

DATED

2013

(1) PRIME DOCUMENT LIMITED

(2) [PARTY 2]

SUPPLY OF SERVICES AGREEMENT

CONTENTS

| Clause | Page |
|---|--------------------|
| Definitions and interpretation..... | 1 |
| Commencement and duration..... | 3 |
| Supplier's obligations..... | 3 |
| Customer's obligations..... | 3 |
| Incomplete, incorrect or inaccurate information or instructions..... | 4 |
| Change control..... | 5 |
| Charges and payment..... | 5 |
| Intellectual property rights..... | 6 |
| Confidentiality and the Supplier's property..... | 6 |
| [Storage and Responsibility for In-put Material and Customer's Equipment..... | 7 |
| Indemnity..... | 7 |
| Limitation of liability – the customer's attention is particularly drawn to this clause | 7 |
| Data protection..... | 9 |
| Termination | 9 |
| Force majeure..... | 11 |
| Variation..... | 12 |
| Waiver..... | 12 |
| Cumulative remedies..... | 12 |
| Severance..... | 12 |
| Entire agreement..... | 12 |
| Assignment..... | 13 |
| No partnership or agency..... | 13 |
| Rights of third parties..... | 13 |
| Notices..... | 13 |
| Dispute resolution..... | 14 |
| Governing law and jurisdiction..... | 15 |
| .Definitions and Interpretation..... | 18 |
| User subscriptions..... | 19 |
| Online Services..... | 20 |
| Customer data..... | 20 |

| | |
|---|---------------------------|
| <u>Supplier's obligations in Providing the Online Services.....</u> | <u>21</u> |
| <u>Customer's obligations in relation to the Online Services.....</u> | <u>22</u> |
| <u>Proprietary rights.....</u> | <u>22</u> |
| <u>Confidentiality.....</u> | <u>23</u> |
| <u>Indemnity.....</u> | <u>23</u> |

THIS AGREEMENT is dated [♦] and made between:

PRIME DOCUMENT LIMITED a company registered in England and Wales with company number 03732738, whose registered office is situated at 22 Prestwich Hills, Prestwich, Manchester, M25 9PY ("**Supplier**").

[FULL COMPANY NAME] a company registered in England and Wales with company number [♦], whose registered office is situated at [♦], ("**Customer**").

IT IS AGREED as follows:

DEFINITIONS AND INTERPRETATION

Definitions

In this agreement:

"Customer Data" if applicable because the Supplier has agreed to provide the Online Services, has the meaning ascribed to it in paragraph 1 of Schedule 3;

"Customer's Equipment" means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;

"Customer's Manager" means [♦], or such other person appointed by the Customer;

"Deliverables" means all Documents, products and materials developed by the Supplier or its licensors, agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data and reports (including drafts);

"Document" has the meaning and includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

"Documentation" if applicable because the Supplier has agreed to provide the Online Services, has the meaning ascribed to it in paragraph 1 of Schedule 3;

"Extended Term" means has the meaning ascribed to it in clause 2(d);

"In-put Material" means all Documents, information, data and materials provided by the Customer relating to the Services;

"Initial Term" has the meaning ascribed to it in clause 2(d);

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Licensor" has the meaning ascribed to it in the introductory paragraphs to Schedule 3;

"Online Services" if applicable because the Supplier has agreed to provide, or procure the provision of, the Online Services, means the subscription services provided by the Supplier or a Licensor or a Third Party Supplier to the Customer

under the terms and conditions described in Schedule 3 via [INSERT WEB ADDRESS] or any other website notified to the Customer by the Supplier from time to time, as more particularly described in Schedule 1;

"Pre-existing Materials" means all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data and reports;

"Services" means the services, including the Online Services (if applicable because the Supplier has agreed to provide, or procure the provision of, the Online Services), to be provided under this agreement as set out in Schedule 1, together with any other services which the Supplier provides or agrees to provide to the Customer;

"Software" if applicable because the Supplier has agreed to provide the Online Services, has the meaning ascribed to it in paragraph 1 of Schedule 3;

["Supplier's Equipment" means any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its licensors or subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;]

"Supplier's Manager" means [♦], or such other person appointed by the Supplier;

"Term" means the Initial Term and the Extended Term (if any);

"Third Party Supplier" has the meaning ascribed to it in the introductory paragraphs to Schedule 3; and

"VAT" means value added tax chargeable under English law for the time being and any similar additional tax.

Construction and interpretation

Unless a contrary indication appears, a reference in this agreement to:

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- (b) A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- (d) Words in the singular shall include the plural and vice versa.
- (e) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (f) A reference to **"writing"** or **"written"** includes faxes but not e-mail.
- (g) Where the words **"include(s)"**, **"including"** or **"in particular"** are used in this agreement, they are deemed to have the words **"without limitation"** following them. Where the context permits, the words **"other"** and **"otherwise"** are illustrative and shall not limit the sense of the words preceding them.
- (h) Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- (i) References to clauses and schedules are to the clauses and schedules of this agreement.

- (j) Any reference to the Supplier providing the Services or the Online Services shall, in the case of the Online Services (if applicable because the Supplier has agreed to provide the Online Services) include a reference that the Supplier shall procure the provision of the Online Services from a Licensor or a Third Party Supplier, provided the Online Services are not being provided directly by the Supplier.

COMMENCEMENT AND DURATION

- (k) The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.
- (l) If the Customer has requested that the Supplier provide the Online Services as part of the Services, and reference to the Online Services is set out in Schedule 1, the Supplier shall provide the Online Services in accordance with this agreement and, in particular, the terms and conditions set out in Schedule 3.
- (m) The Supplier shall provide the Services to the Customer from [the date of this agreement].
- (n) The Services supplied under this agreement shall continue to be supplied for a period of [3] years ("**Initial Term**") and, after that, shall continue to be supplied for successive 12 month periods ("**Extended Term**") unless either party gives written notice to the other party not later than [three] months before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

SUPPLIER'S OBLIGATIONS

- (o) The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with Schedule 1 in all material respects.
- (p) The Supplier shall use reasonable endeavours to meet any performance dates specified in Schedule 1, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- (q) The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause vi, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

CUSTOMER'S OBLIGATIONS

- (r) The Customer shall:
 - (i) co-operate with the Supplier in all matters relating to the Services;
 - (ii) [provide, for the Supplier, its licensors, agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier or any of them];
 - (iii) provide, in a timely manner, such In-put Material and other information as the Supplier may require, or which the Supplier agrees to hold, and ensure that it is accurate in all material respects and, in particular, to ensure that all Documents and data supplied to the Supplier are prepared by competent trained employees, or by individuals under the supervision of competent trained employees, in a proper manner, and in accordance with the Supplier's instructions, from time to time;

- (iv) appoint the Customer's Manager who will act as the Customer's contact person and who will be responsible for providing any Documents, Customer's Equipment and In-put Material, which may be required by the Supplier in relation to the Services;
 - (v) [be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services];
 - (vi) [inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises];
 - (vii) be responsible for all communications links required for the provision of the Services, as may be notified to the Customer from time to time;
 - (viii) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
 - (ix) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services[, the installation of the Supplier's Equipment], the use of In-put Material and the use of the Customer's Equipment [in relation to the Supplier's Equipment], in all cases before the date on which the Services are to start;
 - (x) [keep, maintain [and insure] the Supplier's Equipment in good condition and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation]; and
 - (xi) ensure during the initial set-up stages that any Deliverables, including sample prints, copy and other works produced by the Supplier, are adequate for the Customer's needs.
- (s) The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- (t) The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 6 months after the last date of supply of the Services or termination of this agreement, whichever is earlier, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- (u) Any consent given by the Supplier in accordance with clause t shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

INCOMPLETE, INCORRECT OR INACCURATE INFORMATION OR INSTRUCTIONS

If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (including by the provision of any incorrect or inadequate data, information or instructions), the Supplier:

- (v) shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay; and
- (w) may make an additional charge in accordance with clause 6(b) and clause 6(c) below.

CHANGE CONTROL

- (x) The Customer's Manager and the Supplier's Manager shall meet at least once every [6] months to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- (y) If either party requests a change to the scope or execution of the Services, of if the Supplier wishes to make an additional charge pursuant to clause 5 above, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - (i) the likely time required to implement the change;
 - (ii) any necessary variations to the Supplier's charges arising from the change; and
 - (iii) any other impact of the change on this agreement.
- (z) If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause ggg.
- (aa) Notwithstanding clause z, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least three months' notice of any change.

CHARGES AND PAYMENT

- (bb) In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Schedule 2.
- (cc) All charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.
- (dd) The Supplier shall invoice the Customer on a weekly basis.
- (ee) Subject to clause 7(e), the parties agree that the Supplier may review and increase the charges set out in Schedule 2, provided that:
 - (i) such charges cannot be increased more than once in any 12 month period; and
 - (ii) such increase shall not exceed a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of the second or any subsequent increase) up to the date of this notice.
- (ff) Notwithstanding clauses 7(d)(i) and 7(d)(ii), the Supplier may:

- (i) increase the postal costs it charges to the Customer in line with any increase levied by Royal Mail (or its successor from time to time) or any down stream access provider for the provision of postal service; and
 - (ii) increase the cost of stationery items it charges to the Customer in line with any increases in paper pulp prices.
- (gg) The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt by cheque or to a bank account nominated in writing by the Supplier.
- (hh) Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (i) charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (ii) suspend all Services until payment has been made in full.
- (ii) All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 7(h) is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- (jj) Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party against any amounts payable by it to the other party.
- (kk) All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause kk is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- (ll) Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party against any amounts payable by it to the other party.

INTELLECTUAL PROPERTY RIGHTS

- (mm) As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause nn, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.
- (nn) The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- (oo) The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its licensors, employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

- (pp) The Customer may disclose such information:
 - (i) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
 - (ii) as may be required by law, court order or any governmental or regulatory authority.
- (qq) The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause nn.
- (rr) The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.
- (ss) The Customer agrees that the Supplier may use the Customer's name and trade marks in connection with the promotion of the Supplier's business.
- (tt) [All materials, equipment and tools supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.]

[STORAGE AND RESPONSIBILITY FOR IN-PUT MATERIAL AND CUSTOMER'S EQUIPMENT

The Supplier does not accept any liability for loss or damage to any In-put Material and/or Customer's Equipment in its possession and such In-put Material and/or Customer's Equipment shall at all times remain the sole risk of the Customer, who shall be responsible for insuring such In-put Material and/or Customer's Equipment to such level as it deems appropriate.]

INDEMNITY

The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

- (uu) any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the provision of the Services; and
- (vv) the Supplier's termination of this agreement in accordance with clause 14(b)(i) and clause 14(b)(ii).

LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- (ww) This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, licensors, consultants and subcontractors) to the Customer in respect of:
 - (i) any breach of this agreement however arising;
 - (ii) any use made by the Customer of the Services, the Deliverables, the Online Services (if applicable because the Supplier has agreed to provide the Online Services) and the Documentation (if applicable because the Supplier has agreed to provide the Online Services) or any part of them; and

- (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- (xx) Except as expressly and specifically provided in this agreement:
- (i) if applicable because the Supplier has agreed to provide the Online Services, the Customer assumes sole responsibility for results obtained from the use of the Online Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Online Services, or any actions taken by the Supplier at the Customer's direction;
 - (ii) 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
 - (iii) if applicable because the Supplier has agreed to provide the Online Services, the Online Services and the Documentation are provided to the Customer on an "as is" basis.
- (yy) Nothing in this agreement limits or excludes the liability of the Supplier:
- (i) for death or personal injury resulting from negligence; or
 - (ii) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
 - (iii) for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- (zz) Subject to clauses xx and 12(c):
- (i) the Supplier shall not under any circumstances whatever be liable for:
 - (A) loss of profits; or
 - (B) loss of business; or
 - (C) depletion of goodwill and/or similar losses; or
 - (D) loss of anticipated savings; or
 - (E) loss of goods; or
 - (F) loss of contract; or
 - (G) loss of use; or
 - (H) loss of corruption of data or information, save as set out in paragraph 4(b) of Schedule 3; or
 - (I) loss arising as a result of the Customer's breach of its obligations under this agreement; or
 - (J) loss arising as a result of any claim made against the Customer by a third party, save as otherwise set out in this agreement; or
 - (K) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

- (ii) the Supplier's total 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 in all circumstances be limited to £5,000,000.

DATA PROTECTION

- (aaa) The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.
- (bbb) Save in relation to any personal data processed by the Supplier or any Licensor or Third Party Supplier, as a result of the provision of the Online Services, which is dealt with pursuant to paragraph nnnn of Schedule 3, if the Supplier 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 Supplier shall be a data processor and in any such case:
 - (i) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer or any relevant third party is located in order to carry out the Services and the Supplier's other obligations under this agreement;
 - (ii) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - (iii) 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;
 - (iv) the Supplier 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
 - (v) 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.

TERMINATION

- (ccc) Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than three months' written notice if:
 - (i) the other party commits a material breach of any of the material terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (ii) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, 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; or
 - (iii) 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; or

- (iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on 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; or
 - (v) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - (vi) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - (vii) 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; or
 - (viii) 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 its assets and such attachment or process is not discharged within 14 days; or
 - (ix) 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 ii to clause viii (inclusive); or
 - (x) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- (ddd) Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate this agreement without liability to the Customer immediately on giving notice to the Customer if:
- (i) the Customer requires the Supplier, in the Supplier's reasonable opinion, to store or reproduce any material which is defamatory, illegal, obscene, immoral or in breach of any third party's Intellectual Property Rights; or
 - (ii) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
 - (iii) if applicable because the Supplier has agreed to provide the Online Services, the Supplier's licence to use or provide the Software and/or the Online Services terminates, expires or is brought to an end in any other way which means that the Online Services cannot be provided to the Customer.
- (eee) On termination of this agreement for any reason:
- (i) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (ii) the Customer shall, within a reasonable time, return all of the [Supplier's Equipment,] Pre-existing Materials and the Documentation (if applicable because the Supplier has agreed to provide the Online

Services). If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

- (iii) if applicable because the Supplier has agreed to provide the Online Services, all licences to use the Software and/or the Online Services granted under this agreement shall immediately terminate;
- (iv) if applicable because the Supplier has agreed to provide the Online Services, the Supplier or any Licensor or Third Party Supplier may, unless agreed otherwise, destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier 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 Supplier shall use reasonable commercial endeavours to deliver, or procure the delivery of, 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 Supplier in returning or disposing of Customer Data;
- (v) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and
- (vi) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause ll (Intellectual property rights), clause nn (Confidentiality and the Supplier's property), clause 11 (Indemnity), clause 12 (Limitation of liability), clause ddd, clause 24 (Notices), clause 25 (Dispute resolution) and clause 26 (Governing law and jurisdiction).

FORCE MAJEURE

- (fff) A party shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause ggg, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:
 - (i) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - (ii) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - (iii) terrorist attack, civil war, civil commotion or riots;
 - (iv) nuclear, chemical or biological contamination or sonic boom;
 - (v) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - (vi) fire, explosion or accidental damage;
 - (vii) loss at sea;

- (viii) adverse weather conditions;
 - (ix) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - (x) any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - (xi) non-performance by licensors, suppliers or subcontractors; and
 - (xii) interruption or failure of utility service, including but not limited to electric power, gas, telecommunications or water.
- (ggg) If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

VARIATION

Subject to clause 6, no variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

WAIVER

- (hhh) A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- (iii) No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

CUMULATIVE REMEDIES

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

SEVERANCE

- (jjj) If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- (kkk) If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

ENTIRE AGREEMENT

- (lll) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.
- (mmm) Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any representation or

warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.

(nnn) Nothing in this clause shall limit or exclude any liability for fraud.

ASSIGNMENT

(ooo) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

(ppp) The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

(qqq) Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

RIGHTS OF THIRD PARTIES

A person who is not a party to this agreement shall not have any rights under or in connection with it.

NOTICES

(rrr) A notice given to a party under or in connection with this agreement:

- (i) shall be in writing in English (or accompanied by a properly prepared translation into English);
- (ii) shall be signed by or on behalf of the party giving it;
- (iii) shall be sent for the attention of the person, at the address or fax number specified in this clause (or to such other address, fax number or person as that party may notify to the other, in accordance with the provisions of this clause); and
- (iv) shall be:
 - (A) delivered personally; or
 - (B) sent by commercial courier; or
 - (C) sent by fax; or
 - (D) sent by pre-paid first-class post or recorded delivery; or
 - (E) sent by airmail requiring signature on delivery.

(sss) The addresses for service of a notice are as follows:

- (i) Supplier:
 - (A) address: Unit 3, Park Seventeen, Moss Lane, Whitefield, Manchester, M45 8FJ;

- (B) for the attention of: Simon Thompson; and
 - (C) fax number: 0161 766 5599.
- (ii) Customer:
- (A) address: [ADDRESS];
 - (B) for the attention of: [CONTACT]; and
 - (C) fax number: [FAX NUMBER].
- (ttt) If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- (i) if delivered personally, at the time of delivery; or
 - (ii) if delivered by commercial courier, at the time of signature of the courier's receipt; or
 - (iii) if sent by fax, at the time of transmission; or
 - (iv) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second day after posting; or
 - (v) if sent by airmail, five days from the date of posting.
- (uuu) For the purposes of this clause:
- (i) all times are to be read as local time in the place of deemed receipt; and
 - (ii) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.
- (vvv) To prove delivery, it is sufficient to prove that:
- (i) if sent by fax, the notice was transmitted by fax to the fax number of the party; or
 - (ii) if sent by pre-paid first class post, the envelope containing the notice was properly addressed and posted.
- (www) The provisions of this clause qqq shall not apply to the service of any process in any legal action or proceedings.
- (xxx) A notice required to be given under or in connection with this agreement shall not be validly served if sent by e-mail.

DISPUTE RESOLUTION

- (yyy) If any dispute arises in connection with this agreement, the Supplier's Manager and the Customer's Manager shall, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- (zzz) If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR notice**") to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

(aaaa) No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

GOVERNING LAW AND JURISDICTION

(bbbb) 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.

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

This agreement has been entered into on the date stated at the beginning of this agreement.

SCHEDULE 1
SERVICES

To be determined at account level

SCHEDULE 2
CHARGES

SCHEDULE 3
TERMS AND CONDITIONS FOR THE PROVISION OF THE ONLINE SERVICES

This Schedule 3 is only applicable if the Supplier has agreed to provide the Online Services, which will be detailed in Schedule 1.

Where the Supplier has agreed to provide the Online Services to the Customer, the Customer acknowledges and agrees that the Supplier may supply such Online Services under licence from third parties ("**Licensor**") or may engage third parties to provide such Online Services ("**Third Party Supplier**"); however, the Customer shall regard such Online Services as being provided by the Supplier for the purposes of this agreement, and the Customer's rights and obligations under it.

DEFINITIONS AND INTERPRETATION

Definitions

The definitions in this paragraph 1 of Schedule 3 apply in this Schedule 3, in addition to the definitions and rules of interpretation set out in clause 1 above.

"Access Equipment" means the Customer's hardware, software and other equipment (including telecommunications equipment) necessary to enable the Customer to access the Online Services;

"Authorised Users" means those employees, agents, independent contractors and customers of the Customer who are authorised by the Customer to use the Online Services and the Documentation;

"Business Day" means any day which is not a Saturday, Sunday or public holiday in the UK;

"Confidential Information" means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in paragraph ffff of Schedule 3.

"Customer Data" means the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Online Services or facilitating the Customer's use of the Online Services.

"Documentation" means the document made available to the Customer by the Supplier or any Licensor or Third Party Supplier online via [INSERT WEB ADDRESS] or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Online Services and the user instructions for the Online Services;

"Effective Date" means the date of this agreement;

"Normal Business Hours" means 9.00 am to 5.30 pm local UK time, each Business Day;

"Software" means the online software applications provided by the Supplier or any Licensor or Third Party Supplier as part of the Online Services;

"Support Services Policy" means the Supplier's policy for providing support in relation to the Online Services as made available at [INSERT WEB ADDRESS] or such other website address as may be notified to the Customer from time to time;

"User Subscriptions" means the user subscriptions which entitle Authorised Users to access and use the Online Services and the Documentation in accordance with this Schedule 3; and

"Virus" means 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.

USER SUBSCRIPTIONS

(dddd) Subject to the restrictions set out in this paragraph of Schedule 3 and the other terms and conditions of this Schedule 3, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Online Services and the Documentation during the Term solely for the Customer's, and the Customer's customers', internal business operations.

(eeee) The Customer undertakes that it, and each Authorised User, shall keep the secure user name(s) and password(s) for use of the Online Services and Documentation confidential. The Customer shall indemnify the Supplier against any loss, damages or liability of whatever nature, which the Supplier may sustain or incur as a result of the Customer's failure to comply with this paragraph eeee.

(ffff) The Customer shall not, and shall procure that Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Online Services that:

- (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; or
- (ii) facilitates illegal activity; or
- (iii) depicts sexually explicit images; or
- (iv) promotes unlawful violence; or
- (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (vi) causes damage or injury to any person or property; or
- (vii) was obtained in contempt of court, or in breach of contract, duty of confidence, parliamentary privilege or court reporting restrictions,

and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph. The Supplier may also make an additional charge for investigating or dealing with such breach.

(gggg) The Customer shall not, and shall procure that Authorised Users shall not:

- (i) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (A) and except to the extent expressly permitted under this Schedule 3, 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 Documentation (as applicable) in any form or media or by any means; or

- (B) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (ii) access all or any part of the Online Services and Documentation in order to build a product or service which competes with the Online Services and/or the Documentation; or
 - (iii) use the Online Services and/or Documentation to provide services to third parties; or
 - (iv) subject to clause 21 above, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Online Services and/or Documentation available to any third party except the Authorised Users; or
 - (v) attempt to obtain, or assist third parties in obtaining, access to the Online Services and/or Documentation, other than as provided under this paragraph of Schedule 3.
- (hhhh) The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Online Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

ONLINE SERVICES

- (iii) The Supplier shall, during the Term, provide, or procure the provision of, the Online Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- (jjjj) The Supplier shall use commercially reasonable endeavours to make the Online Services available 24 hours a day, seven days a week, except for:
 - (i) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - (ii) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- (kkkk) The Supplier will, as part of the Online Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Online Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

CUSTOMER DATA

- (llll) The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- (mmmm) In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by, or on behalf of, the Supplier. The Supplier 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 Supplier to perform services related to Customer Data maintenance and back-up including Licensors and Third Party Suppliers).

- (nnnn) If the Supplier or any Licensor or Third Party Supplier processes any personal data on the Customer's behalf when performing its obligations under this Schedule 3, the parties record their intention that the Customer shall be the data controller and the Supplier or any Licensor or Third Party Supplier (as applicable) shall be a data processor and in any such case:
- (i) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Online Services and the Supplier's other obligations under this Schedule 3;
 - (ii) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier or any Licensor or Third Party Supplier (as applicable) so that the Supplier or any Licensor or Third Party Supplier (as applicable) may lawfully use, process and transfer the personal data in accordance with this Schedule 3 on the Customer's behalf;
 - (iii) 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;
 - (iv) the Supplier or any Licensor or Third Party Supplier (as applicable) 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
 - (v) 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.

SUPPLIER'S OBLIGATIONS IN PROVIDING THE ONLINE SERVICES

- (oooo) The Supplier undertakes that the Online Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- (pppp) The undertaking at paragraph 5(a) of Schedule 3 shall not apply to the extent of any non-conformance which is caused by use of the Online Services contrary to the Supplier's or any Licensor's or Third Party Supplier's instructions, or modification or alteration of the Online Services by any party other than the Supplier or the Supplier's duly authorised licensors, contractors or agents including Licensors and Third Party Suppliers. If the Online Services do not conform with the foregoing undertaking, the Supplier 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 paragraph 5(a) of Schedule 3. Notwithstanding the foregoing, the Supplier:
- (i) does not warrant that the Customer's use of the Online Services will be uninterrupted or error-free; nor that the Online Services, Documentation and/or the information obtained by the Customer through the Online Services will meet the Customer's requirements; and
 - (ii) 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 Online Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

(qqqq) This Schedule 3 shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Schedule 3.

(rrrr) The Supplier warrants that it has all necessary licences, consents, and permissions necessary for the performance of its obligations under this Schedule 3.

CUSTOMER'S OBLIGATIONS IN RELATION TO THE ONLINE SERVICES

The Customer shall, and shall procure that Authorised Users shall:

(ssss) provide the Supplier or any Licensor or Third Party Supplier with:

- (i) all necessary co-operation in relation to this Schedule 3; and
- (ii) all necessary access to such information as may be required by the Supplier or any Licensor or Third Party Supplier;

in order to render the Online Services, including but not limited to Customer Data, security access information and configuration services;

(tttt) provide a suitable desktop configuration as part of the Access Equipment in order to be able to use the Online Services. The configuration will include:

- (i) a computer connected to the internet;
- (ii) web browser software with JavaScript enabled: Netscape v7.2 or later, Microsoft Internet Browser v7.1 or above or Firefox v1.0 or above; and
- (iii) Adobe Reader Viewer v7 or above.

The Customer acknowledges that Macintosh is not currently supported.

(uuuu) comply with all applicable laws and regulations with respect to its activities under this Schedule 3;

(vvvv) carry out all other Customer responsibilities set out in this Schedule 3 in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

(wwww) ensure that the Authorised Users use the Online Services and the Documentation in accordance with the terms and conditions of this Schedule 3 and shall be responsible for any Authorised User's breach of this Schedule 3;

(xxxx) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors, agents, Licensors or Third Party Suppliers to perform their obligations under this Schedule 3, including without limitation the Online Services;

(yyyy) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

(zzzz) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's or any Licensor's or Third Party Supplier'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.

PROPRIETARY RIGHTS

- (aaaaa) The Customer acknowledges and agrees that the Supplier, the Licensor or the Third Party Supplier (as applicable) owns all intellectual property rights in the Online Services and the Documentation. Except as expressly stated herein, this Schedule 3 does not grant the Customer or the Authorised Users any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Online Services or the Documentation.
- (bbbbbb) In the defence or settlement of any claim that the Online Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, the Supplier may procure the right for the Customer to continue using the Online Services, replace or modify the Online Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement or any part of it 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.
- (ccccc) In no event shall the Supplier, its employees, licensors, agents and sub-contractors including Licensors or Third Party Suppliers be liable to the Customer to the extent that the alleged infringement is based on:
- (i) a modification of the Online Services or Documentation by anyone other than the Supplier or a Licensor or Third Party Supplier; or
 - (ii) the Customer's use of the Online Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier or a Licensor or Third Party Supplier; or
 - (iii) the Access Equipment not being suitable for the provision of the Online Services; or
 - (iv) the Customer's use of the Online Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- (dddddd) The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', licensors', agents' and sub-contractors' including any Licensor's or Third Party Supplier's) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

CONFIDENTIALITY

- (eeeeee) Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, save that, subject to the terms of this agreement, the Supplier shall be liable for any loss, destruction, alteration or disclosure of Confidential Information caused by any Licensor or Third Party Supplier.
- (fffff) The Customer acknowledges that details of the Online Services, and the results of any performance tests of the Online Services, constitute the Supplier's Confidential Information.
- (ggggg) The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- (hhhhh) This paragraph ddddd of Schedule 3 shall survive termination of this agreement, however arising.

INDEMNITY

The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including

without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's, or the Customer's customers', use of the Online Services and/or Documentation, provided that:

(iiii) the Customer is given prompt notice of any such claim;

(jjjj) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(kkkk) the Customer is given sole authority to defend or settle the claim.

EXECUTED by [**NAME OF**)
DIRECTOR] for and on behalf of)
PRIME DOCUMENT LIMITED)
Director

EXECUTED by [**NAME OF**)
DIRECTOR] for and on behalf of)
[NAME OF CUSTOMER])
Director