

GENERAL TERMS AND CONDITIONS

VERSION 06/2018

Please read the following Terms and Conditions carefully.

1. DEFINITIONS

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"this Agreement"	these Terms and Conditions together with any Annexes hereto and the Order Form;
"Annex"	an annex containing any further description of the services or software provided by the Company to the Customer, including further rights and obligations for the Parties in relation thereto;
"Business Day"	any day other than (i) a Saturday, (ii) a Sunday or (iii) a day when the clearing banks are not open for business in the City of London;
"Change Control Form"	the form attached to the Order Form, which template must be used by the Parties if they wish to amend this Agreement;
"Commencement Date"	the date stipulated in the Order Form;
"Company"	Harper Morris (Payroll) Limited, a company registered in England and Wales under number 01844423 and having its registered office at Saxon House Moseley's Farm Business Centre Fornham All Saints Bury St Edmunds Suffolk IP28 6JY;
"Confidential Information"	any information in any form or medium obtained by one Party from or on behalf of the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly confidential whether disclosed or obtained before, on or after the date of this Agreement together with any reproductions of such information or any part of this information (and the Company's Confidential Information shall include but not be limited to the Software and any information relating to the Company's employees, agents, subcontractors and other customers, and the Customer's Confidential Information shall include but not be limited to the content of the Data);
"Customer"	the customer whose details are set out in the Order Form;
"Data"	data concerning the business of the Customer or the Customer's customers, including "personal data" (as the same is defined in applicable Data Protection Laws from time to time about Customer's employees, agents or customers;
"Data Protection Laws"	means, as binding on either party or the Services: (a) the Directive 95/46/EC (Data Protection Directive) and/or Data Protection Act 2018 or the GDPR; (b) any laws which implement any such laws; and (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
"Fees"	the fees payable by the Customer to the Company for the supply by the Company of the Services or Software;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"Initial Period"	the period described in the Order Form and starting on the Commencement Date;
"Intellectual Property Rights"	all intellectual and industrial property rights of any nature anywhere in the world, including without limitation copyright, database rights, patents, design rights, registered designs, trade mark rights, service mark rights, domain name rights and topography rights, whether or not registered or capable of protection by registration and the right to apply for any of them;
"Order Form"	If applicable, the document containing the specific information relating to the particular software or services supplied by the Company to the Customer;
"Party"	either the Company or the Customer;
"Services"	the services provided by the Company to the Customer pursuant to this Agreement, as may be more particularly described in the relevant Annex;
"Software"	the software provided by the Company to the Customer pursuant to this Agreement, as may be more particularly described in the relevant Annex;
"Term"	the term of this Agreement referred to in Clause 10.1;

"VAT" any tax introduced pursuant to a direction of the Council of the European Community relating to turnover taxes including value added tax as provided for in the Value Added Tax Act 1994 and supplemental legislation (whether delegated or otherwise), any tax of a similar nature which any be substituted for or levied in addition to it and any sales tax;

- 1.2 references to "Clauses" and "Paragraphs" are to clauses of these Terms and Conditions and paragraphs in an Annex;
- 1.3 the headings to Clauses and Paragraphs are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm or partnership;
- 1.5 references to "includes" or "including" or like words or expressions shall mean without limitation; and
- 1.6 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. AGREEMENT

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to all Services and Software.
- 2.2 Save as expressly provided herein, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.4 Except as expressly provided otherwise in this Agreement, this Agreement may be changed by the Company from time to time by the notification of revised Terms and Conditions to the Customer.
- 2.5 In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the Annexes and the Order Form, then the following order of precedence shall apply:
- 2.5.1 Order Form, prevails over
- 2.5.2 these Terms and Conditions, which prevails over
- 2.5.3 an Annex.
- 2.6 If the Customer provides the Company with a purchase order for the Services or Software, the purchase order shall be purely for the Customer's administrative purposes only and shall not form part of this Agreement.
- 2.7 This Agreement shall be legally formed and the Parties shall be legally bound when the Company provides the Services and the Customer receives the Services having been provided with a copy of these Terms and Conditions.

3. SERVICES

- 3.1 In consideration for the payment of the Fees by the Customer, the Company shall provide the Services and Software to the Customer, referred to in the Order Form.
- 3.2 The Company warrants that:
- 3.2.1 it shall use all reasonable skill and care in providing the Services;
- 3.2.2 its employees, agents and subcontractors have the necessary skill to provide the Services;
- 3.2.3 the Services will be provided in a professional, competent and workmanlike manner;
- 3.2.4 it has all necessary rights, permissions and consents to enter into this Agreement;
- 3.2.5 it shall ensure that the Company's employees, contractors and agents co-operate with, and make themselves available at all reasonable times for discussion and meetings with, the Customer and the Customer's employees, contractors and agents; and

- 3.2.6 it shall use reasonable endeavours to ensure that while its employees, agents and subcontractors are on the Customer's premises, they will conform to the Customer's normal codes of staff and security practice as are advised to them by the Customer.
- 3.3 The Company does not warrant that the Services or Software will be uninterrupted or error-free or that they will meet the individual requirements of the Customer. The Company is not responsible for any Services or Software not expressly stipulated in this Agreement that the Company will provide. Except for any matter upon which the Company specifically agrees in writing with the Customer to advise or do, the Company shall not be liable for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).
- 3.4 Except where expressly provided for within this Agreement, the Company excludes all conditions, warranties and representations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services and Software.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall (and shall procure that its agents, employees, contractors and customers shall):
- 4.1.1 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if the Company undertakes any work at the Customer's (or its agents', employees', contractors' or customers') premises;
- 4.1.2 ensure that the Customer's employees, contractors, agents and customers fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, the Company and the Company's employees, contractors and agents;
- 4.1.3 promptly provide to the Company such information and assistance that will enable the Company to carry out fully, accurately and promptly its obligations under this Agreement to the best of its ability;
- 4.1.4 promptly comply with the reasonable requests of the Company from time to time in connection with this Agreement;
- 4.1.5 take all care and assume all responsibility with sending and receiving the Data to the Company. The risk of and responsibility for input of content of the Data supplied by the Customer or its employees, agents, contractors or customers is with the Customer. The Customer shall ensure that the content of the Data supplied by it is true, accurate and complete; and
- 4.1.6 be responsible for ensuring that, and hereby warrants and undertakes to the Company that, the Data and the sending and receipt of them by the Customer and the Company, and the use and processing of them by the Company to perform the Services in accordance with this Agreement or by the Customer:
- 4.1.6.1 conforms in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice;
- 4.1.6.2 does not infringe the privacy rights or Intellectual Property Rights of any third party;
- 4.1.6.3 is not defamatory, malicious, abusive, obscene, indecent, discriminatory or harassing; and
- 4.1.6.4 does not contain any material detrimental to the Company, including without limitation any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- 4.2 It is the Customer's responsibility to ensure that the Software and Services are sufficient and suitable for its purposes and meet its individual requirements.
- 4.3 It is the Customer's responsibility to ensure that the Customer and its employees, agents, contractors and customers have in place and have the right to use any hardware, communications links, equipment and software to enable the Company to provide the Services and Software in accordance with this Agreement and to its maximum performance level possible. The Customer is also responsible for ensuring that it and its employees, agents, contractors and customers provide the Company with the data required by the Company to enable the Company to properly provide the Services and the Software (including the Data). The Company shall not be responsible or liable for any failure to provide the Services or Software to the extent caused by the Customer's failure to ensure the provision of the relevant data or procure the relevant hardware, communications links, equipment and software or for any reason caused by a third party.
- 4.4 The Customer warrants to the Company that the Customer is authorised to receive the Services and Software.

- 4.5 The Customer agrees, during the Term and for a period of one year following its termination, not to solicit or induce any officer, employee or agent of the Company who was involved with the provision of Services or Software to the Customer to terminate their employment or engagement with the Company without the prior written consent of the Company. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of the Customer shall not be deemed to be solicitation for the purposes of this Clause 4.5.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Customer acknowledges that as between the Company and the Customer, the Company and its licensors own all Intellectual Property Rights in the Software, even if any of the Software is created by the Company at the specific request of the Customer. The Customer shall not have any rights over or to use the Software other than as expressly provided under this Agreement.
- 5.2 The Company acknowledges that as between the Company and the Customer, the Customer and its licensors own all Intellectual Property Rights in the Data. The Customer shall be responsible:
- 5.2.1 for having all rights in the Data;
- 5.2.2 for ensuring that all the Customer's employees, agents, contractors and customers have all rights to use and process the Data; and
- 5.2.3 for enabling the Company to have the right to use and process the Data;
- so that the Company can lawfully perform this Agreement.
- 5.3 The Customer hereby grants to the Company a royalty-free, worldwide, perpetual, non-exclusive, assignable, sublicensable licence to use the Data for the purposes of performing this Agreement. Subject to the rest of the provisions in this Agreement, the Company shall not use the Data for any other purpose without the Customer's express prior written consent.
- 5.4 Except for the purpose of performing and complying with this Agreement, the Company shall not without the Customer's prior written consent:
- 5.4.1 disclose the Data to any third party;
- 5.4.2 make any copies of the Data;
- 5.4.3 modify the Data; or
- 5.4.4 reproduce or store any of the Data in any web site or in any public or private electronic retrieval system or service.
- 5.5 Except to the extent expressly provided in this Agreement, the Customer shall only use the Services and Software for its own usual business purposes and shall not, without the Company's prior written consent, allow any third party to use or access the Services or Software or supply the Services or Software to any third party; and then only as contemplated by this Agreement.
- 5.6 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights used by the other, that Party shall forthwith inform the other of such use. The informing Party shall if requested assist the other (at the other's cost) in taking any steps in connection with the protection or defence thereof as the other may determine.

6. CONFIDENTIALITY

- 6.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party (whether before, on or after the date of this Agreement) and shall not use nor disclose the same save:
- 6.1.1 for the purposes of the proper performance of this Agreement; or
- 6.1.2 as otherwise permitted by this Agreement; or
- 6.1.3 with the prior written consent of the other Party.
- 6.2 Where one Party discloses Confidential Information of the other Party to its employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer, it shall do so subject to obligations equivalent to those set out in this Clause 6. Each Party shall use its reasonable endeavours to ensure that any such employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer complies with such obligations.
- 6.3 Each Party shall at all times:
- 6.3.1 adopt, retain and keep updated adequate procedures and physical security measures which protect the Confidential Information of the other Party from inadvertent disclosure or release to unauthorised persons; and
- 6.3.2 hold the Confidential Information of the other Party in strict confidence and in any event with no less standard of confidentiality than that which it applies to its own confidential information.
- 6.4 The obligations of confidentiality in this Clause 6 shall not extend to any matter which either Party can show:

- 6.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
- 6.4.2 was in its written records prior to receipt; or
- 6.4.3 was independently developed by it; or
- 6.4.4 was independently disclosed to it by a third party entitled to disclose the same.
- 6.5 If either Party is required to disclose the Confidential Information of the other Party under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, then the Party so required shall, prior to any disclosure where practicable, notify the other Party and, at the other Party's request and cost, assist that other Party in opposing any such disclosure.
- 6.6 Nothing in this Agreement shall preclude the Customer, nor any customer, employee or agent of the Customer, from taking such steps as are necessary in order to comply with the professional or ethical rules or guidelines of any relevant professional body of which the Customer or its customer, employee or agent may be or become a member.
- 6.7 Neither Party shall make any announcement of any kind in respect of the subject matter of this Agreement except with the prior written consent of the other Party (not to be unreasonably withheld or delayed) or as is required by law.
- 6.8 Subject to Clause 6.7, the Company may identify the Customer as its customer and the type of Software or Services provided by the Company to the Customer, provided that in doing so the Company shall not (without the Company's prior written consent) reveal any Confidential Information of the Customer.
- 6.9 The obligations of this Clause 6 shall continue after termination of this Agreement for whatever reason.

7. DATA PROTECTION

- 7.1 In this clause 7:
- 7.1.1 **Controller, Data Subject, Personal Data, Processor and processing** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including **process, processed, processing, and processes** shall be construed accordingly) and **international organisation and Personal Data Breach** shall have the respective meanings given to them in the GDPR;
- 7.1.2 **Protected Data** means Personal Data received from or on behalf of the Customer in connection with the performance of the Company's obligations under this Agreement; and
- 7.1.3 **Sub-Processor** means any agent, subcontractor or other third party (excluding its employees) engaged by the Company for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.
- 7.2 The parties agree that the Customer is a Controller and that the Company is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Company in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws
- 7.3 The Company shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.
- 7.4 The Company shall:
- 7.4.1 only process (and shall ensure Company employees only process) the Protected Data in accordance with the Order Form and this Agreement (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 7.4.2 if the Company believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 7.5 Taking into account the state of technical development and the nature of processing, the Company shall implement and maintain the technical and organisational measures set out in the Order Form **Error! Reference source not found.** to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 7.6 The Company shall:
- 7.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior written authorisation of the Customer;

- 7.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 7 that is enforceable by the Company and ensure each such Sub-Processor complies with all such obligations;
- 7.6.3 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and
- 7.6.4 ensure that all persons authorised by the Customer or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 7.7 The Customer authorises the appointment of the Sub-Processors listed in the Client Order Form.
- 7.8 The Company shall (at the Customer's cost):
- 7.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Company; and
- 7.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 7.9 The Company shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the European Economic Area (EEA) or to any international organisation outside of the EEA without the prior written consent of the Customer.
- 7.10 The Company shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Company's compliance with the obligations placed on it under this clause 7 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 7.10).
- 7.11 The Company shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 7.12 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Customer shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Company to store such Protected Data. This clause 7 shall survive termination or expiry of this Agreement.

8. LIMITATION OF LIABILITY

- 8.1 This Clause 8 prevails over all other Clauses and sets forth the entire liability of each Party to the other, and their sole and exclusive remedies of the other in respect of:
 - 8.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or of any goods or services in connection with this Agreement; or
 - 8.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 8.2 Neither Party excludes or limits its Liability for:
 - 8.2.1 its fraud; or
 - 8.2.2 death or personal injury caused by its Breach of Duty; or
 - 8.2.3 any breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
 - 8.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 8.3 Subject to the rest of this Clause 8, neither Party accepts and hereby excludes any Liability for Breach of Duty other than any liability arising pursuant to the terms of this Agreement.
- 8.4 Subject to the rest of this Clause 8, neither Party shall have Liability to the other in respect of any:
 - 8.4.1 indirect or consequential losses, damages, costs or expenses;
 - 8.4.2 loss of actual or anticipated profits;
 - 8.4.3 loss of contracts;
 - 8.4.4 loss of use of money;
 - 8.4.5 loss of anticipated savings;
 - 8.4.6 loss of revenue;
 - 8.4.7 loss of goodwill;

- 8.4.8 loss of reputation;
- 8.4.9 loss of business;
- 8.4.10 loss of operation time;
- 8.4.11 loss of opportunity; or
- 8.4.12 loss of, damage to or corruption of, data, suffered by the other in respect of this Agreement whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, Clauses 8.4.2 to 8.4.12 apply whether such losses are direct, indirect, consequential or otherwise.
- 8.5 Subject to the rest of this Clause 8 and the exclusions and limits set out in the rest of this Agreement, the total aggregate Liability of each Party arising out of or in connection with a claim or claims made by the other in respect of loss or damage suffered by the other shall be limited to the greater of (a) £50,000 or (b) the greater of the total sums paid or payable by the Customer to the Company under this Agreement within the twelve months preceding the date on which the claim first arose.
- 8.6 The limitation of Liability under Clause 8.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 8.7 The Customer shall not limit its Liability for failure to pay the Fees.
- 8.8 The Customer acknowledges and accepts that the Company only provides the Services to it on the express condition that the Company will not be responsible for nor shall it have any Liability to the Customer or any third party directly or indirectly for:
 - 8.8.1 inaccuracies or errors in or omissions from any Data provided by the Customer or its employees, agents, contractors or customers; or
 - 8.8.2 inaccuracies or errors in or omissions from any Services as a result of any source or information maintained or provided by a third party; or
 - 8.8.3 any act or omission of the Customer, its employees, agents, contractors or customers or any third party.
- 8.9 In this Clause 8:
 - 8.9.1 "Breach of Duty" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care of exercise reasonable skill (but not any stricter duty); and
 - 8.9.2 "Liability" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including, without limitation, liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract).

9. FEES

- 9.1 In consideration for obtaining the Services provided by the Company pursuant to this Agreement, the Customer shall pay to the Company the Fees.
- 9.2 Where an initial fee is payable (initial fees include but are not limited to set up fees, licence fees, consultancy fees and one-off fees), the initial fee shall be an initial up-front payment. In such case, performance of the Services or the right to use Software is conditional on the Company first receiving the initial fee in cleared funds in full from the Customer.
- 9.3 The Company may issue invoices to the Customer for the Fees on a monthly or weekly basis as applicable.
- 9.4 The Company may issue invoices to the Customer for the expenses incurred by it or its subcontractors in the course of performing this Agreement as and when the expenses arise or if earlier when the Company knows the value of its anticipated expenses.
- 9.5 The Company may charge the Customer an Administration Charge for any administration requested by the Customer or in the Company's reasonable opinion necessary to fulfil a Customer's requirements which are additional to the agreed Service provided to the Customer. This Administration Charge will be made on the basis of the hourly rate charged by the Company from time to time.
- 9.6 Unless otherwise provided, the Customer shall pay the Company in British Pounds (GBP):
 - 9.6.1 for the initial fee or upon receipt of the invoice for the initial fee and in any event in advance of receipt of the Services or Software; and
 - 9.6.2 for all other Fees, within 30 days after receipt of the Company's proper invoice for the Fees; and
 - 9.6.3 for the expenses within 5 Business Days of the date of the Company's proper invoice.

- 9.7 The Company reserves the right to increase the some or all of the Fees and other applicable charges annually and shall advise the Customer of the amount of any such intended increase by not less than forty five (45) days' written notice, provided always that the amount of such increase in any year of this Agreement shall not exceed an amount equal to the equivalent increase in the Average Earnings Index plus five (5) per cent. In the event that the Company does not increase the Fees in one or more years of the Agreement, it shall be entitled to increase some or all of the Fees retrospectively by an amount equal to the aggregate equivalent increase in the Average Earnings Index plus five (5) per cent for the number of years in question.
- 9.8 All sums due to the Company are exclusive of VAT and other duties or taxes (if applicable) which the Customer shall pay to the Company in addition at the same time as payment of the Fees and expenses.
- 9.9 The Customer shall pay the Company by any payment method reasonably stipulated by the Company.
- 9.10 Payment of all sums due to the Company under this Agreement shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.
- 9.11 If the Customer is late in paying any part of any monies due to the Company, the Company may (without prejudice to any other right or remedy available to it whether under this Agreement or by any statute, regulation or bye-law) do either or both of the following:
 - 9.11.1 charge interest on the amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and
 - 9.11.2 suspend the performance of this Agreement and any other agreement between the Company and the Customer until payment in full has been made.

10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination pursuant to this Agreement, shall continue in force for the Initial Period and thereafter unless or until terminated by either Party giving to the other no less than six months' notice to take effect at the end of a calendar month. Should the Customer successfully terminate this agreement without giving notice to the Company, the Company shall be entitled to charge a six month termination fee calculated by taking the average monthly Fee for the preceding six month period.
- 10.2 Either Party may terminate this Agreement immediately by notice in writing to the other Party if:
 - 10.2.1 the other Party is in material breach of any of its obligations under this Agreement which is incapable of remedy; or
 - 10.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement after having been required in writing to remedy such breach within a period of no less than 30 days; or
 - 10.2.3 the other gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt.
- 10.3 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 10.4 Termination of this Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.5 Upon termination of this Agreement for any reason:
 - 10.5.1 the Company shall cease to perform this Agreement;
 - 10.5.2 all outstanding Fees for Services or Software provided shall become immediately payable, whether invoiced or not; and
 - 10.5.3 the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any Confidential Information belonging to the Party requiring the action. The owner of

Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 10.5.3.

- 10.5.4 the Company shall be entitled to levy such Administration Charges on the Customer as it sees fit for the processing and extraction from its systems such Data or Confidential Information that the Customer may request on termination.

11. FORCE MAJEURE

- 11.1 Save for obligations in respect of payment of the Fees, neither Party shall be liable for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by circumstances beyond its reasonable control including without limitation Act of God, actions of third parties (including hackers, suppliers, governments or supra-national authorities), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, earthquake, natural disaster, accident, mechanical breakdown, third party software, failure or problems with public utility supplies (including without limitation electrical, telecoms or general Internet failure), shortage of or inability to obtain materials, equipment or transportation ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen.
- 11.2 Each of the Parties agrees to notify the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 11.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 11.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 11.5 If performance of any obligations are delayed under this Clause 11, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 11.6 If the Event of Force Majeure continues without a break for more than [one month], either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall be liable to the other Party by reason of such termination.
- 11.7 If the Company has contracted to provide identical or similar services or software or deliverables to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, the Company may decide at its absolute discretion which contracts it will perform and to what extent.

12. NOTICES

- 12.1 Any notice or other communication required or authorised to be given under this Agreement shall be in writing and may be served by personal delivery or by pre-paid or recorded delivery letter or by overnight courier or by facsimile addressed to the relevant Party at its address stated in this Agreement or at such other address or facsimile number as is notified by the relevant Party to the other for this purpose from time to time or at the address or facsimile number of the relevant Party last known to the other.
- 12.2 Any notice so given by post shall be deemed to have been served two Business Days after the same shall have been posted by recorded delivery or overnight courier and any notice so given by facsimile shall be deemed to have been served upon receipt of an answerback signal from the receiving machine, and in proving such service it shall be sufficient to prove that the letter or facsimile was properly addressed or numbered and, as the case may be, posted as a prepaid or recorded delivery letter or despatched or an answerback signal received.

13. ASSIGNMENT

- 13.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Agreement, the Company may assign or subcontract its rights, liabilities or obligations under this Agreement either in whole or in part to any other person, firm or company. The Company shall promptly give notice to the Customer of any such assignment.
- 13.2 The Customer shall not assign, transfer or charge or purport to assign, transfer or charge this Agreement or any of its rights, liabilities or obligations under this Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

14. DISPUTE RESOLUTION

- 14.1 The Parties will attempt in good faith promptly to resolve any dispute or claim arising out of or in relation to this Agreement in accordance with the following procedure:

- 14.1.1 The Parties shall use their best efforts to negotiate in good faith and settle amicably any dispute or claim that may arise out of or relate to this Agreement (or its construction, validity or termination) (a "Dispute"). For this purpose, a Dispute shall include a failure to agree any matter which in accordance with any provision of this Agreement is to be agreed between the Parties (except where such provision expressly provides to the contrary). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties having authority to settle the matter, either Party may give to the other a notice in writing (a "Dispute Notice"). Within seven days of the Dispute Notice being given, the Parties shall each refer the Dispute to their senior representatives nominated by the managing director of each Party, who shall meet in order to attempt to resolve the Dispute.
- 14.1.2 If the Dispute is not settled by agreement in writing between the Parties within 14 days of the Dispute Notice, either of the Parties may refer the Dispute to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.
- 14.1.3 The mediation shall be conducted in London in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.
- 14.1.4 If the matter has not been resolved by a mediation procedure within sixty (60) days following referral of the Parties to the CEDR procedure or if the Dispute cannot be resolved using the processes and procedures set out above, then it shall be resolved by reference to the courts in accordance with Clause 15.5 (governing law and jurisdiction).
- 14.1.5 If the Dispute is substantially of a technical nature or financial, such dispute may be referred, with the written agreement of the Parties, to an expert, who shall be deemed to act as expert and not as arbitrator. The expert shall be selected by mutual agreement or, failing such agreement, within 14 days of a request by one Party to the other, shall be chosen by the President for the time being of the British Computer Society (or his nominee) or if the Company reasonably determines that such matter relates primarily to financial matters, the Company may elect that such expert may be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his nominee). Decisions of the expert shall be final and binding and, except in the case of manifest error, not subject to appeal. The fees of the expert shall be borne by the Parties in such proportion as may be determined by the expert.
- 14.1.6 If either Party does not agree with any Dispute being referred for mediation or determination in accordance with this Clause 14, then the Dispute shall be determined by the courts under Clause 15.5. For the avoidance of doubt, either Party may apply to the Court or initiate proceedings without recourse to the process in this Clause 14.

15. GENERAL

- 15.1 No failure or delay by either Party in exercising any right under this Agreement shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish that Party's rights under this Agreement.
- 15.2 If any Clause or other provision in this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 15.3 Nothing in this Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.
- 15.4 A person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 15.5 This Agreement shall be governed by and construed in accordance with English law and the Customer hereby submits to the jurisdiction of the English courts. The Parties irrevocably agree that the English courts shall have exclusive jurisdiction over any claim or matter brought by the Customer in relation to this Agreement. Nothing in this Clause 15.5 shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

ANNEX A – THE SERVICES

1. The Company shall provide the Customer with outsourced payroll and associated services subject to the terms and conditions herein.
2. The Customer will appoint a named contact who will act as the focal point of communications between the Company and the Customer.
3. The Company will undertake the preparation of the Customer's payroll in a form that complies with the Customer's statutory obligations.
4. The Company will calculate net wages and salaries payable, after appropriate deductions, based upon information supplied to the Company by the Customer and in accordance with the statutory tax and National Insurance rates in force at the time.
5. The Company will agree with the Customer the date on which the Customer's employees will receive their payments within the appropriate payment period (e.g. last day of the month for a monthly payroll) (the "Credit Day") and the Company will specify, based on this information, the date on which the payroll must be processed so that the payments reach the employees on the Credit Day (the "Input Day").
6. The Company will arrange for the payment of wages and salaries to the Customer's employees using Bacs, if required. The Company will also arrange for payments to other third parties (eg Inland Revenue for PAYE and National Insurance payments, employee Pension contributions) to be made in accordance with agreed timings (which may be statutory timing obligations) if this is agreed in writing. These payments may also be made by Bacs.
7. The Company will use its standard Company processing timetable to process the appropriate payments taking into account the Customer's agreed Credit Day (the "Company Processing Timetable"). The Customer will abide by the Company Processing Timetable which may be changed from time to time.
8. The Customer may authorise the Company to make payments using Bacs through its own bank account (via a Bacs User Number) or, if agreed in writing with the Company and subject to the provisions of this Agreement as well as the Client Account Rules, through the Company's Client Account whereby the Customer will transfer the appropriate funds to the Client Account and the Company then make the payments on the Customer's behalf.

9. CONTINGENCY SERVICE

- 9.1 Should the Company's payroll operation be disrupted for any reason, the Company will provide the Customer with as full a service as possible.
- 9.2 The Company will advise the Customer should its payroll operation be disrupted to such an extent that there is likely to be an adverse effect to the service provided to the Customer and will make every effort to minimise the disruption.
- 9.3 The Customer will give the Company the opportunity to rectify the disruption within a reasonable time and will cooperate with the Company in its efforts

10. DATA DELIVERY

- 10.1 The Company shall specify the content and format of the information required to deliver the Services ("Controlled Information") which may be varied by the Company from time to time. This includes but is not limited to employee numbers, hours worked, changes to rates of pay, bank details and tax codes. The Customer must ensure the clarity and accuracy of the Controlled Information. In the event that the Customer makes errors in or fails to submit Controlled Information (either by way of content or format): to the Company in a timely fashion in accordance with the Company Processing Timetable (as notified to the Customer from time to time) , the Company reserves the right
 - 10.1.1 to charge additional Fees to the Customer to deliver the Services; or
 - 10.1.2 to refuse to run the payroll for the period in question.
- 10.2 In any event, should the Company invoke Clause 10.1 of this Annex, the Customer shall accept the results of the processing of that information as full and satisfactory performance of the Services by the Company and the Customer shall hold the Company harmless for all errors and/or inaccuracies which might have taken place.
- 10.3 The Customer will provide the Company with the Controlled Information at least two and a half working days prior to the Input Day for Monthly paid employees and at least one and a half working days prior to the Input Day for Weekly paid employees.
- 10.4 The Company will arrange for payslips and the Company's standard payroll summary reports (the "Reports") in an agreed format, to be delivered to the Customer, at a central office, prior to the Input Day

provided that the Customer has fulfilled all of the requirements of this Clause 10 including those relating to Controlled Information.

- 10.5 The requisite Controlled Information, Company Processing Timetable and the format and content of the Reports shall be notified to the Customer from time to time and shall form part of this Agreement.

11. DATA LIMITS

- 11.1 For Customers who are indirect Bacs submitters it is the Customer's responsibility to ensure that the total value of Bacs payments does not exceed the limit negotiated with the Customer's Bacs sponsor. File limits are the responsibility of the Customer and should be managed through their sponsoring bank, including temporary limit increases and pre-authorisation of files which may be over the agreed limit.

12. DATA VERIFICATION

- 12.1 The Customer will check the Reports on the day of receipt and ensure that the details are correct.
- 12.2 The Customer will verify that the information contained in the Reports is in accordance with the information supplied to the Company to calculate the wages and salaries due to the Customer's employees.
- 12.3 The Customer will check the Reports to ensure that:
 - 12.3.1 The number of transactions equates to the number of Customer's employees;
 - 12.3.2 The total value of payments is in line with the Customer's normal wages and salaries for the period involved;
 - 12.3.3 If appropriate, that the total value of payments does not exceed the limit negotiated with the Customer's Bacs sponsor;
 - 12.3.4 No single payment is exceptional, after taking into account of overtime and special payments or bonuses;
 - 12.3.5 No more than one payment is destined for the same account, except where more than one employee shares a joint account.
- 12.4 The Customer will inform the Company of any errors identified on the Reports no later than 12 noon on the day of receipt.

13. COMPANY CLIENT ACCOUNT

- 13.1 The Company operates a separate bank account which Customers may utilise, if agreed in writing with the Company, as the account into which funds are transferred and then paid out by the Company to the Customer's employees and other third parties as appropriate on the Customer's behalf (the "Client Account"). Any Customer using the Client Account does so subject to the rules of the Client Account (which addresses matters including receipts and payments, timings for payment of monies, accounting to Customers for their funds whilst in the Client Account) (the "Client Account Rules") which will be notified to applicable Customers from time to time. In the event that the Client Account is used by the Company to make payments on the Customer's behalf and this is not agreed in writing in advance, the Customer is deemed to have agreed to the Client Account Rules and is bound by them.

14. SUFFICIENCY OF FUNDS

- 14.1 The Customer will ensure that there are sufficient cleared funds at the appropriate time in advance of the Bacs Input Day in the account from which the payroll monies will be paid by Bacs either out of the Customer's bank account or the Client Account.
- 14.2 In any event, should the Company invoke Clause 14.1 of this Annex, the Customer shall accept the results of the potential late processing of that information as full and satisfactory performance of the Services by the Company and the Customer shall hold the Company harmless for all errors and/or inaccuracies which might have taken place.

15. CANCELLATION OF PAYMENTS

- 15.1 If the Customer directs the Company to make payments to its employees and other third parties using the Customer's own bank account (via a Bacs User Number) the Customer will be responsible for arranging the cancellation of individual payments by contacting their Bacs sponsor. If it is necessary to withdraw the whole Bacs file, the Customer will contact the Company before 3pm on the Input Day.

16. BACS REPORTS

- 16.1 The Bacs Input Report is a report generated by Bacs (not the Company) and provides details of the payments that have been sent electronically by Bacs (or using Bacs through the Client Account) for every payment run on behalf of the Customer. For every payment run, it is the Customer's responsibility to verify the existence and content of the Bacs input report independently of the Company and if it does not, the Customer shall accept the results of the processing of that information as full and satisfactory performance of the Services by the Company and the Customer

shall hold the Company harmless for all errors and/or inaccuracies which might have taken place.

- 16.2 The Customer will obtain the Bacs Input Report from Bacs. It is not the Company's responsibility to obtain this report or to supply it to the Customer although it may do so.
- 16.3 The Customer will check the Bacs Input Report the Bacs ARUCS (Automated Return of Unapplied Credits Service) report and the Bacs AWACS (Advice of Wrong Account for Automated Credits Service) to, inter alia:
 - 16.3.1 If applicable, ensure the User Number and User Name in the main heading block on page 1 of the report reflect the Customer's registration with Bacs;
 - 16.3.2 ensure that both the number and value of the payments agree with the Reports forwarded to the Customer by the Company;
 - 16.3.3 Ascertain details of any rejected or adjusted records.
 - 16.3.4 The Customer is responsible for dealing with any rejected or adjusted records identified in the Bacs Input Report.
 - 16.3.5 The Customer must immediately advise their Bacs Sponsor, and, if using the Client Account, the Company, of any errors identified on the Bacs Input Report.