



Master Service
Agreement

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These Terms set out the basis upon which the Supplier will provide the Services (defined below).

By submitting an Offer or by accepting these Terms, whether as part of the Supplier's online ordering process or otherwise, the Customer agrees to contract on the basis of these Terms and in doing so agrees that they prevail over any other terms which the Customer may seek to impose or introduce, including (without limitation) any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by the Customer.

Any person submitting an Offer, or making any other representation, on behalf of the Customer represents and warrants that they have the legal right and authority to bind the Customer to the terms of the Agreement.

The Customer has evaluated the Services and satisfied itself as to their suitability, and confirms that it has not relied on any representation or statement other than as set out in the Agreement.

1. INTERPRETATION

1.1. The following definitions and rules of interpretation apply in the Agreement.

Acceptable Use Policy: the Supplier's acceptable use policy available at <https://www.layershift.com/legal/AcceptableUsePolicy.pdf>.

Agreement: the agreement between the Customer and the Supplier comprising: (i) these Terms, (ii) the Order, and (iii) any documents specifically referred to or incorporated into these Terms, including the Security Policy, Service Level Agreement, Acceptable Use Policy, Privacy Notice and Money Back Guarantee.

Authorised Support Contacts: the agreed Customer personnel authorised to act as the Customer contact in connection with the provision of Support Services.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Confidential Information: all and any confidential information (in whatever form) whether or not marked as such including but not limited to commercial, financial, marketing and technical information relating to the disclosing party's business, services, products, clients, consultants, employees, suppliers, finances, proprietary computer software, website, know how, trade secrets, intellectual property, future product plans, future project plans and documentation in any form or medium whatsoever whether disclosed orally or in writing relating to any of the foregoing (including copies thereof).

Customer: the legal person (whether company, partnership, individual or otherwise), identified in the Order, to whom the Services will be provided.

Customer Control Panel: the control panel via which the Customer may control and manage its use of the Services and Subscriptions, including the service of notice of termination, details of which will be provided by the Supplier and may differ for each Subscription.

Customer Data: the data provided and/or inputted by the Customer or its users in the course of the Customer's use of the Services, which, for the avoidance of doubt, includes any Personal Data.

Data Protection Laws: means all applicable laws and regulations relating to the processing of personal data and privacy including the General Data Protection Regulation 2016/679 once in force (**GDPR**) and any statutory instrument, order, rule or regulation made thereunder, as from time to time

amended, extended, re-enacted or consolidated. The terms 'Data Controller', 'Data Processor', 'Process(ing)', 'Data Subjects', 'Personal Data' and 'Personal Data Breach' shall have the meaning given to them in the GDPR;

Effective Date: the date from which the Services will be provided, as set out in the Order.

Initial Term: the initial term of the Agreement, as set out in the Order.

Fees: the fees payable for the Services and/or any other fees or charges payable under the Agreement, as set out in the Order.

Local Business Hours: 9.00am to 5.00pm local time at the place at which the datacentre is located.

Money Back Guarantee: the Supplier's money back guarantee available at <https://www.layershift.com/legal/MoneyBackGuaranteePolicy.pdf>.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Offer: the offer made by the Customer when it confirms acceptance (by any means, including by email) of a Proposal.

Order: the binding order formed when the Supplier accepts the Customer Offer, either expressly or by delivering Services pursuant to the Offer.

Payment Terms: the terms relating to invoicing and payment, as set out in the Order.

Privacy Notice: the Supplier's privacy notice available at <https://www.layershift.com/legal/PrivacyandCookiesPolicy.pdf>.

Product(s): any products, software or other proprietary technology owned by the Supplier or any third party and licensed or otherwise provided for use in relation to the Services;

Proposal: a proposal for Services which is either (i) specified or set out on the Supplier's Website, or (ii) issued directly to the Customer by the Supplier.

Renewal Period: the period described in clause 1.1.

Security Policy: the Supplier's security policy available at <https://www.layershift.com/legal/SecurityPolicy.pdf>.

Services: the services described in the Order which, for the avoidance of doubt, means all and any Customer Subscriptions.

Service Credits: the service credits which apply in respect of any failure to meet agreed Service Levels, details of which are set out in the Service Level Agreement.

Service Level Agreement: the Supplier's service level agreement available at <https://www.layershift.com/legal/sla>.

Software: any software provided by the Supplier and/or used in relation to or as part of the Services.

Subscription: a standalone component or element of the Services capable of being added or removed without affecting the other elements of the Services.

Subscription Term: the term applicable to each Subscription, as set out in the Order.

Supplier: Layershift Limited (company registration no. 06036217) with registered office at Delta House Wavell Road, Wythenshawe, Manchester, M22 5QZ, United Kingdom.

Supported Version: the version(s) of the Software supported by the Supplier from time to time, details of which are set out at <https://www.layershift.com/legal/software-versions>.

Support Services: the support services provided by the Supplier in connection with the Services, details of which are available at <https://www.layershift.com/about/care-packs>.

Term: the term of the Agreement.

Terms: these terms of service.

Third Party Products: any third party materials, software, products, data, information or other content comprised in the Services.

Website: the Supplier's website at <https://www.layershift.com>

2. COMMENCEMENT & TERM

- 2.1. The Agreement shall commence on the Effective Date and shall continue for the duration of the Subscriptions. The Agreement shall terminate automatically upon termination of the last Subscription.
- 2.2. Each Subscription shall run for the applicable Subscription Term. Thereafter, each Subscription shall automatically renew for successive periods equivalent to the initial Subscription Term (each a **Subscription Renewal**) unless:-
 - (a) either party notifies the other party of termination, in writing, at least 7 days before the end of the initial Subscription Term or any Subscription Renewal, unless any other notice period is agreed in the Order, in which case the Subscription shall terminate upon the expiry of the Subscription Term or Subscription Renewal, as applicable; or
 - (b) otherwise terminated in accordance with the provisions of the Agreement.

For the avoidance of doubt, the Agreement shall continue (subject to its terms) as long as there are any live Subscriptions.

- 2.3. The Agreement supersedes all and any previous agreements in relation to the Services, including (without limitation) any non-disclosure agreements entered into by the parties in anticipation of the provision of the Services.

3. CHARGES AND PAYMENT

- 3.1. The Customer shall on or prior to the Effective Date provide to the Supplier valid, up-to-date and complete payment details (such as PayPal, credit/debit card or direct debit details) or approved purchase order information acceptable to the Supplier and any other required valid, up-to-date and complete contact and

billing details. The Supplier reserves the right to determine payment method, to which administration charges may apply.

- 3.2. The Supplier shall invoice the Customer and the Customer will pay all Fees, each in accordance with the Payment Terms. Where the Customer provides payment details, the Supplier is hereby authorised to take payment upon issue of invoice. By entering into the Agreement, the Customer commits to pay the Fees for the entire Term.
- 3.3. If the Supplier has not received payment of an invoice within 14 days after the due date, (i) all and any Fees for the Term shall become payable in full, including (for the avoidance of doubt) the fees for the entire Subscription Term of the Subscription(s) in default, as well (at the Supplier's discretion) as those not in default, and (ii) and the Supplier may, without prejudice to any other rights and remedies and without liability to the Customer, disable the Customer's password, account and suspend access to all or part of the Services. The Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. Any invoice disputes must be notified to the Supplier within 5 Business Days of receipt of invoice, failing which the invoice will be deemed accepted and any right of dispute waived.
- 3.4. All amounts and Fees stated or referred to in the Agreement:
 - (a) shall be payable in the currency stated in the Order;
 - (b) are non-cancellable and non-refundable, save where permitted under the Money Back Guarantee;
 - (c) are payable in full, net of all charges, and without set-off, deduction or withholding; and
 - (d) are exclusive of value added tax or other local taxes, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 3.5. If, at any time whilst using the Services, the Customer exceeds any resource limits, whether specified in the Order or notified by the Supplier, the Supplier may suspend the Services. Any further use of the Services shall be subject to the Customer paying the Supplier's then current resource usage fees, details of which will be provided on request.
- 3.6. The Supplier shall be entitled to increase the Fees at the start of each Renewal Period, to reflect the corresponding rise in the Retail Prices Index, upon 30 days' prior notice to the Customer, save that charges for Third Party Products may be increased at any time upon reasonable prior notice, on a pass-through basis.

4. SERVICES

- 4.1. The Supplier shall, during the Term, provide the Services to the Customer on and subject to the terms of the Agreement.
- 4.2. The Supplier shall use reasonable endeavours to provide the Services in accordance with the Service Level Agreement, except for:
 - (a) planned maintenance notified by the Supplier; and
 - (b) unscheduled maintenance performed outside Local Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 hours' notice in advance.

- 4.3. The Supplier will, as part of the Services, provide the Customer with the Supplier's standard Support Services in accordance with the Service Level Agreement applicable to the Services provided. The Support Services will be provided only via the Authorised Support Contacts. The Supplier may amend the Service Level Agreement in its discretion from time to time in accordance with clause 21 below. Supplier support obligations (if any) with respect to the Software apply only to the Supported Version unless otherwise agreed.
- 4.4. The Customer shall, as its exclusive remedy, be entitled to Service Credits in respect of any failure to meet the Service Level Agreement.
- 4.5. The rights provided under this clause 4 are granted to the Customer only, and unless otherwise agreed in writing by the Supplier shall not be considered granted to any subsidiary or holding company of the Customer or any associated or affiliated company.

5. PRODUCTS & SOFTWARE

- 5.1. Where the Customer requests the Supplier to provide any Products in connection with the Services, the Customer agrees that all use of such Products will be in strict accordance with the applicable terms of use (including any restrictions therein) and that it will not do or permit to be done anything which may breach the terms of use or comprise a misuse of the Products. Applicable third party terms of use are available at <https://www.layershift.com/legal/third-party-terms>. All usage shall be at the Customer's sole risk. The Customer is responsible for assessing the appropriateness and suitability of the Products and the Supplier provides no warranty or representations in relation thereto.
- 5.2. The Supplier hereby grants the Customer a limited, non-exclusive, non-transferable, non-sublicensable right to use the Software only to the extent reasonably required for the use of the Services by the Customer, subject to and in accordance with the terms of the Agreement.
- 5.3. The Customer shall not, without the Supplier's prior written consent:
- (a) license, sub-license sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Products or the Software, or
 - (b) allow the Products or the Software to become the subject of any charge, lien or encumbrance; or
 - (c) access all or any part of the Products or the Software in order to build a product or service which competes with that of the Supplier.
- 5.4. The Customer shall:
- (a) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Products or the Software and, in the event of any such unauthorised access or use, shall promptly notify the Supplier; and
 - (b) pay, for broadening the scope of the licences granted under this Agreement to cover any unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 5.5. The Customer shall ensure it is legally entitled to use any software used by it in relation to the Services and on the request of the Supplier it will certify that it complies with the requirements of this clause and

will if required provide the Supplier with copies of the relevant licences or other contracts and such other information as may be reasonably required in order to establish compliance.

- 5.6. Any Third Party Products comprised in or forming part of the Services will be used by the Customer solely in accordance with the applicable third party terms of use. The Customer is responsible for compliance with the said third party terms and hereby agrees that its exclusive rights and remedies in respect of the Third Party Products shall be against the applicable third party owner or licensor. The Customer shall have no rights against the Supplier in respect of the Third Party Products.

6. CHANGES

- 6.1. The Supplier reserves the right to make changes to the Services and changes to equipment, software, technology or other aspects of the Services, including (without limitation) changes which are necessary to comply with applicable law or safety requirements or which do not materially adversely affect the nature or quality of the Services, such as software updates and enhancements. The Customer acknowledges and accepts that the Supplier may make the said changes, if necessary without the need for notification, provided they do not materially adversely affect the Services.
- 6.2. The Customer may modify or vary aspects of the Subscriptions, including specifications, pricing and resources limits, subject to payment of the applicable fees and compliance with the Supplier's required processes for effecting such changes. The Supplier may also modify or vary aspects of the Services and may transition the Customer to a different plan or Subscription without the consent of the Customer, save that where the said change has a materially adverse impact on the Services, the Customer shall be entitled to terminate the applicable Subscription(s) on 30 days' written notice.

7. SUPPLIER'S OBLIGATIONS

- 7.1. The Supplier undertakes that the Services will be performed with reasonable skill and care.
- 7.2. The undertaking at clause 7 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 exclusive remedy for any breach of the undertaking set out in clause 7. 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, will meet the Customer's requirements;
 - (b) 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 may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3. The Agreement 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 Agreement.

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

8. CUSTOMER'S OBLIGATIONS

8.1. The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary cooperation in relation to the Agreement; and
 - (ii) such documents, data, drawings, plans, diagrams, designs, reports, specifications or other information as the Supplier may reasonably require; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services, and ensure all information is complete, true and accurate in all material respects;
- (b) appoint a representative, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- (c) make available such Customer staff and applicable subcontractors or suppliers (if any) as may be required for the Supplier to provide the Services and ensure that they cooperate fully with the Supplier in all material respects;
- (d) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner;
- (e) ensure that the Services are used in accordance with the Agreement (the Customer accepting responsibility for any user's breach of the Agreement);
- (f) ensure it has all rights, consents and permissions required for its use of the Services, including (without limitation) all and any relating to the Customer's use of third party information, data or other content and that its said use will not infringe the rights, including the intellectual property rights, of any third party;
- (g) comply strictly with the terms of use applicable to Products;
- (h) obtain and maintain all licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (i) ensure that its network, systems and (where applicable) hosting providers comply with the relevant specifications or standards provided by the Supplier from time to time;
- (j) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- (k) comply with all applicable laws and regulations with respect to its activities under the Agreement.

8.2. The Customer acknowledges that the Supplier's ability to provide the Services depends on the Customer satisfactorily complying with the obligations stated in this Agreement and that should the Customer delay or fail to perform any such obligations then the Supplier will not be liable in any way for any delay, loss or damage, cost increase or other consequences arising from such failure.

- 8.3. The Customer agrees and accepts that it is fully responsible for its use of the Services, including (without limitation) what to store or place on servers, the selection of appropriate methods for protecting or encrypting data or information and when and how best to use the Services, for which the Customer agrees the Supplier shall have no responsibility.
- 8.4. The Customer shall not access, store, distribute or transmit any Viruses, or breach the terms of the Supplier's Acceptable Use Policy.
- 8.5. The Customer will ensure that reasonable security processes are followed regarding its use of the Services, which shall as a minimum ensure compliance with the terms of the Acceptable Use Policy. If the Customer operates as a reseller, it will ensure that it imposes on its customers terms which reflect the security and other relevant requirements of this Agreement.
- 8.6. The Customer undertakes that during the performance of the Services it shall not, and shall not permit others, to
- (a) carry out any act which will, or is likely to, interfere with or compromise the security or proper functioning of the Services, including without limitation any attempt to probe or test the vulnerability of any Supplier system or any network connected to or accessible through Supplier systems, save that it shall be permitted to carry out vulnerability scans against its own servers, on condition that they are non-destructive and do not adversely affect the operation of the Supplier's services or systems;
 - (b) permit any equipment owned, leased, maintained or controlled by it to interfere with or impair the provision of any Service(s), unlawfully interfere with or impair the transmission or privacy or any data or communication transmitted via Supplier systems or otherwise create, cause or contribute to the creation or causing of a hazard.
- 8.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, including ensuring that login names, passwords and other confidential information relating to access to the Services are kept confidential and available only to the authorised users. In the event of any unauthorised access or use, the Customer shall promptly notify the Supplier.

9. CUSTOMER DATA

- 9.1. 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.
- 9.2. The Customer warrants that it owns all rights in the Customer Data and that the Supplier's use and processing of the Customer Data in accordance with the Agreement will not infringe third party rights. The Customer hereby grants the Supplier the non-exclusive worldwide right and licence to process, copy, store, transmit display, print, view and otherwise use the Customer Data to the extent required for the provision of the Services. The Supplier will not process any Customer Data for its own purposes without the prior written consent of the Customer.
- 9.3. The Supplier shall, in providing the Services, comply with its Security Policy and follow its archiving procedures for Customer Data as set out in its Security Policy, as such document may be amended by the Supplier from time to time. In the event of any loss or damage to Customer Data, the Customer's exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data maintained by the Supplier in accordance with its Security Policy. 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 Customer acknowledges and accepts that more regular backups of Customer Data may be achieved by: (i) making its own backups of the Customer Data at any time, or (ii) requesting enhanced data backup services from the Supplier, details of which are available upon request. The Supplier's liability in relation to any data loss or corruption will be limited to that resulting from its failure to comply with any contractual commitments given regarding data backup and the Supplier does not otherwise accept responsibility for data loss or damage of any kind.

- 9.4. The Customer accepts the Services on the basis of the standards set out in the Security Policy and accepts that the Supplier will have no liability owing to any loss, damage or corruption to Customer Data provided the standards in the Security Policy have been complied with. The Customer accepts the security standards set out in the Security Policy as an acceptable commercial standard in light of all the circumstances, including the level of charges applied by the Supplier.
- 9.5. The Customer accepts that electronic communications involve transmission over the Internet, and over other networks, which are outside the Supplier's control. The Customer accepts the risk associated with electronic communications and the possibility that they may be accessed by unauthorised parties and agrees that the Supplier is not responsible for any related delay, loss or damage.

10. DATA PROTECTION

- 10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Where the Supplier acts as Data Controller or joint Data Controller, it will process the applicable Personal Data in accordance with the Privacy Notice.
- 10.2. The parties acknowledge that:
- (a) if the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under the Agreement, it shall do so either as Data Processor for the purposes of the Data Protection Legislation or else as a sub-processor under Article 28(2) GDPR;
 - (b) the nature and purpose of processing will be as necessary for the Supplier to provide the Services in accordance with the Agreement;
 - (c) the duration of processing will be the duration of the Agreement;
 - (d) the categories of Data Subjects will be as determined by the Customer as submitted and used in relation to the Services, but may include (without limitation) Personal Data relating to the following:
 - (i) Prospects, customers, business partners and vendors of Customer (who are natural persons)
 - (ii) Employees or contact persons of Customer's prospects, customers, business partners and vendors
 - (iii) Employees, agents, advisors, freelancers of Customer (who are natural persons)
 - (e) the types of Personal Data will be as determined by the Customer as submitted and used in relation to the Services, but may include (without limitation) Personal Data of the following types:
 - (i) name

- (ii) contact information (email, phone, address)
 - (iii) online identifiers (IP address, device fingerprint, cookies); and
 - (f) the Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Supplier's other obligations under the Agreement.
- 10.3. Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf. The Customer hereby agrees to indemnify and hold the Supplier harmless from and against any and all liability, actions, claims, damages and other costs arising from or relating to any breach of the Customer's said obligations and/or any claim or action brought by any Data Subject(s), other than any claim resulting from the Supplier's breach of the terms of the Agreement.
- 10.4. Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Supplier shall in relation to the Customer Personal Data implement appropriate technical and organizational measures designed to ensure a level of security appropriate to that risk, as described in the Supplier's Security Policy, which the Customer hereby accepts as satisfying the Supplier's obligations under this clause;
 - (c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

- (f) provided written notice is given prior to the end of the relevant Subscription the Supplier shall, at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer unless required by Applicable Law to store the Personal Data. In the event no such notice is received prior to the end of the Subscription, the said Personal Data will be deleted, subject to the obligation to retain under Applicable Law; and
 - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 for the duration of the relevant Subscription(s) and for one month thereafter.
- 10.5. With respect to requests for audits by the Customer, or an auditor appointed by the Customer, in relation to the Processing of Customer Personal Data by the Supplier, the Customer shall give the Supplier reasonable prior notice of not less than 30 days of its wish to carry out an audit or inspection in accordance with this clause 10.5 and the parties will discuss and agree the timing, scope, duration and other aspects in advance of the audit or inspection, subject always to the following conditions:-
- (a) all personnel appointed by the Customer to carry out an audit or inspection ("Personnel") must provide suitable written undertakings to the Supplier, including undertakings regarding confidentiality and compliance with the Supplier's codes of practice and regulations, including any relating to security or health and safety;
 - (b) all Personnel must produce evidence of their identity and authority;
 - (c) the Customer will avoid causing any damage, injury or disruption to the Supplier's premises, equipment, personnel and business while its Personnel are on those premises in the course of such an audit or inspection;
 - (d) all audits and inspections shall be carried out only during Normal Business Hours, unless justified on an emergency basis and provided that the Customer has given an acceptable explanation of the grounds for the need for access outside normal business hours;
 - (e) no more than one audit or inspection may be carried out in any calendar year; and/or
 - (f) that the extent of access permitted to Personnel will be only that strictly required to establish the Supplier's compliance with its obligations under the Agreement in respect of the Processing of Customer Personal Data and under no circumstances will the Personnel be entitled to access any data, systems, equipment or premises which may cause the Supplier to breach any obligations to any third party, including breach of any contractual or confidentiality obligations.
- 10.6. The Customer hereby authorises the Supplier to appoint third-party processors of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.

11. THIRD PARTY PROVIDERS AND CONTENT

- 11.1. The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase or acquire products, services from third parties and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the use of the said third party products or services 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 Customer is responsible for checking and complying with the relevant third party terms of use, and Privacy Notice and otherwise clearing the third party products or services for use. 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.

12. PROPRIETARY RIGHTS

- 12.1. The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, Software and Products. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 12.2. The Supplier confirms that it has all the rights in relation to the Services and the Software as are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 12.3. 'Layershift' and the Layershift logo are trade marks owned by the Supplier and all rights therein are specifically reserved.

13. CONFIDENTIALITY

- 13.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. 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;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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 the Agreement.
- 13.3. 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 the Agreement.
- 13.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

- 13.6. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.7. This clause 13 shall survive termination of the Agreement, however arising.
- 13.8. The Supplier shall be permitted to use the Customer's name and logo on its website and for service credentials purposes. Save for that limited right, neither party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

14. INDEMNITY

- 14.1. The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or the Software infringes any UK 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 judgement or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense, and does not admit liability or do or omit to do anything which may prejudice the Supplier's ability to defend or settle the claim on good terms; and
 - (c) the Supplier is given sole authority to defend and settle the claim.
- 14.2. 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 Software, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense, and does not admit liability or do or omit to do anything which may prejudice the Customer's ability to defend or settle the claim on good terms; and
 - (c) the Customer is given sole authority to defend and settle the claim.
- 14.3. 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 Agreement 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.
- 14.4. 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 the Software by anyone other than the Supplier; or

- (b) the Customer's use of the Services or the Software in breach of the Agreement or in a manner contrary to the instructions given by the Supplier; or
 - (c) the Customer's use of the Services or the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 14.5. Subject always to the terms of clause 15, the foregoing states the Customer's exclusive rights and remedies, and the Supplier's (including the Supplier's employees, agents and subcontractors) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. LIMITATION OF LIABILITY

- 15.1. This clause 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, officers, agents and subcontractors) to the Customer:
- (a) arising under or in connection with the Agreement;
 - (b) in respect of any use made by the Customer of the Services and/or Software or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 15.2. Except as expressly and specifically provided in the Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and/or Software 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 Agreement, including (without limitation) any implied term(s) as to satisfactory quality or fitness for purpose;
 - (c) the Supplier's responsibility with respect to the hacking of any Customer server, website or application is subject to the limitations set out in the Security Policy and the Customer accepts that the Supplier shall have no further responsibility or liability in that respect.
- 15.3. Nothing in the Agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for any other liability which may not be excluded or limited under applicable law.
- 15.4. Subject to clause 15.3:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) 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, in

each case whether direct or indirect, or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and

- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of each Subscription shall be limited to 100% of the total Fees paid or payable in respect of that Subscription during the 12 months immediately preceding the date on which the claim arose. For the avoidance of doubt, the said limit applies to all and any indemnities given by the Supplier.

16. SUSPENSION

- 16.1. Without prejudice to any other right, power or remedy and without liability, the Supplier reserves the right to limit or suspend the Services:
- (a) if it is reasonably necessary to protect the interests of the Customer or the Supplier, or the interests of any third party (including other customers) and/or to protect the security or operation of the Supplier's systems or network or those of its customers;
 - (b) if the Customer breaches any of the terms of the Agreement or the Supplier reasonably believes the Customer has breached or is about to breach;
 - (c) if the Customer fails to pay any Fees when due or exceeds resource limits;
 - (d) if the Customer fails to cooperate regarding any suspected or actual breach of the terms of the Agreement; or
 - (e) if required to do so by law or further to a request from any regulatory or governmental authority.
- 16.2. The Supplier may also temporarily suspend all or any part of the Services for the purpose of repair, maintenance or improvement of any systems. The Supplier shall use all reasonable endeavours to keep any such suspensions to a minimum and to carry out such works outside Local Business Hours wherever possible.
- 16.3. The Supplier shall not be liable for any suspension of the Services under the above circumstances and the Customer shall not be entitled to any setoff, discount, refund or other credit as a result of such suspension and/or disconnection and the Customer agrees that any such downtime will be exempt from measurement under the Service Level Agreement.

17. TERMINATION

- 17.1. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- (c) the other party is or may be (in the reasonable opinion of the first party) unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator or similar appointed or calls a meeting of its creditors or ceases for any other reason to carry on business.

17.2. On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate;
- (b) the Customer shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the Supplier;
- (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- (d) any unspent account credits will be lost.

18. FORCE MAJEURE

- 18.1. The Supplier shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lockouts 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 subcontractors, provided that the Customer is notified of such an event and its expected duration.

19. CONFLICT

- 19.1. If there is an inconsistency between any of the provisions of the Agreement, the Order shall prevail over the Terms and the Terms shall prevail over any documents referred to or incorporated into the Terms.

20. DISPUTE RESOLUTION

- 20.1. If a dispute arises under or in connection with this Agreement (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 20.
- 20.2. If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five (5) Business Days):
- (a) appoint a representative who has authority to settle the Dispute and (where available) is at a higher management level than the person with direct responsibility for the administration of this Agreement (**Designated Representative**); and
 - (b) notify the other party of the name and contact information of its Designated Representative.
- 20.3. Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations,

provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).

- 20.4. If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 20.5. Notwithstanding any other provision of this Agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.

21. AMENDMENTS OR VARIATIONS

- 21.1. The Supplier reserves the right to amend or vary these Terms at any time. The Supplier shall provide 30 days' notice of any such change(s), which shall take effect upon expiry of the said notice. In the event that the Customer does not accept the changes, it has the right to terminate the Agreement prior to the end of the 30 day notice period. Save as aforementioned, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. WAIVER

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

23. RIGHTS AND REMEDIES

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

24. SEVERANCE

- 24.1. If any provision (or part of a provision) of the 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.
- 24.2. 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.

25. ENTIRE AGREEMENT

- 25.1. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 25.2. Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

26. ASSIGNMENT

- 26.1. 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 Agreement.
- 26.2. 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 the Agreement.

27. NO PARTNERSHIP OR AGENCY

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

28. THIRD PARTY RIGHTS

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

29. NOTICES

- 29.1. All Customer notices for the termination of Subscriptions must be submitted via the Customer Control Panel.
- 29.2. Subject to clause 29.1 above, notices required to be given under the Agreement shall be in writing, which shall include email, and shall be delivered by email to the usual email address of the other party, or (in the case of hardcopy documents) 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 Agreement, or such other address as may have been notified by that party for such purposes.
- 29.3. A notice delivered by email shall be deemed delivered when delivered to the recipient's email server and a notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first Business Day following delivery). A correctly 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.

30. GOVERNING LAW

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

31. JURISDICTION

- 31.1. 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).