

SOFTWARE AS A SERVICE TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.4.4.

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

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of DTS's information), information pertaining to customers, pricing and marketing information relating to the Software or any of its constituent parts, any test results relating to the use of the Services.

Customer: the party to which the Proposal is issued and whose details are set out therein and confirmed in the Engagement Letter.

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

Designated Contact(s): those individuals who are identified in the Engagement Letter as being authorised to deal with DTS for or on behalf of the Customer as varied by agreement of the parties from time to time.

Documentation: the operating and user instruction manuals, guides, videos, wikis, forums, blogs technical literature and all other related materials in human-readable and/or machine-readable forms supplied by DTS via any medium from time to time.

DP Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 (**Data Controller, Data Processor, Data Subject, Personal Data** and **Processing** shall take the meanings given to them therein), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction and/or any successor and/or subordinate legislation.

DTS: Digital Training Solutions Limited, a company incorporated and registered in England and Wales with company number 08394191 whose registered office is at 15 Rodmell Close, Bromley Cross, Greater Manchester, BL7 9DT.

Effective Date: means the date on which the agreement is formed between the parties in accordance with clause 2.

Engagement Letter: means the letter addressed to the Customer in accordance with clause 2 and which confirms details of the legally binding agreement.

Error: any failure on the part of the Software to conform in all material respects with its functionalities and specification as set out by DTS, which is reproducible when operated on a Supported Environment.

Error Correction: means the actions taken by DTS arising out of the Error and which is determined at DTS' absolute discretion to serve as the permanent or temporary solution to the Error.

Initial Period: means the initial period detailed in the Proposal or which shall be one year in the event that this is not set out therein, which in any event shall commence on the Effective Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loss: means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, liabilities, losses, penalties, proceedings and settlements.

Maintenance Release: means an update to an existing version of the Software (including any preproduction releases) containing Error Corrections or minor functionality enhancements, improvements, translations, releases on additional operating environments and other changes to the Software and is designated as a numbered service pack for the current version, with no change in the version number but which for the avoidance of doubt does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by DTS in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Normal Working Hours: shall mean the hours of 09:00 to 17:00 on a Business Day.

Offer Period: has the meaning given in clause 2.1.

Permitted Purposes: has the meaning given to it in clause 12.1.

Proposal: the written proposal issued by DTS to the Customer for the provision of the Services on the basis of these Terms.

Renewal Period: the period described in clause 17.1.

Response Times: means the following response times:

Severity Level	Severity Level Description	Response Time Targets
Severity 1	Inability to use any major functions of the Software, resulting in a critical impact on the Authorised User.	6 - 8 Normal Working Hours
Severity 2	An important existing functionality is not available and there is not an acceptable workaround (E.g., a course cannot be published or a previously published course is otherwise unavailable, or an administrator menu feature is not available).	2 Business Days
Severity 3	Incorrect behaviour of the Software. E.g. a cosmetic problem, applicable help files or an important existing functionality is not available but there is an acceptable workaround.	5 Business Days

Services: the subscription services for the Software provided by DTS to the Customer under this agreement via the website notified to the Customer by DTS from time to time, as more particularly described in the Documentation.

Software: the then-current stable version of the online DTS learning management software applications provided in a certain instance by DTS specifically to the Customer as part of the Services and which where applicable is the subject of the Support, further particulars of which are detailed in the Proposal and confirmed in the Engagement Letter.

Subscription Fees: the subscription fees payable by the Customer to DTS for the User Subscriptions, as set out in the Proposal and confirmed in the Engagement Letter.

Subscription Term: has the meaning given in clause 17.1 (being the Initial Period together with any subsequent Renewal Periods).

Support: the support and maintenance services provided in respect of the Software (but excluding any end of life versions of the same) in accordance with these Terms.

Supported Environment: means a hardware, operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Services as set out in its Documentation.

Terms: these terms and conditions.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 12.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

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.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. FORMATION AND LICENCE SUBSCRIPTION

- 2.1 The Proposal is issued by DTS to the Customer and remains valid for a period of 30 days from its date (**the Offer Period**) and for the avoidance of doubt shall not be an offer capable of acceptance. If the Customer wishes to enter into the agreement on the basis of the Proposal it may make an offer to DTS by issuing a purchase order or otherwise doing so in writing (**Offer**) within the Offer Period. If the Customer does not make an Offer within the Offer Period the Proposal shall, unless otherwise determined by DTS, be deemed to have expired.
- 2.2 Following receipt of the Offer, DTS shall either accept or reject the same at its absolute discretion. DTS' acceptance shall take the form of the Engagement Letter and at which point the agreement shall be deemed to come into effect.
- 2.3 Subject to the restrictions set out in this clause 2.3 and the remainder of these Terms, DTS hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences

or resell, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's business operations.

- 2.4 In relation to the Authorised Users, the Customer undertakes where and to the extent applicable that:
- 2.4.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.4.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 2.4.3 each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;
 - 2.4.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to DTS within 5 Business Days of DTS's written request at any time or times;
 - 2.4.5 it shall permit DTS to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at DTS'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;
 - 2.4.6 if any of the audits referred to in clause 2.4.5 reveal that:
 - 2.4.6.1 any password has been provided to any individual who is not an Authorised User, then without prejudice to DTS's other rights, the Customer shall promptly disable such passwords and DTS shall not issue any new passwords to any such individual; and
 - 2.4.6.2 the Customer has underpaid Subscription Fees to DTS, then without prejudice to DTS's other rights, the Customer shall pay to DTS an amount equal to such underpayment as calculated in accordance with the standard prices of DTS within 10 Business Days of the date of the relevant audit.
- 2.5 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.5.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.5.2 facilitates illegal activity;
 - 2.5.3 depicts sexually explicit images;
 - 2.5.4 promotes unlawful violence;
 - 2.5.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.5.6 is otherwise illegal or causes damage or injury to any person or property,
- and DTS 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.
- 2.6 The Customer shall not:
- 2.6.1 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 this agreement:
 - 2.6.1.1 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

2.6.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

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

2.6.3 use the Services and/or Documentation to provide services to third parties; or

2.6.4 subject to the remainder of this agreement, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

2.6.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause.

2.7 The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify DTS.

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

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number which it subscribes for from time to time and DTS shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify DTS in writing. DTS shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where DTS approves the request, DTS shall activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.

3.3 If DTS approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of DTS' invoice, pay to DTS the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Period or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by DTS for the remainder of the then current Initial Period or Renewal Period (as applicable) rounded up to the nearest whole month.

4. SERVICES

4.1 DTS shall, during the Subscription Term, provide the Services, the Support and make available the Documentation to the Customer with reasonable care and skill, on and subject to these Terms.

4.2 DTS may, on prior notice to the Customer, make changes to the Services and the Support, provided such changes do not have a material adverse effect on the Customer's business operations or its receipt of the Services.

4.3 Provided always that DTS makes no such warranties as to its availability, DTS shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except in the event where it provides the Support (whether planned or unscheduled) and whilst DTS shall where possible provide the Customer with reasonable notice, the Customer accepts that in some circumstances it shall need to carry this out immediately and without notice.

5. NEW VERSIONS

5.1 DTS shall make New Versions available from time to time together with any applicable related amendments to the Documentation. DTS may make such New Versions available for use via the internet and will promptly notify the Customer.

5.2 DTS shall notify the Customer promptly in writing of the issue of any New Version, specifying the following:

- 5.2.1 the licence fee payable for the New Version (if any); and
 - 5.2.2 in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- 5.3 For New Versions comprising Customer-specific customisation and/or modifications to the Software:
- 5.3.1 DTS provides support only for the out-of-the-box, unmodified form of the Software;
 - 5.3.2 all Errors must be reproduced by DTS on such Software before an Error Correction will be considered; and
 - 5.3.3 if the Customer has customised and/or modified the Software, Support does not include migrating such customisations and/or modifications to any Maintenance Release or New Version, unless otherwise agreed in writing.

6. MAINTENANCE RELEASES

- 6.1 DTS will provide the Customer with all Maintenance Releases generally made available to its customers at no charge. DTS warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.
- 6.2 Where applicable and to the extent that it is required by DTS to do so, the Customer shall install, facilitate or otherwise take such necessary steps to make use of all Maintenance Releases as soon as reasonably practicable after receipt and in any event within 6 months or such earlier date as specified by DTS.

7. SUPPORT

- 7.1 DTS shall ensure that Support is available by telephone and e-mail during Normal Working Hours to provide assistance to the Customer in respect of the following:
 - 7.1.1 clarifying and assisting in the operation of the Software, provided always that DTS is not a first line of support for Authorised Users and whereby the Customer shall seek to resolve any issues by making use of:
 - 7.1.1.1 the help function on the Software;
 - 7.1.1.2 the knowledge-based website; and
 - 7.1.1.3 community forums and resources;
 - 7.1.2 clarifying the Documentation;
 - 7.1.3 assisting in identifying and verifying and subsequently remedying Errors in the Software; and
 - 7.1.4 facilitating access to the subscriber portal.
- 7.2 DTS shall use reasonable endeavours to correct Errors notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances and the corresponding Response Times provided always that time for compliance with such Response Times shall not be of the essence. In any event where the Customer notifies an Error to DTS, it warrants that:
 - 7.2.1 it has used its best endeavours to remedy the Error in advance of contacting DTS for Support in accordance with clause 7.1.1 above;
 - 7.2.2 it has provided a detailed description of the Error and its projected severity level, provided always that DTS retains the absolute discretion to determine such severity level.
- 7.3 DTS shall:
 - 7.3.1 only provide the Support in the English language and via the Designated Contact(s); and
 - 7.3.2 assign a tracking number to each Error and which the Customer shall use in any and all correspondence with DTS relating to such Error.
- 7.4 The Customer shall:

7.4.1 co-operate with DTS in any manner reasonably required by DTS in order to carry out the Support, including provision of information and data, making available suitably qualified employees and contractors of the Customer and (where and to the extent applicable) provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Errors, provided that system access shall be direct or remote, at the Customer's option, and that, in the latter case, such access will be subject to DTS's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by DTS; and

7.4.2 shall comply, as soon as reasonably practicable, with all DTS's reasonable requests for information or assistance.

7.5 The Error Correction may:

7.5.1 require that the Customer install, facilitate or otherwise take such necessary steps to make use of the latest Maintenance Release;

7.5.2 require multiple contacts and off-line research; and/or

7.5.3 when completed, be provided in the form of a patch consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to the Customer via any means deemed appropriate by DTS.

7.6 Support does not include Errors arising out of or in connection with any of the following events:

7.6.1 the Customer's failure to:

7.6.1.1 purchase a New Version where existing versions are specified as being no longer supported and which shall be the case following the release of two subsequent New Versions; or

7.6.1.2 incorporate Maintenance Releases into the Software in accordance with clause 6;

7.6.2 install, facilitate or otherwise take such necessary steps to make use of Software or any New Version Releases by any party other than DTS;

7.6.3 the Customer's use of the Software with any software or hardware other than within the Supported Environment;

7.6.4 modifications, alterations, or additions to the Software by the Customer or any third party;

7.6.5 damage from any source other than DTS including water, humidity, fire, power surges, Viruses, and accidents;

7.6.6 a database management server or a web server or any other third party component that is used in conjunction with the Software (unless DTS is hosting the Software at its data centre).

7.6.7 Software installation, configuration or services provided on-site at your location;

7.6.8 problems or errors in modifications to the Software provided by third parties; or

7.6.9 where and to the extent otherwise specified in these Terms,

(Excluded Events). In the event that the Customer wishes to receive Support notwithstanding the Error in question resulting from an Excluded Event it agrees and acknowledges that DTS may charge for such Support on a time and materials basis in accordance with its then current rates.

8. DATA PROTECTION

8.1 Each party shall, in performing its obligations under this agreement, comply with the DP Legislation.

8.2 If DTS processes any Customer Data when performing its obligations under this agreement, the parties record their intention that the Customer shall be the Data Controller and DTS shall be a Data Processor and in any such case:

8.2.1 the Customer warrants that all Customer Data delivered to DTS is protected by appropriate technical and organisational measures, including but not limited to the pseudonymisation and encryption of Customer Data, ensuring confidentiality, integrity, availability and resilience

of its systems and services, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;

- 8.2.2 the Customer warrants that it has a legal basis under the DP Legislation to enable the lawful transfer of the Customer Data to DTS for the duration and the purposes of the agreement and, where required under the DP Legislation, it has obtained the prior and express consent of each data subject to transfer the Customer Data to DTS in accordance with DP Legislation and that the Customer is accordingly entitled to transfer the Customer Data to DTS so that it may lawfully use, process and transfer the Customer Data in accordance with this agreement;
- 8.2.3 the Customer acknowledges and agrees that the Customer Data may be transferred or stored outside the EEA or the country where the Customer and the Data Subjects are located in order to carry out the Services and DTS's other obligations under this agreement;
- 8.2.4 the Customer warrants that the Customer is entitled to transfer the relevant Customer Data to DTS having obtained the Data Subject's express consent so that DTS may lawfully use, process and transfer the Customer Data in accordance with this agreement on the Customer's behalf;
- 8.2.5 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by DP Legislation; and
- 8.2.6 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Data or its accidental loss, destruction or damage.

8.3 DTS shall:

- 8.3.1 only carry out processing of any of the Customer Data on the Customer's and any other lawful instructions given from time to time;
- 8.3.2 only transfer the Customer Data to countries outside EEA that ensure an adequate level of protection for the rights of the data subject; and
- 8.3.3 promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.

8.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for DTS to use reasonable commercial endeavours to restore the Customer Data which has been lost or damaged from the latest back-up of such maintained by the Customer.

8.5 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

9. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. DTS 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 DTS. DTS 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. DTS does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

10. DTS' OBLIGATIONS

10.1 DTS undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

- 10.2 The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to DTS's instructions, or modification or alteration of the Services by any party other than DTS or DTS's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, DTS 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 10.1. Notwithstanding the foregoing, DTS:
- 10.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free, or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 10.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3 This agreement shall not prevent DTS 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 this agreement.
- 10.4 DTS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

11. CUSTOMER'S OBLIGATIONS

- 11.1 The Customer shall:
- 11.1.1 provide DTS with:
- 11.1.1.1 all necessary co-operation in relation to this agreement and the Support which in connection with the latter may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes; and
- 11.1.1.2 all necessary access to such information as may be required by DTS;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 11.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 11.1.3 carry out all other Customer responsibilities set out in this agreement 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, DTS may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 11.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with these Terms and shall be responsible for any Authorised User's breach of this agreement;
- 11.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for DTS, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- 11.1.6 ensure that the Supported Environment, including its network and systems comply with the relevant specifications provided by DTS from time to time;
- 11.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to DTS'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;

- 11.1.8 following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction; and
 - 11.1.9 maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs.
- 11.2 The Customer shall provide DTS with any and all safe and unencumbered access to, movement around and egress from the Supported Environment, whether physical or remote. Such access and assistance may include:
- 11.2.1 carrying out determination activities such as performing network traces, capturing error messages, collecting configuration information and other similar activities to allow DTS to reproduce an Error; and
 - 11.2.2 resolution activities such as granting access to the Customer's personnel.
- 11.3 In order to ensure the smooth use and operation of the Software and mitigate the need to obtain Support, the Customer agrees that it shall have any and all Authorised Users complete basic training on the Software, Documentation and Supported Environment using the self-paced courses available.

12. CHARGES AND PAYMENT

- 12.1 The Customer shall pay:
- 12.1.1 the Subscription Fees in full to DTS for the forthcoming year on the Effective Date and each anniversary thereafter; and
 - 12.1.2 any fees payable for any additional services or expenses incurred within 30 days of the date of the invoice, which shall be raised by DTS monthly on or about the end of the month in which they were incurred,
- unless otherwise specified in the Proposal or Engagement Letter.
- 12.2 If DTS has not received payment via the agreed method of payment within 5 Business Days after the due date, and without prejudice to any other rights and remedies of DTS:
- 12.2.1 DTS may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and DTS shall be under no obligation to provide any or all of the Services while the payment(s) concerned remain unpaid; and
 - 12.2.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.3 Unless agreed otherwise, all amounts and fees stated or referred to in this agreement:
- 12.3.1 shall be payable in pounds sterling;
 - 12.3.2 are, subject to clause 16.4.2, non-cancellable and non-refundable;
 - 12.3.3 are exclusive of value added tax, which shall be added to DTS's invoice(s) at the appropriate rate.
- 12.4 DTS shall be entitled to increase the Subscription Fees, the fees payable pursuant to these Terms at the start of each Renewal Period upon no less than 3 months' prior notice to the Customer.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Customer acknowledges and agrees that DTS owns all Intellectual Property Rights in the Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in any Intellectual Property Rights, or any other rights or licences in respect of the Services or the Documentation.
- 13.2 DTS confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.

- 13.3 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that DTS may consider necessary or desirable to perfect the right, title and interest of DTS in and to the Intellectual Property Rights in the Services.
- 13.4 The Customer shall use reasonable endeavours to prevent any infringement of DTS's Intellectual Property Rights in the Services and shall promptly report to DTS any such infringement that comes to its attention. In particular, the Customer shall:
- 13.4.1 ensure that each Authorised User, before starting to use the Services, is made aware that the Services are proprietary to DTS and that it may only be used and copied in accordance with this agreement;
 - 13.4.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Services; and
 - 13.4.3 not permit third parties to have access to the Services without the prior written consent of DTS, who may require that such third party executes a written confidentiality agreement before being given access to the Services.

14. NON-SOLICITATION OF EMPLOYEES

- 14.1 In order to protect the Confidential Information and Intellectual Property Rights of DTS, the Customer covenants with DTS that it shall not throughout the Subscription Terms and for a period of 12 months after the effective date of termination:
- 14.1.1 solicit or endeavour to entice away from DTS;
 - 14.1.2 employ; or
 - 14.1.3 engage or otherwise facilitate the employment or engagement,
of anyone employed or engaged by DTS and who could materially damage the interests of DTS if they were involved in any capacity (whether as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity) in any business concern which competes with the Customer, whether or not such person would be in breach of contract as a result of such employment or engagement.
- 14.2 The restrictions imposed on the Customer by clause 11.1 apply to it acting:
- 14.2.1 directly or indirectly;
 - 14.2.2 through one of its directors, authorised personnel or shareholders; and
 - 14.2.3 on his own behalf or on behalf of, or in conjunction with, any firm, company or person.
- 14.3 Each of the restrictions in this clause is intended to be separate and severable. If any of the restrictions shall be held to be void but would be valid if part of their wording were deleted, such restriction shall apply with such deletion as may be necessary to make it valid or effective.

15. CONFIDENTIALITY

- 15.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this agreement (**Permitted Purposes**).
- 15.2 In relation to the Customer's Confidential Information:
- 15.2.1 DTS shall treat as confidential all Confidential Information of the Customer supplied under this agreement. DTS shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. DTS shall ensure that its employees are aware of, and comply with, this clause 12; and
 - 15.2.2 DTS may provide any subcontractor with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to DTS in terms similar to clause 15.2.1 (which DTS shall ensure is adhered to).

- 15.3 In relation to DTS's Confidential Information:
- 15.3.1 the Customer shall treat as confidential all Confidential Information of DTS contained or embodied in the Software or Documentation, or otherwise supplied to the Customer during the performance of this agreement;
 - 15.3.2 the Customer shall not, without the prior written consent of DTS, divulge any part of DTS's Confidential Information to any person other than the employees of the Customer who need to know it for the Permitted Purposes; and
 - 15.3.3 the Customer undertakes to ensure that the persons mentioned in clause 15.3.2 are made aware, before the disclosure of any part of DTS's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 15.3.1 (which the Customer shall ensure is adhered to).
- 15.4 The restrictions imposed by clause 15.1, clause 15.2 and clause 15.3 shall not apply to the disclosure of any Confidential Information which:
- 15.4.1 is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 12;
 - 15.4.2 before any negotiations or discussions leading to this agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
 - 15.4.3 is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 15.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 15.6 This clause 12 shall remain in full force and effect in the event of any termination of this agreement.
- 16. INDEMNITY AND LIMITATION OF LIABILITY**
- 16.1 The Customer shall indemnify DTS, keep DTS indemnified and hold DTS harmless against all Loss (including any direct, indirect, special or consequential Loss, 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 and any and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by DTS arising out of or in connection with:
- 16.1.1 the Customer's breach of this agreement or any other legal obligations howsoever arising;
 - 16.1.2 any wilful or negligent act or omission of the Customer, its officers, employees, contractors or agents; and
 - 16.1.3 the Customer's use of the Services or receipt of the Support.
- 16.2 Except as expressly and specifically provided in this agreement:
- 16.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. DTS shall have no liability for any damage caused by errors or omissions in any information provided to DTS by the Customer in connection with the Services, or any actions taken by DTS at the Customer's direction; and
 - 16.2.2 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 this agreement.
- 16.3 Nothing in this agreement excludes or limits the liability of DTS:
- 16.3.1 for death or personal injury caused by DTS's negligence;

- 16.3.2 for fraud or fraudulent misrepresentation; or
 - 16.3.3 for any other matters in respect of which it is illegal to exclude or limit liability.
- 16.4 Subject to clause 16.2 and clause 16.3:
- 16.4.1 DTS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any Loss of an indirect, special or consequential nature howsoever arising under this agreement including any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, pure economic loss or any and all interest, penalties and legal and other reasonable professional costs and expenses;
 - 16.4.2 DTS'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 this agreement shall be limited to the total of all Subscription Fees paid to DTS by the Customer in cleared funds during the 12 months immediately preceding the date on which the claim arose; and
 - 16.4.3 in no event shall DTS, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 16.4.3.1 a modification of the Services or Documentation by anyone other than DTS; or
 - 16.4.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by DTS; or
 - 16.4.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from DTS or any appropriate authority.
- 16.5 In the defence or settlement of any claim, DTS 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 this 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.
- 16.6 The foregoing states the Customer's sole and exclusive rights and remedies, and DTS's (including DTS's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights and confidentiality.

17. TERM AND TERMINATION

- 17.1 This agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Period and thereafter, this agreement shall automatically renew for successive periods of 12 months (each a **Renewal Period**), unless either party notifies the other party of termination, in writing, at least 3 months before the end of the Initial Period or any Renewal Period (as the case may be) in which case this agreement shall terminate upon the expiry of the applicable Initial Period or Renewal Period.
- 17.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 17.2.1 the other party commits a breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
 - 17.2.2 the other party repeatedly breaches any of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms;
 - 17.2.3 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;
 - 17.2.4 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;

- 17.2.5 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;
 - 17.2.6 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;
 - 17.2.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 17.2.8 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;
 - 17.2.9 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 10 Business Days;
 - 17.2.10 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 17.2.3 to clause 17.2.9 (inclusive);
 - 17.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 17.3 In any event where DTS is permitted to transfer the agreement, it shall without prejudice to any of its other rights or remedies, be permitted to suspend the provision of the Services and Support.
- 17.4 On termination of this agreement for any reason:
- 17.4.1 the Customer shall immediately pay any outstanding unpaid Subscription Fees and interest due to DTS up to the end of the Initial Period or applicable Renewal Period as it would have otherwise been required to do under these Terms;
 - 17.4.2 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and receive the Support;
 - 17.4.3 each party shall (as applicable) return and make no further use of any equipment, property, Software, Documentation and other items (and all copies of them) belonging to the other party;
 - 17.4.4 DTS may destroy or otherwise dispose of any of the Customer Data in its possession unless DTS receives, no later than 5 Business Days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. DTS shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 Business Days of its receipt of such a written request, provided that the Customer has, at that time, paid all Subscription Fees outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by DTS in returning or disposing of Customer Data; and
 - 17.4.5 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.
- 17.5 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

17.6 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

17.7 Notwithstanding its obligations in this clause, if a party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

18. ASSIGNMENT AND SUBCONTRACTING

18.1 Save to the extent provided for elsewhere in this agreement, this agreement is personal to the Customer and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of DTS (such consent not to be unreasonably withheld or delayed).

18.2 DTS may assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Customer.

18.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. FORCE MAJEURE

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

20. CONFLICT

If there is an inconsistency between any of the provisions in:

20.1.1 the Engagement Letter;

20.1.2 the Proposal; and

20.1.3 the main body of these Terms,

the provisions of the document appearing first in the above list shall prevail.

21. VARIATION

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

22. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this 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

Except as expressly provided in this agreement, the rights and remedies provided under this 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 this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

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 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

26. NO PARTNERSHIP OR AGENCY

Nothing in this 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).

27. THIRD PARTY RIGHTS

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

28. NOTICES

28.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by:

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

28.1.2 by email to the addresses set out within the Engagement Letter (in the case of the Customer) or to info@dtslimited.net (in the case of DTS).

28.2 Any notice or communication shall be deemed to have been received:

28.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

28.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

28.2.3 if sent by email at 9:00 am on the second Business Day after transmission.

28.3 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. For the purposes of this clause, "writing" shall not include fax or e-mail.

29. DISPUTE RESOLUTION

29.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 29 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

29.2 If any disagreement or difference of opinion arises out of this agreement, directors for each party shall meet to attempt resolution. If, within 20 Business Days of the matter first having been referred to the directors, no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 29 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.

29.3 For the avoidance of doubt, this clause 29 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

30. GOVERNING LAW AND JURISDICTION

30.1 This 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.

30.2 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).