



**Terms and Conditions for the
Supply of Services**

This general terms of service agreement is effective from date of order of a solution and is made between **Tangent 90 Limited**, a company registered in England and Wales with Company Number 06995868, whose principal place of business is at 27 Pegasus Court, Herschel Street, Slough, Berkshire SL1 1PA (“Us”, “We”, “Our”), and any CLIENT COMPANY who has entered into a working contract (“You”, “Your”) (together referred to as “Both of Us”).

BOTH OF US HEREBY AGREE AS FOLLOWS

1 Definitions

The following terms have the meanings set forth below whenever they are used in this Agreement:

- “Acceptance” means the confirmation by You that the Solution complies with the Specification, in accordance with Clause 7, and “Accepted” shall be construed accordingly.
- “Acceptance Period” means the times during which You may test the Solution for the purpose of determining whether it shall pass Acceptance.
- “Acceptance Testing” means testing carried out by You to verify that the Solution complies with the Specification.
- “Branding Materials” means those trademarks, logos, artworks, photographic images and other visual or audio materials provided by You to Us for incorporation into the Solution as set out in the Specification.
- “Change Control Process” means the process by which We respond to any request by You for modifications to the Solution or New Content or changes to the platform supporting the Solution as detailed in Clause 2.9.
- “CMS” means the content management system adopted for use by You in the management of the Solution.
- “CMS Users” means Your employees or duly authorised representatives who are named in the Specification and who are permitted by You to access the CMS.
- “Commencement Date” means the commencement date specified in the Specification hereto.
- “Content” means text and images to be included in the Solution.
- “Delivery Date” means the estimated date on which We shall first make available the Solution.
- “Issue” means the failure of the Solution or Services to perform in accordance with a reasonable interpretation of the Specification.
- “Hosting” means the hosting of the Solution on Our or Our subcontractor’s servers as detailed in the Specification and in accordance with the provisions of Clause 4 and “Host” and “Hosted” shall be construed accordingly.
- “Hosting Fee” means the fee payable by You to Us for the Hosting service.
- “L&R Acceptance” means Acceptance of the Solution by Your Legal and Regulatory department.
- “Marketing Acceptance” means Acceptance of the Solution by Your marketing department.
- “New Content” means Content to be developed or compiled by Us under this Agreement.
- “Proposal” means Our proposal to You setting out Our high-level vision of the design and functionality of the Solution, the estimated timescales in which We expect to deliver the Specification and to be able to develop the Solution, and the Specification Fee as detailed in the Estimate.
- “Services” means those services provided by Us in relation to development and implementation of the Solution as further set out in the Specification.

- “Services Fee” means the fee payable by You to Us as set out in the Estimate hereto and in accordance with the provisions of Clause 9 below.
- “Solution” means the item developed by Us under this Agreement in accordance with the Specification, Your Content, Branding Materials and the New Content.
- “Specification” means the document prepared by Us based on the Proposal and setting out the design and functionality of the Solution, Your Content and New Content to be attached hereto at the Specification when agreed in accordance with the provisions of Clause .
- “Specification Fee” means the fee payable by You to Us for the preparation of the Specification as set out in the Estimate.
- “Support and Maintenance” means support of the Solution and Services provided to You by Us as detailed in the Specification and in accordance with the provisions of Clause 5.
- “Support and Maintenance Fee” means the fee payable by You for Support and Maintenance and set out in the Estimate.
- “User” means an individual who is granted access to the Solution by You.
- “Your Content” means Content supplied by You.

2 Specification and Supply of Solution

- 2.1 Upon commencement of this Agreement (by order of services) and in consideration of the Specification Fee We shall prepare the Specification as further set out below.
- 2.2 Subject to Clause 2.1 We shall work with You to determine the required functionality, look-and-feel and design required by You in the Solution and shall prepare the Specification to reflect the outcome of these discussions, in line with the initial Proposal/Quote/Brief.
- 2.3 You shall review the Specification and notify Us any changes that You require. In the event that these impact on either the target Delivery Date or the Services Fee, We shall notify You of such at the time of submitting the updated Specification and Both of Us will agree on any updates to the Delivery Date and Services Fee prior to continuing with the development of the Solution.
- 2.4 Upon receipt of the updated Specification, You may either:
- 2.4.1 *Sign the Specification to indicate Your acceptance thereof, and submit a copy of such signed Specification, together with Your valid purchase order for the development of the Solution, to Us; or*
- 2.4.2 *Notify Us of further requests for change to the Specification; or*

- 2.4.3 *Pay the Specification Fee in accordance with Clause 9.2 and terminate this Agreement.*
- 2.5 If You have notified Us of further requests for change in accordance with Clause 2.4.2 We may, after reaching agreement, invoice You for the costs incurred in making such further changes to the Specification at Our usual hourly rates and You hereby agree to pay such invoice.
- 2.6 Title to the Specification shall be vested in You upon payment of the Specification Fee.
- 2.7 If You have accepted the Specification in accordance with Clause 2.4.1 the signed Specification shall become binding upon You and Us subject to the terms and conditions of this Agreement. We agree to develop the New Content and the Solution as set out in the Specification, incorporating Your Content and the Branding Materials. We will commence work on the New Content and the Solution upon agreement of the Specification and receipt of a corresponding purchase order from You.
- 2.8 The Delivery Date and any timescales given in the Estimate and the Specification are given in good faith but because of the nature of work undertaken they must be considered to be estimates only. While We shall make reasonable endeavours to maintain the Delivery Date and any timescales quoted, meeting such Delivery Date and timescales shall not constitute the essence of this Agreement.
- 2.9 You may request additions or amendments to the Solution and the New Content or changes to the platform supporting the Solution. We may also give notice to You that a change in circumstances prompted by You constitutes a request for modification to the Specification even though no formal request for modification has been issued by You. In response to such requests We shall:
- 2.9.1 *If You have purchased Support and Maintenance, and such request falls within the services set out in the Estimate and can be delivered within Your allocated budget of Support and Maintenance hours as set out therein, We shall document such addition and/or amendment and shall attach such to this Agreement as an addendum to the Specification and deliver the said addition and/or amendment subject to the terms and conditions of this Agreement; or*
- 2.9.2 *If Your request does not fall within the provisions of 2.9.1 above, We shall supply You with a written proposal including the specification for the work, price and approximate timescales for delivery. Once You have accepted such proposal in writing, it shall be attached to this Agreement as an Addendum to*

the Specification and shall be delivered subject to the terms and conditions of this Agreement.

- 2.10 Once agreement has been reached and work has commenced You will be liable for the full cost of the solution. If an order is cancelled we will endeavour to deliver the full or part solution developed to the best of our ability.

3 Supply of Services

- 3.1 For the duration of this Agreement and subject to the terms and conditions of this Agreement, We hereby grant to You and your Users a personal, non-transferable license to use the Solution in accordance with this Clause 3. You may use the CMS in accordance with this Clause 3.

- 3.2 You shall nominate a number of individuals as CMS Users up to the limit set out in the Specification. You shall ensure that access to each CMS User's login details is limited to the relevant CMS Users only and shall use reasonable security measures to safeguard such login details. The CMS Users may be changed by You from time to time.

- 3.3 You agree that, unless agreed in writing otherwise:

3.3.1 *You will not reverse engineer, decompile, or disassemble the Solution, except to the extent that We cannot prohibit such acts by the applicable law;*

3.3.2 *You are expressly prohibited from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing and creating derivative works of the Solution for any purpose including error correction or any other type of maintenance save that You may use the CMS to upload, download and edit Content on the Solution;*

3.3.3 *You will maintain and not remove any notices placed on the Solution by Us, Our licensors or Our subcontractors; and*

3.3.4 *You will take security measures sufficient to reasonably safeguard the CMS from access by persons other than Our or Your authorised employees or agents.*

- 3.4 The CMS element of the Solution includes functionality permitting You to perform certain administrative tasks including the uploading, downloading and editing of Content (the “Administrative Functions”). You undertake to keep all usernames, passwords and other access details relating to the Administrative Functions confidential and You hereby agree to indemnify Us from any loss or damage arising from Your failure to do so.
- 3.5 Where the New Content includes images that We have supplied, the copyright and all intellectual property rights in those images shall remain vested in Us or Our licensors in accordance with Clause 13.2 and the images may not be used for any other purpose or on any other media, altered, moved, duplicated or in any way reproduced by You without Our prior written approval.

4 Hosting

The terms and conditions of this Clause 4 shall apply only if We are providing Hosting to You as set out in The Specification and shall commence on the Commencement Date set out therein and shall continue until terminated in accordance with Clause 12.2 or Clause 9.4:

- 4.1 We agree to Host the Solution on Our computer facilities or those of Our subcontractors for the term of this Agreement subject to the payment by You of the Hosting Fee.
- 4.2 You may use the Solution and the CMS as Hosted by Us and unless otherwise expressly permitted by Us in writing and save as required for the normal use and access of the Solution in the normal course, neither You nor any third party shall have any rights to download, copy or install the Solution or any part thereof onto any media or computer system belonging to You or to any third party.
- 4.3 We reserve the right at pre-agreed maintenance times to move or suspend the Solution for short periods of time to allow Us to carry out maintenance or repair to Our servers or to implement improvements. We will notify You of planned maintenance by email using as much advance notice as possible. We undertake to schedule maintenance and repair to Our servers at off peak times. Please be aware that We very occasionally have to perform emergency maintenance or repairs and on these occasions it may not be possible to notify You in advance.
- 4.4 You acknowledge that no additional fee shall be due to Us upon Your uploading, downloading or editing the Content but that the total data volume shall be limited to the

physical space on the server that has been allocated for Your Solution, as set out in The Specification.

- 4.5 You hereby acknowledge that in hosting the Solution We are acting as a data processor and You are the data controller as defined in the Data Protection Act 1998. In Our capacity as a data processor We agree to comply with the Seventh Data Protection Principle as set out in the Data Protection Act 1998 relating to data security.
- 4.6 Bandwidth usage from our servers is not limited by this agreement but may be specified in the Specification. All our clients are expected to stay within a 'fair usage' allocation which is available on request.
- 4.7 Our standard service Level Agreement for the hardware and the Operating System of the hosted solution is 99.5% uptime, outside of agreed maintenance windows.
- 4.8 We cannot guarantee the uptime of any bespoke solution due to the nature of the work entailed but our best endeavours will be made to match that SLA quoted in clause 4.7.

5 Support and Maintenance

The terms and conditions of this Clause 5 shall apply only if We are providing Support and Maintenance to You as specified in the Specification and shall commence on the Commencement Date set out therein and shall continue until terminated in accordance with Clause 12.2 or Clause 9.4:

- 5.1 Subject to the payment of the Support and Maintenance Fee We shall provide the Support and Maintenance as set out in the Specification. The total number of hours allocated to You for Support and Maintenance each month are detailed in the Estimate. Any additional hours of Support and Maintenance requested by You shall be subject to an additional fee as detailed in the Estimate.
- 5.2 Subject to Clause 5.1, in the event that You become aware of an Issue You shall notify Us as soon as You become aware of such Issue and We shall use Our reasonable endeavours to respond to Your notification of Issues and to resolve them. If a request or an Issue notification submitted by You will cause You to exceed Your allocated Support and Maintenance hours We shall notify You of the additional hours required prior to commencing work on such request or notification.
- 5.3 We will not exceed Your allocated monthly Support and Maintenance hours without Your prior approval, which may be provided by email.

- 5.4 Upgrades to the Solution and/or operating system may be provided by Us from time to time as part of Support and Maintenance. Any additional improvements or changes requested by You shall be subject to the Change Control Process set out in Clause 2.9.

6 Your Obligations

- 6.1 You shall provide co-operation and support to Us in Our efforts to develop the Solution and to provide the Services. Such co-operation and support shall include, but not be limited to:

- 6.1.1 *the timely provision of the Branding Materials and Your Content;*
- 6.1.2 *the making available of competent personnel to respond to Our requests and queries during the preparation of the Specification;*
- 6.1.3 *a reasonable level of responsiveness to Our requirements and communications;*
- 6.1.4 *the timely transmittal and release to Us of appropriate and accurate documentation and information;*
- 6.1.5 *the review and analysis of the Specification and any other work performed by Us within the specified timescales;*
- 6.1.6 *the making available of facilities including but not limited to computer facilities, desk space, telephone access and parking when and to the extent as is reasonably requested by Us;*
- 6.1.7 *the prompt provision of access to Your servers and network, either on site or remotely, and access to Your hardware as requested by Us to facilitate implementation of the Solution; and*
- 6.1.8 *the making available of competent personnel to assist Us when and to the extent as is reasonably requested by Us.*

- 6.2 You are responsible for ensuring all Content on the Solution complies with all applicable legislation and regulations and You hereby agree to indemnify Us from any loss or damage arising from Your failure to do so.

- 6.3 Whilst we shall use reasonable endeavours to comply with any specified industry guidelines (the "Guidelines"), You are responsible for ensuring that the Content of the

Solution is compliant with the Guidelines and We shall not be liable for breach of the Guidelines arising from Your failure to do so.

- 6.4 You agree that if You do not perform Your obligations under this Agreement and such non-performance affects Our ability to perform, We shall not be considered in default under this Agreement to the extent so affected, and You shall remain fully obligated to pay Us as provided in this Agreement regardless of any failure to perform any services so affected.

7 Acceptance – if applicable

- 7.1 When the Solution has been completed We shall notify You of such in writing and shall make available the Solution to Your marketing department for testing, and the Acceptance Period for Marketing Acceptance as detailed in the Specification shall commence immediately.
- 7.2 Your marketing department shall examine and test the Solution during the Marketing Acceptance Period and shall notify Us in writing of any Issues or requests for minor changes identified during this Period that will prevent Acceptance. If We do not receive any such notification during the Marketing Acceptance Period, the Solution shall be deemed to have achieved Marketing Acceptance.
- 7.3 When Marketing Acceptance has been achieved, the second Acceptance Period relating to L&R Acceptance as set out in the Specification shall begin immediately. Your legal and regulatory department shall examine and test the Solution during the L&R Acceptance Period and shall notify Us in writing of any Issues or requests for minor changes identified during this Period that will prevent Acceptance. If We do not receive any such notification during the L&R Acceptance Period, the Solution shall be deemed to have achieved L&R Acceptance.
- 7.4 If We receive notification of Issues that prevent Acceptance, or of minor changes which are within the scope of the Specification, during the Acceptance Periods, then the Acceptance Periods shall be extended by the period of time taken by Us to resolve such Issues or to make such minor changes and to notify You that Acceptance Testing can be resumed.
- 7.5 Any changes that You request as a result of the review and testing of the Solution during the Acceptance Period which are not within the scope of the Specification, or any such changes that You request after Acceptance has occurred, shall be considered as

a modification to the Specification and shall be subject to the Change Control Process as set out in Clause 2.9.

8 Personnel

- 8.1 You shall advise Us of all rules, regulations and practices with which Our employees should comply while on Your premises. Our personnel shall use reasonable endeavours to comply with such rules and regulations whenever they are on Your premises. You shall take reasonable precautions to ensure the health and safety of Our staff, employees, agents and sub-contractors while they are on Your premises.

9 Fees & Payment

- 9.1 We may invoice you:

9.1.1 *the Specification Fee upon submission of the Specification to You in accordance with Clause 2.2.*

9.1.2 *the Services Fee in accordance with the Specification set out in the Estimate hereto.*

9.1.3 *the Hosting Fee in accordance with The Specification hereto.*

9.1.4 *the Support and Maintenance Fee in accordance with the Estimate hereto.*

9.1.5 *Our reasonable expenses (charged at cost) incurred in attending You for the development of the Solution monthly in arrears.*

- 9.2 Our standard payment terms are 30 days from date of invoice.

- 9.3 You shall be liable for any other agreed upon fees, any value added tax or customs duties applicable. We shall be entitled to seek interest charge on any undisputed sum outstanding to Us at the rate of 2% above Barclays Bank Sterling base rate in the event any of Our invoices remain unpaid after forty-five (45) days You shall notify Us in writing within 10 days of receipt of an invoice that the invoice is in dispute.

9.4 We may increase the Support and Maintenance Fee and/or the Hosting Fee not more than once in any twelve month period, and shall give You at least thirty (30) days written notice of any such increase. If You do not accept such increase, Your sole remedy shall be to terminate the applicable Support and Maintenance and/or Hosting Schedule on the anniversary of the Commencement Date set out in the corresponding Schedule by giving Us thirty (30) days written notice. If You do not notify Us of Your intention to terminate such Schedule in accordance with this clause 9.4 You shall be deemed to have accepted such increase.

9.5 If payment of the Fees or any part thereof is overdue then unless You have notified Us in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice We may at Our option:

9.5.1 suspend all work in progress in respect of development of the Solution and/or provision of the Services until such payment is made in which case any expenses to Us occasioned by such suspension and subsequent resumption shall be added to the consideration and the project time-scales shall be delayed accordingly; or

9.5.2 treat such as a material breach and terminate this Agreement in accordance with Clause 12.2.1.

10 Warranties

10.1 Subject to the exceptions set out below and the limitations upon Our liability in Clause 11, We warrant that for a period of sixty (60) days from Acceptance the Solution will substantially comply with the Specification.

10.2 The warranty set out in Clause 10.1 does not apply to conditions resulting from improper use, external causes, including service or modifications not performed by Us, or operation outside the specified environmental parameters or from use other than as permitted under this Agreement. We do not warrant that the operation of the Solution will be uninterrupted or error free.

10.3 Any modifications, enhancements, alterations or amendments to the Solution or CMS by You or any third party other than those permitted via use of the CMS in accordance with Clause 3 of this Agreement and/or any breach of Clauses 3.3 or 3.4 shall cause the warranty set out in Clause 10.1 to become null and void and any support requested by You as a result of such modifications, enhancements, alterations or amendments or

breach of Clauses 3.3 or 3.4 shall be subject to additional fees in accordance with the Change Control Process as set out in Clause 2.9.

- 10.4 Save as expressly provided in Clause 10.1 of this Agreement, We specifically exclude but without limitation all other conditions, warranties, representations or other terms relating to this Agreement hereto including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into this Agreement, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 10.5 You hereby agree that Your sole remedy in respect of any non-conformance with any warranty in this Agreement is that We will remedy such non-conformance (either by Ourselves or through a third party) and if, in Our reasonable opinion, We are unable to remedy such non-conformance then We will refund the Services Fee if paid and the portion of the Support and Maintenance Fee and/or Hosting Fee which applies to the remaining period of the Agreement, if paid, whereupon this Agreement shall immediately terminate.
- 10.6 You must promptly notify Us in writing of any breach of the above warranties in order to benefit from the remedy stated above in Clause 10.5. You shall provide all information as may be deemed necessary by Us to assist Us in resolving such breach.

11 Limitation of Liability

- 11.1 Nothing in this Agreement shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Our employees in connection with the performance of their duties hereunder or by defects in any services or software supplied pursuant to this Agreement, or (iii) any other liability that cannot be excluded by law.
- 11.2 Subject to Clause 11.1, in no event shall either party be liable under this Agreement for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 11.3 Except as provided in Clause 11.1 and in Clause 11.2 Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 100% of the aggregate of the Services Fee, Support and

Maintenance Fee or Hosting Fee paid minus any agreed capital expenditure linked directly to the Services and payable by You in respect of the software or service that is the subject of Your claim.

- 11.4 Each party (on behalf of itself and its employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties Act 1999) excludes all liability that has not expressly accepted in this Agreement. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action.
- 11.5 No action, regardless of form, arising out of transactions occurring under or contemplated under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.
- 11.6 Save as provided in Clause 11.7 You shall have no remedy in respect of any representation (whether written or oral) made to you upon which You relied in entering into this Agreement ("Misrepresentation) and We shall have no liability to You other than pursuant to the express terms of this Agreement.
- 11.7 Nothing in this Agreement shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

12 Duration & Termination

- 12.1 This Agreement shall become effective on the Effective Date of order and shall continue unless and until terminated in accordance with the provisions of Clause 2.4, Clause 9.4, Clause 10.5, Clause 12.2 and/or Clause 13.6.3.
- 12.2 Either party ("the Initiating Party") may forthwith terminate this Agreement or any Schedule at any time:

12.2.1 on giving written notice to the other party if the other party commits any material breach of any term of this Agreement and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or

12.2.2 if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up

(otherwise than for the purpose of a bone fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction; or

12.2.3 on two (2) months written notice.

The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

13 Intellectual Property

- 13.1 Subject to the provisions of Clause 13.2 We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Solution (excluding Your Content and the Branding Materials). Title to the Solution shall remain vested in Us or Our licensors. For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, or any other items that We create for You shall remain vested in Us or Our licensors. Any rights not expressly granted herein are reserved to Us.
- 13.2 You are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in Your Content and the Branding Materials. Title to Your Content and the Branding Materials shall remain vested in You or Your licensors. Upon payment of the Services Fee in full, We shall assign copyright and all intellectual property rights in the New Content to You save where and to the extent that the New Content includes third party material in which case We shall assign to You the right to use the New Content as granted to Us by its owner or licensor.
- 13.3 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right or any applicable law resulting from the possession or use of Your Content and the Branded Materials, the incorporation of Your Content and the Branded Materials into the Solution, or the use of Your Content

and the Branded Materials in the hosting of the Solution in accordance with the terms of this Agreement.

- 13.4 In the event that We become aware that the Solution is being used for any unlawful purpose and/or that the Content is identified as containing material of an offensive or unlawful nature We reserve the right to remove access to the Solution and to delete all such offending or unlawful material without prior notice or reference to You. This Agreement shall then immediately terminate in accordance with the provisions of Clause 12.2.1.
- 13.5 Subject to the provisions of this Clause 13, and in particular subject to Clause 13.3, We shall defend at Our own expense any claim brought against You alleging that the normal use of the Solution or the New Content infringes a patent, copyright, or mask work belonging to a third party in the United States of America or European Union ("Intellectual Property Claim") and We shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that You:
- 13.5.1 *promptly furnish Us with written notice of the Intellectual Property Claim upon becoming aware of the same;*
 - 13.5.2 *make no admissions or settlements without Our prior written consent;*
 - 13.5.3 *act in accordance with Our reasonable instructions and provide Us with reasonable assistance in respect of the Intellectual Property Claim; and*
 - 13.5.4 *give to Us the sole authority to defend or settle the Intellectual Property Claim.*
- 13.6 If in Our reasonable opinion the Solution or the New Content is or may become the subject of an Intellectual Property Claim then We shall either:
- 13.6.1 *obtain for You the right to continue using the Solution or the New Content;*
 - 13.6.2 *replace or modify the Solution or the New Content so that it becomes non-infringing; or*
 - 13.6.3 *if such remedies in 13.6.1 and/or 13.6.2 above are not in Our opinion reasonably available, then You shall cease to use the Solution or the New Content as applicable and We shall refund to You the corresponding portion of the Services Fee as normally depreciated, if paid, and the portion of the Support and Maintenance Fee and/or Hosting Fee which applies to the*

remaining period of the Agreement, if paid, whereupon this Agreement shall immediately terminate.

- 13.7 We shall reimburse You Your reasonable costs incurred in complying with the provisions of Clause 13.5.
- 13.8 We shall have no liability for any Intellectual Property Claim resulting from the combination of the CMS or the New Content with other applications or material that were neither supplied nor combined with the CMS or the New Content by Us or if the same results from any breach of Your obligations under this Agreement.
- 13.9 This Clause 13 states Our entire obligation and liability and Your sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from Your use of the CMS or the New Content. We hereby exclude all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person.

14 Confidentiality

- 14.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Our or Your business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 14.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under this Agreement. Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of this Agreement, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.
- 14.3 The provisions of Clause 14.2 shall not apply to:

- 14.3.1 *any information in the public domain otherwise than by breach of this Agreement;*
 - 14.3.2 *information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party;*
 - 14.3.3 *information lawfully obtained without restriction from a third party; and*
 - 14.3.4 *information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.*
- 14.4 We may publicise Our involvement with You with Your prior written consent. Such consent not to be unreasonably withheld or delayed.
- 14.5 If this Agreement is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

15 Assignment

Neither party may assign this Agreement or otherwise transfer any rights or obligations under this Agreement except with the prior written consent of the non-assigning party.

16 Force Majeure

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under this Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

17 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The Agreement shall prevail

notwithstanding any variance with the terms and conditions of any order or purchase order submitted by You.

18 Dispute Resolution, Law & Jurisdiction

- 18.1 In the event of any dispute arising under this Agreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 18.2 Subject to the provisions of Clause 18.1 each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to this Agreement.
- 18.3 Notwithstanding the provisions of Clause 18.1, nothing in this Agreement shall limit either party's right to seek injunctive relief.
- 18.4 This Agreement shall be governed by English law.

19 Survival

The following clauses shall continue to be in effect after the termination or expiration of this Agreement: 9, 10, 11, 13, 14, 19, 20 and 21 inclusive.

20 General

If any provision of this Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of this Agreement shall not be affected thereby, and that the remainder of this Agreement shall remain valid and enforceable.