

ReallySocial

Terms & Conditions

1. THESE TERMS

- 1.1. These Terms and Conditions is a legal agreement between you (“**Customer**”, “**You**”, “**Your**”) and Really Social Media Ltd (“the **Company**”) (collectively the “Parties”) and defines the terms and conditions under which You are permitted to use the Services and Deliverables (as defined below).
- 1.2. This agreement takes effect from the date you click “I accept” or otherwise we commence providing the Services to you.
- 1.3. The Company may make modifications to this agreement at any time, by notifying You of such changes with at least 60 days prior written notice. If You do not agree to the modified terms, You may terminate the agreement with 30 days prior written notice. The Customer agrees that use of the Services by the Customer after such notified period constitutes the Customer’s acceptance of the modified terms.

2. INTERPRETATION

- 2.1. The definitions and rules of interpretation in this clause apply in this agreement.
 - Accounts:** the social media accounts of the Customer which form part of the Services.
 - Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
 - Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.6 or clause 11.7.
 - Customer Data:** the data inputted by the Customer, or the Company on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, and shall include any photos or content.
 - Deliverables:** any output of the Services to be provided by the Company to the Customer.
 - Effective Date:** the date specified in clause 1.2.
 - Fee Outline:** the document specifying the fees payable in connection with this agreement.
 - Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case

whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Initial Subscription Term: the initial term of this agreement commencing on the Effective Date and continuing for a three month period.

Subscription Term: the term of this agreement, being the Initial Subscription Term together with any subsequent Renewal Periods.

Normal Business Hours: 9.00 am to 5.00 pm on Mondays to Thursdays and 9.00 am to 4.00 pm on Friday local UK time, each Business Day.

Renewal Period: the period described in clause 14.1.

Services: the services provided by the Company to the Customer under this agreement as more particularly described in the Services Description.

Services Description: the document made available to the Customer by the Company which sets out a description of the Services.

Social Media Accounts: the social media accounts used in the provision of the Services.

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

Subscription Fees: the subscription fees payable by the Customer to the Company for the User Subscriptions, as set out in the Fee Outline.

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.

- 2.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 2.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 2.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 2.9. A reference to writing or written includes faxes but not e-mail.
- 2.10. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

3. LICENCE

- 3.1. Subject to the terms and conditions of this agreement, the Company hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licence, to permit the Customer to use the Services and the Services Description during the Subscription Term solely for the Customer's internal business operations.
- 3.2. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - 3.2.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.2.2. facilitates illegal activity;
 - 3.2.3. depicts sexually explicit images;
 - 3.2.4. promotes unlawful violence;
 - 3.2.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.2.6. is otherwise illegal or causes damage or injury to any person or property;and the Company reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.3. The Customer shall not:
 - 3.3.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - 3.3.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Services Description (as applicable) in any form or media or by any means; or

- 3.3.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 3.3.2. access all or any part of the Services and Services Description in order to build a product or service which competes with the Services and/or the Services Description; or
 - 3.3.3. use the Services and/or Services Description to provide services to third parties; or
 - 3.3.4. subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Services Description available to any third party, or
 - 3.3.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Services Description, other than as provided under this clause; and
- 3.4. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify the Company.
- 3.5. The rights provided under this clause are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. SERVICES

- 4.1. The Company shall, during the Subscription Term, provide the Services and Deliverables to the Customer on and subject to the terms of this agreement.

4.2. Social Media Content

- 4.2.1. The Customer is responsible for checking the accuracy of all Customer Data via the Software in all circumstances. The Company shall not be liable for any mistakes, errors or loss of business as a result of any content produced by the Company.
- 4.2.2. Content shall be removed from the Software within 7 days of the posting date, regardless of whether such content has been used. No discount is given for unused content.
- 4.2.3. The Company reserves the right to remove any content posted via the Software at its sole discretion.
- 4.2.4. The Company may at its sole discretion assist with requests including changing the name of Social Media Accounts, creating new cover photos and profile pictures.
- 4.2.5. The Company reserves the right to only advertise posts which have been provided as part of the Services.

- 4.2.6. The Customer shall receive its first piece of content within seven (7) Business Days from the Effective Date.

4.3. Landing Pages

- 4.3.1. The Company shall be responsible for the design and hosting (via a third party hosting supplier) of up to one landing page per month, as specified in the Services Description.
- 4.3.2. Email data collected from the landing pages shall be stored on our email platform. If more than 500 email addresses are stored, the Company shall charge an additional fee.
- 4.3.3. Such landing pages are hosted by a third party provider (and are subject to the relevant third parties terms and conditions), and the Company is not liable for any downtime of the landing page.

4.4. Websites

- 4.4.1. The Company shall provide the website design work specified in the Service Description. The Company shall use its reasonable endeavours to complete the website design within 30 days of receiving all requested information from the Customer.
- 4.4.2. Websites shall include up to 10 pages, unless as otherwise specified in the Services Description and/or Fee Proposal.
- 4.4.3. The Company shall provide three (3) minor (being a price or image change) website updates and one (1) major (being a new page added) website updates per month. Any further updated requested by the Customer shall include an additional fee.
- 4.4.4. A website developed by the Company shall not be transferrable by the Customer to alternative hosting.
- 4.4.5. The Company reserves the right to stop providing website support at any time, on 30 days written notice. In such case, the Customer shall have the option to have such website transferred, subject to entering into a direct agreement with the third party website host.
- 4.4.6. In the event a domain name was purchased on behalf of the Customer, as specified in the Service Description, on written request, the Company shall arrange for the domain name to be transferred to the Customer, for the fee specified in the Fee Outline.

4.5. Email Marketing

- 4.5.1. The Customer shall be responsible for checking the accuracy of all information contained in the template email and for ensuring that the content and transmission of the email complies with all applicable laws and advertising

standards (including those provided by the Advertising Standards Authority) from time to time in place.

4.5.2. Data storage for up to 500 email subscribers is included in the Subscription Fee as outlined in the Services Description, and any further subscribers shall be at an additional fee, as outlined in the Fee Outline.

4.5.3. As specified in the Services Description the Company shall design up to one (1) new email per month, if requested.

4.6. Artwork

4.6.1. As specified in the Services Description, the Services includes one (1) hard copy piece of related artwork designed per month (e.g. email sign up cards). The cost of printing and any additional artwork required shall be provided at an additional cost. If artwork is unused, it cannot be rolled over to subsequent months.

4.6.2. The Customer shall be responsible for checking the accuracy of all text, images and format before sending it to print, and the Company shall not be liable for any errors once printed.

4.7. Social Media

4.7.1. The Customer grants the Company permission to automatically follow and/or like third party social media accounts accessible from or linked to the Customer's Social Media Accounts.

4.7.2. The Customer grants the Company permission to access the Social Media Accounts, including use of the Customer's social media login credentials to post content on the Customer's behalf.

4.7.3. The Company reserves the right to promote third party content and third parties' products and/or services via the Customer's Social Media Accounts.

4.7.4. Notwithstanding the provisions set out in clause 11, the Customer grants the Company the right to show Customer Data and results to promote the Company's products and services to potential clients.

4.7.5. The Customer agrees to review and comply with any third party terms relating to the Social Media Accounts.

4.8. General

4.8.1. The Company shall use commercially reasonable endeavours to make the Software available 24 hours a day, seven days a week, except for:

4.8.1.1. planned maintenance carried out during the maintenance window;
and

4.8.1.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Company has used reasonable endeavours

to give the Customer at least 6 Normal Business Hours' notice in advance.

4.8.2. The Company does not warrant that the Software will be uninterrupted or error-free.

4.8.3. The Company will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Company's standard customer support services during Normal Business Hours. The Company may amend the customer support services in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Company's then current rates.

5. CUSTOMER DATA

5.1. The Customer shall own all rights, title and interest in and to all of the Customer Data and the Social Media Accounts and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Company 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 Company, if one is available. The Company does not provide a file storage service and is not responsible for the back up of Customer Data. The Company shall delete Customer Data from time to time and in accordance with applicable data protection legislation.

5.3. The Company shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Company to perform services related to Customer Data maintenance and any back-up).

5.4. The Company shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at its website or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Company in its sole discretion.

5.5. If the Company processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Company shall be a data processor and in any such case:

5.5.1. the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Company's other obligations under this agreement;

5.5.2. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Company so that the Company may lawfully use, process

and transfer the personal data in accordance with this agreement on the Customer's behalf;

5.5.3. 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 and such personal data is kept up to date;

5.5.4. the Company shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and

5.5.5. 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.

5.6. The Company may immediately terminate or suspend all or part of the Services if the Company reasonably believes that the Customer is or may be participating in or undertaking aggressive or unlawful direct marketing activities.

6. THIRD PARTY PROVIDERS

6.1. The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and/or purchase products and services (including Social Media Accounts) from, third parties via third-party websites and that it does so solely at its own risk. The Company makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Company. The Company recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Company does not endorse or approve any third-party website nor the content of any of the third-party website or Social Media Accounts made available via the Services.

6.2. The Company reserves the right to suspend or cancel all or part of the Services in the event it reasonably considers that the provisions of such Services would breach any policy or terms of the third party website or Social Media Accounts.

7. COMPANY'S OBLIGATIONS

7.1. The Company undertakes that the Services and Deliverables will be performed substantially in accordance with the Services Description and with reasonable skill and care.

- 7.2. The Company shall use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 7.3. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Company's instructions, or modification or alteration of the Services by any party other than the Company or the Company's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Company will, at its expense, use all 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 7.1. Notwithstanding the foregoing, the Company:
- 7.3.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Deliverables and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 7.3.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Deliverables may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4. This agreement shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing Services Description, products and/or services which are similar to those provided under this agreement.
- 7.5. The Company warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

- 8.1. By using the Services or submitting any Customer Data through the Service, the Customer hereby grants the Company a worldwide, non-exclusive, perpetual, sublicensable and transferable license to use, process, store, edit, modify, aggregate, reproduce, distribute, display, perform and prepare derivative works of the Customer Data in connection with the Services.
- 8.2. The Customer warrants and represents that:
- 8.2.1. the Customer Data and the Accounts which form part of the Services are proprietary to the Customer and that it has the right to licence such Customer Data and use of the Accounts to the Company; and

8.2.2. use of the Customer Data and Accounts does not infringe the intellectual property rights of any third party.

8.3. The Customer shall:

8.3.1. provide the Company with:

8.3.1.1. all necessary co-operation in relation to this agreement, including checking all content provided by the Company; and

8.3.1.2. all necessary access to such information as may be required by the Company;

in order to provide the Services, including but not limited to Customer Data and access to the Social Media Accounts.

8.3.2. comply with all applicable laws and regulations and advertising standards (including those provided by the Advertising Standards Authority) with respect to its activities under this agreement;

8.3.3. carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Company may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.3.4. ensure that it uses the Services and the Services Description in accordance with the terms and conditions of this agreement and shall be responsible for any breach of this agreement;

8.3.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

8.3.6. ensure that its network and systems comply with the relevant specifications provided by the Company from time to time; and

8.3.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

9.1. The Customer shall pay the Subscription Fees to the Company for the Services in accordance with this clause 9 and the Fee Outline.

9.2. The Customer shall on the Effective Date provide to the Company valid, up-to-date and complete credit or debit card details and any other relevant valid, up-to-date and complete contact and billing details and the Customer hereby authorises the Company to bill such credit card:

- 9.2.1. for immediate payment on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- 9.2.2. subject to clause 14.1, thereafter on a monthly basis for the Subscription Fees payable in respect of any Renewal Period.
- 9.3. An advertising credit is included each month, as specified in the Fee Outline. Any unused advertising credit each month will not be rolled over or refunded.
- 9.4. If the Company has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Company:
 - 9.4.1. the Company may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Company shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 9.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclay's Bank PLC from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.5. All amounts and fees stated or referred to in this agreement:
 - 9.5.1. shall be payable in [pounds sterling];
 - 9.5.2. are, subject to clause 13.3.2, non-cancellable and non-refundable;
 - 9.5.3. are exclusive of value added tax, which shall be added to the Company's invoice(s) at the appropriate rate.
- 9.6. If, at any time the Company provides any additional services to the Customer, the Company shall charge the Customer, and the Customer shall pay, at the same time as the Subscription Fee, the Company's then current additional services fees. The Company's additional services fees current as at the Effective Date are set out in the Fee Proposal.
- 9.7. The Company shall be entitled to increase the Subscription Fees, at the start of each Renewal Period upon 60 days' prior notice to the Customer and the Fee Proposal shall be deemed to have been amended accordingly.

10. PROPRIETARY RIGHTS

- 10.1. The Customer acknowledges and agrees that the Company and/or its licensors own all intellectual property rights in the Services and the Services Description. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Services Description.

- 10.2. The Company confirms that, subject to clause 8.2, it has all the rights in relation to the Services and the Services Description that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 10.3. The Customer warrants that:
- 10.3.1. it is the legal owner of all of the Intellectual Property Rights in and relating to the Social Media Accounts and/or the Customer Data (including any photographs, images, logos), and/or that it has a valid licence to use any such IPR;
 - 10.3.2. the use by the Company and/or the Customer of the Intellectual Property in order to provide the Services will not infringe any third party Intellectual Property Rights.

11. CONFIDENTIALITY

- 11.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2. was in the other party's lawful possession before the disclosure;
 - 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2. Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 11.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Company's Confidential Information.
- 11.7. The Company acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.9. The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12. INDEMNITY

- 12.1. The Customer shall defend, indemnify and hold harmless the Company against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Services Description, provided that:
 - 12.1.1. the Customer is given prompt notice of any such claim;
 - 12.1.2. the Company provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3. the Customer is given sole authority to defend or settle the claim.
- 12.2. The Company shall defend the Customer, its officers, directors and employees against any claim that the Services or Services Description infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 12.2.1. the Company is given prompt notice of any such claim;
 - 12.2.2. the Customer provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and
 - 12.2.3. the Company is given sole authority to defend or settle the claim.
- 12.3. In the defence or settlement of any claim, the Company may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4. In no event shall the Company, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- 12.4.1. a modification of the Services or Services Description by anyone other than the Company; or
 - 12.4.2. the Customer's use of the Services or Services Description in a manner contrary to the instructions given to the Customer by the Company; or
 - 12.4.3. the Customer's use of the Services or Services Description after notice of the alleged or actual infringement from the Company or any appropriate authority.
- 12.5. The foregoing [and clause 13.3.2] state[s] the Customer's sole and exclusive rights and remedies, and the Company's (including the Company's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

WARNING: you are strongly advised to read the Drafting note, Limitation of liabilityUPDATE FC on this clause.

- 13.1. Except as expressly and specifically provided in this agreement:
- 13.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Services Description by the Customer, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Customer in connection with the Services, or any actions taken by the Company at the Customer's direction;
 - 13.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 13.1.3. the Services and the Services Description are provided to the Customer on an "as is" basis.
- 13.2. Nothing in this agreement excludes the liability of the Company:
- 13.2.1. for death or personal injury caused by the Company's negligence; or
 - 13.2.2. for fraud or fraudulent misrepresentation.
- 13.3. Subject to clause 13.1 and clause 13.2:
- 13.3.1. the Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
 - 13.3.2. the Company's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in

connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the Service during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

14.1. This agreement shall, unless otherwise terminated as provided in this clause 14 or clause 1.3, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of one (1) month (each a **Renewal Period**), unless:

14.1.1. either party notifies the other party of termination, in writing at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2. otherwise terminated in accordance with the provisions of this agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

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

14.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

14.2.2. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

14.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;

14.2.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 14.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 14.2.7. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.2.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
 - 14.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.3 to clause 14.2.9 (inclusive);
 - 14.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.3. On termination of this agreement for any reason:
- 14.3.1. all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Services Description;
 - 14.3.2. each party shall return and make no further use of any equipment, property, Services Description and other items (and all copies of them) belonging to the other party;
 - 14.3.3. the Company may destroy or otherwise dispose of any of the Customer Data in its possession unless the Company receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Company shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Company in returning or disposing of Customer Data; and
 - 14.3.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. NON-SOLICITATION

In order to protect the legitimate business interest of the parties, neither party shall, without the others prior written consent, employ or engage or otherwise facilitate the employment or engagement of any person who was employed or engaged by the other party at any time during a period of 12 months preceding the date on which the offer for employment or engagement was made.

16. FORCE MAJEURE

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

17. CONFLICT

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

18. VARIATION

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

19. WAIVER

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

20. RIGHTS AND REMEDIES

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

21. SEVERANCE

- 21.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2. 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.

22. ENTIRE AGREEMENT

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

23. ASSIGNMENT

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

24. NO PARTNERSHIP OR AGENCY

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

25. THIRD PARTY RIGHTS

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

26. NOTICES

- 26.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
- 26.2. 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 fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. GOVERNING LAW

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

28. JURISDICTION

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