Terms and Conditions

1. SCOPE

Subject to the payment of the Activation Fee and the Subscription Charges and Subject to observance and performance of the terms and conditions by the Customer, the Company grants the Licence to the Customer, to use its Website Space by allocating its Application and shall supply the user ID and Password to the extent of user of the said Application to the Customer in accordance with this agreement or as may be mutually agreed between the parties hereto in writing.

1.1. By entering into this Agreement, the Customer has specific knowledge and has specifically agreed and accepts that the Company shall not made accountable, liable and responsible to the customer, licenced user and/or third party on account of any contents which are made available on site and/or in the bespoke software/application contents to the customer and it shall be sole and exclusive liability, sole responsibility of the customer in that regard. **This Clause shall be deemed to be a Public Notice by the Company to the Customer and the Licensed User/s and shall also be applicable to all the third party/parties as if such party/parties is/are Party to this agreement to the aforesaid extent.**

The Terms and Conditions of this Agreement hereinafter specified shall be read in conjunction with all other sections enclosed herein.

Following clauses shall be considered as an extension and not in limitation of the obligations of the Customer. For avoidance of doubt, it is clarified that in the event of any discrepancies, ambiguities or conflicts between this Agreement and any other documents executed in accordance with the terms of this Agreement, the terms of this Agreement shall prevail.

This Agreement shall be referred to for any interpretation, reference or meaning thereto.

2. INTERPRETATION

2.1.   The following definitions and rules of interpretation apply in this agreement.

Application: the application software comprised of the Licensed Software developed by the Company in accordance with the Configuration for operation on the Platform (includes any New Versions subject to its payment in accordance with this agreement).

Activation Fee: the fee payable by the Customer for the Application to be activated and made available in the App Store, as set out in the Customer Specification.

App Store: an online or remote-accessed location where the Application/s will be made available for downloading.

Activation Date: means the date on which the client's Application has been approved by the Company and is made available in the App Store as set out herein clause 3.2.

Bespoke Software: software programs developed by the Company specifically for the Customer as part of the Application.

Business: the primary business of the Customer at the date of this agreement.

Commencement Date: the date on which this agreement becomes effective, as specified in the Customer Specification.

Configuration: means the Application configuration work as set out in the Customer Specification, subject to Customer making the payment in advance, as specified herein.

Customer: means the Customer to whom the services are being provided as specified in the Customer Specification.

Customer Specification: means the plan appended to these terms or separately agreed between the parties, which sets out the Configuration, the Activation Fee and the Subscription Charges.

Data Protection Law: all applicable data protection law and regulations in any jurisdiction.

Intellectual Property Rights: Trade mark and other services marks of the Company, Application Software (including any modification, addition, deletion and any new versions as well as any new innovations) of the Company, patents, utility models, rights to inventions, copyright and neighbouring and related rights, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Licence: the licence granted under clause 7.1.

Licensed Software: the Bespoke Software, the Company's Standard Software and the Open-Source Software.

Licensed Users: anyone who downloads the Application of the Company from an App Store or is given access to the Application by the Customer.

Minimum Term: the minimum user's term set out in the Customer Specification.

Mobile Device: the mobile phones, smart phones, tablets, PDAs, computers and other equipment or any other Device on which the Application will operate.

New Version: a new release of all or any part of the Application in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function(s) have been added.

Normal Working Hours: the Office working hours of the Company between 09:00 to 17:00 GMT, Monday to Friday, except Bank Holidays in England and Wales.

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (set out at www.opensource.org) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at www.gnu.org), or anything similar, included or used in, or in the development of, the Application (Current,.

Order: an order for goods/services to be supplied by the Customer to the Licensed User made by a Licensed User via the Application.

Personal Data: data, subject to protection under Data Protection Law in any jurisdiction.

Platform: Native Apps: iOS and Android. Web browsers: Chrome, Firefox, Internet Explorer, Safari and any other means which is used for similar purpose/s. The current and previous major releases of these platforms are supported on a rolling basis. Each time a new version is released, subject to the Company's Policy, support for that version begins and support for the third most recent version stops.

Subscription Charges: the monthly or weekly support charge specified in the Customer Specification.

Company Standard Software: the software programs proprietary of the Company.

The Company: means Brand A Way Ltd. (company number 10108109), trading as Brand A Way.

Third-Party Licences: all third party licences relating to the Third Party Software and all licences relating to any Open-Source Software.

Virus: anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2.2.   A reference to a particular law is a reference to it as it is in force for the time including any amendment, extension, application or re-enactment, and includes any subordinate legislation. A reference to a clause, Schedule or annex is a reference to a clause, Schedule or annex to, this agreement. Clause and Schedule headings do not affect the interpretation of this agreement.

2.3.   The Schedules to this agreement, together with any documents referred to in them, form part of this agreement and any reference to this agreement means this agreement and the Schedules and all documents referred to in them.

2.4.   If any conflict arises between the terms and conditions of this agreement and any provision of the Customer Specification, this Agreement shall prevail.

3. THE APPLICATION

3.1.   The Company shall carry out the Configuration, (subject to the Policy as may be framed by the Company), with reasonable care, skill and expertise and use reasonable endeavours to provide the Application in accordance with the Configuration by the estimated Activation Date. Time shall not be of the essence in relation to any timescales which are applicable to the Company.

3.2.   Once the Configuration is completed in all respect (including compliances of the company's policy decision by the customer), the Company may at its sole discretions, submit the Application to the relevant App Store or the site as may be available to the Company for approval. When approval has been given, the Application will be made available in the App Store or the site as may be available to the Company.

3.3.   If delivery is delayed at the request of the Customer, or because of its acts or omissions, any impacted dates or timescales shall be amended to take account of such delay. If the Company demonstrates that the delay has resulted in an increase in cost to the Company for carrying out its obligations under this agreement, the Company shall, at its sole discretion, notify the Customer that it wishes to increase the Activation Fee by an amount not exceeding any such demonstrable cost. The Company shall invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs. Notwithstanding to what is contained herein and in any of the clauses set out herein, the Company shall not be liable and/or accountable and/or responsible on whatsoever ground including money claims, if any, or otherwise of/to third party/parties in any manner whatsoever, who has/have placed the order/s with the Customer. The Customer shall indemnify and always keep indemnified the Company against any losses, costs, charges, damages, litigations (civil or criminal) and expenses which the Company and its Director/s, employees etc. may incur to defend the same, without any delay or demure of whatsoever nature.

4. CUSTOMER SPECIFICATION AND EXTENSION OF TIME

4.1. Both parties shall perform their respective obligations under this agreement in accordance with the Customer Specification.

4.2. The Company shall be given an extension of the timetable of any one or more of the stages in the Customer Specification if one of more of the following events occurs:

4.2.1.   a variation to the Application is made at the Customer's request;

4.2.2.   a force majeure event occurs as described in clause 16.7;

4.2.3.   a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors

4.2.4.   a delay is caused in whole or in part by any action which is beyond the control of the Company and/or which is otherwise not in ordinary course to complete the

obligation of the Company which includes an act of un-intentional commission or omission.

4.3. If the Company is entitled to an extension of time under clause 16.7, it shall give written notice to the Customer within seven working days from the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under clause 16.7, shall estimate the probable extent of the delay.

4.4. The Customer acknowledges and unconditionally and irrevocably agrees that any delays or rejections caused by an App Store and/or due to browsing of the Application and/or due to collapsing of the Application on any ground whatsoever, which are outside the Company's control and therefore, the Company shall not be liable to the Customer and/or to any third party claiming by or through the Customer in the event of any delay caused by such actions. **This Clause shall be deemed to be a Public Notice by the Company to the Customer and the Licensed User/s and/or any third party and shall also be applicable to all the third party/parties and Licenced User/s as if such party/parties is/are Party to this agreement to the aforesaid extent.**

5. PAYMENT

5.1. The Company shall submit invoices in accordance with the Customer Specification. The Customer shall make payment of each invoice in advance as per the Agreement.

5.2. The Activation Fee, the Subscription Charges and all other payments stated in the Customer Specification are net of VAT and other taxes. The Customer hereby agrees to pay VAT and other taxes (prospective or retrospective) as the case may be, applicable from time to time, in addition to the aforesaid payments.

5.3. If any sum is not paid on or before its due date under this agreement or under any extended period granted by the Company, the Customer in default shall pay interest at 4% per annum over the Barclays Bank PLC base rate for the period beginning on the due date and ending with the date on which the sum is paid (and the period shall run after as well as before judgment).

5.4. The Company may increase the Subscription Charges by giving the Customer written notice, such notice to be effective either:

5.4.1. on the first anniversary of the Activation Date if the Minimum term is greater than 12 months;

5.4.2. on the expiry of the Minimum Term if the Minimum Term is 12 months or less; or

5.4.3. 3 months after the Activation Date, if the Minimum Term is less than 3 months.

5.5. Out-of-pocket expenses shall be charged by the Company to the Customer.

5.6. It is agreed by the Customer that in case the Customer fails to pay the aforesaid charges on its due dates as specified hereinabove, then without prejudice to the rights of the Company, the Company shall at its sole discretion withhold and/or stop the use/display of

the Application and/or the name of the Customer on its web site without any reference to the Customer in that behalf. The Customer unconditionally and irrevocably agrees to the aforesaid understanding and shall thereafter have no right to raise any dispute or claim any monetary compensation in that behalf from the Company and its Directors/employees. The Customer further agrees that the Company has executed this Agreement on the basis of the aforesaid understanding, which has been accepted by the Customer.

6. OWNERSHIP

6.1. The Customer acknowledges and agrees that the Company owns all Intellectual Property rights in the Application (including its further invention in this regards done by the Company). Except as expressly stated otherwise, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Application or any related documentation. The Customer further acknowledges that the license granted herein by the Company is for a limited period to the Customer and that no other right of whatsoever nature is hereby granted by the Company to the Customer other than the temporarily license for limited period subject to prompt payment and observance of terms and conditions as stipulated herein by the Customer.

6.2. The Company confirms that it has all the rights in relation to the Application that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement. The Customer confirms that the Company has sole and absolute rights on the Application and all further inventions made in this regards and the same shall always be the proprietary rights of the Company.

6.3. The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Application and shall promptly report to the Company any such infringement that comes to its attention. In particular, the Customer shall:

6.3.1. ensure that each Licensed User, before starting to use the Application, is made aware that the Application is proprietary to the Company and that it may only be used in accordance with this agreement; and

6.3.2. ensure that the terms and conditions of use of any App Store and/or Mobile Device and/or any other device do not conflict with any of the terms of ownership detailed in this clause 6 .

6.4. The Customer hereby indemnifies the Company and shall always keep the Company harmless and indemnified against any and all costs, charges, losses, expenses and damages howsoever incurred by the Company relating to the Company's use of any materials supplied or use of any of the property which belongs to the Company by the Customer and/or by any third party claiming through the Customer, that result in a claim, or potential claim against the Company by a third party relating to the alleged or actual infringement of a third party's rights, and the Customer shall reimburse such costs, charges, losses, expenses and damages which the Company incurred, without any delay or demure upon receipt of written notice from the Company.

7. SOFTWARE LICENCE AND DOCUMENTS

7.1. In consideration of the Activation Fee and the Subscription charges, the Company grants, subject to the terms of this agreement, the Customer the non-exclusive, non-transferable right to use the Application on the Mobile Devices for purpose related to its Business and to sub-license the Application to any License User in accordance with clause 6.

7.2. Except as permitted under clause 7.1, the Customer shall not:

    7.2.1.   sub-license, rent, lend, assign or transfer in any other way this agreement or the Licensed Software to any person without the prior written consent of the Company; and

    7.2.2.   give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

7.3. The Customer shall not use the Licensed Software /Application of the Company with other software.

7.4. The Customer shall not make adaptations or variations of the Licensed Software without the prior written consent of the Company. The Company reserves its sole discretionary rights to reject such request without assigning any reasons to the Customer.

7.5. The Customer shall not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software or in any manner tamper with the property of the Company.

7.6. The Company shall provide such New Versions as it may determine from time to time.

7.7. The Company shall notify the Customer promptly in writing of the issue of any New Version, specifying in what way the New Version differs from the previous version in terms of functionality, performance and compatibility and the charge for the same.

7.8. The Customer unconditionally agrees and accepts to download the New Version and acknowledges that older versions of the Application may not continue to be supported, as per the policy of the Company. The Customer undertakes to pay the revise **Subscription Charges** (including any increase thereto) to the Company.

7.9. The Company shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to the Company of any inaccuracies or omissions in order to permit the Company to correct them. If such data includes Personal Data, the Company shall return all copies of such Personal Data to the Customer on completion of the data migration process.

7.10. The Company shall ensure that support is available by telephone and e-mail during Normal Working Hours to provide assistance to the Customer in respect remedying defects in the Application.

7.11.   The Company shall use reasonable endeavours to correct defects notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:

7.11.1. the Customer shall promptly notify in writing to the Company of all defects. Where such notification is made orally, the Customer shall provide written confirmation of the notification within 24 hours;

7.11.2. within one working day of such notification, the Company shall acknowledge receipt of the written notification and shall determine, in consultation with the Customer, the seriousness of the defect;

7.11.3. if a notified defect substantially impairs the Customer's Business, the Company shall:

7.11.3.1. start work on correcting the defect within twenty four hours of determining the seriousness of the defect;

7.11.3.2. use all reasonable efforts to correct the defect as soon as possible; and as soon as 'the Company's workload allows and shall use commercially reasonable efforts to correct the defect.

7.11.3.3. keep the Customer informed of progress towards correction of the defect and

7.11.4. if a notified defect, while not substantially impairing the Customer's Business, causes those operations to become significantly slowed or causes substantial inconvenience, the Company shall commence work on correcting the defect within two working days of receipt of such notification and shall use all reasonable efforts to correct the defect as soon as possible.

7.12. The Customer shall not at any time, give the Company's detail to any Licensed User in the event of a fault with the Application. Any correspondence in relation to faults shall only be between the Customer and the Company.

7.13. Notwithstanding anything contained herein, it is agreed by the Customer that in case if the defects notified by the Customer to the Company, could not be remedied by the Company on any ground whatsoever, then in that event the Company shall not be liable to pay any loss, damages and/or any charges for the same to the Customer and/or its Licensed User.

8. ORDERS

8.1. All Orders received via the Application will be to the knowledge of the Customer using the method(s) referred to in the Customer Specification. Before accepting any Order, the Customer must check the contents of each Order to ensure it is correct and error free, including but not limited to the prices listed and payable or paid by the Licensed User. The Company shall have no liability in respect of the content of any Order and/or if the prices

listed, paid or payable by the Licensed User are incorrect and/or any failure to recover any amount on such Order and/or in the event the Customer sustains any loss due to such Order It shall always be responsibility and obligation of the Customer to honour or reject the Order which has been placed by the Licensed User at its sole risks, costs and consequences thereto. In no circumstances, the Company shall be made responsible and/or made accountable/liable on that count. For the sake of clarity, no amount towards price of such order shall be received by the company and that such amount shall be directly be received by the customer from the licenced user and/or any third party.

8.2. Each contract arising out of an Order shall be between the Customer and the Licensed User and the Company shall not be liable for any delivery, loss or damages to the Customer and/or any third party who place such Order. The Company shall not be liable as to delivery, quality and quantity of Order placed by any Licensed User and/or by any third party. Further the Company shall not be made liable for any false representations and/or assurances given by the Customer on its Software Application, and/or any fraud committed by the Customer with any Licensed User and/or by any third party and Licensed User and/or any third party who place its order with the Customer, shall be at its own sole risks, costs and consequences thereto. **This Clause shall be deemed to be a Public Notice by the Company to the Customer and the Licensed User/s and shall also be applicable to all the third party/parties as if such party/parties is/are Party to this agreement to the aforesaid extent.**

8.3. The Customer shall be absolutely and solely accountable, liable and responsible towards any amount (including charge back or otherwise whatsoever in nature) that may be refundable to the Licensed User/s and/or to any third party who placed an order on the Application with the Customer. The Customer specifically agree, undertakes and accepts to the Company that in the event of any amount received by the Customer against the placement of any order which is subject to a chargeback, then it will be sole and absolute responsibility of the Customer to reimburse the said amount (along with any further expenses, if any) to the Licensed User or third party, as the case may be. The Company shall not be responsible, liable and accountable towards chargeback transaction and/or any transaction in any manner whatsoever. **This Clause shall be deemed to be a Public Notice by the Company to the Customer and the Licensed User/s and shall also be applicable to all the third party/parties as if such party/parties is/are Party to this agreement to the aforesaid extent.** The Customer hereby indemnify and shall keep indemnified the Company, its Directors, employees etc. against all losses, claims, expenses, cost, charges and damages that the Company may have to suffer or incur in that behalf, including litigation (criminal and/or civil). The Customer gives un-conditional and irrevocable absolute rights, power and absolute authority to the Company to deduct such amount of chargeback (together with any further expenses or amount which may be incurred by the Company) from the advance amount which may be received by the Company under this Agreement.

8.4. Notwithstanding anything contained herein, it is agreed by the Customer that because of the Software Application which is customised for the Customer as per the Customer Specification and subject to the payment by the Customer as per this Agreement, the Customer shall be deemed to have all the notices with regards to the placement of any

order by the Licensed User/Third Party and shall promptly as soon as possible response to such order and deliver the same to the Licensed User/Third Party who has placed such order after receipt of money thereof. In the event of any inability on the part of the Customer to deliver the said Order then in such event, the Customer shall send such Email (and correspondent) directly to such Licensed User/Third Party and shall directly refund the necessary amount for non-delivery of such Order. In the event of any demand is made by the Company then in that event the Customer shall send all such Emails by forwarding the same to the Company in this regard. However, under no circumstances, the Company shall be responsible, accountable and liable to any third party, Licensed User and/or to the Customer on that count.

9. CUSTOMER'S OBLIGATIONS

9.1. To pay one time Setup Fees / activation fees to the Company at the time or prior to execution of this Agreement and to pay necessary amount of Subscription Fees as per the Plan selected by the Customer as per the Customer Specification. During the validity of this Agreement, the Customer shall ensure that the said Subscription Fees shall be transferred by the Customer's Bank into the Bank Account of the Company.

9.2. Whilst Subscription Charges are payable by the Customer, the Customer shall not, without the Company's prior written approval, allow any person other than a representative of the Company to modify, repair or maintain any part of the Application.

9.3. The Customer shall co-operate with the Company in any manner reasonably required by the Company in order to carry out the Configuration and shall, subject to the Company's compliance with the Customer's normal security requirements, provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of defects, provided that the Customer may choose to have direct or remote access and, if remote, the Customer must comply with any additional requirements for security and encryption techniques or software which the Company may from time to time specify.

9.4. The Customer shall be absolutely solely responsible for ensuring any menu and price list it supplies to the Company for incorporation into the Application is correct and the Customer must check the uploaded menu and confirm to the Company that it is correct and error free. If the Customer fails to check the menu and/or if the menu does contain any errors, in relation to description of products, pricing or otherwise, the Company shall have no liability in this respect to the Customer for such default of the Customer to give the correct data.

9.5. The Customer must ensure that any information relating to health and safety or otherwise (including but not limited to allergy information) that is required by law to be on the menu, is included and displayed in a prominent place on the menu. It will be obligatory and mandatory on the part of the Customer to comply with all the mandatory requirements as may be prescribed in law in relation to its product/material and shall submit photosets/copies of all the requisite supporting permissions and license obtained from the Government in respect of its product/material in support of its Application to the Company. In no event, the Company shall be made liable or responsible (either monetary or otherwise) in the event of any breaches committed by the Customer (including for renewal

of License or permission from the appropriate Authority/government) by violating such mandatory conditions or permissions of the appropriate Government and/or appropriate Licensing Authority/ties in that behalf.

9.6. If the Licensed User is able to purchase alcoholic products via the Application, it is the Customer's sole and absolute responsibility to ensure that such Licensed Users are over the age of 18 when such products are delivered to, or collected from, the Customer and the Company shall have no liability and/or responsibility in this respect in any manner whatsoever.

9.7. The items/products which are prohibited and banned by the Government or by any bodies/authorities, such items/products shall not be displayed in the Application by the Customer and the Customer shall ensure that no such items/products are displayed in the Application of the web-site of the Company. Violation of the aforesaid term by the Customer shall be breached of the terms of this Agreement and the Company, without prejudice to its other rights, shall immediately terminate this Agreement and shall forfeit all the amounts paid by the Customer under this Agreement.

10. CONFIDENTIALITY AND PUBLICITY

10.1.   Upon execution of this Agreement, the Customer (unconditionally and irrevocably) undertakes that it shall not at any time disclose to any person 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 Company, its employees, agents, consultants or subcontractors or of any member of the group of companies to which the Company belongs and any other confidential information concerning the Company's business or its products which the Customer may obtain, except as permitted by clause 10.2.

10.2.   The Customer may disclose the Company's confidential information strictly under the Customer's own supervision:

10.2.1.   to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses such confidential information comply with this clause 10; and

10.2.2.   as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3.   The Customer shall not use the Company's confidential information or any part thereof, for any purpose other than to perform its obligations under this agreement.

10.4.   All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own costs, expenses, risk and shall be maintained and kept in good condition by the Customer until

returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

11. DATA PROTECTION

11.1.   The following definitions apply:

11.1.1.   the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act;

11.1.2.   "data" includes Personal Data; and

11.1.3.   Customer Personal Data means any Personal Data provided by or on behalf of the Customer.

11.2.   Subject to clause 11.5, the Company shall:

11.2.1. only carry out processing of any Customer Personal Data on the Customer's instructions (which shall be an absolute irrevocable authority given by the Customer to the Company in that behalf);

11.2.2. implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and

11.2.3. only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.

11.3.   The Company shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.

11.4.   The Customer specifically agrees, accepts and acknowledges that the Company will be acting only as a data processor, rather than as a data controller, in respect of all such data processing activities which the Company carries out under this agreement.

11.5.   Notwithstanding anything contained herein, the Customer hereby agrees and acknowledges that the Customer and the Company have entered into this agreement on a principal-to-principal basis and that the Company shall not be construed or deemed to be the agent, middleman, or supervisor of the Customer.   Notwithstanding what is stated herein, the Company shall not be liable for any loss or damage that may be caused to the Customer and/or its Licensed User due to any reason, ground and/or circumstances whatsoever. The Customer hereby indemnify and shall keep indemnified the Company, its Directors, employees etc. against all losses, claims, expenses, cost, charges and damages that the Company may have to suffer or incur in that behalf, including litigation (criminal and/or civil).

11.6. Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise) in, any Intellectual Property Rights in any data.

12. WARRANTIES

12.1. The Company represents that, as far as the Company is aware:

12.1.1. the Licensed Software belongs to the Company and/or it has the necessary rights to license all UK Intellectual Property Rights in and to the Licensed Software to the Customer;

12.1.2. use of the Company Standard Software and Bespoke Software does not infringe the UK Intellectual Property Rights of any third party;

12.1.3. the Licensed Software at the Activation Date, and for six months after that date, will perform in accordance with the Configuration relating to the Platform;

12.1.4. it is in compliance with all applicable law and regulations.

12.2. The sole remedies for breach of the representation in clauses 12.1.1 and 12.1.2 are that the Company may, at its sole discretion:

12.2.1. replace all or part of the Application with functionally equivalent software;

12.2.2. modify the Application as necessary to avoid such claim;

12.2.3. procure for the Customer a licence from the relevant claimant to continue to use the Application; or

12.2.4. if clauses 12.2.1 to 12.2.3 are not necessarily feasible (in the Company's opinion) terminate this agreement on notice.

12.3. The sole remedy for breach of the representations under this clause 12.1.3 shall be correction of defects within a reasonable time from notification by the Customer of the defect that constitutes such breach.

12.4. The representation set out in clause 12 are in lieu of all other express or implied representation or conditions. The Company specifically denies any implied or express representation that the Licensed Software will be fit:

12.4.1. to operate in conjunction with any hardware items or software products other than with those that are identified in the Customer Specification as being compatible with the Licensed Software; or

12.4.2. to operate uninterrupted or error-free.

12.5. Any unauthorised modifications, use or improper installation of the Application by, or on behalf of, the Customer shall render all the Company's obligations under this agreement null and void.

12.6.   The Company shall not be obliged to rectify any particular defect if attempts to rectify such defect other than by normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Company.

12.7.   Any Open-Source Software provided by the Company may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 12.4.

12.8.   The Customer:

12.8.1. Warrants, assure and represent to the Company that it will at all times comply with all applicable laws and regulations with respect to its activities under this agreement and any part of the Licensed Software;

12.8.2. shall not access, store, distribute or transmit or cause, suffer or allow to be accessed, stored, distributed or transmitted any Virus or distributed or transmitted any information or data which is otherwise not permitted in any law which may be applicable; and

12.8.3. shall indemnify the Company against all liabilities, costs, charges, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company arising out of any non-compliance by the Customer with this agreement and also by any claim or demand in the event if the same is made by any third party claiming by or through the Customer (including Licensed User).

12.9.   Each party represents that it has full capacity, power and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

13. LIMITATION OF LIABILITY

13.1.   Neither party excludes or limits liability to the other party for:

13.1.1. fraud or fraudulent misrepresentation;

13.1.2. death or personal injury caused by negligence;

13.1.3. a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or any applicable laws and Act/s or amendments thereto; or

13.1.4. any matter for which it would be unlawful for the parties to exclude liability.

13.2.   Subject to clause 13.1, the Company shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

13.2.1.   any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

13.2.2.   any loss or corruption (whether direct or indirect) of data or information;

13.2.3.   loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

13.2.4.   any loss or liability (whether direct or indirect) under or in relation to any other contract.

13.3.   Subject to clause 13.1, the Company's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, to the Customer and/or to the Licensed User and/or any third party, arising in connection with this agreement shall be limited to the Subscription Charges paid by the Customer during the last 12 month's or any period lesser that 12 month whichever is lower period immediately before the date on which the claim arises. On the date when the aforesaid claim arises, this Agreement shall ipso-facto come to an end without any reference to any of the parties herein.

13.4.   The Company shall use all reasonable endeavours to ensure that the Application will (subject to other terms of this agreement) be available and accessible at all times following the Activation Date. The Customer specifically irrevocably and unconditionally agrees and accepts that there may be occasional delays, interruptions or failures in the Application due to the inherent nature of the internet and the need to carry out maintenance, repairs or modifications to the Application ("Downtime"). The Company will have no liability to the Customer for any loss or damage resulting as a consequence of any Downtime and specifically excludes the same to the extent permitted by law.

14. DURATION

Subject to exclusive sole rights reserved by the Company to terminate this Agreement, this agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15, until either party gives not less than 30 days written notice, such notice not to expire before the end of the Minimum Term Customer Specification.

15. TERMINATION

15.1.   Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, the Company shall at any time terminate this agreement with immediate effect by giving written notice to the Customer if:

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

15.1.2.   the Customer commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

15.1.3. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or by any order from any court of law or tribunal or any competent authority which restrain in any manner to allow to use the Customer from marketing or publishing the material/product of the Customer;

15.1.4. the Customer 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;

15.1.5. 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 Customer other than for the sole purpose of a scheme for a solvent amalgamation of with one or more other companies or the solvent reconstruction of the Customer;

15.1.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer and/or its property;

15.1.7. a floating charge holder over the assets of that Customer has become entitled to appoint or has appointed an administrative receiver;

15.1.8. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

15.1.9. a creditor or encumbrancer of the Customer 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;

15.1.10. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.3 to clause 15.1.9 (inclusive); or

15.1.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

15.2. On termination of the Licence, the Customer shall ensure in writing to the Company that any copies of the Licensed Software on hard discs and other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted. The Customer has agreed and accepted that the Customer shall allow the authorised representatives of the Company to attend (Office/Business/Working) at premises of the Customer and supervise all the formalities as more particularly stated in Clause 15.6 herein below. The Customer shall intimate in writing (minimum 3 working days in advance) prior to such deletion, so that the

authorised representative of the Company shall attend the Customer premises and supervise such deletion as more particularly stated in Clause 15.6 herein below.

15.3.   This agreement shall be automatically terminated on termination or expiry of the Licence and/or its sooner determination upon breach committed by the Customer and/or as per the Company Policy.

15.4.   Save and except recovery of amount/s by the Company, neither party shall have any further obligation to the other under this agreement after its termination.

15.5.   Any provision of this agreement (including any Policy as framed by the Company) which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

15.6.   On termination of this agreement for any reason, the Customer shall as soon as reasonably practicable:

15.6.1.1.   Shall intimate in writing mutually convenient date and time, to enable the Company to send their authorised representatives to supervise the following acts as more particularly stated in Clause 15.2 hereinabove and comply the same by what is stated herein below:

15.6.2.   return, destroy or permanently erase (as directed in writing by the Company) any documents or other information or data provided to it by the Company containing, reflecting, incorporating or based on Confidential Information belonging to the Company;

15.6.3.   permanently delete any proprietary software belonging to the Company; and

15.6.4.   return all of the Company's equipment and materials, failing which, the Company has lawful rights and permissions to enter the relevant premises of the Customer and take possession of them. For this purposes, the Customer shall be deemed to have granted irrevocable and unconditional authority and permission to the Company to complete all the formalities of termination in that behalf. The Customer shall always co-operate in that regards and ensure that the Customer and its sub-ordinates staffs, employees and all the persons associated with the Customer, shall render their full co-operation in that behalf to the representatives of the Company without any objections, obstructions and/or hindrances.

15.7.   On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Company. The Company shall submit invoices for any services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

16. GENERAL

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

16.2.   The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any and/or all of its rights and obligations under this agreement without the prior written consent of the Company. The Customer shall always intimate in writing 7 working days in advance its intentions of any change of constitution of the Customer. Such change of constitution of the Customer after the Company intimate in writing about its confirmation or dis-allow of such re-construction/re-constitution of the Customer, shall be solely governed by the terms and conditions of this Agreement as well as Policy decision of the Company.

16.3.   This agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

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

16.5.   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.

16.6.   A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.

16.7.   Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 45 days or more, the party not affected may terminate this agreement by giving 10 days' written notice to the other party.

16.8.   If termination occurs under clause 16.7, all sums paid to the Company by the Customer under this agreement shall be refunded to the Customer on pro-rata basis, except that the Company shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Company takes all reasonable steps to mitigate the amount due.

16.9.   This agreement shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction.

17. **Indemnity**

Notwithstanding what is stated herein, the Company shall not be liable for any loss or damage that may be caused to the Customer and/or its Licensed User and/or Third Party due to any reason, ground and/or circumstances whatsoever, and the customer. The Customer hereby indemnify and shall keep indemnified the Company, its Directors, employees etc. against all losses, claims, expenses, cost, charges and damages that the Company may have to suffer or incur in that behalf, including litigation (criminal and/or civil).

Notwithstanding what is stated herein, the Customer shall indemnify the Company against all liabilities, costs, charges, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company arising out of any non-compliance, non-observance/non-performance by the Customer with this agreement and also by any claim or demand in the event if the same is made by any third party claiming by, through, from or under the Customer (including Licensed User)."

18. This agreement has been entered into on the date stated in the Customer Specification.