Monika Terms and Conditions for Cloud Hosting

1. Interpretation

1.1 The definitions in Monika's proposal to the Customer and the definitions and rules of interpretation in this clause apply in the Contract.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Cloud Services and the Documentation, as further described in clause 2.2(b).

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 interpreted accordingly**.**

Cloud Services: the services provided by Monika to the Customer under the Contract via the Platform, as set out in the Monika's proposal and more particularly described in the Documentation.

Conditions: these terms and conditions as amended from time to time in accordance with **Error! Bookmark not defined.**16.

Contract: the contract between Monika and the Customer for the supply of Cloud Services in accordance with these Conditions comprising these Conditions and Monika's proposal (and either as signed by the Customer to indicate acceptance or accepted by the Customer proceeding with a purchase under it).

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

Documentation: the document made available to the Customer by Monika on the Platform from time to time which sets out a description of the Cloud Services and the user instructions for the Cloud Services.

Effective Date: the date specified in Monika's quotation being (as applicable) the installation date for a new or replacement system; the contract date for an existing system; or the date of despatch in respect of Devices which are to be installed by the Customer.

Initial Term: the period of year(s) from the Effective Date specified in Monika's quotation.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Platform: Monika's platform at www.monika.com or such other web address notified by Monika to the Customer from time to time.

Support Services Policy: Monika's policy for providing support in relation to the services as made available on the Platform from time to time.

Term: from the date of contracting to the date of termination of the Contract.

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, and the term **Vulnerabilities** shall be interpreted accordingly.

1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** excludes fax but not email.

2. User access

2.1 Subject to the Customer paying the Charges and the other terms and conditions of the Contract, Monika hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Cloud Services and the Documentation during the Term solely for the Customer's internal business operations.

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

(a) each Authorised User shall keep a secure password for their use of the Cloud Services and Documentation and shall keep their password confidential;

(b) it shall maintain a written, up to date list of current Authorised Users and provide such list to Monika within 5 Business Days of Monika's written request at any time or times;

(c) it shall permit Monika or Monika's designated auditor to audit the Cloud Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with the Contract. Each such audit may be conducted no more than once per quarter, at Monika'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;

(d) if any of the audits referred to in clause 2.2(c) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Monika's other rights, the Customer shall promptly disable such passwords and Monika shall not issue any new passwords to any such individual.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Cloud 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 Monika reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

(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 the Contract:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software 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 Software; or

(b) access all or any part of the Cloud Services and Documentation in order to build a product or service which competes with the Cloud Services and/or the Documentation; or

(c) use the Cloud Services and/or Documentation to provide Cloud Services to third parties; or

(d) subject to clause 21, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services and/or Documentation available to any third party except the Authorised Users; or

(e) attempt to obtain, or assist third parties in obtaining, access to the Cloud Services and/or Documentation, other than as provided under this clause 2; or

(f) introduce or permit the introduction of, any Virus or Vulnerability into Monika's network and information systems.

2.5 The Customer shall prevent any unauthorised access to, or use of, the Cloud Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Monika.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional Devices and Sites

The Customer may, from time to time, purchase additional Devices from Monika and/or use the Cloud Services in relation to sites additional to the Sites. Subject to the Customer obtaining Monika's prior written consent to additional sites, Monika shall grant access to the Cloud Services and the Documentation in respect of such additional Devices and sites in accordance with the provisions of the Contract. Monika shall be entitled to increase the fees commensurately.

4. Cloud Services

4.1 Monika shall, during the Term, provide the Cloud Services and make available the Documentation to the Customer on and subject to the terms of the Contract.

4.2 Monika shall use commercially reasonable endeavours to make the Cloud Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that Monika has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 Monika will, as part of the Cloud Services and at no additional cost to the Customer, provide the Customer with Monika's standard customer support services during Normal Business Hours in accordance with Monika's Support Services Policy in effect at the time that the Cloud Services are provided. Monika 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 Monika's then current rates.

5. Data protection

5.1 In this clause, the following terms have the meanings set against them:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation:

a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.

b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of personal data.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

EU Law: the law of the European Union or any member state of the European Union.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

5.2 Each party will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Monika is the Processor. The scope, nature and purpose of processing by Monika, the duration of the processing and the types of Personal Data and categories of Data Subject shall be as notified by the Customer to Monika in writing and the Customer agrees to make such notifications from time to time as are necessary to ensure that the parties comply at all times with Data Protection Legislation.

5.4 Without prejudice to the generality of clause 5.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Monika and/or lawful collection of the Personal Data by Monika on behalf of the Customer for the duration and purposes of the Contract.

5.5 Without prejudice to the generality of clause 5.2, Monika shall, in relation to any Personal Data processed in connection with the performance by Monika of its obligations under the Contract:

(a) process that Personal Data only on the documented written instructions of the Customer unless Monika is required by Domestic Law or EU Law to otherwise process that Personal Data. Where Monika is relying on Domestic Law or EU Law

as the basis for processing Personal Data, Monika shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits Monika from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside the UK/EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or Monika has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) Monika 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) Monika complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) 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;

(f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law or EU Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Customer or the

Customer's designated auditor and immediately inform the Customer if, in the opinion of Monika, an instruction infringes the Data Protection Legislation.

5.6 The Customer consents to Monika appointing Microsoft Azure as a third-party processor of Personal Data under the Contract. Monika confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 5 and in either case which Monika confirms or undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Monika, Monika shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.

6. Third party providers

6.1 The Customer acknowledges that:

(a) the Cloud 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. Monika 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 Monika. Monika 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. Monika does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Cloud Services; and

(b) Monika is not responsible for any defect in the Cloud Services to the extent that it is caused by a third party.

7. Monika's obligations

7.1 Monika undertakes that the Cloud Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Cloud Services contrary to Monika's instructions, or modification or alteration of the Cloud Services by any party other than Monika or Monika's duly authorised contractors or agents. If the Cloud Services do not conform with the foregoing undertaking, Monika 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 7.1.

7.3 Monika:

(a) does not warrant that:

(i) the Customer's use of the Cloud Services will be uninterrupted or error-free; or

(ii) that the Cloud Services, Documentation and/or the information obtained by the Customer through the Cloud Services will meet the Customer's requirements; or

(iii) the Software or the Cloud Services will be free from Vulnerabilities or Viruses.

(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 Cloud Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities including outage of cloud servers.

7.4 The Contract shall not prevent Monika 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.

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

7.6 Monika shall follow its archiving procedures for Customer Data as set out on the Platform (including Monika's right to archive data off-line three years after it has been uploaded to the Platform), as such document may be amended by Monika in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Monika shall be for Monika to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Monika in accordance with those archiving procedures. Monika 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 Monika to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8. Customer's obligations

8.1 The Customer shall:

(a) provide Monika with:

(i) all necessary co-operation in relation to the Contract; and

(ii) all necessary access to such information as may be required by Monika;

in order to provide the Cloud Services, including but not limited to Customer Data, security access information and configuration services;

(b) make available such of its staff for training as is required by Monika from time to time, including in the thirty days following the Effective Date (and pay Monika's additional training fee in respect of any staff failing to attend on the agreed training dates);

(c) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

(d) carry out all other Customer responsibilities set out in the Contract 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, Monika may adjust any agreed timetable or delivery schedule as reasonably necessary;

(e) ensure that the Authorised Users use the Cloud Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

(f) obtain and shall maintain all necessary licences, consents, and permissions necessary for Monika, its contractors and agents to perform their obligations under the Contract, including without limitation the Cloud Services;

(g) ensure that its network and systems comply with the relevant specifications provided by Monika from time to time; and

(h) be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Monika'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.

8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

8.3 The Customer acknowledges and agrees that, without prejudice to clause 8.2, Monika shall own and be entitled to use any data generated in the course of provision of the Cloud Services for its own business purposes provided that it is anonymised.

9. Charges and payment

9.1 The Customer shall pay the fees in respect of the Cloud Services to Monika in accordance with this clause 9 and the Payment Terms.

9.2 Monika shall be entitled to increase the fees and/or the excess storage fees payable pursuant to clause 9.5 upon 90 days' prior notice to the Customer.

9.3 All amounts and fees stated or referred to in the Contract:

(a) shall be payable in pounds sterling;

(b) are non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to Monika's invoice(s) at the appropriate rate.

9.4 If Monika has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Monika:

(a) Monika may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Cloud Services and Monika shall be under no obligation to provide any or all of the Cloud 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 3% over the then current base lending rate of Monika's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.6 If, at any time whilst using the Cloud Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Monika shall charge the Customer, and the Customer shall pay, Monika's then current excess data storage fees.

10. Proprietary rights

10.1 The Customer acknowledges and agrees that Monika and/or its licensors own all intellectual property rights in the Cloud 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 Cloud Services or the Documentation.

10.2 Monika confirms that it has all the rights in relation to the Cloud Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the

Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12. Indemnity

12.1 Without prejudice to Monika's obligation to provide the Cloud Services in accordance with the provisions of the Contract, the Customer shall defend, indemnify and hold harmless Monika 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 Cloud Services and/or Documentation, provided that:

(a) the Customer is given prompt notice of any such claim;

(b) Monika provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c) the Customer is given sole authority to defend or settle the claim.

12.2 Monika shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Cloud Services or Documentation in accordance with the Contract infringes any patent effective as of the date of the Contract, 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) Monika is given prompt notice of any such claim;

(b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Monika in the defence and settlement of such claim, at Monika's expense; and

(c) Monika is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, Monika may procure the right for the Customer to continue using the Cloud Services, replace or modify the Cloud 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.

12.4 In no event shall Monika, 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 Cloud Services or Documentation by anyone other than Monika; or

(b) the Customer's use of the Cloud Services or Documentation in a manner contrary to the instructions given to the Customer by Monika; or

(c) the Customer's use of the Cloud Services or Documentation after notice of the alleged or actual infringement from Monika or any appropriate authority.

12.5 The foregoing and clause 13.3(b) state the Customer's sole and exclusive rights and remedies, and Monika's (including Monika's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

13.1 Except as expressly and specifically provided in the Contract:

(a) the Customer assumes sole responsibility for;

(i) configuring the Software and Devices to reflect the Customer's risk and hazard profiles (Monika having no responsibility for any default parameters pre-set in the Software and Devices); and

(ii) results obtained from the use of the Cloud Services and the Documentation by the Customer, and for conclusions drawn from such use. Monika shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Monika by the Customer in connection with the Cloud Services, or any actions taken by Monika 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 Cloud Services and the Documentation are provided to the Customer on an "as is" basis; use of the Cloud Services by the Customer constitutes acceptance by the Customer of the Cloud Services and an acknowledgement that they meet the Customer's requirements.

13.2 Nothing in the Contract excludes the liability of Monika:

(a) for death or personal injury caused by Monika's negligence; or

(b) for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

(a) Monika shall not 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, wasted expenditure, 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) Monika's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), 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 fees paid under the Contract during the 12 months immediately preceding the date on which the claim arose.

14. Term and termination

14.1 The Contract shall, unless otherwise terminated as provided in this clause 14, commence on the date of signature (or, if later, the date of receipt by Monika of the Customer's purchase order) and shall continue until the end of the Initial Term and thereafter, unless and until one party gives at least three months' written notice of termination, such notice to expire at the end of the Initial Term or an anniversary of that date.

14.2 The Contract shall terminate automatically upon termination of the agreement between the parties in respect of the supply of Devices, Services and/or Software.

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

(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) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) 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;

(g) 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 (being a company, partnership or limited liability partnership);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(i) 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;

(j) 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;

(k) 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 14.3(c) to clause 14.3(j) (inclusive);

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(m) 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 the Contract is in jeopardy.

14.4 Without affecting any other right or remedy available to it, Monika may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer undergoes a Change of Control.

14.5 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 Cloud 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;

(c) Monika may destroy or otherwise dispose of any of the Customer Data in its possession unless Monika receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Monika shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Monika 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

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

16. Variation

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

17. Waiver

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

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

19. Severance

19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

19.2 If any provision or part-provision of the Contract is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

20.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into 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 the Contract.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

22. No partnership or agency

Nothing in the 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).

23. Third party rights

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24. Counterparts

The Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

25. Notices

25.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address agreed by the parties in writing from time to time.

25.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. 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 interpreted in accordance with the law of England and Wales.

27. 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) provided that either party may enforce any judgment of the courts of England and Wales in the courts of any jurisdiction.

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