

FC+ General Terms and Conditions

These general terms and conditions form the contract between J&D Consulting and the Client for the use of the FC+ software and services. Together with any Contract Details they form the Agreement between us. You should ensure that any Contract Details correctly record the Software Services you have contracted for, that you have paid any fees for the use of the J&D Software and that you have read these terms and conditions.

1 Definitions and interpretation

1.1 In this Agreement the following terms shall have the following meanings:

Agreement: means the agreement between J&D Consulting and the Client for the provision of Software Services which are for the use of the J&D Software and/or as set out in any Contract Details (as varied from time to time) and these General Terms and Conditions;

Authorised Representative: means a Director of a Party who is incorporated, or a person fully authorised by the Party to bind it in any agreement;

Business Day: means: (i) in relation to any notice, between the hours of 09:00 to 17:00 during working days in England, not including public or statutory holidays; or (ii) in relation to the supply of works a day, other than a Saturday and Sunday, when banks are open for business in the city of London;

Business User: means any entity or business division or individual associated with the Client permitted to use or benefit from the use of the Software Services under the terms of this Agreement;

Charges: means J&D Consulting's charges for the Software Services as set out in the Contract Details and clause 6, as amended from time to time on agreement of the parties or as otherwise provided under this Agreement;

Client: means the customer using the J&D Software and contracting for the Software Services as set out in the Contract Details.

Client Data means all the data, information, text, drawings, diagrams, images or sound or any other items which belong to the Client (and any Business User) pursuant to the Agreement;

Client Systems: means telecommunication systems, computer programmes, software, computer and communications networks, hardware, cabling and related equipment and databases owned or operated by the Client;

Commencement Date: means the date the Client began using the Software Services as set out in the Contract Details;



Confidential Information: means any information relating to the business, affairs, clients or suppliers of a party, including, but not limited to, any Deliverables, products, data, source code, object code, know how, personnel, clients and suppliers;

J&D Documentation: means all proposals, specifications, reports, user documentation and other documentation (if any) supplied from time to time by J&D Consulting as required in an Agreement;

J&D Software means the software proprietary to J&D Consulting known as FC+ which operates within an Excel system and supplied under the terms of this Agreement;

Contract Details: mean a document or webpage providing details of the Software Services, Charges, Client and other matters relating to the terms on which Software Services are used. The contract document may consist of an email detailing the level of J&D Software provided and Charges.;

Data Controller: has the meaning given in the Data Protection Legislation;

Data Processor: has the meaning given in the Data Protection Legislation;

Data Protection Legislation: means the Data Protection Acts and all other laws relating to the processing of Personal Data applicable to the parties at the relevant time;

Documentation means information supplied with the J&D Software in printed or machine-readable form;

Execution means the acceptance of the use of the Software by accepting its use in the J&D Software and/or the acceptance of any additional Software Services specified in a Contract Document provided by J&D Consulting to the commencement of the provision of Software Services on these terms;

General Terms: means these general terms;

IPR: Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.;

J&D Consulting: means J&D Consulting Limited of Three Acres Lane, Eden Point, Cheadle Hulme, Cheadle, SK8 6RL..

Licensed Materials means the J&D Software and the Documentation;

Licence means the licence for the Software Service granted to the Client in this Agreement (as set out in Clause 19);



Packages: means the Software Services elements set out in any Contract Details which are to be provided to the Client under the Agreement at the applicable time;

Personal Data: has the meaning given in the Data Protection Legislation;

Platform: means the website www.thehub.jdforecasting.com/fchub;

RPI: means the United Kingdom retail prices index (all items) as published by the Office for National Statistics (or by any government department or other body upon which duties in connection with such index devolve) or such other index as replaces such index;

Software Services: means J&D Software provided by J&D Consulting under the terms of this Agreement, including without limitation and where relevant Support Services;

Site: means each Client site address set out in the Contract Details or such other address as the Client notifies to J&D Consulting and J&D Consulting agrees;

Support Services: means the support services specified in and to be supplied on the basis set out in Clause 17;

Term: means the term and duration of an Agreement as provided for in Clause 11;

Virus means 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 Headings of clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement. Words imparting the singular shall include the plural and vice versa. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. References to persons include to an individual, company, corporation, firm or partnership. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.4 References to clauses are to the clauses in these General Terms.

1.5 Any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.



1.6 The words and phrases other, including and in particular shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible. References to in writing include by e-mail, fax and letter. All references in these General Terms to clauses, paragraphs, Schedules and Appendices are to the clauses and paragraphs of and Schedules and Appendices to an Agreement.

2 Scope of Agreement

2.1 From the Execution of the Agreement, and provided that the Agreement has not terminated, J&D Consulting agrees to supply the Software Services in accordance with and subject to the terms of the Agreement. These General Terms shall be deemed incorporated as part of the Contract Details to form the Agreement.

2.2 Should there be a conflict or inconsistency between any provision in the Contract Details and/or the General Terms, the documents shall take precedence over each other in that order.

2.3 The provision of the J&D Software is subject to the terms of this Agreement and the details contained in any Contract Details including where no Fees are paid for the use of the software.

3 Supply Of Works

3.1 J&D Consulting shall supply the Software Services with all reasonable skill and care in accordance with these General Terms and the Contract Details.

3.2 All third-party software is licensed subject to the licence terms of the software licensor and J&D Consulting gives no warranty in respect of any third party software which they supply or which the Client is required to use to benefit from the Software Services.

3.3 J&D Consulting shall supply the Software Services in accordance with the provisions of these General Terms and any express terms set out in the Contract Details or signed by a Director of J&D Consulting from any date specified therein.

4 Client Responsibilities

4.1 To enable J&D Consulting to perform its obligations under this Agreement, the Client shall cooperate fully with J&D Consulting at all times and shall at its own cost

ensure that the Client Systems are appropriate for use with and compatible for the Software Services.

4.2 The Client shall ensure that any Software Service provided is used in accordance with the terms of this Agreement and that any data captured using the Software Service, processed using the Software Service or passed to J&D Consulting is managed in accordance with the Data Protection Legislation.

4.3 The Client acknowledges and agrees that J&D Consulting and/or its licensors own all intellectual property rights in the Software Services (including the J&D Software). Except as expressly



stated herein, any Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software Services or any related documentation.

5 Intellectual Property and Client Data

5.1 J&D Consulting and its licensors retain all right, title and interest in and to all IPR subsisting in and/or arising from the delivery of and/or performance of the Software Services. The Client shall have no right to use such IPR (or grant any sub-license in respect of the same) save as licensed to the Client in accordance with the terms of an Agreement.

5.2 The Client acknowledges and agrees that J&D Consulting gives no warranties and/or indemnities in respect of the J&D Software or the provision of any Software Services save as expressly set out in this Agreement. In particular, J&D Consulting gives no warranty that any software will not infringe the IPR of a third party.

5.3 The Client acknowledges and agrees that J&D Consulting supplies the Software Services subject to this Agreement and the respective terms and conditions of any third party software licensor and that it is the Client's sole responsibility to familiarise itself with any such terms and conditions.

5.4 The parties acknowledge and agree that in the course of providing the Software Services, J&D Consulting may develop experience, expertise, processes, procedures, know-how and methodologies ("Methodologies") and that all such Methodologies shall be owned by J&D Consulting who shall be entitled, subject to the provisions of Clause 10, to use them for any purposes whatsoever, including in providing deliverables and services to its other clients.

5.5 J&D Consulting acknowledges that the Client Data is the property of the Client or its third party licensors as licensed to the Client under the terms of an agreement and the Client, where applicable, hereby reserves all IPRs which may subsist in the Client Data.

5.6 The Client agrees that where any claim is made against it for breach of any intellectual property right in relation to the J&D Software or Documentation the Client shall notify J&D Consulting and follow any instructions J&D Consulting gives in managing such claim. Save where the claim relates to any change the Client has made to the J&D Software or Documentation J&D Consulting shall pay any reasonable legal expenses needed to meet its instructions in managing the claim.

6 Charges and Payment

6.1 In consideration of the supply of the Services and any Deliverables, the Client shall pay to J&D Consulting all Charges due in accordance with this Clause 6 and the terms of this Agreement.

6.2 Unless otherwise stated in the Contract Details or as required when agreeing to start the use of any J&D Software, the Charges and all other fees and charges arising pursuant to this Agreement are exclusive of Value Added Tax and all other applicable sales taxes, levies and duties. These are payable by the Client in addition to the Charges.



6.3 Charges shall be payable from the Commencement Date and shall be paid in full annually in advance at the rate applicable on the payment date. The payment date shall be the same date in the month as the Commencement date. In the event the Software Service is altered in any month a revised charge for the balance of the current year shall immediately be due. If the Client fails to make payment of any Charges or other payments by the due date (unless disputed in accordance with Clause 6.4), J&D Consulting shall be entitled to suspend supply of all and any Software Services until it has received payment in full.

6.4 J&D Consulting reserves the right by giving notice to the Client at any time to increase the Charges to reflect any increase in cost to J&D Consulting of the provision of the Software Services due to a factor beyond the control of J&D Consulting including due to price increases of suppliers.

6.5 J&D Consulting may increase the Charges no more than once in any twelve (12) month period for this Agreement and J&D Consulting shall give the Client not less than one months' notice of any such increase.

6.6 All amounts due under this Agreement 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).

6.7 Any initial charge set out in the Contract Details may be invoiced on Execution and periodic charges shall be invoiced at the frequency specified in the Contract Details.

7 Warranties

7.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement.

7.2 J&D Consulting warrants to the Client that it shall provide the Software Services in a timely and professional manner with all due skill and care and in accordance with good industry practice.

7.3 The Client acknowledges that J&D Consulting does not manufacture or develop any of the third-party software which may from time to time be included within or necessary for the use of the Software Services. The Client further acknowledges that J&D Consulting gives no warranty, and expressly excludes all warranties, in respect of third party software.

7.4 J&D Consulting shall have no liability for any breach of contract and/or defects, faults or other shortcomings in the Software Services to the extent that any are caused by:

any delay, act, omission and/or default of the Client and/or any person under its control, including any failure of the Client to comply with its obligations pursuant to this Agreement;

the use of any software, hardware, services and/or system(s) which are not approved by J&D Consulting as being compatible with the Software Services;

any unauthorised and/or improper use, storage and/or operation of any Software Services.



7.5 J&D Consulting gives no warranty that the use of the Software Services will be uninterrupted or free of virus or bugs, but will use its reasonable endeavours to ensure that this is the case, as far as practicable.

7.6 Except as expressly set forth in this Agreement, all warranties, terms and conditions, whether oral or written, express or implied by statute, common law, or otherwise, including, but not limited to, any warranties, terms and conditions of fitness for purpose, description or quality, are hereby excluded to the maximum extent permitted by law.

8 Limitation of Liability

8.1 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from that party's negligence, for fraud, or for fraudulent misrepresentation, or for any other liability which cannot be excluded or limited under applicable law, including breach of the terms implied by section 2 of the Supply Of Goods And Services Act 1982 (title and quiet possession) or for breach under Clause 4.1(b), 10 or 16.

8.2 Subject to Clause 8.1, J&D Consulting shall not in any circumstances be liable to the Client for any loss of profit, savings and/or revenue, loss of business, loss of data and/or any indirect, special and/or consequential losses arising under or in connection with this Agreement.

8.3 Unless set out to the contrary in the Contract Details, the total aggregate liability of J&D Consulting under this Agreement whether in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to the lower of £10,000 or 50% of the Charges paid in the six months immediately prior to the event that gave rise to the liability. For the avoidance of doubt, where no Charges are paid J&D Consulting shall have no liability.

8.4 The Client agrees that the limitation of liability contained in Clause 8.3 is reasonable in the circumstances.

8.5 Any advice or recommendation given by J&D Consulting or its personnel to the Client or its employees, contractors or agents about the storage, application and/or use of the Software Services which is not confirmed in writing by an authorised officer of J&D Consulting is followed or acted on entirely at the Client's own risk.

8.6 This Clause 8 shall survive termination of any Agreement.

9 Personnel

9.1 The Client undertakes that during the Term, and for the period of twelve (12) months after its termination, it shall not without the prior written consent of J&D Consulting:

make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any personnel employed by J&D Consulting or sub-contractor, consultant or freelancer retained by J&D Consulting to provide services to the Client; or



solicit or attempt to solicit services from any personnel employed (or sub-contractors retained to provide Services or Deliverables) by J&D Consulting on their own account and/or entice or attempt to entice any such personnel away from J&D Consulting or solicit the provision of Software Services or any similar service or software from them.

9.2 Neither party's employees, contractors or sub-contractors shall be considered, by virtue of any clause of any Agreement, an employee or agent of the other party or be entitled to participate in any benefits or privileges provided by the other party to its employees or be deemed an employee of the other party for any purpose including payment of salary, benefits, contributions, levies and taxation.

9.3 In performing its obligations pursuant to an Agreement, J&D Consulting shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Client.

10 Confidential Information

10.1 Except with the prior written consent of the party making any disclosure, each party shall keep and procure to be kept secret any and all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties or under any Agreement and shall not use nor disclose the same save to its employees, officers, representatives or advisers who need to know such information for the purposes of the proper performance of an Agreement or with the prior written consent of the other party. For the avoidance of doubt, no party shall use the other's Confidential Information for any other purpose than to perform its obligations under an Agreement.

10.2 The obligations of confidentiality in this clause 10 shall not extend to any information which:

is in, or has become part of, the public domain and/or is disclosed to the receiving party by a third party other than as a result of a breach of the obligations of confidentiality under an Agreement; or

was in the lawful possession of the receiving party prior to disclosure under an Agreement or which is independently developed by the receiving party, without dependence on, or reference to, such Confidential Information; or

is required to be disclosed by law or final mandatory order of a court or other competent authority, or to any regulatory authority to which that party is subject, provided always that, the party whose Confidential Information is to be disclosed is promptly notified of such a requirement and afforded a reasonable opportunity to seek relief therefrom, where available.

10.3 J&D Consulting may advertise or publicly announce that the Client is a Client of J&D Consulting for the relevant Software Services with the written consent of the Client, which consent shall not be unreasonably refused.

10.4 Both parties agree to treat as Confidential Information the details of this Agreement and any and all dealings between the parties under the Agreement. For the avoidance of doubt both parties agree that they shall not make detrimental comments about the other save in that nothing shall prevent



either party from providing information on or comments in respect of their own actions, dealings and processes.

11 Term, Changes and Termination

11.1 The Client may amend the Software Services at any time in the manner permitted by J&D Consulting where it is possible to increase the level of the Software Services being provided or to reduce the level of the Software Services. Changes may be made for any change and will take effect once the request has been processed by J&D Consulting. Charges will be amended as specified in clause 6.

11.2 This Agreement shall commence on the Commencement Date and, unless otherwise terminated in accordance with the Agreement, shall continue until either J&D Consulting provides one months' notice of termination or the Client updates the Platform to request termination. Termination will take effect at the end of the then current payment period.

11.3 Without affecting any other right or remedy available to them, this Agreement may be terminated by either party on written notice to the other party if:

the other party commits a material breach of its obligations under this Agreement which is either incapable of remedy or is capable of remedy and the other party fails to remedy such material breach within thirty (30) days of receipt of a written notice specifying details of the breach and requesting that breach be remedied;

the other party fails to pay any undisputed sum due and payable to the terminating party within twenty-eight (28) days of its due date for payment in accordance with this Agreement; or

the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to discharge its obligations or give effect to the terms of this Agreement; or

In the case of the Client:

(i) the directors make an application for a moratorium under Schedule A1 of the Insolvency Act 1986 ("Act"), convene a meeting of creditors for the purpose of considering a voluntary arrangement under Part I of the Act, approve a scheme of arrangement or enter into negotiations with any creditor with a view to compromising its debts;

(ii) any step is taken by the Client, its directors or any creditor for the appointment of an administrator;

(iii) a receiver, receiver or manager, administrative receiver or an LPA Receiver, is appointed to or over any or all of the assets of the Client;

(iv) a resolution to wind-up is passed or a petition is presented for the winding up of the Client or a winding up order is made unless for the purpose of a solvent amalgamation or reconstruction;



- (v) if it is struck off from the Register of Companies, or otherwise ceases to trade or exist;
- (vi) if it is deemed to be unable to pay its debts within the meaning of section 123 of the Act save that all references to the 'court' in that section shall be replaced with J&D Consulting;
- (vii) it is in breach of the requirements of any safeguarding policy and/or is subject to any adverse finding by any regulator of the childcare sector.

any analogous or equivalent event to these specified in paragraph (d) above occurs;

or in the case of a Client which is incorporated or has a centre of main interests outside England and Wales any event or circumstances occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the events in paragraph (d) above occurs.

11.4 For the purposes of clause 11.3 (a) "material breach" means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of an Agreement over its term. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

12 Consequences of Termination

12.1 Termination of this Agreement shall not affect any other agreement.

12.2 On the expiry or termination of this Agreement (for whatever reason) the Client shall immediately cease all use of the Confidential Information and IPR of J&D Consulting under the terminated contracts.

12.3 The expiry or termination of an Agreement shall not affect the continuation of any other Agreements and shall be without prejudice to any rights of either party in respect of any Agreements entered into before such expiry or termination.

12.4 The termination or expiry of an Agreement shall not affect the rights and remedies of the parties which are applicable at the date of termination or expiry.

12.5 The provisions of clauses 1, 4, 5, 6, 7.5, 8, 9, 10, 12 and 13 and all other provisions intended by their nature to continue or to come into effect after termination or expiry, shall survive the termination or expiry of an Agreement and shall continue in full force and effect.

13 General

13.1 In the event of any dispute or difference between the parties arising out of an Agreement, the parties shall use their reasonable endeavours to seek a resolution to such dispute.



13.2 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under any such contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations provided that if the period of delay or non-performance continues for 3 months, the party affected may terminate the Agreement by giving 30 days' written notice to other party.

13.3 This Agreement is personal to the Client. The Client may not assign, sub-contract or otherwise transfer the Agreement (or any part of such), to any third party, without the prior written consent of J&D Consulting, such consent maybe withheld at J&D Consulting's absolute discretion. J&D Consulting may at any time assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under an Agreement, or any part thereof.

13.4 If any provision of this Agreement is or becomes invalid, illegal or unenforceable at law, then such provision shall be severed, and the remainder of the Agreement shall continue in full force and effect.

13.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no party who is not a party to the Agreement shall have any right to enforce any term of the agreement.

13.6 Any purported variation or amendment to an Agreement shall be of no effect, unless either confirmed in writing by an Authorised Representative of J&D Consulting or is made by J&D Consulting may amending any term of the Agreement (other than the Charges) by the provision of 28 days' notice.

13.7 The waiver by either party of any breach of this Agreement by the other party in a particular instance shall not operate as a waiver of subsequent or other earlier breaches of the same or a different kind. No failure or delay by either party in exercising or enforcing any of its rights under this Agreement shall be deemed to be a waiver of such rights, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

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

13.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13.10 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

13.10.1 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

13.10.2 sent by e-mail to its main e-mail address.



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

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

13.11.2 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 at the time recorded by the delivery service;

13.11.3 if sent by e-mail, at 9.00 am on the next Business Day after transmission.

13.12 This Agreement and the documents referred to in them constitute the entire understanding between the parties and, save as expressly referred to or referenced therein, supersedes, replaces and extinguishes all prior representations, writings, negotiations or understandings oral or written relating to the subject-matter. Each party acknowledges and agrees that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty of any person other than as expressly set out in the Agreement and that it 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 Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement not in the Agreement.

13.13 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. 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 an agreement or its subject matter or formation (including non-contractual disputes or claims).

14. Training

14.1 J&D Consulting shall provide on line training resources for clients generally which the Client may access when paying for the Software Services. J&D Consulting is not generally bound to provide any training. In the event J&D Consulting agrees to provide additional training it shall be the subject of a separate agreement.

15. Execution and Contract Registration

15.1 The Software Services are provided on a software as a services basis and require the Client to download the J&D Software, agree to its use select the applicable Software Services and agree to (and pay) all applicable Charges.

15.2 The Client shall execute the Agreement by selecting to use the J&D Software following the provision of the charging details. The Client shall provide such information and detail as is required by J&D Consulting for the purposes of registration and for the ongoing use of the Software Service. The Client shall be entitled to use the J&D Software on those machines to which it is downloaded and the Agreement applies (by virtue of the acceptance of the terms applicable).



15.3 The Client shall be responsible for all passwords provided for the registration on the Platform or in the J&D Software and shall ensure that only those authorised to amend the terms of the Agreement are provided with access to the Platform.

16 Data Security

16.1 J&D Consulting and the Client shall each take reasonable precautions (having regard to the nature of their respective obligations under any Agreement) to preserve the integrity of the Client Data and/or the Software Service and to prevent any corruption or loss thereof.

16.2 Unless otherwise agreed, the Client shall be responsible for undertaking back-up of the Client Data and shall ensure that such back-up copies are recorded on media from which the Client Data can be re-loaded in the event of any corruption or loss thereof and kept safe.

16.3 In relation to the parties rights and obligations under this Agreement, the parties agree that the Client is Data Controller and J&D Consulting is Data Processor for any personal data provided to it as part of the Software Service by the Client.

16.4 In respect of Client Data, including any Personal Data, the Client shall ensure that it obtains all consents or other authority needed for J&D Consulting to process the data and both parties shall comply with the Data Protection Legislation.

16.5 Where J&D Consulting process data for the Client it shall do so on the basis of the Clients instructions and as intended in the working of the Software System. J&D Consulting shall ensure that appropriate security is in place and processing is in accordance with the Data Protection Legislation.

17 Support Services

17.1 This Clause 17 will apply where support is specified as being provided in the Contract Details.

17.2 Support shall only be provided for the Software Services specified as receiving support in, and in accordance with, the Contract Details.

17.3 J&D Consulting shall provide resolution of telephone incidents between the hours of 9:00am and 5:00pm (UK time) on Business Days (Support Services Hours) in accordance with the service level agreement set out in this Clause or otherwise set out in the Contract Details. Unless specifically agreed otherwise, calls outside of these times will be resolved on a reasonable endeavours basis.

17.4 Service Level Agreement

J&D Consulting shall respond to support requests within one working day of such request.

J&D Consulting shall allocate a consultant to any reported error in Software Service (other than third party software). Such consultant shall be responsible for contacting the Client or Business User, and



diagnosing and resolving the error. The Client shall be responsible for implementing any error corrections provided by J&D Consulting.

All above target response times are times within Support Services Hours. Problems arising in test or development systems will be allocated a priority level that is one less than a similar problem occurring in a productive system.

If any Support Services are provided outside Support Service Hours, J&D Consulting may make additional charges at its current rate.

17.5 J&D Consulting responsibility

17.5.1 Once a call is logged, J&D Consulting shall use its reasonable endeavours to respond to the Client's/Business User's request within the constraints of the service level agreement set out in 17.4 above. J&D Consulting shall ensure that the main contact specified on the incident is kept up to date on progress.

17.6 Client responsibility

17.6.1 The Client will ensure that when the incident is logged as much information as possible about the incident is recorded, including error messages and any other related information. The Client should also be available to enable J&D Consulting to respond to any incident in a timely fashion.

17.6.2 If an incident is logged and J&D Consulting requires access to equipment, for example a laptop, the Client must ensure that appropriate access is made available to ensure the successful resolution of the issue.

17.6.3 Where access cannot be granted or the Client is not available within ten working days of the incident being logged, the incident will be closed, requiring the Client/Business User to open a new incident when they are more readily available.

17.7 Escalation

17.7.1 In the event that a Client reasonably believes the progress of the incident or level of service from J&D Consulting has not met the agreed service levels, the incident may be escalated to J&D Consulting's senior management to enable prompt resolution of such issues to the satisfaction of the Client.

17.8 Miscellaneous

17.8.1 All Charges for Software Services (that include an element of charge for support) shall be subject on written notice from J&D Consulting to increase on significant change to volume of activity or on an annual basis, as agreed with the Client.



17.8.2 A significant change to volume of activity shall be determined by J&D Consulting in its sole discretion. In exercising its discretion J&D Consulting shall consider whether any additional cost is incurred as a result of any changing activity.

17.8.3 The Client agrees that Software Services (that include an element of charge for support) provide support for new queries and issues which are raised by the Client to support its use of the Software Services. These services are not intended to provide assistance for queries and issues which are a repeat of previous queries. Where J&D Consulting reasonably determine that queries and issues are being repeated it shall consider whether any additional cost is incurred as a result of this activity and increase its Charges accordingly.

18 Software Services

18.1 The Software Services to be provided shall be the use of the J&D Software and such other services as may be agreed. The Client shall host the Software Services and shall ensure that it is held securely and protected from any third party.

18.2 The Client shall be entitled to use the Software Services in accordance with the terms of the licence set out in Clause 19 below save where the Contract Details confirms the software is third party software. In the case of third party software the Client agrees that it shall comply with the terms of any third party licences and shall indemnify and hold J&D Consulting harmless against any and all losses, damages, costs and expenses (including professionals' fees) which J&D Consulting may incur as a result of the Client's breach of the terms of any of those third party licences.

18.3 In the event that any licence fees are payable in respect of any third party software (whether on a one-off or periodic basis) then the Client shall be liable to pay such fees, (unless payment of those fees has been included by J&D Consulting, and are not expressly set out as such, in the Contract Details), and J&D Consulting shall not be liable for any consequences of any failure of the Client to do so.

18.4 The Client acknowledges and agrees that J&D Consulting supplies the Software Services "as is" and gives no warranty as to its use. Save as otherwise expressly provided for under this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose.

18.6 The Client expressly acknowledges that the J&D Software is not designed specifically for the Client and it is the Client's responsibility to ensure that the facilities and functions of the Software Services meet the Client's requirements.

18.7 The Client shall pay the Charges for Software Services set out in the Contract Details for the Software Services and the licence of the J&D Software.



18.8 J&D Consulting confirms that it has all the rights in relation to the J&D Software that are necessary to grant all the rights it purports to grant under, and in accordance with, any Agreement.

19 Software Licence

19.1 Subject to the Client paying the Charges specified in the Agreement, J&D Consulting grants to the Client a non-exclusive, non-sublicensable and non-transferable licence, for the Term to use Licensed Materials subject to the terms of this Agreement. The Software Services and the licence permit only the use of the J&D Software on each machine it is downloaded to and on the basis for which use was confirmed.

19.3 The Client shall use Licensed Materials for processing its own data for its own internal purposes only. The Client shall not permit any third party to use the Licensed Materials in any way whatsoever nor use the Licensed Materials on behalf of or for the benefit of any third party in any way whatever.

19.4 The Licensed Materials and all IPRs therein (including IPRs in any modifications carried out by or on behalf of the Client) shall remain the property of J&D Consulting. The Client shall notify J&D Consulting immediately if it becomes aware of any unauthorised use of the whole or any part of the Licensed Materials by any person. The Client will permit J&D Consulting to check the use of the Licensed Materials by the Client at reasonable times and for that purpose J&D Consulting, its employees and agents shall be entitled to enter any of the Client's premises.

19.5 Save to the extent and in the circumstances expressly permitted by law, the Client shall not alter, modify, adapt or translate the whole or any part of the Licensed Materials in any way whatever nor permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs nor decompile, disassemble or reverse engineer the same nor attempt to do any of such things.

19.6 If a Client fails to pay any amount due under the Agreement on the due date for payment, J&D Consulting shall be entitled to suspend access to the Software Services used by a Client, until such time as any due amounts have been paid.

19.7 The Client shall ensure that any user has a user name used only by that individual who keeps a secure password for their use of the J&D Software, that such password is changed no less frequently than twice in one calendar year and that each authorised user keeps his password confidential.

19.8 J&D Consulting may audit the J&D Software regarding the use on an applicable machine. If such audit reveals unauthorised or improper use, and without prejudice to J&D Consulting's other rights, the Client shall promptly disable any J&D Software.

19.9 In relation to the J&D Software the Client shall not:

(a) store, distribute or transmit any Virus, or any material through the hosting services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence,



discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

(b) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the J&D Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

(c) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the J&D Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

(d) access all or any part of the J&D Software or hosting services in order to build a product or service which competes with the J&D Software and/or the Software Services

(e) use the J&D Software or Software Services to provide services to third parties;

And shall use reasonable endeavours to prevent any unauthorised access to, or use of, the J&D Software and notify J&D Consulting promptly of any such unauthorised access or use.

19.10 Each party shall indemnify the other and hold it harmless against any and all losses, damages, costs and expenses (including professional fees) which it may incur as a result of that party's breach of the terms of any third party hosting or licencing agreement applicable to it.

