

GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

In this Agreement, the words and expressions within this Agreement are defined in the General Terms and Schedules.

1.2 Interpretation:

In this Agreement unless the context otherwise requires:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) headings are for convenience only and shall not affect the construction of this Agreement;
- (c) reference to "including" or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;
- (d) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;
- (e) words in the singular include the plural and vice versa; and
- (f) reference to "writing" or "written" includes email.

1.3 Not used.

2. Services

2.1 Tribal to Provide Services. The Customer shall be provided with the services which may include the Software, Software Services, , Core Support Services, On Premise Software Support Services, On Premise Managed Service, Professional Services and any other service referred to in this Agreement (as appropriate) (collectively "**Services**", as the context requires).

3. GRANT AND SCOPE OF USE

3.1 Software Service and Customer Rights: In relation to the Software

Service for the Software and subject to full payment of the Fees (as applicable), and subject to the other provisions of this Agreement, Tribal grants to the Customer for the Term:

- (a) **On Premise** - a non-transferable, non-exclusive, revocable and limited licence to access and use the On Premise Software subject to the Customer Obligations.

3.2 Use of the Software and Service Documentation. Subject to full payment of the Fees (as applicable), and subject to the other provisions of this Agreement, Tribal grants to the Customer a non-transferable, non-exclusive, revocable and limited licence for the Term to access and use the Software and Service Documentation, Proposal and any other Tribal provided materials.

3.3 Permitted Use. The Customer's use of the Software and Software Services is restricted to:

- (a) the internal business requirements of the Customer only; and
- (b) no other use, unless it has the prior written consent of Tribal, and the Customer acknowledges that additional fees may be payable on any change of use approved by Tribal.

3.4 Customer Responsibilities. The Customer shall be responsible for all access to and use of the Software and Software Service by its Authorised and Permitted Users. The Customer shall only provide its Authorised and Permitted Users with access to the Software via the Software Service approved by Tribal. The Customer shall immediately notify Tribal in the event that the Customer becomes aware of breach of this Agreement by any person.

3.5 Customer Maintain Security and Confidentiality. The Customer shall be responsible for ensuring the security and confidentiality of all log-on identifiers, including usernames and passwords, assigned to, or created by, the Customer and/or Tribal in order to access or use the Software and/or Software Service ("**ID**").

The Customer acknowledges and agrees that the Customer will be solely responsible for all activities that occur under such ID. The Customer shall promptly notify Tribal upon becoming aware of any unauthorised access to or use of the Software and/or Software Service and provide all reasonable assistance to Tribal to bring an end to such unauthorised access or use.

3.6 Customer Obligations. The Customer shall:

- (a) comply with all applicable laws and regulations with respect to its activities;
- (b) obtain and maintain all necessary licenses, consents, and permissions necessary for Tribal to perform its obligations, if any;
- (c) Not Used;
- (d) keep a complete and accurate record of the Customer's copying and disclosure of the On Premise Software, its location, and its Authorised Users, and produce such record to Tribal on request from time to time (including, without limitation, on expiry or termination of this Agreement);
- (e) pay, for broadening the scope of the licences or FTE to cover the unauthorised use by a third party, an amount equal to the Fees which Tribal would have levied had it licensed or granted such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 9.5 from such date to the date of payment;
- (f) in relation to On Premise Software, install it only at the Site, not copy the whole or any part of the Software, provided that the Customer shall be entitled to make an agreed, in writing, number of copies of the On Premise Software, such copies to be subject to the restrictions relating to use of the On Premise Software;
- (g) reproduce on any copy of the Software and/or Software and Service Documentation, Tribal's copyright and trademark notices;
- (h) Not Used;
- (i) not translate, modify, adapt or create derivative works from the Software;
- (j) not obscure, amend or remove any copyright notice, trademark or other proprietary marking on, or visible during the operation or use of, the Software, Software and Service Documentation or Third-Party Software;
- (k) not attempt to discover or gain access to the source code for the Software or reverse engineer, modify, decrypt, extract, disassemble or decompile the Software or Third-Party Software (except strictly to the extent that the Customer is permitted to do so under applicable law in circumstances under which Tribal is not lawfully entitled to restrict or prevent the same), including in order to:
 - (i) build a competitive product or service;
 - (ii) build a product using similar ideas, features, functions or graphics of the Software; or
 - (iii) copy any ideas, features, functions or graphics of the Software;
- (l) not attempt to interfere with the proper working of the Software and/or Software Service and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt the Software and/or Software Service or any associated website, computer system, server, router or any other internet-connected device;
- (m) not separate the component parts of the Software for use on more than one hosted service without the prior written consent of Tribal;
- (n) not introduce any software virus or other malware that may infect or cause damage to the Software or Software Service;

- (o) in relation to On Premise Software, not merge or combine the whole or any part of the Software with any other software or documentation, save with the prior consent of Tribal;
- (p) not resell, sublicense, rent, lease, sell, assign, lend, transfer, charge, novate or otherwise deal with the Software and/or Software Service and/or this Agreement, or use the Software and/or Software Service, for the benefit of anyone other than the Customer and not allow or permit a third party to do so;
- (q) not allow the Software and/or Software Service to become the subject of any charge, lien or encumbrance without the prior written consent of Tribal;
- (r) not deal in any other manner with any or all of its rights and obligations without the prior written consent of Tribal; and/or
- (s) not use the Software and/or Software Service:
 - (i) in relation to On Premise Software only, to provide any application service provider offering, hosted services or bureau services;
 - (ii) to upload, store, post, email, transmit or otherwise make available any content that infringes any Intellectual Property Rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable or prohibited as set out in any acceptable use policy published online through the Software and/or Software Service, as updated by Tribal from time to time ("**Prohibited Content**");
 - (iii) to impersonate any person or entity or otherwise misrepresent the Customer's relationship with any person or entity;
 - (iv) to engage in any fraudulent activity or further any fraudulent purpose;
 - (v) to provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organisation(s) designated by the government of the United Kingdom or Australia or any foreign government as a terrorist organisation;
 - (vi) to "stalk" or otherwise harass another person;
 - (vii) to provide false identity information to gain access to or use the Software and Software Service;
 - (viii) to collect or store personal data about other users in connection with the Prohibited Conduct and activities set out in clauses 3.6(s)(i) to (vii); and/or
 - (ix) in a manner as prohibited by any third party service provider to Tribal in respect of the Software. Software Service or Services, as advised to the Customer from time to time, and shall not permit any third party to do any of the foregoing.

4. IMPLEMENTATION AND USE

4.1 **Not Used.**

4.2 **Not Used.**

4.3 **Not Used.**

4.4 **Not Used.**

4.5 **Not Used.**

4.6 **Not Used.**

4.7 **Approved Equipment.** In relation to the Software and/or Software Service the

Customer shall ensure that the Software and/or Software Service are used on equipment of sufficient specification and functionality (as notified to it by Tribal) to enable the Software and/or Software Service to operate to the standards set out in the Software and Software Service Documentation, which includes approved browsers.

4.8 **Not Used.**

4.9 **Not Used.**

5. SUPPORT SERVICES

5.1 **Provision of Support Services.** Tribal shall provide the Support Services.

5.2 **Reasonable Endeavours.** Tribal will use its reasonable endeavours to co-ordinate the provision of Support Services with the Customer so as not to interfere with the operations of the Customer.

5.3 **Support Requests.** In order for Tribal to be able to provide Support Services to the Customer, it will be necessary (and is a condition of this Agreement) for the Customer:

- (a) to submit a Request to Tribal through the Customer Portal which includes, a detailed description of any Fault requiring Support Services (including where possible a screenshot), and the circumstances in which it arose, upon becoming aware of the Fault. The Customer shall provide such additional information and access as may be reasonably requested by Tribal to enable the Fault to be classified;
- (b) to maintain the Software including installing all Major Releases;
- (c) to ensure that appropriate arrangements are put into place to allow remote access to the system by modem, internet or some other appropriate arrangement in accordance with Customer remote access security policies and which are acceptable to Tribal; and
- (d) to continue to maintain any system requirement in accordance with the minimum operating requirements as notified by Tribal or the owner

thereof from time to time.

5.4 **Designated Support Staff.** Support Services shall be provided to Designated Support Staff only, unless otherwise agreed. Designated Support Staff shall be properly and adequately trained to a level of competence in relation to the Software and/or Software Services, failing which Tribal shall not be required to provide Support Services to such individual.

5.5 **On-Site Support Services.** Except as specifically provided, the Customer acknowledges that any on-site support is outside the scope of Support Services and will be delivered by way of an agreed Change Request.

5.6 **Advance Notice of Material Changes.** The Customer acknowledges that from time to time, Tribal may update the Software and/or Software Service which may result in changes to the appearance and/or functionality of the Software and/or Software Service. Tribal shall advise the Customer, in advance, of any material changes that will occur in respect of the appearance and/or functionality of the Software and/or Software Service.

5.7 **Unsupported Period:** If a Customer fails to implement two consecutive Major Releases then the obligation on Tribal to provide Support Services will cease (**Unsupported Period**) and a warranty-free right to use shall come into immediate effect. During any Unsupported Period, the Customer's obligation to pay Support Service Fees (including as part of Annual Subscription Fees) will continue in accordance with the terms of the Agreement and all warranties, indemnities and liabilities in this Agreement, in respect of Tribal only, shall be suspended.

6. **NOT USED.**

6.1 **Not Used.**

6.2 **Not Used.**

6.3 **Not Used.**

6.4 **Not Used.**

7. **NOT USED.**

7.1 **Not Used.**

8. PROFESSIONAL SERVICES

- 8.1 **Services Outside Scope of this Agreement.** Any services outside the scope of the, Core Support Services, On Premise Software Support Services, On Premise Managed Service, or Excluded Support Services shall be considered "**Professional Services**" under this Agreement, unless otherwise agreed between the parties in writing.
- 8.2 **Provision of Professional Services.** Tribal shall provide the Professional Services as agreed between the parties from time to time by way of a Change Request.
- 8.3 **Cancellation of Professional Services.** In the event that the Customer requests and schedules Professional Services to be supplied, and seeks to cancel the Professional Services prior to delivery, the Customer shall be required to pay the Professional Services Cancellation Fees, provided that Tribal has used reasonable efforts to find alternative work for the relevant Tribal personnel.
- 8.4 **Customer Requirements.** In order for Tribal to be able to provide Professional Services to the Customer, the Customer shall
- (a) If applicable, provide physical access to such premises of the Customer as Tribal shall reasonably require; and
 - (b) reimburse any reasonable Expenses incurred by Tribal where such expenses are (i) if applicable, incurred wholly and exclusively for the purpose of providing on-site services; (ii) the estimated cost or principals are agreed in advance with the Customer; and (iii) provided that any request for reimbursement is in the form of an invoice accompanied by receipts (if requested).
- 8.5 **On-site services.** Tribal may provide on-site services (e.g. training) subject to the Customer's written request and a minimum charge of 6 Working Hours, including travel to site (excluding breaks) unless otherwise agreed in writing.

9. FEES

- 9.1 **Payment of Fees.** The Fees payable under this Agreement by the Customer shall be paid on the Due Date, without any set off, withholding or deduction whatsoever and in accordance with the Payment Terms.
- 9.2 **Expenses.** The Customer shall reimburse any reasonable Expenses incurred by Tribal where such expenses are (i) if applicable, incurred wholly and exclusively for the purpose of providing on-site services; (ii) the estimated cost or principals are agreed in advance with the Customer; and (iii) provided that any request for reimbursement is in the form of an invoice accompanied by receipts (if requested). Expenses are payable in accordance with the Payment Terms, unless otherwise provided in the Schedules.
- 9.3 **Not Used.**
- 9.4 **Exclusive of Taxes.** All Fees payable under this Agreement are exclusive of Taxes, for which the Customer shall be responsible.
- 9.1 **Disputed Amount.** In the event of any dispute as to the amount of an invoice:
- (a) the Customer will promptly notify Tribal of a Dispute in relation to the amount of an invoice which shall include full particulars (and supporting evidence) detailing the dispute;
 - (b) the Customer will pay the undisputed amount within the Payment Terms;
 - (c) the parties must continue to perform their obligations under this Agreement; and
 - (d) the Customer will immediately invoke the Dispute Resolution procedure in clauses 27.
- 9.5 **Interest on Overdue Payments.** If the Customer fails to make any payment due to Tribal under this Agreement by the due date for payment, then, without limiting Tribal's remedies under clause 21, the Customer shall pay interest on the overdue amount at the rate 5% p.a. above the Bank of England base interest rate per annum or, if lower, the maximum rate permitted by applicable law. Such

interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10. FEE ADJUSTMENTS

10.1 **Not Used.**

10.2 **Not Used.**

10.3 **Not Used.**

10.4 **Not Used.**

10.5 **Not Used.**

10.6 **Fee Increases.** Tribal shall be entitled to increase the Fees upon each anniversary of the Effective Date by the percentage increase in the most recently published Annual Fee Increase Benchmark.

10.7 **Not Used.**

10.8 **Not Used.**

11. CHANGE CONTROL

11.1 **Making Changes.** Where the Customer or Tribal wishes to make a change to this Agreement or part thereof, either party may at any time request such change, and a Change Request shall be submitted by the party requesting the change to the other party in the form of the Change Request Agreement. Such change shall be agreed by the parties only once the Change Request is signed by both parties.

11.2 **Agreement Applies Until Change is Agreed.** Until a change is made in accordance with this clause, the Customer and Tribal shall continue to perform this Agreement in compliance with its existing terms.

11.3 **Change Request Fees.** All fees in relation to a Change Request shall be detailed in the Change Request.

12. CONFIDENTIALITY, PUBLICITY AND NON-SOLICIT

12.1 **Confidentiality.** Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the

other disclose to any third party (except, subject to clause 12.2, its employees, agents, sub-contractors and professional advisers or as may be required by any law or any legal or regulatory authority or stock exchange) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates ("**Confidential Information**"), unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party, or a request received by a party for disclosure of any information relating to the other party pursuant to Freedom of Information laws (if any in the Jurisdiction), provided that in the party's compliance with this clause, it shall not disclose any such information until such time as it has obtained a view from the other party as to whether such information should be subject to disclosure or not, and shall take reasonable account of such view in deciding whether or not disclosure is required. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

12.2 **Confidentiality of Employees, Agents, Sub-Contractors and Sub-Processors.** Each party shall (and shall procure that all relevant employees, agents and sub-contractors, and any sub-processors appointed in accordance with Schedule 2, shall) keep confidential the Confidential Information and limit access to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Confidential Information, subject to each such person of the party being bound by an obligation of confidentiality equivalent to this clause.

12.3 **Public Announcement.** Subject to clauses 12.1 and 12.4, neither party shall make, or permit any person to make, any public announcement concerning this Agreement, without the prior written

consent of the other party (and, if such consent is given, the announcement shall not extend to the commercial terms (including Fees) of this Agreement).

12.4 **Marketing and Statutory Reporting.** Tribal may use the Customer's name and logo for marketing purposes with the consent of the Customer, such consent not to be unreasonably withheld or delayed. Tribal reserves the right to use descriptions and/or examples of the Customer's use of the Software in its statutory and public announcements. Tribal may also reference and link to the Customer's website.

12.5 **Non-Solicitation.** Neither party shall without the prior written consent of the other party, either during the Term or at any time during the period of 6 calendar months following the date of termination or expiry of this Agreement, solicit or endeavour to solicit away from the other party or its Affiliates, or be directly involved in the employment or engagement of any person with whom the first party has had dealings or contact (other than on a de minimis basis) in the course of the Term and who is as at the date of termination or expiry of this Agreement, or was at any time during the period of 6 calendar months prior to the date of termination or expiry of this Agreement, employed or engaged by the other party and/or its Affiliate.

13. EXPORT

13.1 **Export.** Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which any government (or any agency thereof), at the time of export, requires an export licence or other governmental approval without first obtaining such licence or approval.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 **No Transfer.** Except for as expressly stated in this Agreement, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

14.2 **Ownership of Intellectual Property Rights.** The Customer acknowledges (and shall inform all relevant employees, agents and sub-contractors accordingly) that all Intellectual Property Rights in the Software, Software Service, Software and Service Documentation, and Services (including any material that Tribal creates whilst undertaking the Services) and the Tribal brand ("**Tribal IPR**") belong to Tribal or the relevant third party owners (as the case may be), and the Customer shall have no rights in or to Tribal IPR other than the right to use it in accordance with the terms of this Agreement. Except as expressly permitted by this Agreement, the Customer may not use any of Tribal IPR's without Tribal's prior written consent.

14.3 **Intellectual Property Rights in Reports.** In the event that a deliverable created pursuant to any Services is a written report for the Customer, then the Customer acknowledges that it will own the physical media on which the report is supplied (if any) but that all Tribal IPR in the report remains Tribal IPR and the Customer shall have no rights in or to such Tribal IPR other than the right to use it in accordance with the terms of this Agreement.

14.4 **Ownership of Customer Created Intellectual Property Rights.** The Customer acknowledges that it may create Intellectual Property Rights as a result of a request for unique configurations, preparing a Change Request and/or implementation and integration of the Software, Software Service and Services with the Customer's systems and/or equipment ("**Customisations**") or by improving or suggesting improvements of Tribal IPR to Tribal. Any and all improvements and Customisations to the Tribal IPR suggested by the Customer which results in the creation of Intellectual Property Rights shall be owned by Tribal. The Customer hereby assigns any and all rights to such Intellectual Property Rights in respect of the Tribal IPR to Tribal and waives its moral rights and/or shall procure a waiver of moral rights in respect thereof. The Customer shall execute and deliver or procure the

execution and delivery of such documents and perform such acts as may be required for the purpose of giving full effect to this clause.

14.5 **Notify of Wrongful Use of Intellectual Property Rights.** The Customer shall promptly bring to the attention of Tribal any improper or wrongful use of any Tribal IPR which comes to the Customer's notice. The Customer shall assist Tribal, at Tribal's expense, in taking all steps to defend Tribal's IPR's but will not institute legal proceedings of its own accord and without Tribal's consent.

14.6 **Limited Licence to Use Each Party's Intellectual Property Rights.** Subject to any other terms expressly agreed by the parties, each party grants the other a non-transferable, non-exclusive, revocable and limited licence of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under this Agreement or make use of the Services supplied under this Agreement and for the Term of this Agreement, but not otherwise.

15. DATA PROTECTION

15.1 **Data Protection:** Each party will comply with applicable Data Protection Law.

15.2 **UK and/or EEA Data Protection Law:** If UK and/or EEA Data Protection Law applies to the processing of personal data under this Agreement, the provisions of the Data Protection Obligations set out in Schedule 2, shall apply in relation to data protection obligations between the parties in respect of such processing.

15.3 **Tribal Global Service Desk:** The Customer acknowledges that in providing the Services, Tribal operates a global service desk via its Affiliates which may store or process any Data or other personal data collected by Tribal in connection with the Services. All Tribal Affiliates are contractually bound to adhere to the same high level of security and data privacy as set out in the Data Protection Legislation. The transfer of data outside the UK and/or EEA to Tribal Affiliates as part of its global service desk operations in this scenario is thus GDPR compliant as a result of Tribal's

contractual agreements.

16. **NOT USED.**

16.1 **Not Used.**

16.2 **Not Used.**

17. **WARRANTIES**

17.1 **Tribal Warranties.** Tribal warrants that:

- (a) its title to the Software is free and clear of encumbrances;
- (b) it has the right, power and authority to license the On Premise Software and Software and Service Documentation and/or provide the Software Services and the Third-Party Software, as contemplated by this Agreement;
- (c) the Software and Software Service shall, under normal operating conditions, substantially conform to the Specification and will be materially free from errors; and
- (d) the Services will be provided with reasonable skill and care.

17.2 **Remedy for Breach of Warranty.** If any of the warranties in clause 17.1 is breached, the Customer must notify Tribal as soon as possible. The Customer must give Tribal a reasonable time to fix the problem, including (in Tribal's discretion) by making available a corrected version of the Software and/or Software Service (as the case may be) or a reasonable way to work around the problem that is not materially detrimental to the Customer and/or by re-performing any relevant Services. This will be done without any additional charge to the Customer. If Tribal is able to do this within a reasonable time, this shall be the Customer's sole and exclusive remedy in relation to such breach and Tribal will, subject to the terms herein, have no other obligation or liability in relation to such breach.

17.3 **No Warranty – Error Free.** Tribal does not warrant that the use of the Software and/or Software Service will be uninterrupted or error-free.

17.4 **No Warranty – Achieve Intended Results.** The Customer accepts responsibility for the selection of the Software, Software Service and Services

to achieve its intended results and acknowledges that the Software, Software Service and Services have not been developed to meet the individual requirements of the Customer, unless otherwise expressly specified in this Agreement.

17.5 **No Warranty – Open Source.** The Customer acknowledges that any Open Source Software provided by Tribal as a standalone solution are provided "as is" and expressly subject to the disclaimer in clause 17.6.

17.6 **No Warranty – Implied.** Except as expressly set out in this Agreement, all other conditions, warranties or other terms which be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, or which might otherwise have effect between the parties (including any terms contained in any purchase order issued by the Customer) are hereby excluded, including any implied terms as to satisfactory quality or fitness for purpose.

18. INDEMNITIES

18.1 **Tribal Indemnity.** Tribal shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses finally awarded against the Customer by a court of competent jurisdiction as a result of or in connection with any claim by a third party that the Customer's use of the Services infringes the Intellectual Property Rights of any third party.

18.2 **Customer Indemnity.** The Customer shall indemnify Tribal from and against any losses, damages, liability, costs (including legal fees) and expenses finally awarded against Tribal by a court of competent jurisdiction and/or amounts paid by the Customer further to a final settlement approved by Tribal, as a result of or in connection with any claim by a third party that the Customer's use of, amendments or variation of the Services (to the extent they have not been approved or authorised by Tribal) infringes the third party's Intellectual Property Rights.

18.3 **No Liability to Indemnify.** The indemnifier in each case shall have no

such liability if the other party:

- (a) does not notify the indemnifier in writing setting out full details of the relevant action, demand or claim ("**Claim**") of which it has notice as soon as is reasonably possible;
- (b) makes any admission of liability or agrees any settlement or compromise of the relevant Claim without the prior written consent of the indemnifier (which shall not be unreasonably withheld or delayed);
- (c) does not let the indemnifier at its request and own expense have the conduct of or settle all negotiations and litigation arising from Claim; or
- (d) does not, at the indemnifier's request and own expense, give the indemnifier all reasonable assistance in the circumstances described above.

18.4 **Tribal Obligations.** If any Claim is made, or in Tribal's reasonable opinion a Claim is likely to be made, against the Customer, Tribal may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Services (or any part thereof) in accordance with the terms of this Agreement;
- (b) modify the relevant Services so that they cease to be infringing without incurring a material diminution in performance or function; or
- (c) replace the relevant Services with non-infringing Services provided that such substitutes do not entail a material diminution in performance or function than that of the Services;

provided that if Tribal modifies or replaces the Services, the modified or replacement Services must comply with the warranties contained in clause 16.

18.5 **Customer Right to Terminate.** If Tribal, in its reasonable judgment, is not able to exercise any of the options set out in clause 18.4 within 90 calendar days of the date it received notice of the Claim it shall so notify the Customer who shall be entitled to terminate this Agreement by 14 calendar days' notice in writing to Tribal.

18.6 **Exclusions to Tribal Indemnity.** Tribal shall have no liability to indemnify the Customer if the relevant Claim results from:

- (a) possession or use of any of the Software (or any part thereof) and Software Services by the Customer other than in accordance with the terms of this Agreement;
- (b) any unauthorised alteration, modification or adjustment to any of the Software and/or Software Services without the prior written consent of Tribal;
- (c) the combination, connection, operation or use of any of the Software and/or Software Services with any other software or documentation not supplied by Tribal or not on Approved Equipment; or
- (d) any act or omission of the Customer, including any breach of the Customer's obligations under this Agreement, or a failure to comply with the guidance produced by Tribal.

18.7 **Liability for Third-Party Software.** The Customer agrees and acknowledges that Tribal shall have no liability of any nature whatsoever to the Customer in respect of any Intellectual Property Rights infringement of a third party arising from the use of any Third-Party Software (including any Open Source Software) other than to use its reasonable endeavours to procure for the benefit of the Customer any indemnity or right Tribal may have against the Third-Party Proprietor.

18.8 **Exclusive Remedy.** Subject to clause 18.4, clause 17.2 and 18.5 shall constitute the Customer's exclusive remedy and Tribal's only liability in respect of Claims.

19. LIMITS OF LIABILITY

19.1 **Liability Excluded.** Subject to clause 19.4, Tribal shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same arise in contract, tort

(including negligence), breach of statutory duty, under any indemnity or otherwise howsoever:

- (a) which fall within any of the following categories (even if Tribal was aware of the circumstances in which such loss could arise):
 - (i) indirect, consequential or special loss;
 - (ii) loss of profits, business or revenue;
 - (iii) loss of anticipated savings;
 - (iv) loss of opportunity;
 - (v) loss of contracts;
 - (vi) loss of goodwill; and/or
 - (vii) loss or corruption of data (to the extent that is caused by Tribal); or
- (b) arising as a result of:
 - (i) the use of any of the Software, Software Services or Services except for their normal intended purpose;
 - (ii) any adaptation or modification of any of the Software, Software Services or Services, or integration or combination with any other equipment, software, product or material not supplied or approved by Tribal, in each case carried out by anyone other than Tribal or without Tribal's express written consent;
 - (iii) any defect arising in any of the Software and/or Software Services and/or Services as a result of misuse, wilful damage, negligence on the part of anyone other than Tribal, abnormal operating conditions or any failure by the Customer to follow any instructions of Tribal as to use;
 - (iv) the compliance by Tribal with any design, specification or instructions provided by the Customer or on the Customer's behalf;
 - (v) the continued use of a version

of the Software after Tribal has made two (2) subsequent Major Releases of the Software available to the Customer, to the extent that any claim in respect of which Tribal would otherwise be obliged, under this Agreement to indemnify would have been avoided by the use of such subsequent Major Releases; and/or

(vi) a Customer Cause.

19.2 **Agreed Liability.** Subject to clause 19.1 and 19.4, the total liability of Tribal, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise howsoever and whether in connection with this Agreement, or any collateral contract, shall be limited:

(a) **Not Used.**

(b) in respect of each 12 month period calculated from the Effective Date (or anniversary thereof) ("**Contract Year**"), an amount equal to the Fees paid to Tribal during such Contract Year, provided that, if the first incident giving rise to the loss is within the first Contract Year from the Effective Date, liability shall be capped to the Fees paid to Tribal in the period between the Effective Date and the date of the first incident giving rise to the loss.

19.3 **Liability for Series of Connected Events.** For the purpose of clause 19.2, where liability arises out of an event or series of connected events which span more than one Contract Year, all such liability shall be deemed to have occurred in the Contract Year in which the event first occurred, or in which the first of a series of connected events occurred, as appropriate. If the connected events occur both before and after the Effective Date, then clause 19.2(b) shall apply.

19.4 **No Limit on Liability.** Tribal does not limit or exclude its liability for:

(a) death or personal injury caused by the negligence of Tribal, its officers, employees, contractors or agents;

(b) fraud or fraudulent misrepresentation; or

(c) any other liability which may not be excluded or limited by law.

19.5 **Dates are Estimates.** All dates supplied by Tribal for the delivery of the Software, Software Services or Services shall be treated as approximate only. Tribal shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

19.6 **Customer Cause:** In the event that Tribal can demonstrate that its non-conformance with an obligation was caused or attributed to the acts and/or omissions of the Customer (**Customer Cause**), Tribal:

(a) shall not be in breach of this Agreement;

(b) may delay, postpone or revise any deadline, milestone, timeline, plan or obligation taking into account the consequences caused by the Customer Cause;

(c) may amend any Implementation Services to reflect any consequences caused by the Customer Cause;

(d) shall be entitled to claim payment of Fees it has incurred as a result of the Customer Cause; and

(e) shall be entitled to invoice for Fees for Services delivered, notwithstanding that a milestone has not yet been achieved and/or a Fee is not yet due for payment in accordance with a Payment Term;

provided that Tribal uses reasonable endeavours to mitigate the impact resulting from the Customer Cause.

19.7 **Beneficiaries.** All references to "**Tribal**" in this clause shall, for the purposes of this clause, be treated as including all employees, subcontractors and suppliers of Tribal and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

20. TERM

20.1 **Term.** Subject to clause 20.2, this Agreement (including all Services agreed to be delivered pursuant to it) shall commence on the Effective Date and

shall, unless sooner terminated in accordance with its terms, continue for the Initial Term and thereafter renew automatically for successive renewal terms, of one (1) year each (each a "**Renewal Term**") unless and until terminated by either party giving 90 calendar days' prior written notice to that effect (such notice to expire at the end of the Initial Term or any subsequent Renewal Term).

20.2 Services to be Provided in 12 Months.

In the event that the Customer purchases any Services from Tribal in respect of any year of this Agreement, it shall be obliged to receive such Services within 12 months thereafter failing which it shall not be entitled to receive such Services and shall receive no reimbursement in respect thereof.

21. TERMINATION

21.1 Termination for Material Breach.

Either party may terminate this Agreement, at any time, by giving the other written notice if the other party:

- (a) materially breaches any term of this Agreement and it is not possible to remedy that breach;
- (b) materially breaches any term of this Agreement and it is possible to remedy that breach, but the other party fails to do so within 30 calendar days of being requested in writing to do so; or
- (c) suffers or undergoes an Insolvency Event (where permitted under applicable law).

21.2 Other Termination. Tribal may, partially or fully, terminate this Agreement, at any time, by giving the Customer 60 calendar days' written notice if:

- (a) the Software and/or Software Services is discontinued by Tribal, for any reason, such notice to take effect at the end of the Term;
- (b) its ability to provide the Software and/or Software Services and/or Services is restricted or altered in such a way that Tribal, acting reasonably, considers it to be impractical or impossible to continue providing the Software

and/or and Software Services and/or Services to the Customer, such notice to take effect at the end of the Term;

- (c) the Customer undergoes a change of Control without having received Tribal's prior consent.

21.3 Termination or Suspension of Services.

Without prejudice to clause 21.1 and 21.2, Tribal may, in addition, and without liability, terminate this Agreement with immediate effect, or alternatively, may suspend access to and use of the Software or Software Services or Services by giving the Customer written notice if:

- (a) any invoiced amount is outstanding 30 calendar days beyond the due date for payment;
- (b) any provision of clause 9.1 (Payment of Fees) and/or 12.1 (Confidentiality), is breached; and/or
- (c) Not Used.

21.4 Suspension Lifted on Payment.

In relation to suspensions under clause 21.3(a), access will be restored promptly after Tribal receives payment in full in cleared funds together with interest calculated thereon in accordance with clause 9.5.

21.5 When Access Restored.

In relation to suspensions under clause 21.3(b) and clause 21.3(c), access will be restored promptly after the Customer rectifies those matters to the satisfaction of Tribal.

21.6 Failure to Rectify Cause of Suspension.

In the event of a suspension under clause 21.3, that has not been remedied within 30 calendar days of Tribal sending notice, the Customer agrees that Tribal has the right, at its sole discretion, but not the obligation, to delete or deactivate the Customer's account, block/terminate Customer's access to the Software and/or Software Service, immediately and without notice, and discard any Customer data (subject to Schedule 2). Further, the Customer agrees that Tribal shall not be liable to the Customer or any third party for any such termination of access to the Software and/or Software

Service. The Customer agrees not to attempt to use the Software and/or Software Service after termination.

21.7 **Fees Payable During Suspension.** Fees shall remain payable and continue to accrue during any period of suspension notwithstanding that the Customer may not have access to the Software or Software Services or Services.

21.8 **Customer Wrongful Suspension.** Without prejudice to Tribal's rights, in the event that the Customer suspends the Implementation Services in whole or in part prior to completion, without a right to do so under this Agreement ("**Customer's Wrongful Suspension**"), the Customer agrees that any and all Implementation Fees, including in respect of Implementation Services that have not yet been performed, and/or milestones (if any) that have not yet been reached, shall become due and payable immediately on the Customer's Wrongful Suspension, unless otherwise agreed in writing between the parties.

22. CONSEQUENCES OF TERMINATION

22.1 **On Termination.** Upon termination of this Agreement for any reason, and subject to Schedule 2:

- (a) the Customer shall immediately cease to access, and discontinue all use of, the Software and/or Software Service;
- (b) all licences granted under this Agreement shall terminate;
- (c) all Fees payable to Tribal by the Customer shall become immediately due and owing, without any set off, withholding or deductions whatsoever. For the avoidance of doubt, no refund of Fees paid in advance shall be due by Tribal to the Customer in respect of any unexpired portion of the Term and the Customer shall not set off, withhold or deduct any such Fees paid in advance from any amounts payable by the Customer to Tribal;
- (d) the Customer acknowledges that Tribal may audit any computer system on which the Software and/or Software Services has been

deployed in order to verify compliance with this Agreement;

- (e) at the Customer's request and upon payment of Tribal's then-current daily rate related thereto, upon expiration or termination of this Agreement, Tribal may provide reasonable termination assistance services, including provision to the Customer of Customer data held within the Software and/or Software Service in a commonly used electronic format such as a simple flat file ("**Termination Assistance Services**") to the Customer and/or a successor service provider designated by the Customer;
- (f) subject to clause 22.1(e) and Schedule 2, Tribal may destroy or otherwise dispose of any Customer data in its possession; and
- (g) the Customer shall pay for any use of the Software and/or Software Services post-termination in breach of this clause.

22.2 **Customer Obligations.** If requested by Tribal at any time post termination, or on completion of a Service, by notice in writing to the Customer, the Customer shall promptly:

- (a) destroy or return to Tribal all documents and materials (and any copies) containing, reflecting, incorporating or based on Tribal's IPR and/or Confidential Information including without limitation the Software, Software Services and Software and Service Documentation;
- (b) erase all Tribal IPR and/or Confidential Information from its computer and communications systems and devices used by it (including those of any Affiliate), or which is stored in electronic form;
- (c) erase all the Tribal IPR and/or Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
- (d) certify in writing to Tribal that it has complied with the requirements of this clause.

22.3 **Tribal May Retain Data.** Subject to Schedule 2, nothing in this Agreement prohibits Tribal from retaining computer generated backup copies of any data or information, including Customer Confidential Information, subject to Tribal's continuing obligation of confidentiality.

22.4 **Termination Not Affect.** The termination of this Agreement for any reason will not affect:

- (a) any accrued rights or liabilities which either party may have at the time termination takes effect; or
- (b) the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after the termination, including, without limitation, clause 14 (Intellectual Property Rights) and Schedule 2 (Data Protection Obligations).

23. THIRD PARTY AND OPEN SOURCE SOFTWARE

23.1 **Third-Party Software.** The Customer acknowledges that some of the Software and/or Software Services may be provided with Third-Party Software. In relation to On Premise Software only, unless otherwise permitted, the Customer may not (i) assign, grant or transfer any interest in the Third-Party Software to another individual or entity; (ii) exercise any of the reserved other proprietary rights provided under laws governing this Agreement, without the express and advance written permission of Tribal (such permission may be withheld or delayed). Subject to clause 17.1(b), Tribal makes no representation or warranty regarding Third-Party Software except that it is in material compliance with its applicable licence.

23.2 **Open Source.** The Software and Software Services may include or incorporate Open Source Software or similar royalty free open source licence. In relation to On Premise Software only, wherever Open Source Software is provided, Tribal shall use reasonable endeavours to identify the Open Source Software and applicable open source

licence that applies in the Software, Software Services and Software and Service Documentation. This Agreement does not modify or abridge any rights or obligations the Customer may have in the Open Source Software, or is required to comply with, under the applicable open source licences.

23.3 Use of Open Source Software or Third-Party Software outside scope.

Any use of Open Source Software or Third-Party Software outside of the Customer's authorised use of the Software and Software Service is subject to the rights and obligations under such third party technology's Open Source Software licence and/or Third-Party Licence. To the extent there is a conflict between this Agreement, the Third-Party Licence and the Open Source Software licence, the terms of the applicable Third-Party Licence or Open Source Software licence shall control in respect of the Third-Party Software or Open Source Software respectively.

24. NOT USED.

24.1 **Not Used.**

25. INSPECTION

25.1 **Inspection.** The Customer shall permit Tribal to inspect and audit (and in respect of On Premise Software only, reasonable access to any premises or will cause the occupier of any premises at or on which the On Premise Software are being kept or used to provide access) the records (including computer equipment or devices) kept in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that Tribal in relation to such inspections and audits:

- (a) provides reasonable advance notice to the Customer;
- (b) will take place at reasonable times; and
- (c) use all reasonable endeavours so as not to interfere with the operations of the Customer.

26. FORCE MAJEURE

26.1 **Force Majeure.** Neither party shall have any liability under or be deemed to be in

breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party, including without limitation a party's Affiliates and/or subcontractors ("**Force Majeure**"). The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than 3 calendar months, either party may terminate this Agreement by written notice to the other party. The affected party is under an obligation to take all reasonable means to limit the effect of the impediment or event constituting the Force Majeure.

27. DISPUTE RESOLUTION

- 27.1 **Dispute Resolution.** Where any dispute or difference arises between the parties in relation to, or in relation to either party's rights or obligations, or as to any matter arising under this Agreement, ("**Dispute**"), that party shall give written notice to the other party of the existence of the Dispute and the particulars of it. The parties shall then discuss and attempt, in good faith, to resolve the Dispute within 20 Working Days of the commencement of such discussions under this clause.
- 27.2 **Meeting to Resolve Dispute.** If the Dispute is not resolved within the 20 Working Day period, either party may notify the other in writing of their intention to request a meeting to try and resolve the Dispute. The parties (each to be represented by a senior executive or member of staff with full authority to resolve the dispute) shall then meet and attempt, in good faith, to resolve the Dispute within 10 Working Days of the date after the notice in this clause was served.
- 27.3 **Resolution with Assistance of Third Party.** If the Meeting to Resolve the Dispute does not resolve the Dispute within the 10 Working Day period, either party may elect to refer the Dispute to mediation at the Venue for Dispute Resolution. The Parties hereby consent to the Independent Mediation Service to independently appoint the mediator who

in the opinion of Independent Mediation Service has the necessary ability and experience to provide the best possible mediation service. The Parties also agree to abide by the mediation rules advised by the Independent Mediation Service. If mediation is pursued the Parties shall jointly be responsible, in equal amounts, for the mediator(s) fees and disbursements, and all other costs of the mediation shall lie where they fall.

- 27.4 **Mediation Not Successful.** If mediation does not resolve the Dispute within 20 Working Days after a mediator is appointed or such extended time as the Parties may agree in writing, either Party may take steps to attempt to resolve the Dispute before an appropriate court.

28. GENERAL

- 28.1 **Personnel.** Tribal reserves the right to allocate Tribal's Personnel in the provision of the Services provided that the Customer may reasonably request a change of Personnel if they are not content with then current Personnel.
- 28.2 **Right to Modify.** Tribal reserves the right to modify the Software, Software Service, any end user licence agreement or privacy policy. If Tribal is required to make any changes to the Software or Services due to a change in law, these changes will apply automatically in respect of this Agreement.
- 28.3 **Changes in laws.** Notwithstanding any other provision of this Agreement, Tribal reserves the right to increase the Fees in the event that there is a major change affecting the Software and/or Software Service, if the following conditions are satisfied:
 - (a) the major change is occasioned by statute, regulatory authority, or court of competent jurisdiction, or by any act of a government body, assembly or agency;
 - (b) but for the major change, Tribal would not have been required to make such change;
 - (c) the major change requires more than an Upgrade of an existing component of the Software and/or Software Service used by the Customer; and

- (d) Tribal shall, where it is practical and reasonable to do so, spread any such cost across its user base including the Customer.

28.4 Transfer. Tribal may at any time sublicense, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives written notice to the Customer.

28.5 Notices. All notices and consents relating to this Agreement (but excluding any proceedings or other documents in any legal action) must be in writing. Notices must be sent to the address of the recipient or otherwise notified by the relevant party in accordance with this Agreement. Notices shall be sent by hand, by first class recorded delivery or registered post or other form of certified or registered mail (and sent by air mail if posted to or from a place outside the Jurisdiction) or email, and shall be treated as having been delivered:

- (a) if sent by hand, when delivered;
- (b) if sent by certified or registered mail, when delivered; and
- (c) if sent by email, at the time the sender receives confirmation of successful delivery if sent during Working Hours (of the recipient), otherwise at the close of business on the next business day (of the recipient).

This clause does not apply to the service of any proceedings or other documents in any legal action.

28.6 No Waiver. Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy.

28.7 Rights at Law Preserved. 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.

28.8 Severability. If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

28.9 Party Acting for Self. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28.10 Variations. All variations to this Agreement must be agreed, set out in writing in a Change Request and signed on behalf of both parties before they take effect.

28.11 Relationship. Except to the extent that this Agreement expressly provides otherwise, nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it were or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

28.12 Successors. This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

28.13 No Third Party. A person who is not a party and/or signatory to this Agreement shall not have any rights under or in connection with it or be entitled to assert a benefit under the Agreement, which in the UK shall include the Contracts (Rights of Third Parties) Act 1999 or otherwise, or other equivalent law in the Jurisdiction.

- 28.14 **Anti-Bribery or Anti-Corruption.** Each party shall at all times comply with all legislation in the Jurisdiction relating to anti-bribery or anti-corruption (which in the UK shall include the Bribery Act 2010 (UK)) and shall not do anything that might constitute a breach thereof.
- 28.15 **Modern Slavery.** Each party warrants that it shall have and maintain in place throughout the term of this Agreement its own policies and procedures as are necessary to comply with laws in the Jurisdiction relating to modern slavery (which in the UK shall include the Modern Slavery Act 2015).
- 28.16 **No Representation.** Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents ("**Representation**"). Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing shall exclude or limit either party's liability for fraudulent misrepresentation.
- 28.17 **Conduct.** Each Party shall (and shall procure that all relevant employees, agents and sub-contractors) act with courtesy, respect and professionalism, in respect of all dealings, communications, and interactions with each other.
- 28.18 **Counterpart.** This Agreement may consist of a number of counterparts, each of which when executed and delivered (whether in original, copy, or via email in PDF format) shall together constitute one and the same instrument.
- 28.19 **Electronic Signature.** Each party agrees that an Electronic Signature, whether digital or encrypted, is may be used to authenticate execution of this Agreement and has the same force and effect as a wet/manual signature.
- 28.20 **Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of England and, subject to Dispute Resolution, the parties agree to submit to the exclusive jurisdiction of the

courts of England. Notwithstanding the foregoing, Tribal is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its Intellectual Property Rights and/or Confidential Information. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.