



Elasticine Limited

Standard Terms and Conditions

Version 1.1 September 2017

1 Interpretation

All defined terms used in the Agreement formed from these standard terms and conditions and the master document shall have the meanings set out below:

- 1.1 Clause headings shall not affect the interpretation of the Agreement.
- 1.2 Words in the singular shall include the plural and vice versa.
- 1.3 A reference to one gender shall include a reference to the other genders.
- 1.4 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 This Agreement includes all schedules, annexes and appendices hereto. If there is any conflict between the terms of the Agreement and its schedule, annex or an appendix, unless expressly stated to the contrary, the terms of the main body of this Agreement shall prevail (to the extent of any conflict or inconsistency only).
- 1.8 The master document is the Agreement for the supply of Software and other Services entered into between Elasticine and the Client.



Additional Terms	means any additional terms agreed with the Client
“Business Day”	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Charges”	means the charges specified in the Agreement and payable by the Client for the supply of the ELASTICINE Software (including the ELASTICINE Software Licence Fee) and/or the Services provided to it by Elasticine;
Data	means the data uploaded by the Client to, and/or supplied by the Client to Elasticine for inclusion in, the ELASTICINE Database;
“Client Materials”	means any and all software, equipment and Client Data supplied by the Client to Elasticine;
“Commencement Date”	means the date of execution of this Agreement;
“Confidential Information”	has the meaning given in clause 9;
“The Cloud”	means software and data hosting service provided by a third party accessible through the worldwide web/internet, with which party Elasticine has entered into an agreement for those services;
“Deliverables”	means any documents and materials developed by Elasticine to be supplied as part of the Services agreed with the Client;
“Agreement”	means this agreement as amended from time to time;
“Group Company”	means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. “Subsidiary” and “holding company” shall have the meanings given to them in section 1159 of the Companies Act 2006;
“Intellectual Property Rights”	means (i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow and Confidential Information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;
“IPR Claim”	has the meaning given in clause 5.3;
“ELASTICINE Database”	means that database accessed by the ELASTICINE Software which holds the Client Data;



"ELASTICINE Software"	means those modules of the software known as 'ELASTICINE' provided by Elasticine to the Client as specified by Elasticine from time to time;
"ELASTICINE Software Licence Fee"	means the fee payable by the Client to Elasticine for the use of the ELASTICINE Software;
"Elasticine Group"	means any or all of Elasticine and each of its Group Companies together any partnership, limited liability partnership, company or sole practice affiliated or associated with Elasticine from time to time;
"Elasticine Information"	has the meaning given in clause 9;
"Elasticine IPR"	means all Intellectual Property Rights either owned by Elasticine Group or its third party licensors (whether or not such rights exist at the Commencement Date) including, without limitation, any and all Intellectual Property Rights in and to the ELASTICINE Software and the Deliverables other than: (i) any Intellectual Property Rights in and to any Client Materials included in the Deliverables; and (ii) any Intellectual Property Rights in material included in the Deliverables taken from a publically available source;
"Relevant Requirements"	has the meaning given in clause 8;
"Security Feature"	means any security feature including any key, PIN, password, token or smartcard features incorporated into the ELASTICINE Software;
"Services"	means any services to be provided by Elasticine, in addition to the provision of the ELASTICINE Software, as specified in the Statement of Works;
"UK Bribery Act"	means the UK Act of Parliament entitled 'Bribery Act 2010' as amended, extended or re-enacted from time to time and including any subordinate legislation for the time being in force made under it; and
"VAT"	means United Kingdom value added tax or any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.



2. Supply of the ELASTICINE Software and of the Services

- 2.1 In supplying any requested Services, Elasticine shall, if applicable:
- 2.1.1 provide any requested Services with reasonable care and skill;
 - 2.1.2 use reasonable endeavours to meet any performance dates specified by the Client, but any such dates shall be estimates only and time for performance by Elasticine shall not be of the essence;
 - 2.1.3 use reasonable endeavours to provide any Deliverables to the Client in accordance with any express terms relating to such Deliverables which may be agreed;
 - 2.1.4 if applicable, use reasonable endeavours to ensure that its employees, agents and representatives comply with all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to Elasticine in writing, provided that Elasticine shall not be liable if, as a result of such compliance, it is in breach of any of its obligations under this Agreement.

3. Client's obligations

- 3.1 The Client shall:
- 3.1.1 co-operate with Elasticine in all matters relating to its use of the ELASTICINE Software and the supply of any related Services and appoint (and, as it thinks fit, replace) a designated contact who has the authority to bind the Client on all matters relating to this Agreement;
 - 3.1.2 if necessary for the performance of the Services, promptly provide the Client Materials to Elasticine;
 - 3.1.3 if applicable, provide such access to the Client's premises, data, personnel and other facilities as may reasonably be requested by Elasticine, for the purposes of its use of the ELASTICINE Software and the supply of any related Services.
- 3.2 If any act or omission of the Client, its employees, agents or representatives delays or prevents the performance by Elasticine of its obligations under this Agreement:
- 3.2.1 Elasticine shall have no responsibility for any failure or delay in the installation of the ELASTICINE Software or in performing the Services arising directly or indirectly from such prevention or delay; and
 - 3.2.2 Elasticine shall be entitled to increase the Charges to reflect any additional costs incurred by Elasticine in the installation of the ELASTICINE Software or in providing the Services that arise directly or indirectly from such prevention or delay.

4. Charges and payment

- 4.1 Not earlier than 12 months from the Commencement Date Elasticine may review and increase the Charges provided that such Charges cannot be increased more than once in any 12 month period. Elasticine shall give the Client written notice of any such increase at least 2 months before the proposed date of that increase. If such increase is not acceptable to the Client, it may terminate the Agreement by giving not less than 1 months' written notice to Elasticine.



4.2 All sums payable to Elasticine shall become due immediately on its termination.

5. Intellectual property

5.1 The ownership of all Elasticine IPR shall vest and remain vested in Elasticine.

5.2 Subject to the provisions of clause 5.3, Elasticine indemnifies the Client against all liabilities, costs, damages and losses (excluding loss of profit or any indirect or consequential losses) suffered or incurred by the Client arising out of or in connection with any claim made against the Client for infringement by any of the Elasticine IPR of a third party's Intellectual Property Rights.

5.3 The Client shall:

5.3.1 notify Elasticine in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 5.2 ("**IPR Claim**");

5.3.2 allow Elasticine, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, provided that Elasticine obtains the Client's prior approval of any settlement terms, such approval not to be unreasonably withheld;

5.3.3 provide Elasticine with such reasonable assistance regarding the IPR Claim as is required by Elasticine, subject to reimbursement by Elasticine of the Client's costs reasonably incurred; and

5.3.4 not, without the prior written consent of Elasticine, make any admission relating to the IPR Claim or attempt to settle it.

5.4 The Client warrants that:

5.4.1 it owns or has the right to use and provide the Client Materials to be used in the ELASTICINE software; and

5.4.2 Any use by Elasticine of the Client Materials shall not infringe the Intellectual Property Rights of any third party.

5.5 The Client indemnifies Elasticine against all liabilities, costs, damages and losses (excluding loss of profit or any indirect or consequential losses) suffered or incurred by Elasticine arising out of or in connection with any claim made against Elasticine for infringement of a third party's Intellectual Property Rights arising out of the use of the Client Materials.

5.6 The Client authorises Elasticine to:

5.6.1 use the Client Materials for the purposes of providing the Services; and

5.6.2 include the Client Materials (or parts of the Client Materials) in the Deliverables.

6. ELASTICINE Software

6.1 Elasticine Group is responsible for the hosting, maintenance and integrity of the ELASTICINE Software and Database which is hosted in the Cloud.

6.2 Access to the ELASTICINE Software is covered by this clause 6.

In consideration of the Client paying the ELASTICINE Software Licence Fee and subject to clauses 6.5 to 6.10, and clauses 7.1 and 7.2 below, Elasticine grants the Client a non-exclusive licence to use the ELASTICINE Software for the duration of this Agreement.



- 6.3 To the extent that the ELASTICINE Software is based on Open Source software it is provided subject to the terms of the applicable Open Source software licence, "as is," without any warranty of any kind, and Elasticine, to the extent permitted by law, further disclaims all other warranties, express, implied or statutory, with respect to the ELASTICINE Software including but not limited to the implied warranties of non-infringement, merchantability and fitness for a particular purpose.

Terms of Use

- 6.4 In respect of the ELASTICINE Software:
- 6.4.1 "use" shall be restricted to use in object code form for the internal operational purposes of the Client only (which, for the avoidance of doubt, shall not include the right to develop or modify the ELASTICINE Software in any way); and
- 6.4.2 the Client shall:
- 6.4.2.1 use the Elasticine ELASTICINE Software for its internal business purposes only;
 - 6.4.2.2 not assign, sublicense or novate any rights granted to it in respect of the ELASTICINE Software in whole or in part;
 - 6.4.2.3 not grant any rights in or to the ELASTICINE Software to any third party;
 - 6.4.2.4 not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble or modify the ELASTICINE Software in whole or in part except as expressly authorised in the Statement of Works or as otherwise permitted by law; and
 - 6.4.2.5 notify Elasticine as soon as it becomes aware of any unauthorised use of the ELASTICINE Software by any person.
- 6.5 If Elasticine becomes aware of any unauthorised access or has reason to suspect that the ELASTICINE Software is being used other than in accordance with this clause 1, Elasticine may, without prejudice to any other rights and remedies it may have:
- 6.5.1 change any Security Feature; or
 - 6.5.2 suspend (in whole or in part) the Client's rights to access and/or use the ELASTICINE Software,
- pending the outcome of an investigation into the relevant use.
- 6.6 The Client shall permit Elasticine to inspect and have access to any premises (and to the computer equipment located there) at or on which the ELASTICINE Software is being used or stored, and have access to any records kept in connection with it, for the purposes of ensuring that the Client is complying with the terms of this clause 7, provided that Elasticine provides reasonable advance notice to the Client of such inspections.
- 6.7 Elasticine may at any time change the content, format, nature or means of access of the ELASTICINE Software. Elasticine shall give the Client as much prior notice of such changes as is reasonably practicable. If any such changes have a material adverse effect on the Client's ability to use the ELASTICINE Software, the Client may terminate this Agreement on giving not less than 3 months' written notice to Elasticine.



- 6.8 The Client represents, warrants and undertakes that none of the Client Data will infringe the rights of any third party (including Intellectual Property Rights, privacy, publicity or other personal or proprietary rights) or will contain libellous, defamatory or otherwise unlawful material.
- 6.9 The Client undertakes not to:
- 6.9.1 use the ELASTICINE Database in any unlawful manner or in any other manner that could damage, disable, overload or impair the ELASTICINE Database or the servers on which it is hosted;
 - 6.9.2 use automated scripts to collect information from or otherwise interact with the ELASTICINE Database;
 - 6.9.3 upload, transmit, store or otherwise make available any Client Data that Elasticine may deem to:
 - 6.9.3.1 be misleading, harmful, threatening, unlawful, libellous, defamatory, infringing of any Intellectual Property Rights, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable; and/or
 - 6.9.3.2 contain software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; and/or
 - 6.9.3.3 be unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes" or any other form of solicitation; and/or
 - 6.9.3.4 be the private information of any third party, including, without limitation, addresses, phone numbers, email addresses, National Insurance numbers or other identifiers, credit card numbers and/or debit card numbers;
- 6.10 Elasticine is not responsible to the Client or any third party for unauthorised access to Client Data or the unauthorised use of the Services unless the unauthorised access or use results from Elasticine's failure to meet its security obligations. The Client is responsible for the use of the Services by any of its employees, any person it authorises to use the Services, any person to whom it has given access to the Services, and any person who gains access to its data or the Services as a result of its failure to use reasonable security precautions, even if such use was not authorised by it.
- 6.11 The Client represents and warrants and undertakes that it will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by Elasticine under this Agreement in any manner which would cause any member of the Elasticine Group to breach any applicable export control laws, rules, or regulations of any jurisdiction (including without limitation those under UK and US law).



- 6.12 The Client agree to indemnify Elasticine and its subsidiaries and affiliates, and each of Elasticine’s directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable legal fees and expenses arising out of or in connection with any of the Client Data or other use of the ELASTICINE Database, the Client’s conduct in connection with the ELASTICINE Database, and any breach by the Client of any applicable law or the rights of any third party.
- 6.13 Elasticine may from time to time enter into agreements with third party organisations offering software tools which Elasticine believes would benefit the Client in its use of the ELASTICINE software. Elasticine may grant access to Client Data to such organisations on the following terms only:
- 6.13.1 That any such organisation enter into a comprehensive non disclosure agreement with Elasticine;
 - 6.13.2 That on entering into the agreement Elasticine will notify all of its clients and shall not allow access to Client Data of any Client who notifies Elasticine that it does not want its data to be accessed by such organisation;
 - 6.13.3 Elasticine and the Client shall agree what fee if any is to be paid by the Client for access to the outputs generated by such organisation or organisations.

7. Availability, security, support and maintenance

- 7.1 Elasticine will use all reasonable efforts to ensure the ELASTICINE Software, and the ELASTICINE Database if hosted by Elasticine, remains available at all times. The Client, however, acknowledges that there are risks inherent in internet connectivity and that the Services may not be uninterrupted, error-free, or completely secure. Elasticine will not be liable for internet connectivity issues arising for reasons outside of its control nor will it be liable for any failure of a Cloud service provider.
- 7.2 Elasticine will use commercially reasonable efforts to provide error corrections to the ELASTICINE Software, as well as minor improvements to the ELASTICINE Software, and make such corrections and improvements generally available to Elasticine clients. Any other upgrades or enhancements to the ELASTICINE Software will not be made available by Elasticine as part of ongoing maintenance and may be subject to additional charges.

8. Anti-bribery compliance

- 8.1 Elasticine has internal policies and procedures in place to ensure that it and its employees, agents and representatives comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act and US Foreign Corrupt Practices Act (“**Relevant Requirements**”).
- 8.2 The Client shall not request or require Elasticine Group to do or omit to do anything which would cause Elasticine Group to contravene the Relevant Requirements.
- 8.3 Elasticine shall have no liability to the Client for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay arises out of or in connection with Elasticine’s observance of the Relevant Requirements.



9. Confidentiality

- 9.1 Confidential Information means all confidential information (however recorded or preserved), marked or otherwise indicated as being confidential or which by its nature should be regarded as confidential by a reasonable person (“**Confidential Information**”), which may be disclosed by a party or its employees, officers, representatives or advisers (together its “**Representatives**”) to the other party and that party's Representatives.
- 9.2 The terms of the Agreement shall also be Confidential Information for the purposes of this clause 9.
- 9.3 The term Confidential Information does not include any information that:
- 9.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 9);
 - 9.3.2 was known by or available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 9.3.3 was available to the receiving party on a non-confidential basis from a person who, as far as the receiving party is aware (having made prudent enquiries), is not prohibited from disclosing the information to the receiving party; or
 - 9.3.4 the parties agree in writing is not confidential or may be disclosed.
- 9.4 Each party shall keep the other party's Confidential Information confidential and shall not:
- 9.4.1 use any Confidential Information except for the performance of either party's obligations or the exercise either party's rights under this Agreement (the “**Permitted Purpose**”); or
 - 9.4.2 disclose any Confidential Information in whole or in part to any third party, except as permitted by this clause 9 and, in the case of the existence and/or terms of the Agreement, except as permitted in clause 12.
- 9.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
- 9.5.1 it informs those Representatives of the confidential nature of the Confidential Information before disclosure and such Representatives agrees to maintain the confidential nature of the Confidential Information on the terms set out in this clause 9; and
 - 9.5.2 at all times, it is responsible for its Representatives' compliance and liable for their non-compliance with the confidentiality obligations set out in this clause 9.
- 9.6 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 9.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated are granted or are to be implied to the other party.



- 9.8 The Client acknowledges that other than in relation to any publically available materials and/or any Client Materials contained therein, the ELASTICINE Software and any information, inferences and/or conclusions contained in the Deliverables (“**Elasticine Information**”) and all Intellectual Property Rights associated with Elasticine Information are owned by Elasticine.
- 9.9 Without prejudice to the materiality of any other clause, breach by the Client of this clause 9 shall be deemed a material breach.
- 9.10 Without prejudice to any other rights or remedies that Elasticine may have, the Client acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this clause 9 by the Client. Accordingly, Elasticine shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any suspected, threatened or actual breach of the terms of this clause 9 by the Client.

10. Use of information and limitation of liability

- 10.1 The Client acknowledges that it is responsible for the Client Data which is entered into the ELASTICINE Database and for any conclusions drawn from analysis of that information. Accordingly, the Client shall be fully responsible for the consequences of any decisions made which are influenced by such conclusions and Elasticine shall have no liability in relation to any such conclusions or decisions.
- 10.2 Any observations and/or commentary made by Elasticine in the course of providing the Services are for information purposes only, are not intended to be relied upon, should not be relied upon and do not constitute any form of advice on which reliance should be placed.
- 10.3 The Client acknowledges and agrees that, under the Agreement, it is engaging Elasticine and Elasticine alone. The Client acknowledges and agrees that it will not bring any claim personally against any such individual employees or consultants in relation to any losses which the Client suffers in connection with the use of the ELASTICINE Software, ELASTICINE Database and/or the provision of the Services.
- 10.4 The parties acknowledge and agree that:
- 10.4.1 the Charges reflect the level of liability undertaken by Elasticine as set out in this clause 10 and that if the exclusions and limitations contained in this clause 10 were not to apply then Elasticine would not be willing to supply the ELASTICINE Software and to provide the Services for that price;
- 10.4.2 it is not intended that Elasticine will or should provide any kind of insurance to the Client (or undertake any liability that would have the effect of doing so) and the Client is solely responsible for taking out any insurance policy or other financial cover for loss or damage which may arise from the Client’s use of the ELASTICINE Software and receipt of the Services and any action and/or decision taken by it (whether or not based on any information provided to it by Elasticine); and
- 10.4.3 the exclusions and limitations contained in this clause 10 are regarded by the Client as reasonable and reflect the agreed balance of risk between the parties.
- 10.5 Nothing in this Agreement shall limit or exclude Elasticine's liability for:
- 10.5.1 death or personal injury caused by its negligence;



10.5.2 fraud or fraudulent misrepresentation; or

10.5.3 any other liability to the extent that it cannot be limited or excluded by applicable law.

10.6 Subject to clause 10.5, Elasticine shall have no liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: (a) loss of profits or revenues; (b) loss of business or damage to reputation; (c) loss of assets; (d) loss of anticipated savings; (e) trading, market or portfolio losses; (f) loss of employment; (g) depletion of goodwill and/or similar losses; (h) loss of corruption of data or information; or (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, including (in each case) such losses or damages arising from any breach of the Agreement, from any termination of the Agreement or from the Client's use of the ELASTICINE Software, Deliverables, or the Services generally.

10.7 Subject to clauses 10.5 and 10.6, Elasticine's total aggregate liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise, arising under or in connection with this Agreement shall be limited to an amount equivalent to the Charges paid or payable in the 12 months immediately preceding the event giving rise to the liability under this Agreement.

10.8 The limitations and exclusions on liability in this clause 10 shall apply to all liability of Elasticine under this Agreement whether or not such liability was foreseeable, even if Elasticine has been advised or was aware of the possibility of such loss or damages.

11. Consequences of termination

11.1 On expiry or termination of the Agreement (for any reason):

11.1.1 the Client shall immediately pay to Elasticine any sums due to Elasticine under this Agreement up to the date of termination;

11.1.2 the Client may remove any or all the Client Data from the ELASTICINE Database;

11.1.3 if hosted on Elasticine servers, Elasticine will provide the Client with a copy of all the Client Data in CSV file format; and

11.1.4 all rights granted to the Client under clause 6 shall cease and the Client shall immediately cease to access and/or use of the ELASTICINE Software.

11.2 Termination of the Agreement shall not affect the accrued rights, remedies, obligations and liabilities of the parties existing at termination.

11.3 Any terms of the Agreement which expressly or by implication have effect after termination shall continue in full force and effect.

12. Announcements and public references

12.1 Elasticine hereby agrees that the Client may make public reference to the fact that it uses the ELASTICINE Software and that Elasticine provides this software and related Services, other than in respect of any Statement of Works which specifies the use to be confidential.

12.2 Subject to clause 12.3, neither party shall make, or permit any person to make, any announcement, communication or disclosure concerning the specifics terms of the Agreement without the prior written consent of the other party.



- 12.3 Where an announcement, communication or disclosure is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the party required to make the announcement, communication or disclosure shall, provided it is not prohibited from doing so by law, promptly notify the other party. The party concerned shall make all reasonable attempts to agree the contents of the announcement, communication or disclosure before making it.

13. Dealings with designated entities

- 13.1 Each party warrants to the other that it and its employees, agents, representatives and affiliates have not, do not, and do not intend to, breach any export controls or sanctions laws and regulations put in place by the UK, EU, US or any other jurisdiction whose laws or regulations may be applicable to the activities connected with this Agreement.
- 13.2 Each party warrants to the other that it and its employees, agents, representatives and affiliates have no connections or relationships, directly or indirectly, with any listed or designated persons or entities as set out in the UK, EU or US sanctions regimes or any other similar regime adopted by any jurisdiction whose laws or regulations may be applicable to the activities contemplated in or connected to this Agreement.
- 13.3 If it comes to the attention of a party that any connections or relationships as described in clauses 13.1 and/or 13.2 have come into existence (whether before or after the Agreement has been entered into), that party shall promptly notify the other party in writing of all relevant details of such connections or relationships including the name of the concerned designated or listed entity, the nature of the connection or relationship with the relevant party and the date of the commencement of such connection or relationship.
- 13.4 Each party (the “Indemnifying Party”) shall indemnify the other party (the “Indemnified Party”) from and against all costs and expenses incurred by the Indemnified Party as a result an inquiry, investigation, claim or proceeding brought by a third party (including any regulatory body) against the Indemnified Party arising out of or in connection with the Indemnifying Party’s connection or relationship with any listed or designated persons or entities.
- 13.5 Nothing in this Agreement shall require either party to act illegally, including, without limitation, by requiring payments to be made for the benefit of any listed or designated persons or entities as set out in the UK, EU or US sanctions regimes or any other similar regime adopted by any jurisdiction whose laws may be applicable to the activities contemplated in or connected with this Agreement.

14. Force majeure

- 14.1 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Agreement if, and to the extent that, such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party (a “**Force Majeure Event**”). For the avoidance of doubt, a Force Majeure Event includes, without limitation, the entry into force of any new legislation or regulation which delays or does not permit the obligations under the Statement of Works to be performed.



If a Force Majeure Event prevents Elasticine from providing access to the ELASTICINE Software or from delivering the Services for more than 3 months, the Client may, without limiting its other rights or remedies, terminate the use of the ELASTICINE Software and/or the affected Services by giving 3 months' written notice to Elasticine. On the expiry of this notice period, the Agreement or part of the Agreement relating to the affected Services will terminate.

15. Assignment

- 15.1 Subject to clause 15.2, neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 15.2 Either party shall be entitled to assign or transfer its rights or obligations under the Agreement to a Group Company or, in the case of Elasticine only, to a member of the Elasticine Group provided that such transfer or assignment will not have a material adverse effect on the ability of the party to perform its obligations under the Agreement.

16. No partnership or agency

Nothing in the Agreement is intended to, or shall operate to, create a partnership between its parties, or to authorise either party to act as agent for the other, and neither party to the Agreement made under it shall have authority to act in the name or on behalf of or otherwise to bind the other party in any way.

17. Third party rights

- 17.1 A person who is not a party to the Agreement made under it shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

18. Waiver

- 18.1 A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to the Agreement to exercise any right or remedy provided under the Agreement, or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 18.2 No single or partial exercise of any right or remedy provided under the Agreement, or by law shall preclude or restrict the further exercise of that or any other right or remedy.

19. Severance

- 19.1 If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 19.2 If any invalid, unenforceable or illegal provision of the Agreement made under it would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



20. Notices

- 20.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or other next working day delivery service (providing proof of postage) or sent by facsimile (provided that a copy of the notice or communication is sent by pre-paid first-class post on the same or next working day following transmission of the facsimile).

For the purposes of this clause 20, notices or other communication shall be sent to the parties as follows:

- 20.1.1 for Elasticine:

marked for the attention of: **Owain Franks**

address: **Elasticine Limited, 83 Cholmley Gardens London NW6 1UN**

for the Client, at the address specified in the relevant Statement of Works.

Either party may amend its details for the purposes of this clause 0 from time to time by giving written notice to the other party.

- 20.2 Any notice or communication shall be deemed to have been received if delivered by hand, at the time the notice is left at the proper address, or if sent by fax, at 9.30 am on the next Business Day after transmission, or otherwise at 9.30 am on the second Business Day after posting.
- 20.3 This clause 20 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. Alternative dispute resolution

- 21.1 If any dispute arises in connection with the Agreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure.
- 21.2 Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (“ADR notice”) to the other party requesting a mediation. A copy of the request should also be sent to CEDR.
- 21.3 The mediation will start no later than 30 days after the date of the ADR notice. Neither party may commence any court proceedings in relation to any dispute arising out of the Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

22. Governing law and jurisdiction

- 22.1 The Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.
- 22.2 The parties to the Agreement irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or their subject matter or formation (including non-contractual disputes or claims).

