



Terms and Conditions

A product provided by:



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TERMS AND CONDITIONS

These terms and conditions and the relevant Order (as defined below) constitute the agreement between **On Track Learning Limited** and the Customer (as defined below) in relation to the Customer's use of, and access to, the platform operated by On Track Learning known as Novella and any related Documentation (the "**Agreement**").

1 DEFINITIONS

- 1.1 References to 'Us', 'We', and 'Our' refer to On Track Learning Limited.
- 1.2 In these Terms and Conditions, the following terms shall have the meanings set out below:

"Authorised Users"	means those employees, agents, and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Customer Data"	means all data, works, and materials: uploaded to or stored on the Platform by the Customer or Users; transmitted by the Platform at the instigation of the Customer or Users; supplied by the Customer or Users to Us for uploading to, transmission by, or storage on the Platform; or generated by the Platform as a result of the use of the Services by the Customer or Users (but excluding analytics data relating to the use of the Platform and server log files).
"Data Protection Legislation"	Means the UK General Data Protection Regulation, the Data Protection Act 2018 and any other relevant legislation protecting the rights of individuals in

	relation to their personal data in any jurisdiction relevant to the delivery of the Services.
"Documentation"	means the documentation for the Services produced by Us and delivered or made available by Us to the Customer online via the Platform or such other web address notified by Us to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
"Initial Subscription Term"	means the initial term during which the Customer will be provided with access to the Services, as set out in the Order.
"Platform"	means the platform operated by Us and known as Novella, accessed via www.Novellalearning.com or such other designated web address notified to the Customer by Us from time to time.
"Order"	means the Customer's written order for the Services which sets out the number of User Subscriptions, the Subscription Fees and the Subscription Term whether completed online through Our website or that of any authorised reseller or distributor or otherwise confirmed in writing.
"Renewal Period"	means the period described in clause 11.1.
"Services"	means the subscription services provided by Us to the Customer via the Platform.
"Subscription Fees"	means the subscription fees payable by the Customer to Us for the User Subscriptions, as set out in the Order.

"Subscription Term"	means the Initial Subscription Term as set out in the Order together with any subsequent Renewal Periods.
"User Subscriptions"	means the user subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Terms and Conditions.
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.3 Clause headings shall not affect the interpretation of this Agreement.
- 1.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes email but excludes fax, SMS or MMS text messages, social media messages or any other form of electronic communication.

2 USER SUBSCRIPTIONS

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 10.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, We hereby grant to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 2.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential;
 - 2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Us within five Business Days of Our written request at any time or times;
 - 2.2.5 it shall permit Us or Our designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's

data processing facilities to audit compliance with this Agreement. Each such audit shall be conducted at Our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Our other rights, the Customer shall promptly disable such passwords and We shall not issue any new passwords to any such individual; and

2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to Us, then without prejudice to Our other rights, the Customer shall pay to Us an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 10 Business Days of the date of the relevant audit or reasonable determination by Us that such Subscription Fees have been underpaid based on the evidence gathered during the course of the audit judged on the balance of probabilities.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2 facilitates illegal activity;

2.3.3 depicts sexually explicit images;

2.3.4 promotes unlawful violence;

2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.6 is otherwise illegal or causes damage or injury to any person or property;

and We reserve the right, without liability or prejudice to Our other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform and/or Documentation (as applicable) in any form or media or by any means; or
 - b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform or the Services; or
- 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 2.4.3 use the Services and/or Documentation to provide services to third parties; or
- 2.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- 2.4.6 introduce or permit the introduction of, any Virus into the Services or Our network and information systems.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Us.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3 ADDITIONAL USER SUBSCRIPTIONS

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and We shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Us in writing. We shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.

- 3.3 If We approve the Customer's request to purchase additional User Subscriptions, the Customer shall, pay to Us, in advance, the relevant fees for such additional User Subscriptions as We may agree in advance and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Us for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4 SERVICES DOWNTIME

- 4.1 We shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 We shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am GMT; and
- 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that We have used reasonable endeavours to give the Customer at least 6 hours' notice in advance.
- 4.3 We rely on third party services and systems to provide the Services to you and so, while We use commercially reasonable endeavours to maximise the availability of the Service we will not be liable for any downtime or lack of availability of the Service due to the acts or omissions of any third party or the loss of availability of any third party service or systems.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- 5.1.1 provide Us with:
- a) all necessary cooperation in relation to this Agreement; and
- b) all necessary access to such information as may be required by Us;
in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 5.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 5.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of

such assistance as agreed by the parties, We may adjust any agreed timetable or delivery schedule as reasonably necessary;

- 5.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement; and
- 5.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Us, Our contractors and agents to perform their obligations under this Agreement, including without limitation the Services.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 As between the parties, We own all Intellectual Property Rights in the Services and the Documentation. Nothing in this Agreement grants the Customer any rights to Our Intellectual Property Rights except as expressly set out herein.
- 6.2 The Customer owns all Intellectual Property Rights in the Customer Data. The Customer grants Us a non-exclusive, royalty free, world-wide licence to copy, store, process and otherwise use the Customer Data:
 - 6.2.1 to the extent necessary for the performance of this Agreement; and
 - 6.2.2 for the continued review, development and improvement of the Services.
- 6.3 In the event that the Customer or any Authorised User provides feedback to Us in relation to the Service and we utilise such feedback for the purposes of developing or improving the Platform and/ or Services, neither the Customer, nor any Authorised User, shall obtain any rights in relation to such improvement, the Platform or the Services.

7 CONFIDENTIALITY

- 7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
 - 7.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 7.1.2 was in the other party's lawful possession before the disclosure;
 - 7.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 7.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

- 7.2 Subject to clause 7.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 7.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 7.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 7.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 7.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (except, in the case of the Customer, Authorised Users) and not caused by a breach of this Agreement by the receiving party.
- 7.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.
- 7.7 We acknowledge that the Customer Data is the Confidential Information of the Customer.
- 7.8 The Customer acknowledges that some of the Services may utilise open source forms of artificial intelligence in order to provide the Services and We warrant to the Customer that the Customer Data will not be distributed to, or shared with, any such open sources in a manner that could make any such Customer Data traceable to the Customer or otherwise exploitable by any third party.
- 7.9 This clause 7 shall survive termination of this Agreement, however arising.

8 DATA PROTECTION

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and We are the Data Processor (where Data

Controller and Data Processor and Personal Data have the meanings as defined in the Data Protection Legislation).

- 8.3 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Us for the duration and purposes of this agreement.
- 8.4 Without prejudice to the generality of clause 8.1, We shall, in relation to any Personal Data processed in connection with the performance by Us of Our obligations under this agreement:
 - 8.4.1 process that Personal Data only on the Customer's written instructions unless We are required by the laws of the United Kingdom or by the laws of the European Union applicable to Us to process Personal Data (Applicable Data Processing Laws). Where We are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, We shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit Us from so notifying the Customer;
 - 8.4.2 ensure that We have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Us);
 - 8.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 8.4.4 not transfer any Personal Data outside of the United Kingdom unless the following conditions are fulfilled:

- a) the Customer or We have provided appropriate safeguards in relation to the transfer;
 - b) the data subject has enforceable rights and effective legal remedies;
 - c) We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d) We comply with reasonable instructions notified to Us in advance by the Customer with respect to the processing of the Personal Data;
- 8.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 8.4.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 8.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Data Processing Laws to store the Personal Data; and
- 8.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the Customer or the Customer's designated auditor.
- 8.5 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

9 WARRANTIES AND DISCLAIMER

- 9.1 We warrant that We have validly entered into this Agreement and have the legal power to do so.
- 9.2 Except as expressly provided in this Agreement, 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.
- 9.3 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. We make no representation, warranty or commitment and shall have no

liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.

10 CHARGES AND PAYMENT

10.1 The Customer shall pay the Subscription Fees to Us for the User Subscriptions in accordance with this clause 10 and the provisions of the Order.

10.2 On the commencement of any Renewal Period the Subscription Fees due in respect of such Renewal Period shall, unless expressly agreed otherwise, be adjusted upwards only by the same rate as the Retail Price Index in England as stated by the Office of National Statistics (or such other successor body).

10.3 All amounts and fees stated or referred to in this Agreement:

10.3.1 shall be payable in the currency set out in the Order;

10.3.2 are non-cancellable and non-refundable;

10.3.3 are exclusive of value added tax or other applicable sales tax, which shall be added to at the appropriate rate.

10.4 We shall invoice the Customer for the Subscription Fees:

10.4.1 annually in advance; and

10.4.2 where any Additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), pro-rata from the date of Our invoice.

10.5 The Customer shall pay each invoice submitted by Us:

10.5.1 within 30 days of the date of the invoice or as otherwise specified in the Order; and

10.5.2 in full and in cleared funds to a bank account nominated in writing by Us, and

10.5.3 if the Customer fails to make any payment due to Us under this Agreement by the due date for payment, then, without limiting Our remedies, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

11 TERM AND TERMINATION

11.1 This Agreement shall, unless otherwise terminated as provided in this clause 11, commence on the date that we acknowledge acceptance of the Order in writing and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of equal duration to the Subscription Term (each a "Renewal Period"), unless:

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

11.1.2 otherwise terminated in accordance with the provisions of these terms and conditions.

11.2 Without affecting any other right or remedy available to Us, We may terminate this Agreement with immediate effect by giving written notice to the Customer if:

11.2.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;

11.2.2 the Customer commits a material breach of any other term of this Agreement;

11.2.3 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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

11.2.4 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;

11.2.5 the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

- 11.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer 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;
- 11.2.7 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 (being a company, partnership or limited liability partnership);
- 11.2.8 the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 11.2.9 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;
- 11.2.10 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 the Customer's assets and such attachment or process is not discharged within 14 days;
- 11.2.11 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 11.2.3 to clause 11.2.10 (inclusive);
- 11.2.12 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 11.2.13 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- 11.2.14 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 11.3 On termination of this Agreement for any reason:
- 11.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 11.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- 11.3.3 We may destroy or otherwise dispose of any of the Customer Data in Our possession unless We receive, 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. We shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Us in returning or disposing of Customer Data; and
- 11.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12 NOTICES

- 12.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 12.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- a) On Track Learning Limited: support@novellalearning.com
 - b) The Customer to such email address utilised for such purpose in the Order.
- 12.2 Any notice shall be deemed to have been received:
- 12.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 12.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13 LIMITATION OF LIABILITY

13.1 Except as expressly and specifically provided in this Agreement:

13.1.1 the Customer assumes sole responsibility for the outputs and/or results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to Us by the Customer in connection with the Services, or any actions taken by Us at the Customer's direction;

13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

13.2 Nothing in this Agreement excludes Our liability:

13.2.1 for death or personal injury caused by Our negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

13.3.1 We shall have no liability for any:

- a) loss of profits,
- b) loss of business,
- c) wasted expenditure,
- d) depletion of goodwill and/or similar losses,
- e) loss or corruption of data or information, or
- f) any special, indirect or consequential loss, costs, damages, charges or expenses; and

13.3.2 Our total aggregate liability to the Customer, in respect of all breaches of duty occurring within any contract year shall not exceed the cap. If breaches committed in more than one contract year give rise to a single claim or a series of connected claims, Our total liability for those claims shall not exceed the single highest annual cap for those contract years.

13.3.3 In clause 13.3.2:

- a) The cap is the total Subscription Fees paid in the contract year in which the breaches occurred.
- b) A contract year means a 12 month period commencing on the date that the Order is accepted by Us.

13.4 References to liability in this clause 12 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Our intellectual property rights.

14 FORCE MAJEURE

Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 90 day, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

15 CONFLICT

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

16 VARIATION

16.1 We may revise these Terms and Conditions from time to time in response to changes in relevant laws and other regulatory requirements.

16.2 We shall notify the Customer in writing of any such changes. The Customer shall have the right to terminate this Agreement with immediate effect by giving written notice to Us within 14 days of being informed of such changes, if such changes are materially detrimental to the Customer's rights under this Agreement.

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

17 WAIVER

- 17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18 RIGHTS AND REMEDIES

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

19 SEVERANCE

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20 ENTIRE AGREEMENT

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

21 ASSIGNMENT

21.1 The Customer shall not, without Our prior written consent, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

21.2 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that We give written notice of such dealing to the Customer.

22 NO PARTNERSHIP OR AGENCY

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

23 THIRD PARTY RIGHTS

Unless it expressly states otherwise, this agreement is not intended to give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24 GOVERNING LAW

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

25 JURISDICTION

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