier shall not be responsible for any loss suffered by the Customer as a result of or arising from the destruction, alteration, or disclosure of any Customer Data caused by any third party (including any third-party providing customer service functionality in connection with the Software), except and to the extent that the Supplier is entitled to recover and has so recovered an amount (net of the costs of recovery) equal to such loss from the relevant third party.
- 5.7 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under these Terms and Conditions of Use, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) the Customer undertakes to comply with all the requirements of the Data Protection Act 1998 in connection with any personal data processed by the Supplier on the Customer's behalf when performing its obligations under these Terms and Conditions of Use;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully process the personal data in accordance with these Terms and Conditions of Use on the Customer's behalf;
 - (c) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under these Terms and Conditions of Use;
 - (d) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing and transfer as required by all applicable data protection legislation;
 - (e) the Supplier shall process the personal data only in accordance with these Terms and Conditions of Use and any lawful instructions reasonably given by the Customer from time to time;
 - (f) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage; and
 - (g) the Customer shall make and maintain all necessary registration applications within all appropriate categories under the DPA as are required in relation to any personal data processed by the Supplier on the Customer's behalf when performing its obligations under these Terms and Conditions of Use.
- 5.8 The Customer shall indemnify and keep indemnified the Supplier against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever arising out of or in connection with the Supplier's processing of personal data on the Customer's behalf when performing its obligations under these Terms and Conditions of Use, save to the extent that the same is caused by or arises from the Supplier's (or its directors, employees or sub-contractors') negligence or breach of its obligations under these Terms and Conditions of Use.

6. **Supplier's obligations**

- 6.1 The Supplier undertakes that the Software will perform substantially in accordance with the Software Specification.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions or these Terms and Conditions of Use or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 6.3 If the Software does not conform with the foregoing warranty, the Supplier will at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.4 Notwithstanding the undertaking at clause 6.1, the Supplier:
- (a) does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free ; 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.
- 6.5 These Terms and Conditions shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under these Terms and Conditions of Use.
- 6.6 The Supplier shall appoint an account manager who shall be the Customer's primary point of contact for the Customer's activities under these Terms and Conditions of Use and who shall have the authority to contractually bind the Supplier on all matters relating to these Terms and Conditions of Use. The Supplier shall use reasonable endeavours to ensure continuity of its personnel assigned to these Terms and Conditions of Use but may replace them from time to time where reasonably necessary in the interests of the Supplier's business.

7. Customer's obligations

The Customer shall:

- 7.1 provide the Supplier with:
- (a) all necessary co-operation in relation to these Terms and Conditions of Use; and
 - (b) all necessary access to such information as may be required by the Supplier in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;
- 7.2 provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
- 7.3 appoint the Nominated Contact who shall be the Supplier's primary point of contact for the Supplier's activities under these Terms and Conditions of Use and who shall have the authority to contractually bind the Customer on all matters relating to these Terms and Conditions of Use. The Customer shall use reasonable endeavours to ensure

continuity of its personnel assigned to these Terms and Conditions of Use but may replace them from time to time where reasonably necessary in the interests of the Customer's business in accordance with these Terms and Conditions of Use;

- 7.4 comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions of Use and its use of the Software and the Services;
- 7.5 carry out all other Customer responsibilities set out these Terms and Conditions of Use and any policy or further terms (including the Service Level Agreement and Hosting Policy) referred to in these Terms and Conditions of Use 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 timetable or delivery schedule set out in the relevant Service Level Agreement, Hosting Policy or these Terms and Conditions of Use (as applicable) as reasonably necessary; and
- 7.6 ensure that the Authorised Users use the Software and Services in accordance with these Terms and Conditions of Use and shall be responsible for any Authorised User's breach of these Terms and Conditions of Use.

8. Charges and payment

- 8.1 The Customer shall pay to the Supplier the Licence Fee for use of the Software .
- 8.2 The Customer shall pay to the Supplier the Hosting Fee for the Hosting Services and the Maintenance Fee for the Support Services.
- 8.3 All amounts and fees due from the Customer shall be payable in pounds sterling and are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.4 Save where the Customer holds an Annual Licence, the Supplier shall invoice the Customer monthly on the first day of each month for:
 - (a) the Hosting Fee and Maintenance Fee for that month; and
 - (b) the Licence Fee for that month; and
 - (c) any other Fees (including fees in respect of optional file storage) for that month.
- 8.5 Where the Customer has an Annual Licence, the Supplier shall invoice the Customer on the Start Date and on each anniversary of the Start Date during the Licence Term for:
 - (a) the Hosting Fee and Maintenance Fee for the next 12 months;
 - (b) the Licence Fee for the next 12 months; and
 - (c) any other fixed fees (including fees in respect of optional file storage) for the next 12 months.

If a Party has served a notice prior to an invoice date to terminate the Annual Licence, references in this clause 8.5 to the "next 12 months" shall be deemed to refer to "the unexpired notice period".

If the Customer requests any additional Support Services during the Licence Term the applicable fees and/or expenses shall be invoiced on acceptance of the request or otherwise as provided in these Terms and Conditions. Where any such fees are

periodic, they shall be invoiced for the period up to the next anniversary of the Start Date.

- 8.6 Each invoice is due and payable 30 days after the invoice date. If the Supplier has not received payment by after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
 - (b) the Supplier may, at its option, restrict or deny the Customer's access to the Software; and
 - (c) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Lloyds Bank PLC at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.7 The Supplier shall be entitled to increase the Licence Fee payable and/or the Hosting Fee payable on each twelve month anniversary of the Start Date upon 90 days' prior notice to the Customer and the Key Information Sheet shall be deemed to have been amended accordingly.

9. Change of Key Information Sheet

- 9.1 The provisions of this clause 9 shall not apply to any of the following:
- (a) a change to the details of the Nominated Contact or the Supplier's designated account manager, which details may be changed on notice to the other party); or
 - (b) a change by the Supplier to the Hosting Policy (which change shall be dealt with in the manner set out in clause 3); or
 - (c) a change by the Supplier to the Service Level Agreement (which change shall be dealt with in the manner set out clause 4).
- 9.2 If either party wishes to change any details contained in the Key Information Sheet it shall submit details of the requested change to the other in writing.
- 9.3 If either party requests a change to the Software Specification or the Services (including the Customer's selected Service Level Agreement) , the Supplier shall, within a reasonable time , provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Licence Fee, Hosting Fee or Maintenance Fee arising from the change; and
 - (c) any other impact of the change on these Terms and Conditions of Use.
- 9.4 If the Supplier requests a change to the Software Specification or the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 9.5 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Key Information Sheet to take account of the change.

10. Proprietary rights

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Services. Except as expressly stated herein, these Terms and Conditions of Use do not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms and Conditions of Use.

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms and Conditions of Use. 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; or
 - (b) was in the other party's lawful possession before the disclosure; or
 - (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 otherwise than in breach of these Terms and Conditions of Use, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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 these Terms and Conditions of Use.
- 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 these Terms and Conditions of Use.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. Notwithstanding the generality of the foregoing, the Supplier shall not be responsible or liable for any loss or disclosure of any Customer Data caused by any third party providing customer service or fault reporting functionality in connection with the Software.
- 11.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.
- 11.6 This clause 11 shall, to the extent permitted by law, survive the end of the Term.

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 (including use by its Authorised Users) of the Software or Services, including as a result of:

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

provided that the Customer is given prompt notice of any such claim, the supplier provides reasonable cooperation to the Customer (at the Customer's cost) in the defence and settlement of such a claim and the Customer is given sole conduct of the claim (but subject always to the Supplier's consent to any settlement or admission that might restrict the Supplier's present or future business activities).

12.2 Subject to clause 12.3, the Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Start Date, copyright, 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 by the Customer;
- (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.

In the defence or settlement of any claim referred to in clause 12.2, the Supplier may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, end the term with immediate effect without any additional liability to pay liquidated damage or other additional costs to the Customer.

12.3 The Supplier shall have no liability under clause 12.2 if the alleged infringement is based on or arises from:

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

12.4 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

13. Limitation of liability

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer

in respect of:

- (a) any breach of these Terms and Conditions of Use, the Hosting Policy or the Service Level Agreement;
- (b) any use made by the Customer of the Services, the Software or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions of Use, the Hosting Policy or the Service Level Agreement.

13.2 Except as expressly and specifically provided in these Terms and Conditions of Use:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and Conditions of Use; and
- (c) the Software and the Services are provided to the Customer on an "as is" basis.

13.3 Nothing in these Terms and Conditions of Use 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.

13.4 The Hosting Policy states the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of the performance and/or availability of the Hosting Services and the Backup Services, or their non-performance and non-availability.

13.5 Subject to clause 13.3 and clause 13.4:

- (a) the Supplier shall not be liable whether in tort (including for 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 these Terms and Conditions of Use; and
- (b) the Supplier's total aggregate liability to the Customer:
 - (i) in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Supplier's obligations to these Terms and Conditions of Use; and
 - (ii) in respect of the indemnity provided at clause 12.2.

shall be limited to the aggregate Licence Fee, Maintenance Fee and Hosting Fee paid by the Customer (if any) during the 12 months preceding the date on which the claim was notified in writing to the Supplier.

14. Licence Term and Termination

- 14.1 The Licence Term shall commence on the Start Date and (unless it is terminated in accordance with any other provision of these Terms and Conditions of Use) shall continue and until it is terminated by either party giving to the other the period of notice specified in the Key Information Sheet.
- 14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Licence Term without liability to the other if:
- (a) the other party commits a material breach of any of these Terms and Conditions of Use and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) the other party repeatedly breaches any of these Terms and Conditions of Use in such a manner as to reasonable justify the opinion that its conduct is inconsistent with it having the intention to comply with these Terms and Conditions of Use; or
 - (c) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party (other than a winding up commenced in connection with a solvent restructuring of the relevant party's business); or
 - (d) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule 81 to the Insolvency Act 1986); or
 - (e) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - (f) (being an individual) is the subject of a bankruptcy petition or order; or
 - (g) the other party commences negotiations with or makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - (h) the other party ceases, or threatens to cease, to trade; or
 - (i) there is a Change of Control of the other party; or
 - (j) (being an individual) dies or by reason of illness or incapacity is incapable of managing his affairs; or
 - (k) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.3 On termination of the Licence Term for any reason:
- (a) all licences granted under these Terms and Conditions of Use shall immediately terminate;

- (b) each party shall promptly return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force majeure

- 15.1 The Supplier shall have no liability to the Customer under these Terms and Conditions of Use if it is prevented from or delayed in performing its obligations under these Terms and Conditions of Use, 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. Waiver

- 16.1 A waiver of any right under these Terms and Conditions of Use is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. Severance

- 17.1 If any provision (or part of a provision) of these Terms and Conditions of Use is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. Entire agreement

- 18.1 These Terms and Conditions, and any documents referred to in it (including the Key Information Sheet, the Hosting Policy and Service Level Agreement), constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover, including any previous licence of the Software.
- 18.2 Each of the parties acknowledges and agrees that in accepting these Terms and Conditions of Use it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms and Conditions of Use or not) relating to the subject matter of these Terms and Conditions of Use, other than as expressly set out in these Terms and Conditions of Use.

19. Assignment

19.1 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 these Terms and Conditions of Use.

19.2 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 these Terms and Conditions of Use (including, without limitation, assigning the benefit of these Terms and Conditions of Use to any person to whom it transfers a proprietary interest in the Software).

20. No partnership or agency

20.1 Nothing in these Terms and Conditions of Use 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).

21. Third party rights

21.1 These Terms and Conditions does not confer any rights on any person or party (other than the parties to these Terms and Conditions of Use and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. Notices

22.1 Any notice required to be given under these Terms and Conditions of Use shall be in writing and shall be delivered by hand or sent by

(a) pre-paid first-class post or recorded delivery post to the other party at its address; or

(b) in the case of notice to the Customer only, to the e-mail address of the Nominated Contact,

in each case as set out in the Key Information Sheet, or such other address as may have been notified by that party for such purpose.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. Governing law and jurisdiction

23.1 These Terms and Conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions of Use or its subject matter or formation (including non-contractual disputes

or claims).