



DGauge Flow Software as a Service (SaaS) Terms and Conditions

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Authorised Users: those employees, agents and independent contractors of the Customer (including any Third Parties) who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 18.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.6 or clause 12.7.

Contract: the contract between the Customer and the Supplier for the sale and purchase of the Services in accordance with these Conditions.

Customer: means the person, firm, business purchasing the Services, as set out in the Order Form.

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

Documentation: the document made available to the Customer by the Supplier online via <https://www.dgaugeflow.com/Login/Terms>

or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of the Contract.

Initial Subscription Term: the initial term of the Contract as set out in the Order Form.

Licence: means the end user licence agreement available at <https://www.dgaugeflow.com/Login/Terms#licence>

Maintenance Window: As defined in the support Services Policy available at <https://www.dgaugergift.com/supportpolicy>

Normal Business Hours: As defined in the Support Services Policy available at <https://www.dgaugergift.com/supportpolicy>

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Order: means the Customer's order for the Services as set out in the Order Form.

Order Form: means the document signed by each of the parties that sets out details of the Order.

Portal: the DGauge Flow online portal that connects a user to stepping data and analysis, as provided by the Supplier as part of the Services.

Renewal Period: the period described in clause 15.1.

Route Specification: means the specification of the route(s) prepared by the Supplier, following receipt of the route description and any other information requested by the Supplier, from the Customer.

Subscriptions: the route and/or vehicle subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Conditions.

Services: the subscription services provided by the Supplier to the Customer under the Contract via www.dgaugeflow.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Subscriptions, as set out in the Order Form.

Subscription Term: has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supplier: DGauge LTD, registered in England and Wales with company number 06527181.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available at www.dgauge.co.uk/policy/supportservicespolicy.pdf or such other website address as may be notified to the Customer from time to time.

Vehicle Specification: means the specification of the vehicle(s) prepared by the Supplier, following receipt of its description and any other information requested by the Supplier, from the Customer.

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

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability of Customer Data / the Services, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause headings shall not affect the interpretation of these Conditions and, references to clauses are to the clauses of these Conditions.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.7 A reference to writing or written includes e-mail.

2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted upon the parties signing the Order Form, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 The Customer shall provide the Supplier with full, complete and accurate details of any relevant vehicles and routes.
- 2.6 The Customer accepts that the Supplier shall not, in any event, be liable to the Customer for any inaccuracies or errors in the details of vehicles and routes provided in accordance with clause 2.5.
- 2.7 Where the Customer believes that the specified vehicles and routes are incorrect, it shall notify the Supplier of any amendments required and, the Supplier shall, as soon as reasonably practicable following receipt of such notification, make the amendments.
- 2.8 It is agreed between the parties, that the Contract is made on and subject to the Customer, obtaining all necessary permissions, consents and certificates, through the appropriate channels. The Supplier accepts no responsibility and/or liability for obtaining these permissions, consents and/or certificates.

3. Subscriptions

- 3.1 Subject to the Customer purchasing the Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of Authorised Users entitled to access and use the Services and the Documentation under the Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any Subscription to be used by more than the number of Authorised Users allowed to use such Subscription (as set out in the Order Form) unless it has been reassigned in its entirety to other Authorised User(s), in which case the prior Authorised User(s) shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 3.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 10 Business Days of the date of the relevant audit; and
- (h) each Authorised User shall comply in full with the terms of the Licence.

3.3 The Customer shall not and shall procure that an Authorised User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's and/or any Authorised User's access to the Portal and/or any material that breaches the provisions of this clause.

- 3.4 The Customer shall not and shall procure that each and every Authorised User shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Portal and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Portal; or
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
 - (c) use the Services and/or Documentation to provide services to third parties;
 - (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party;
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; or
 - (f) introduce or permit the introduction of, any Virus or Vulnerability into the Services or the Supplier's network and information systems.
- 3.5 Not used.
- 3.6 Where the Customer wishes to provide a third party with access to the Portal, such third party shall, upon the Supplier's request, enter in to an agreement with the Supplier, that contains provisions similar to those conferred upon the Customer under the Contract, in relation to the use of the Portal. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.7 The Customer accepts and acknowledges that access to the Portal does not include any interpretations of data incorporated within the Portal and, where such interpretations are required from the Supplier, the parties shall enter into a separate agreement that deals with the commissioning of a report by the Supplier and, the costs associated for this (**Report**). The elements of any Report provided by the Supplier shall be strictly confidential, however, the Customer shall have the right to share the information contained within the Report with a third party. For the avoidance of doubt, the Supplier accepts no responsibility and shall not be held liable for, any use made of the Report by a third party or, any reliance placed upon the Report by a third party.
- 3.8 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. Additional subscriptions

- 4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional Subscriptions in excess of the number set out in the Order Form and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Conditions.
- 4.2 If the Customer wishes to purchase additional Subscriptions, the Customer shall notify the Supplier in writing and supply a valid purchase order. The Supplier shall evaluate such request for additional Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional Subscriptions within 7 days of its approval of the Customer's request.
- 4.3 If the Supplier approves the Customer's request to purchase additional Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Subscriptions as set out in the Order Form and, if such additional Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5. Services

- 5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Conditions.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the Maintenance Window
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 1 Business days' notice in advance.
- 5.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 5.4 The Supplier shall, where requested to do so by the Customer in writing, make changes to the Vehicle Specifications to take in to account any updates to the route vehicle. Such changes shall be made no more than once in any given 3 month period and require 10 Business Days' notice. Where the Customer requests changes in addition to this, the Supplier shall have the right to charge the Customer a fee (in addition to any other fees payable under the Contract) for such changes and, will agree such fees with the Customer in advance, prior to them being accrued.

6. Customer data

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 6.2 The Supplier shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the Supplier's archiving. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up). The Supplier shall produce and provide the Customer with a data security document.
- 6.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under the Contract;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) the Supplier shall process the personal data only in accordance with the terms of the Contract and any lawful instructions reasonably given by the Customer from time to time; and
 - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

7. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. Supplier's obligations

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors

or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (b) the Software or the Services will be free from Vulnerabilities or Viruses; and
- (c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.3 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

8.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

8.5 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its standard archiving procedures. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

9. Customer's obligations

9.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Contract; and
 - (ii) all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services; and
- (b) be responsible for procuring and maintaining its network connections and telecommunications links from its systems to the other's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to such party's network connections or telecommunications links or caused by the internet.

9.2 The Customer shall:

- (a) comply with all applicable laws and regulations with respect to its activities under the Contract;

- (b) carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary and the Supplier shall not be liable for any failure to deliver any or all of the Services to the extent caused by Customer's delay;
- (c) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these Conditions and shall be responsible for any Authorised User's breach of these Conditions;
- (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services; and
- (e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time.

10. Charges and payment

- 10.1 The Customer shall pay the Subscription Fees to the Supplier for the Subscriptions in accordance with this clause 10 and the Order Form.
- 10.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
 - (a) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 15.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 10.3 If the Supplier has not received payment within 30 days after the due date and has notified the Customer of this and made reasonable efforts to claim the debt due, without prejudice to any other rights and remedies of the Supplier:
 - (a) the Supplier may, without liability to the Customer, immediately disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% over the then current base lending rate of Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in the Contract:
 - (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.5 The Supplier shall be entitled to increase the Subscription Fees and/or the fees payable in respect of the additional Subscriptions purchased pursuant to clause 4.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Order Form shall be deemed to have been amended accordingly.
- 11. Proprietary rights**
- 11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Conditions.
- 12. Confidentiality**
- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Conditions.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Conditions.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party and each party shall use reasonable endeavours to mitigate any such loss, destruction, alteration or disclosure by a third party.
- 12.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

- 12.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 The above provisions of this clause 12. shall survive termination of the Contract, however arising.
- 13. Indemnity**
- 13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation.
- 13.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given notice of any such claim within 3 Business Days of the Customer becoming aware of the intended claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense;
 - (c) the Supplier is given sole authority to defend or settle the claim; and
 - (d) the Customer uses all commercially reasonable endeavours to mitigate its losses.
- 13.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - (d) the Customer Data; or
 - (e) the Customer's breach of this Contract.
- 13.5 To the extent permitted at law, the foregoing and clause 14.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any intellectual property right, including without limitation, any patent, copyright, trade mark, database right or right of confidentiality.

14. Limitation of liability

14.1 Except as expressly and specifically provided in these Conditions:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in the Contract excludes the liability of either party:

- (a) for death or personal injury caused by such party's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any matter in which a party cannot legally limit or exclude or attempt to limit or exclude their liability.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15. Term and termination

15.1 The Contract shall, unless otherwise terminated or renewed as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term.

The Customer may renew the Contract with the Supplier by notifying the Supplier in writing, at least 60 days before the end of the Initial Subscription Term, in which case the Contract shall renew upon the expiry of the applicable Initial Subscription Term for such period as is agreed between the parties in writing (**Renewal Period**). For the avoidance of doubt, the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(c) to clause 15.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (m) there is a change of control of the other party.

15.3 On termination of the Contract for any reason:

- (a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party, provided that each

party may retain one copy of any information disclosed to, or created by, that party under or in connection with this Contract as required by law and / or as necessary to evidence compliance with the Contract;

- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the most recent back-up of the Customer Data to the Customer within 30 days of receipt of a written request provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract, which existed at or before the date of termination shall not be affected or prejudiced.

16. Force majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. Conflict

If there is an inconsistency between any of the provisions contained in these Conditions and the Order Form, the provisions in the Order Form shall prevail, to the extent of such inconsistency.

18. Variation

No variation of the Contract shall be effective unless it is in writing and signed by each party (or their authorised representatives).

19. Waiver

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

20. Rights and remedies

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

21. Severance

- 21.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. Entire agreement

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

23. Assignment

- 23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 23.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

24. No partnership or agency

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

25. Third party rights

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Notices

- 26.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Order Form.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly

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addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27. Governing law

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

28. Jurisdiction

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