

VALIANTYS: GENERAL TERMS AND CONDITIONS (UK)

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

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

1. INTERPRETATION

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

Acceptable Use Policy: the Supplier's acceptable use policy available at <http://www.valiantys.com/aup>.

Agreement: the collective agreements between the Client and the Supplier comprising: (i) these Terms, (ii) the Statement of Work, (iii) any documents specifically referred to or incorporated into these Terms, including the Security & Backup Policy, Service Catalog, Acceptable Use Policy and Privacy Notice, and (iv) any other document instrument or agreement entered into between Supplier and Client, in each case as may be amended at any time and from time to time.

Approval: the approval given by the Client when it confirms its acceptance (by any means, including signature or by email) of a Statement of Work.

App(s): software application(s) or extension(s) for use with the Software.

Atlassian: Atlassian Corporation Plc.

Authorised Users: those users entitled to use the Software under the terms of the Software Licence.

Background IP: those Intellectual Property Rights owned by a party prior to the Agreement, or which are created or produced at any time independently of the Agreement.

Bribery Laws: any applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, as amended from time to time, including the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

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

Business Hours: unless otherwise defined in the Service Catalog, means the Supplier's availability on Business Days per geography, for up to eight hours per day:

Europe: 8am-6pm CET

North America: 8am-8pm EST.

Change Control Note: a note detailing the impact (including cost implications) of a requested change to the Services, the pro-forma version of which is attached at <http://www.valiantys.com/change>.

Client: the legal person (whether company, partnership, individual or otherwise), identified in the Statement of Work, to whom the Services will be provided.

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

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

Consultancy Services: those professional consultancy services (if any) which the Supplier agrees to provide to the Client pursuant to the Statement of Work.

Data Processing Agreement: means the agreement entered into between the parties governing the processing of personal data in relation to the Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the EU GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). "UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018 and the "EU GDPR" means the General Data Protection Regulation ((EU) 2016/679). The terms 'Data Controller', 'Data Processor', 'Process(ing)', 'Data Subjects' and 'Personal Data' shall have the meaning given to them in the UK GDPR.

Deliverable(s): any creation, work, know-how, data, technical or business information, invention (whether patentable or not), design (whether registrable or otherwise), process, formula, copyright work, database, which is created, devised, developed or discovered by the Supplier during the provision of the Services either alone or with any other person.

Effective Date: the date on which the Statement of Work is Approved by the Supplier.

Fees: Managed Services fees and/or Consultancy fees and/or any other fees or charges set out in the Statement of Work.

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Hosting Services: the cloud-based hosting services described in the Statement of Work, if any.

Intellectual Property Rights: 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 right, topography rights, moral 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.

Managed Services: those Support Services and/or Hosting Services which the Supplier agrees to provide to the Client pursuant to a Statement of Work.

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

Privacy Notice: the Supplier's privacy notice available at <http://www.valiantys.com/privacy>.

Project Limitations: any limitations, contingencies, prerequisites, conditions or constraints referred to in the Statement of Work.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Statement of Work.

Security & Backup Policy: the Supplier's security & backup policy available at <http://www.valiantys.com/trust>.

Service Catalog: the document agreed upon by the parties detailing, amongst others, the Service Levels, delivery and availability of the Managed Services.

Service Commencement Date(s): the date(s), as applicable and as set out in the Statement of Work, from which the Services will be provided.

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

Service Levels: means the service level responses and response times in relation to the Managed Services as set out in the Service Catalog.

Service Token: the unit of measure used to quantify the cost of delivery of Service Catalog elements by the Supplier to the Client.

Services: the Consultancy Services and/or the Managed Services as described in the Statement of Work.

Software: the Atlassian proprietary software, and such applicable Atlassian or third party software offerings, including, without limitation all updates, revisions bug-fixes, upgrades and enhancements thereto, each as described in the Statement of Work.

Software Licence: the licence from Atlassian under which the Client uses the Software, including all applicable terms and conditions.

Statement of Work (SOW): the document which is issued to the Client by the Supplier describing the key aspects of the Services. The Statement of Work shall be binding once the Supplier accepts the Client's Approval, either expressly or by delivering Services pursuant to the approved Statement of Work.

Supplier: Valiantys Limited (company registration no. 08211416) with registered office at 20 St. Thomas Street, London, England, SE1 9RS.

Support Services: the support services described in the Statement of Work.

Term: the time period, generally defined in the Statement of Work, during which the Services are provided.

Terms: these General Terms and Conditions.

Third Party Terms: third party terms applicable to the use of any Apps.

Third Party Content: third party materials, software, data, information or other content.

Usage Limits: the usage limits applicable to the Services, whether with respect to capacity, users or otherwise, details of which are set out in the Statement of Work.

Website: the Supplier's website at <https://valiantys.com/en/>.

2. BASIS OF AGREEMENT

- 2.1 The Supplier shall issue a Statement of Work, which shall include (without limitation) a description of the Services.
- 2.2 By giving Approval or by accepting these Terms, whether as part of the Supplier's online ordering process or otherwise, the Client agrees to contract on the basis of these Terms and in doing so agrees that they prevail over any other terms which the Client may seek to impose or introduce, including (without limitation) any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by the Client.
- 2.3 Any person granting Approval, or making any other representation, on behalf of the Client represents and warrants that they have the legal right and authority to bind the Client to the terms of the Agreement.
- 2.4 Other than those specifically incorporated into a Statement of Work, any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues, brochures or Website are issued or published for the sole purpose of illustration or to provide an approximate idea of the services described in them and shall therefore have no contractual force.

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3. COMMENCEMENT & TERM

- 3.1 The Agreement shall commence on the Effective Date and shall continue for the Term, or if not defined until the Services under the Statement of Work have been completed, unless terminated earlier by the parties pursuant to the terms of the Agreement or as otherwise agreed to by the parties in writing.
- 3.2 The Agreement supersedes all and any previous agreements in relation to the Services, including (without limitation) any non-disclosure agreements entered into by the parties in anticipation of the provision of the Services.

4. SERVICES

- 4.1 In consideration of the Client's compliance with the terms of the Agreement, including the payment of all applicable Fees, the Supplier shall provide the Services to the Client from the Service Commencement Date(s) on the terms of the Agreement.
- 4.2 Unless otherwise agreed, the Services are provided (i) in relation only to the Software and to any add-ons to the Software developed under the Agreement by the Supplier for the Client, and (ii) subject to the Usage Limits which, if exceeded will give rise to additional charges, including upgrade charges.
- 4.3 The Supplier will use reasonable endeavours to ensure the continuity of the Services and of any personnel engaged in the Services but shall have discretion to make changes if needed, in which event it shall provide replacements of similar status and experience.
- 4.4 The Supplier will provide:
 - (a) the Consultancy Services in accordance with the Agreement and the applicable Statement of Work and in a timely and professional manner, using reasonable endeavours to comply with any time schedules agreed in writing with the Client, subject to any Project Limitations. Any such times or dates shall be estimates only and time for performance by the Supplier shall not be of the essence.
 - (b) the Managed Services as per the Service Levels as described in the Statement of Work and Service Catalog.
- 4.5 If the Consultancy Services do not conform with Clauses 4.3 and 4.4(a) the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's exclusive remedy for any breach of Clauses 4.3 and 4.4(a). Notwithstanding the foregoing, the Supplier:
 - (a) does not warrant that the Consultancy Services will be uninterrupted or error-free or that the Consultancy Services will meet the Client's requirements other than those detailed in the applicable Statement of Work;
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Consultancy Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.6 The Client uses the Software under the terms of the Software Licence and (where applicable) shall use any Apps under the relevant Third Party Terms. All responsibility regarding the use of the Software and the Apps rests with the Client, including (without limitation) payment of all relevant fees, compliance with the terms of the Software Licence and/or Third Party Terms and all related liability. The Client agrees and accepts that its contract for the use of (i) the Software is directly with Atlassian and (ii) the Apps are directly with the applicable third party provider. The Client agrees that the Supplier is not a party to, and has no responsibility under, those contracts, whether or not the Supplier has acted as a reseller. Any failures, breaches or defaults under the terms of the Software Licence or the Third Party Terms are the exclusive responsibility of the Client, including any which may impact on the Supplier's ability to provide the Services in accordance with the Agreement.

5. CHARGES AND PAYMENT

- 5.1 The Client shall on or prior to the Effective Date provide to the Supplier valid, up-to-date and complete payment details or approved purchase order information acceptable to the Supplier and any other required valid, up-to-date and complete contact and billing details.
- 5.2 The Supplier shall invoice the Client and the Client will pay all Fees, each in accordance with the Payment Terms. If no intervals are so specified, the Supplier shall invoice the Client at the end of each month for Works performed during that month. Where the Client provides payment details, the Supplier is hereby authorised to take payment upon issue of invoice. By entering into the Agreement, the Client commits to pay the Fees for the entire Term.

Consulting Services: Time & Materials

- 5.3 Where, or to the extent that, the Consulting Services are provided on a time-and-materials basis:
 - (a) the Fees payable shall be calculated in accordance with the Supplier's daily fee rates set out in the Statement of Work;
 - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked during applicable Business Hours on Business Days;
 - (c) the Supplier shall be entitled to charge at an overtime rate of (i) 150% of the normal rate for any time worked by members of the project team on Saturdays or on Business Days outside of Business Hours on a pro-rata basis, and (ii) 200% of the normal rate for any time worked on Sundays or bank holidays;

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- (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each relevant invoice; and
- (e) the Supplier shall invoice the Client monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 5. Any expenses, materials and third party services shall be invoiced by the Supplier at cost or, where applicable, in accordance with any agreed budget, fixed sum or limit. Each invoice shall set out the time spent by each member of the project team and, where applicable, shall provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

Consulting Services: Fixed Price

- 5.4 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Statement of Work. Where staged payments have been agreed, the Fees are payable on the Supplier's achievement of the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Client for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).
- 5.5 For the avoidance of doubt, any fixed price contained in the Statement of Work excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost unless otherwise agreed.
- 5.6 The Supplier shall also be entitled to charge the Client for any approved expenses reasonably and properly incurred. Such expenses will be invoiced monthly in arrears, including a breakdown of expenses payable in relation to the invoiced period.
- 5.7 All amounts and Fees stated or referred to in the Agreement:
 - (a) shall be payable in the currency stated in the Statement of Work;
 - (b) are non-cancellable and unless the Agreement has been terminated by the Client pursuant to Clause 19.1 are non-refundable;
 - (c) are payable in full, and (subject to Clause 6) without set-off, deduction or withholding; and
 - (d) are exclusive of value added tax or other local taxes, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 5.8 If any of the Service Commencement Dates of the Consultancy Services are postponed by the Client, or its representative the following fees are payable:
 - (a) If notice of more than 10 Business Days is given before the scheduled Service start, there will be no cancellation charge.
 - (b) If notice of more than 5, but less than or equal to 10 Business Days is given before the scheduled Service start, the cancellation charge will be 50% of the assigned consultant's Fees payable for the corresponding cancelled or postponed days.
 - (c) If notice of 5 Business Days or less is given before the scheduled Service start the cancellation charge will be 100% of the assigned consultant's Fees payable for the corresponding cancelled or postponed days.
- 5.9 If the Supplier has not received payment of an invoice within 14 days after the due date, all and any Fees for the Term shall become payable in full and the Supplier may, without prejudice to any other rights and remedies and without liability to the Client, disable the Client's password, account and suspend access to all or part of the Services. The Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. Any invoice disputes must be notified to the Supplier within 5 Business Days of receipt of invoice, failing which the invoice will be deemed accepted and any right of dispute waived.
- 5.10 The Supplier shall be entitled to increase the Fees (i) annually during the Term on each anniversary of the Effective Date, provided the said increase does not exceed the corresponding increase in the UK retail prices index over the corresponding period, and (ii) at its discretion at the start of any renewal period upon 90 days' prior notice to the Client, save that charges for Third Party Content may be increased at any time upon reasonable prior notice, on a pass-through basis.

6. SERVICE CREDITS

The Client shall be entitled to Service Credits in respect of the Supplier's failure to meet any applicable Service Levels. Details of when and on what basis Service Credits apply are set out in the Statement of Work. The right to Service Credits is the Client's exclusive remedy with respect to the Supplier's failure to meet applicable Service Levels.

7. CHANGES

- 7.1 The Supplier reserves the right to make changes to the Services and changes to equipment, software, technology or other aspects of the Services, including (without limitation) changes which are necessary to comply with applicable law or safety requirements or which do not materially adversely affect the nature or quality of the Services. The Client acknowledges and accepts that the Supplier may make the said changes, provided they do not materially adversely affect the Services.
- 7.2 Subject to Clause 7.1, either party may request a change to the Services at any time during the Term of the Agreement, including requests to modify, vary or upgrade the Services. Where the Client raises the request,

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it will promptly provide the Supplier with such information as the Supplier may reasonably require in connection with that request. The Supplier shall prepare a Change Control Note in respect of all change requests. A change to the Services will be effective only when the Change Control Note is agreed in writing by the parties. The parties agree to act promptly and in good faith with respect to change requests and shall not unreasonably delay or withhold consent to the same.

- 7.3 Subject to Clause 7.1 above, any changes to the Services or the Agreement shall require the written consent of the parties, not to be unreasonably withheld or delayed.

8. SUPPLIER'S OBLIGATIONS

- 8.1 Without prejudice to its obligations under the Service Catalog, the Supplier undertakes to:
- (a) provide the Services in a competent and professional manner with reasonable care, skill and ability and in all material respects in accordance with the Agreement;
 - (b) use reasonable endeavours to meet any agreed delivery dates or milestones, but any such dates shall be estimates only; and
 - (c) provide suitably qualified and skilled individual or individuals to provide all or any of the Services.
- 8.2 The undertaking at Clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to instructions, or modifications or alterations of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's exclusive remedy for any breach of the undertaking set out in Clause 8. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Client's use of the Services will be uninterrupted or error-free or that the Services will meet the Client's requirements that were not expressly set forth in the applicable Statement of Work or Service Catalog;
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 The Agreement shall not prevent the Supplier from entering into similar agreements with third parties or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 8.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 8.5 The rights provided under this Agreement are exclusive to the Client. The Client may permit its subsidiaries or holding companies to benefit from the Services on condition that (i) the Client notifies the Supplier of the said subsidiaries or holding companies and obtains the Supplier's prior consent to such usage or access (not to be unreasonably withheld or delayed), and (ii) the Client accepts that the Supplier's exclusive liability, contractual or otherwise, is to the Client and not to any agreed subsidiaries or holding companies.

9. CLIENT'S OBLIGATIONS

- 9.1 The Client shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Agreement; and
 - (ii) such documents, data, drawings, plans, diagrams, designs, reports, specifications or other information as the Supplier may reasonably require;in order to provide the Services, including but not limited to Client Data, security access information and configuration services, and ensure all information is complete, true and accurate in all material respects;
 - (b) appoint a representative, who shall have the authority contractually to bind the Client on matters relating to the Services;
 - (c) make available such Client staff and applicable sub-contractors or suppliers (if any) as may be required for the Supplier to provide the Services and ensure that they co-operate fully with the Supplier in all material respects;
 - (d) carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner;
 - (e) ensure that the Services are used in accordance with the Agreement, Statement of Work and Service Catalog where applicable (the Client accepting responsibility for any user's breach of the Agreement);
 - (f) keep and maintain all materials, training resources, equipment, documents and other property of the Supplier (Supplier Materials) which is provided to the Client in safe custody at its own risk. The Client must maintain the Supplier Materials in good condition, and not dispose, copy or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - (g) ensure it has all rights, consents and permissions required for its use of Third Party Content and that its said use will not infringe or otherwise violate or interfere with the rights, including the intellectual property rights, of any third party;

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- (h) obtain and maintain all licences, consents, and permissions for which the Client is responsible and which are necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
 - (i) ensure that its network, systems and (where applicable) hosting providers comply with the relevant specifications or standards provided by the Supplier from time to time;
 - (j) ensure that its Authorised Users shall be fully responsible for arranging their own internet access to enable access to the Software;
 - (k) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet; and
 - (l) comply with all applicable laws and regulations with respect to its activities under the Agreement.
- 9.2 The Client acknowledges that the Supplier's ability to provide the Services depends on the Client satisfactorily complying with the obligations stated in this Agreement and that should the Client delay or fail to perform any such obligations then the Supplier will not be liable in any way for any delay, loss or damage, cost increase or other consequences arising from such failure.
- 9.3 The Client agrees and accepts that it is fully responsible for its use of the Services, including (without limitation) what to store or place on servers, the selection of appropriate methods for protecting or encrypting data or information within the Client's custody or control and when and how best to use the Services, for which the Client agrees the Supplier shall have no responsibility.
- 9.4 The Client shall not access, store, distribute or transmit any Viruses, or breach the terms of the Supplier's Acceptable Use Policy.
- 9.5 The Client will ensure that reasonable security processes are followed regarding its use of the Services, which shall as a minimum ensure compliance with the terms of the Acceptable Use Policy. If the Client operates as a reseller, it will ensure that it imposes on its customers terms which reflect the security and other relevant requirements of this Agreement.
- 9.6 The Client undertakes that during the performance of the Services it shall not, and shall not permit others, to
- (a) carry out any act which will, or is likely to, interfere with or compromise the security or proper functioning of the Services, including without limitation any attempt to probe or test the vulnerability of any Supplier system or any network connected to or accessible through Supplier systems, save that it shall upon prior notice of not less than 48 hours to the Supplier be permitted to carry out vulnerability scans against its own servers, on condition that they are non-destructive and do not adversely affect the operation of the Supplier's services or systems;
 - (b) permit any equipment owned, leased, maintained or controlled by it to interfere with or impair the provision of any Service(s), unlawfully interfere with or impair the transmission or privacy or any data or communication transmitted via Supplier systems or otherwise create, cause or contribute to the creation or causing of a hazard.
- 9.7 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, including ensuring that login names, passwords and other confidential information relating to access to the Services are kept confidential and available only to the Authorised Users. In the event of any unauthorised access or use, the Client shall promptly notify the Supplier.
- 9.8 The Client shall not, without the prior written consent of the Supplier, at any time during the Project or for the period of 12 (twelve) months after the completion of the Project, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier, except that the Client shall not be in breach of this Clause 9.8 if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier.

10. CLIENT DATA

- 10.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 10.2 The Client warrants that it owns all rights in the Client Data and that the Supplier's use and processing of the Client Data in accordance with the Agreement will not infringe or otherwise violate or interfere with third party rights. The Client hereby grants the Supplier the non-exclusive worldwide right and licence to process, copy, store, transmit display, print, view and otherwise use the Client Data to the extent required for the provision of the Services.
- 10.3 The Supplier shall, in providing the Services, comply with its Security & Backup Policy and follow its archiving procedures for Client Data as set out in its Security & Backup Policy, as such document may be amended by the Supplier from time to time. In the event of any loss or damage to Client Data, the Client's exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier in accordance with its Security & Backup Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up). The Supplier's liability in relation to any data loss or

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corruption will be limited to that resulting from its failure to comply with any contractual commitments given regarding data backup and the Supplier does not otherwise accept responsibility for data loss or damage of any kind.

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

11. DATA PROTECTION

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 The parties acknowledge that:
- (a) if the Supplier processes any Personal Data on the Client's behalf when performing its obligations under the Agreement, it shall do so either as Data Processor for the purposes of the Data Protection Legislation or else as a sub-processor under Article 28(2) GDPR;
 - (b) The Data Processing Agreement will describe the scope, nature and purpose of processing by the Supplier, duration of the processing, types of Personal Data and categories of Data Subject where Personal Data is processed in terms of this Agreement; and
 - (c) the Personal Data may be transferred or stored outside the European Economic Area (EEA) or the country where the Client is located in order to carry out the Services and the Supplier's other obligations under the Agreement.
- 11.3 Without prejudice to the generality of Clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Client's behalf. The Client hereby agrees to indemnify and hold the Supplier harmless from and against any and all liability, actions, claims, damages and other costs arising from or relating to any breach of the Client's said obligations and/or any claim or action brought by any Data Subject(s), other than any claim resulting from the Supplier's breach of the terms of the Agreement.
- 11.4 Without prejudice to the generality of Clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Client unless the Supplier is required by the laws applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on Applicable Law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
 - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer. If cross border transfer of Personal Data occurs, the Client authorises the Supplier to enter into SCC with the third-party processors in the Client's name and on its behalf, when these are necessary. Standard Contractual Clauses (SCC) means the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU as adapted for the UK;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

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- (d) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Client without undue delay on becoming aware of a Personal Data breach;
 - (f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
 - (g) maintain complete and accurate records and information to demonstrate its compliance with this Clause 10.
- 11.5 The Client hereby authorises the Supplier to appoint third-party processors of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 11. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 11.

12. ANTI-BRIBERY

- 12.1 Each party shall comply with applicable Bribery Laws and use reasonable endeavours to ensure that:
- (a) all of that party's personnel;
 - (b) all of that party's subcontractors; and
 - (c) all others associated with that party, involved in performing services for or on behalf of that party or otherwise involved in this Agreement so comply.
- 12.2 Without limitation to Clause 12.1 above:
- (a) neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable Bribery Laws; and
 - (b) each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Laws.
- 12.3 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in the foregoing subclauses.

13. THIRD PARTY PROVIDERS AND CONTENT

The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the use of Third Party Content or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Client is responsible for checking and complying with the relevant third party terms of use, and privacy notice and otherwise clearing Third Party Content for use. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

14. PROPRIETARY RIGHTS

- 14.1 Each party shall own all rights in or relating to its Background IP and nothing in the Agreement shall be construed as transferring or assigning any rights therein. Each party hereby grants to the other a non-exclusive, royalty free, worldwide right and licence to use its Background IP to the extent reasonably required for the performance of the other party's obligations under the Agreement.
- 14.2 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in or relating to the Services. The Supplier grants the Client a non-exclusive, royalty free, worldwide right and licence to use the Deliverables for the Term in connection with the Client's use of the Software and the Services. The said right is personal to the Client and may not be assigned or sub-licensed to any third party without the prior consent of the Supplier. On expiration or termination of the Contract for any reason, the said licence will immediately and automatically terminate.
- 14.3 Save as expressly stated herein, the Agreement does not grant the Client any rights to, or title or interest in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Deliverables.
- 14.4 The Supplier confirms that it has all the rights in relation to the Services and the Deliverables as are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 14.5 'Valiantys' and the Valiantys logo are trademarks owned by the Supplier and all rights therein are specifically reserved.

15. INSURANCE

The Supplier shall for the duration of the Agreement maintain in force insurance policies (to include at a minimum public liability insurance, professional liability insurance and employer's liability insurance) to adequately cover its relevant potential liabilities in relation to the Agreement. Upon written request by the Client, the Supplier shall provide a copy of any relevant insurance policy.

16. CONFIDENTIALITY

- 16.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;

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- (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 16.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 16.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 16.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 16.5 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 16.6 The Supplier acknowledges that Client Data and Client Background IP are Confidential Information of the Client. The Client acknowledges that the Supplier Background IP is Confidential Information of the Supplier.
- 16.7 This Clause 16 shall survive termination of the Agreement, however arising.
- 16.8 The Supplier shall be permitted to use the Client's name on its website and for service credentials purposes. Save for that limited right, neither party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

17. LIMITATION OF LIABILITY

- 17.1 This Clause 17 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, officers, agents and sub-contractors) to the Client:
- (a) arising under or in connection with the Agreement;
 - (b) in respect of any use made by the Client of the Services and/or Software or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 17.2 Notwithstanding any other provision of this Agreement, the Client acknowledges that the Supplier is not the developer or supplier of the Software or (where applicable) of the Apps, and therefore makes no representations, warranties or conditions of any nature, express or implied, statutory or otherwise, regarding the Software or the Apps, including any relating to non-infringement, satisfactory quality or fitness for a particular purpose or from a course of dealing or usage of trade.
- 17.3 Except as expressly and specifically provided in the Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Services and/or Software by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement, including (without limitation) any implied term(s) as to satisfactory quality or fitness for purpose;
 - (c) the Supplier's responsibilities with respect to security and backup of data are set out in the Security & Backup Policy and the Client acknowledges receipt and understanding of such policy and accepts that the Supplier shall have no further responsibility or liability in that respect.
- 17.4 Nothing in the Agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's gross negligence or wilful misconduct;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for any other liability which may not be excluded or limited under applicable law.
- 17.5 Subject to Clause 17.4:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, in each case whether direct or indirect, or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
 - (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 150% of the total Fees paid or payable during the 12 months immediately preceding the date on which the claim arose. For the avoidance of doubt, the said limit applies to all and any indemnities given by the Supplier.

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18. SUSPENSION

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

19. TERMINATION

- 19.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - (c) the other party is or may be (in the reasonable opinion of the first party) unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator or similar appointed or calls a meeting of its creditors or ceases for any other reason to carry on business.
- 19.2 On termination of the Agreement for any reason:
- (a) the Client shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the Supplier;
 - (b) the Supplier will provide the Client with (i) a snapshot of server information, including relevant data, free of charge to enable the Client to restore the information on a third party server and (ii) such support and assistance as the Client may reasonably require in connection with the migration of the Services to a third party supplier, subject to payment of the Supplier's related fees and expenses; and
 - (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 19.3 Save in the event of termination of the Agreement by the Client under Clause 19.1, any unspent account credits, including any unused Limited Hours Services, will be lost on termination or expiry of the Agreement.

20. FORCE MAJEURE

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

21. CONFLICT

If there is an inconsistency between any of the provisions of the Agreement, the Statement of Work shall prevail over the Terms so long as reference is made to the provisions of the Terms with which they are inconsistent; and the Terms shall prevail over any documents referred to or incorporated into the Agreement.

22. DISPUTE RESOLUTION

- 22.1 If a dispute arises under or in connection with this Agreement (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this Clause 22.
- 22.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five (5) Business Days):

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- (a) appoint a representative who has authority to settle the Dispute and (where available) is at a higher management level than the person with direct responsibility for the administration of this Agreement (**Designated Representative**); and
- (b) notify the other party of the name and contact information of its Designated Representative.

22.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing to the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).

22.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.

22.5 Notwithstanding any other provision of this Agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.

23. AMENDMENTS OR VARIATIONS

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

24. WAIVER

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

25. RIGHTS AND REMEDIES

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

26. SEVERANCE

26.1 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

26.2 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.

27. ENTIRE AGREEMENT

27.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

27.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

28. ASSIGNMENT

Neither party may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior, written consent of the other party. Such consent shall not be unreasonably withheld or delayed.

29. NO PARTNERSHIP OR AGENCY

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

30. THIRD PARTY RIGHTS

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

31. NOTICES

31.1 Any notice required to be given under the Agreement shall be in writing (which shall include email) and directed to the individual nominated by each party for the receipt of notices. Email notices shall be delivered to the usual email address of the said nominated individual. Hardcopy documents shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party, for the attention of the nominated individual, at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes.

31.2 A notice delivered by email shall be deemed delivered upon receipt of a successful send receipt and a notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business

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hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

32. GOVERNING LAW

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

33. JURISDICTION

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