

Wolters Kluwer (UK) Limited
Power BI Subscription Services Ts&Cs

Wolters Kluwer (UK) Limited, a company registered in England and Wales with company number 00450650 having its registered office at 145 London Road, Kingston upon Thames, Surrey, KT2 6SR (“the Supplier”, “we” and “us” and “our” in context) has developed and owns (or has the benefit of licences) certain computer software applications (“Software”) and provides Subscription Services that the Supplier, in its sole discretion, chooses to provide from time to time.

The Customer (as more fully identified on any documentation including the Order Form and/or the invoice) (“the Customer”, “you” and “your” in context) has the benefit of Supplier’s Software licences and Microsoft Power BI licences and would like to receive Subscription Services that the Supplier is willing to provide strictly subject to the terms and conditions set forth below.

Herein and after each referred to as a “Party” and collectively as “Parties”.

1. Interpretation

In these terms and conditions, unless the context requires otherwise:

- 1.1 words importing any gender include every gender;
- 1.2 words importing the singular number include the plural number and vice versa;
- 1.3 words importing persons include firms, companies and corporations and vice versa;
- 1.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 1.5 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.6 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 1.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.8 where the word ‘including’ is used in this Agreement, it shall be understood as meaning ‘including without limitation’;
- 1.9 a reference to a Party includes its successors or permitted assigns; and
- 1.10 a reference to writing or written includes faxes and e-mails.

2. Definitions

2.1 In these Subscription Service Ts&Cs, the following words and expressions shall have the following meanings: “Agreement” comprises some or all of:

- these Subscription Service Ts&Cs;
- Order Form; Sales Order;
- Deliverables; and
- any other addenda or additional documents agreed by the Parties in writing to be part of the contract between them.

In the event of conflict between the provisions of the above documents, the order of precedence shall be as expressed above, unless expressly agreed to the contrary. These Subscription Service Ts&Cs will prevail over any other terms and conditions between the Supplier and the Customer whether implied by law, or imposed by custom, practice or previous course of dealing between the Parties and shall replace all previous terms and conditions that may exist between the Supplier and the Customer in respect of the subject matter hereof.

“Annual Subscription Fee” means the annual payments (starting from the Completion Date) to be made by you for the Support & Maintenance Services and which is payable as set out in clause 6.

“Completion Date” means the date at which we consider all Milestones are completed and deliver the Deliverables to you.

“Confidential Information” means information in any form (whether oral, written, graphic, electronic, computerised or otherwise) which is disclosed by or on behalf of the disclosing Party to the recipient Party on or after the date of this Agreement which is conspicuously marked ‘confidential’ (or similar) at the time of its disclosure, or is disclosed on a confidential basis, or which in the reasonable appreciation of the recipient Party by reference to the disclosing Party’s operations, inventions, systems, processes, methodologies, plans, know-how, trade secrets, commercial or financial affairs or other business, is deemed confidential.

“Consultancy Services” means the remote and bespoke services to be provided once under the Agreement, which may include project planning, database review and testing, consultancy, set up and configuration instructions for building reporting features, business insights, dashboards. “Deliverables” means the output of the Subscription Services to be provided by us to you once as per the specified Milestones and updated annually.

“DPA” means the Data Processing Addendum at <https://www.wolterskluwer.com/en-gb/solutions/software-tax-accounting/terms-conditions>

“Effective Date” means the date at which we accept your signed Order Form or Sales Order or we carry out actions consistent with this Agreement coming into force, whichever occurs first.

“Fee” means the payments to be made by you in respect of the Consultancy Services as such amounts are specified on the Order Form or Sales Order and/or varied under clause 6.

“Force Majeure” means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party and without its fault or negligence including without limitation government regulations, communication line failures, telecommunication network failures and power failures, fire, flood or any disaster.

“Intellectual Property Rights” or “IPR” shall mean

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intellectual property rights comprising all patents, copyright, trademarks, service marks, design rights, domain names, (whether registered or unregistered), trade secrets, rights in know-how, database rights, proprietary information rights and all other intellectual property rights as may exist anywhere in the world including: i) all registrations and pending registrations relating to any such rights and the benefit of any pending applications for any such registrations; and ii) all extensions and renewals of any such rights.

“Materials” means all your documents, information, items and materials in any form, whether owned by you or a third party, which are provided by you and may be reasonably required by us from you, in connection with or to enable us to provide the Subscription Services such as a database.

“Milestone” means a date by which the following parts of the Consultancy Services are to be completed, as follows:

1. Undertake initial data analysis
2. Create test reports/dashboards
3. Walk-through test reports/dashboards
4. Customer UAT support & validation
5. Create live reports/dashboards
6. Walk-through live reports/dashboards

“Minimum Term” means the period starting with the Completion Date and continuing until the number of Years (whether or not expressed in months) identified on the Order Form or Sales Order have expired and continuing thereafter automatically for successive periods of one Year unless terminated by you or us giving the other written notice to terminate the Agreement in accordance with clause 4. The Minimum Term cannot be a period shorter than 1 Year.

“Order Form” means our standard document that may accompany the Sales Order or any Quotation; “Quotation” shall mean a non-binding document issued by us to you to provide an indication of the Total Amount Payable that is payable for the Subscription Services.

“Requirements Document” means a list of pre-requisites that your business must fulfil/have in place, installed or ready to deploy and use to enable the provision of Subscription Services and including any equipment, tools, systems, services, licences, as we specify from time to time (e.g. download/install Microsoft Power BI & enterprise gateway, provision login credentials etc).

“Sales Order” means the document setting out the Subscription Services to be provided by us to you.

“Subscription Services” means the Consultancy Services and Support & Maintenance Services.

“Support & Maintenance Services” means the services set out in clause 12 inclusive of support and any other services to be provided under the Agreement or as otherwise agreed in writing between the Parties from time to time.

“Total Amount Payable” means the Fee and the Annual Subscription Fee amounts due from you in full for payment under the Agreement together with all taxes and other sums payable.

“Virus” means any thing or device (including any software, code, file or programme) which may:

- (a) 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; (b) 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 rearranging, altering or erasing the programme or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

“Year” means each successive period of 12 months, the first of which runs: (a) in the absence of a Minimum Term from the Completion Date and each consecutive period of 12 months thereafter during the duration of this Agreement; or (b) where there is a Minimum Term from the end of the Minimum Term and each consecutive period of 12 months thereafter during the duration of this Agreement.

3. QUOTATIONS AND ORDERS

3.1 All Quotations are non-binding and we reserve the right to withdraw Quotations at any time. Any Quotation that you return or accept shall constitute an offer which is open to our acceptance/ declinature. For the avoidance of doubt, any Quotations which remain unaccepted within 30 days of the date of issue shall be deemed withdrawn or expired on day 31 following the date of issue.

3.2 Each Order Form shall be deemed to be a separate offer by you to us on the terms of this Agreement, which we shall be free to accept or decline at our absolute discretion. A contract between the Parties comes into force incorporating the terms of this Agreement when we inform you of our acceptance of any Order Form (or equivalent), or the date on which we carry out any actions consistent with this Agreement whichever occurs first.

4. DURATION AND TERMINATION

4.1 This Agreement shall commence on the Effective Date and shall continue in force indefinitely subject to the following provisions of this clause 4, the timely payment of the Fee and on-going Annual Subscription Fee and your compliance with your obligations under this Agreement.

4.2 We may terminate this Agreement forthwith on notice, if you fail to make any payment due under this Agreement within 30 days of the date of invoice. Where payment is not made in accordance with this clause 4.2 and provided that the invoice (or part thereof) is not subject of a genuine dispute between the Parties and where any payment due to us remains outstanding for longer than 14 days after the due date then we shall be entitled to:

4.2.1 charge interest on any amounts overdue at the rate of 4% per annum accruing daily above the Bank of England base rate for the time being in force, from the due date until the outstanding amount is paid in full. We may instruct a third party to recover any payments that have not been

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received by the date that the payment becomes due, and you shall indemnify us in respect of all costs, losses, damages and expenses that we reasonably incur as a result of your delay or failure to pay;

4.2.2 not provide any further service, support, Milestone or part of the Subscription Services; or

4.2.3 terminate the Agreement forthwith.

4.3 Either Party may terminate this Agreement forthwith on notice if:

4.3.1 the other Party commits any material breach of this Agreement and if remediable that Party fails to remedy that breach within 14 days of receipt of a written request to do so; or

4.3.2 an order is made or a resolution is passed for the other Party's winding up or if an order is made for the appointment of an administrator to manage that Party's affairs, business and property or if a receiver is appointed over any of that Party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if that Party takes or suffers any similar or analogous action in consequence of debt, including any inability to meet any debts due.

4.4 Without affecting any other right or remedy available to us, we may:

4.4.1 terminate this Agreement with immediate effect by giving written notice to you, if you repeatedly breach any of the terms of this Agreement in such a manner so as to reasonably justify the opinion that your conduct is inconsistent with you having the intention or ability to give effect to the terms of this Agreement; or

4.4.2 suspend our performance of the Agreement if: (a) you do not make a payment when it falls due; or (b) you are in breach of any term of the Agreement.

4.5 You may terminate this Agreement on or after the expiry of the Minimum Term (if any) or otherwise on or after the expiry of any Year by giving us written notice (using a "signed for" service as proof of delivery may be required) at least 12 weeks before the expiry of such Minimum Term or Year respectively or any anniversary

date thereafter to expire on:

4.5.1 where there is a Minimum Term, on the last day of the Minimum Term; or

4.5.2 where there is not a Minimum Term, on the last day of the relevant Year.

4.6 Upon expiry of the Minimum Term or of the relevant Year, and in the absence of you giving us written notice at least 12 weeks before the next anniversary date, the Agreement shall continue automatically but for successive periods of one Year unless another period has been agreed between the Parties prior to such expiry date. For the avoidance of doubt, you may not terminate the Support & Maintenance Services without terminating the entire Agreement.

4.7 We may terminate this Agreement by giving you 3 months' notice to be given at any time.

4.8 Upon termination of this Agreement howsoever arising:

4.8.1 your licence granted under clause 9.1.2 to use the Deliverables shall forthwith terminate and you shall deliver to us within 7 (seven) days of termination at your expense all copies of the Deliverables and of our Confidential Information (or at our request and discretion, certify their deletion in writing such certification being signed by one of your directors or authorised signatories) failing which you will continue to pay the Annual Subscription Fee notwithstanding termination and until such time as all copies of the Deliverables and our Confidential Information have been duly returned; and

4.8.2 all rights and obligations of the Parties shall automatically terminate except for any rights of action which shall have accrued prior to such termination and any obligations expressly or by implication intended to come into or continue in force on or after such termination.

5. OUR OBLIGATIONS

5.1 We shall use reasonable endeavours to:

5.1.1 co-operate with you in all matters relating to the Subscription Services and to promptly provide the Requirements Document prior to or following the Effective Date;

5.1.2 supply the Subscription Services in accordance with this Agreement in all material respects; and

5.1.3 meet any performance dates agreed with you in advance but any such dates shall be estimates only and time for performance by us shall not be of the essence of this Agreement. If our performance of our obligations under this Agreement is prevented or delayed by any act or omission on your part, your agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy we may have, we shall be allowed an extension of time to perform our obligations at least equal to the delay caused by you.

6. CHARGES, COSTS AND EXPENSES

6.1 The Total Amount Payable is quoted or charged exclusive of value added or other sales tax which shall be paid by you in addition on delivery of a VAT invoice.

6.2 All Fees and Annual Subscription Fees invoices are non-cancellable once raised and payments are non-refundable.

6.3 You hereby agree that we may:

6.3.1 charge for advice for feasibility studies and for the preparation of specifications and Quotations for goods and services not included in our original Quotation and/or proposal and/or any Order Form. Such charges shall be payable whether or not we then conclude any Agreement with you and shall be determined in accordance with our prevailing rates;

6.3.2 charge additional fees to cover our reasonably incurred expenses and any third-party costs, including but not limited to (as applicable) travel, accommodation and data transmission;

6.3.3 increase any price, Fee or charge to take account of any extra costs we reasonably incur as a result of your site's conditions, systems, infrastructure or IT environment, incorrect

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information supplied by you or changes in such information during the performance of the Consultancy Services or Subscription Services or a failure or delay on your part of providing information or Materials or providing access to the information or Materials where we require such access to deliver any part of the Subscription Services; and

6.3.4 charge you for any additional reasonable costs and expenses incurred by us caused by changes in your instructions including failure to honor arranged appointments, failure to provide access to the information or Materials required or failure to comply with clause 8.

6.4 Unless otherwise agreed, the Fee payable is based on our obligations to perform the Consultancy Services once following the Effective Date. The Annual Subscription Fee payable for the Support & Maintenance Services includes the provision of annual updates to the Deliverables held for you on our files (such updates taking into account updates and upgrades to our Software) but excludes the provision of annual Consultancy Services (unless these are re-ordered).

7. PAYMENT

7.1 All Fees, Annual Subscription Fees, payments, charges are due in full and you shall pay our invoice(s) within 30 (thirty) days of the date of invoice. Time of payment shall be of the essence in this Agreement.

7.2 Subject to any express provisions in the Agreement to the contrary or otherwise agreed, a Fee invoice will be raised on completion of each Milestone of the Consultancy Services. The Annual Subscription Fee shall follow thereafter for the period starting with the Completion Date for the Support & Maintenance Services under the Agreement. The Consultancy Services are deemed completed when we consider the Milestones are completed and deliver to you the Deliverables. Any query or dispute on any of the invoices must be raised in writing strictly within 5 (five) days of the date of the relevant invoice failing which the invoice shall be deemed accepted and payable in full. If any dispute should arise over an invoice:

7.2.1 you shall pay the undisputed amounts and promptly provide adequate information necessary to substantiate your claim; and

7.2.2 the Parties will make all reasonable efforts to agree on how much of the disputed sum, if any, is payable as soon as possible.

7.3 You shall not be entitled by reason of set-off, counter-claim, abatement or other similar deductions to withhold payment of any amounts due to us. We shall be entitled to offset any amount we owe to you under this Agreement against any amount which you owe to us under this Agreement or any other agreement between you and us.

7.4 Subject to the Order Form, we may increase the Annual Subscription Fee every Year by 5% or RPIJ (or such other index as replaces RPIJ from time to time), whichever is the greater. Notwithstanding any other provisions in this Agreement, we shall be entitled in our absolute

discretion to charge additional fees for any updates to the Deliverables where we are reasonably required to reperform the Consultancy Services due to material changes in the environment at your practice or at your request.

8. YOUR OBLIGATIONS

8.1 You shall:

8.1.1 ensure that you fulfil the Requirements Document prior to or as at the Effective Date;

8.1.2 co-operate with us in all matters relating to the Subscription Services and promptly provide to us the Materials and any information reasonably required by us in order to provide the Subscription Services and create the Deliverables, without delay (and in any event within 10 business days following the Effective Date);

8.1.3 ensure that the Materials and any information provided to us under the Agreement are accurate and complete;

8.1.4 obtain and maintain in place throughout the term of the Agreement all necessary licences (including in relation to our Software; Microsoft Power BI and your Materials) and consents and comply with all relevant legislation as required to enable us to provide the Subscription Services, insofar as such licences, consents and legislation relate to your business, premises, staff, equipment, Materials etc, in all cases and in any event before the date on which the Consultancy Services are to start;

8.1.5 appoint an experienced IT manager or other skilled IT professional with appropriate technical proficiency to competently carry out the set up and configuration instructions for building the reporting features, business insights, dashboards and you agree that installation or implementation (including any updates thereof) of the Deliverables in your business is your responsibility. You shall, at your own risk and expense, set up, install and implement the Deliverables (and any updates thereof) provided under this Agreement in accordance with the instructions supplied.

8.1.6 use your best endeavours to ensure that no Virus is introduced into the Materials that you provide to us or into any computer system in which the Deliverables are used or operated and in particular (without prejudice to this general obligation) to install and keep up-to-date an acknowledged and efficient anti-Virus software package.

9. TITLE AND LICENCE

9.1 In relation to the Deliverables:

9.1.1 we and our licensors shall retain ownership of all IPR in the Deliverables, excluding your Materials. Unless expressly stated to the contrary, all IPR is reserved to us;

9.1.2 subject to your compliance with the payment obligations under this Agreement, we grant to you or we shall procure the direct grant to you of, a fully paid-up, non-exclusive, royalty-free licence during the term of this Agreement to use and copy the Deliverables including any updates thereof (excluding your Materials) for the purpose of receiving and using the benefit of the

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Subscription Services and/or the Deliverables in your business for your internal business purposes only (and for no other purposes);

9.1.3 you shall NOT sub-license, sell, lease, assign or otherwise transfer the rights granted to you in this clause 9.1;

9.1.4 you shall notify us immediately if you become aware of any unauthorised use or disclosure of the whole or any part of the Deliverable by any person;

9.1.5 you undertake not to alter, modify, amend, misuse, damage, reverse engineer or disassemble, or create derivative products based on the Deliverables or any part of them in any way whatever or permit the whole or any part of the Deliverables to be combined with or become incorporated in any other programs, documents or materials other than by usage of the facilities incorporated within them or strictly as permitted by law; and

9.1.6 you shall ensure that any copyrights, trademarks and associated proprietary rights notices remain displayed and unmodified.

9.2 In relation to your Materials, you:

9.2.1 and your licensors shall retain ownership of all IPR in your Materials; and

9.2.2 grant to us and our affiliates (and any employee, sub-contractor, consultant or agent) a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify your Materials during the term of this Agreement for the purpose of providing the Subscription Services to you.

10. WARRANTY

10.1 Subject to clauses 10.2 and 10.3 and your compliance with your obligations under the Agreement, we warrant that the Deliverables for a period of 30 days following delivery to you, will, if properly implemented by you in accordance with the instructions and this Agreement, substantially achieve the set up and configuration agreed.

10.2 You accept that the Deliverables may have certain defects when delivered and you agree that our sole liability and your sole remedy in respect of any breach of the above warranty shall be for us to provide support (part of the Support & Maintenance Services) which may include corrections to instructions notified and documented in accordance with clause 12.1

10.3 To the extent permitted by applicable law, we disclaim all other warranties with respect to the Subscription Services and/or the Deliverables, either express or implied, including but not limited to any implied warranties relating to quality, performance, fitness for any particular purpose or ability to achieve a particular result. We do not warrant that the Deliverables supplied will operate in all combinations selected by you, the use of the Deliverables will satisfy your requirements or that such use will be unlimited in time, uninterrupted or error free or free from Viruses.

11. CONFIDENTIALITY

11.1 We will keep confidential all Confidential information about your business disclosed to us

and you shall keep confidential (and shall require your staff to do so) all Confidential Information which we may disclose to you and guard and protect the Deliverables from unauthorised disclosure apart from necessary disclosure to your employees to enable their use of the same. These obligations of confidence shall survive the termination of this Agreement for a period of 5 (five) years but shall not restrict our freedom to copy and to re-use the Deliverables and techniques developed by us for or with you whether or not based upon confidential information disclosed by you to us.

11.2 Each Party shall:

11.2.1 hold the Confidential Information in confidence and treat the Confidential Information with the same degree of care that it uses for its own confidential information and in no event less than in a prudent and reasonable manner;

11.2.2 not, without prior written consent of the other Party disclose Confidential Information to any third party (save that disclosure shall be permitted to our professional advisers, within our group of companies or as may be required by law, court order or any governmental or regulatory authority); and

11.2.3 use the Confidential Information solely in connection with the performance of its obligations under this Agreement and not for its own benefit or for the benefit of any third party.

11.3 The provisions clause 11.2 shall not apply to any Confidential Information which:

11.3.1 is or becomes public knowledge other than by breach of this clause;

11.3.2 is in the possession of each Party without restriction or other obligation of confidentiality in relation to disclosure before the date of receipt by the other Party;

11.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

11.3.4 is independently developed by the recipient Party without access to any item of Confidential Information.

11.4 You shall indemnify us against all loss including (but not limited to) loss of profits, loss of business, diminution of goodwill and any and all consequential loss and damage and claims suffered or incurred by us as a result of the possession and/or use of the Deliverables by you or any possession and/or use by a third party arising out of any act or omission on your part and will account to us for all profits or other benefits (including benefits in kind) received by you arising from any unauthorised disclosures or use of the Deliverables by you or your employees.

11.5 You represent and warrant that:

11.5.1 your employees shall use the Deliverables in your possession only in accordance with the provisions of this Agreement; and

11.5.2 no unauthorised third parties shall use or have access to the Deliverables in your possession.

11.6 You shall not sell, transfer, assign, lease, commercially exploit or otherwise deal in the Deliverables or make them available to any third

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party or copy them unless expressly authorised by this Agreement.

11.7 This clause 11 shall survive the termination of the Agreement for whatever reason.

12. SUPPORT & MAINTENANCE SERVICES

12.1 You shall notify us of any faults in the Deliverables of which you become aware as soon as possible and you must keep a written record of the sequence of events which led to the emergence of any such fault and supply a copy of such written record to us upon request.

12.2 We will use reasonable endeavours to provide support to you under the Support & Maintenance Services for the duration of the Agreement (the "Support Period") and otherwise in accordance with this clause 12.

12.3 The support shall not include the performance of any services to correct any problem or fault in your environment, systems or at your site arising as a result of any of the following:

12.3.1 your improper use or implementation of the Deliverables;

12.3.2 your implementation of the Deliverables on an environment or site which has been subsequently modified following the delivery of your information or Materials to us and which were not accepted by us such modification including without limitation further builds, developments, new software, new software versions, upgrades, bug fixes, or other IT services being deployed/ implemented etc.

12.3.3 your use of the Deliverables for a purpose for which they were not designed;

12.3.4 the failure of the computer hardware on which the Deliverables have been operated;

12.3.5 the failure by you (or your staff) to appoint skilled personnel to implement the Deliverables;

12.3.6 contamination of the Deliverables or any associated system by Virus;

12.3.7 the addition of anything to the data model which was not originally in scope of the Deliverables (e.g. either additional data from CCH Central, or data from any other third party software or system); or

12.3.8 any matter after the Support Period has expired.

12.4 If a defect or error in the Deliverables is caused by any of the matters set out in sub-clause 12.3 above we shall, if requested by you, use our reasonable endeavours to correct such defect or error provided you shall pay such additional charges at our then current rates.

12.5 Following the Minimum Term and subject to the payment of the Annual Subscription Fee, we shall provide you with an updated version of the Deliverables held for you on our files (such updates to be taking into account updates and upgrades to our Software).

13. LIMITATION OF LIABILITIES AND INDEMNITY

13.1 We do not seek to limit or exclude liability for:

13.1.1 death or for personal injury arising from our negligence;

13.1.2 fraud or fraudulent misrepresentation; or

13.1.3 any breach of the terms implied by s.12

Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982.

13.2 You shall inform us of any alleged default on our part and provide us with a reasonable opportunity to investigate and correct any default.

13.3 Subject to clause 13.1 we shall not be liable for any loss and/or expenses incurred:

13.3.1 after the date that we correct or procure correction of the default; or

13.3.2 after the date on which the licence is terminated; or to the extent that we afford you reasonable opportunity to reduce your loss and expenses by providing alternative services.

13.3.3 for any delays, delivery failures, or any other loss or damage resulting from the transfer of your Materials over communications networks and facilities, including the internet, and you acknowledge that the Subscription Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

13.4 Subject to clause 13.1, we shall not be liable for the following loss or damage however caused even if we were aware of circumstances giving rise to any such loss or if foreseeable by us:

13.4.1 (i) loss of revenue, business or contracts; (ii) loss of profits, anticipated savings or wasted expenditure; (iii) loss or reduction or depletion of goodwill or similar losses; (iv) loss, destruction, alteration or damage or corruption of data; (v) pure economic loss; (vi) punitive damages or losses suffered by any third parties; (vii) any special, indirect or consequential loss; and (viii) costs, damages, charges or expenses under this Agreement;

13.4.2 special, indirect or consequential loss;

13.4.3 loss arising from any claim made against you or penalty imposed on you or on any other person; or

13.4.4 loss or damage arising from your failure to fulfil your obligations under this or any other agreement with us or from any matter under your control.

13.5 Subject to clause 13.1, 13.2, 13.3 and 13.4 our entire aggregate liability to you in respect of all loss arising under or in connection with the performance or contemplated performance of this Agreement, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, shall be limited and in no circumstances exceed the preceding 12 months' Total Amount Payable paid to us under this Agreement as at the date at which the loss occurred.

13.6 We shall have no liability unless you shall have served notice in writing of any facts which may give rise to a claim (and were not excluded by this Agreement) against us within one year of the date you either became aware of the circumstances giving rise to a claim or the date you ought reasonably to have become so aware, and you acknowledge and agree that the limitations on or exclusions of our liability to you and any other third party are fair and reasonable having regard to the commercial relationship between the parties.

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13.7 You shall indemnify us against any claim by a third party which arises from or as a result of our compliance with your instructions or which arises from or is occasioned by any of your acts or defaults.

13.8 We shall, at your written request, defend and hold you harmless with respect to any and all claims against you in a court of competent jurisdiction, if and only to the extent that such claims are based upon allegations that any current unaltered version of the Deliverables (or any part thereof) infringes the IPR of any third party provided that you immediately notify us in writing of any such claim, provide all reasonable assistance requested by us, not make any admission or settlement or do any act which may compromise our position and permit us, at our option, to defend or control the defence (including any appellate proceedings) or settle any such claim.

13.9 In the event that a claim under clause 13.8 is made, we may at our option, discretion and expense procure the right for you to continue using any affected item or modify or replace it so that it becomes non-infringing.

13.10 We shall have no liability under this Agreement for any claim arising solely or substantially from:

13.10.1 the alteration or modification of the Deliverables unless authorised by us in writing;

13.10.2 the combination, operation or use of the Deliverables with equipment, data or programs or products not supplied by us; or

13.10.3 your breach of clause 11.5.

13.11 This clause 13 shall not affect any rights of termination specified elsewhere in this Agreement.

13.12 This clause 13 shall survive the termination of this Agreement for whatever reason.

14. DATA PROTECTION

14.1 In relation to its obligations hereunder that may entail the processing of personal data, each Party shall comply with the terms of the DPA.

14.2 You represent and warrant that you have obtained all necessary consents and permissions to enter into and perform your obligations under this Agreement. To the extent required by any applicable law, rule, regulation, or contract, you shall obtain all necessary permissions from your own customers, employees, agents, or contractors (as applicable) that will allow us, in performing our obligations under this Agreement (to the extent applicable) to store, transmit, use, and otherwise process any Personal Data delivered to us by you under this Agreement.

15. FORCE MAJEURE

15.1 Neither Party shall be responsible for any delay or failure to fulfil its obligations in this Agreement, apart from the payment of money, to the extent that this results from any event of Force Majeure.

15.2 If a Party's performance of its obligations under this Agreement is affected by a force majeure event:

15.2.1 it will give written notice to the other

Party, specifying the nature and extent of the force majeure event within 7 (seven) days of becoming aware of the force majeure event and will at all times use reasonable endeavours to bring the force majeure event to an end and, whilst the force majeure event is continuing, to mitigate its severity, without being obliged to incur any expenditure; and

15.2.2 subject to the provisions of clause 15.2.1, the date for performance of such obligation will be deemed suspended for a period equal to the delay caused by the force majeure event.

15.3 If a force majeure event continues for more than 3 (three) months, either Party may give written notice to the other to terminate this Agreement on no less than thirty (30) days' written notice.

16. PARTIAL INVALIDITY

If any clause or any part thereof is held to be illegal, invalid or unenforceable under any applicable statute, or rule of law, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

17. WAIVER

A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

18. ASSIGNMENT

18.1 Any purported assignment, sub-licence or other transfer by you of all or part of this Agreement with us will be void and it shall only be valid with our prior written consent.

18.2 We may at any time assign, transfer, pledge or in any other manner dispose of any or all of our rights and obligations under this Agreement. We may sub-contract or delegate any or all of our obligations under the Agreement to a third party.

19. NOTICES

19.1 Any notice or consent to be given under this Agreement shall be in writing and shall be delivered personally or sent by post or receipted email to the other Party at the address given herein and shall be deemed to have been given:

19.1.1 in the case of a letter sent by ordinary pre-paid first-class post or email; forty-eight hours from the date of posting/the date of transmission, save that if notice is served outside of normal business hours' notice shall be deemed served the next day; and

19.1.2 if delivered personally, at the time of delivery.

20. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed and construed in accordance with English Law. Each Party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or

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claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

21. RIGHTS OF THIRD PARTIES

No part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a Third Party unless expressly provided.

22. WHOLE AGREEMENT

22.1 This Agreement contains the whole agreement between the Parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement, either written or oral.

22.2 Each of the Parties acknowledges that in agreeing to enter into the Agreement it has not relied on any representation, warranty or other assurance except those set out in the Agreement and the documents referred to in it.