



ARTIFAX SOFTWARE LIMITED
STANDARD TERMS AND CONDITIONS

1. Applicability

These standard terms and conditions must be read alongside the Quote, which together form an Agreement for Artifax to provide certain Services to the Customer. A legally binding contract, expressly incorporating this document, is formed only once the Customer confirms its acceptance of the Quote. Where as a result of any successful Tender any Additional Terms and Conditions are to apply to the Agreement, this shall be specified in the Quote.

2. Interpretation

The following definitions apply to the Agreement:

Additional Terms and Conditions: any additional terms and conditions that shall be deemed expressly incorporated to the Agreement, as detailed in the Quote.

Agreement: the agreement between Artifax and the Customer for the provision of the Services, comprising this document and the Quote and any variation to it (in accordance with clause 18.4).

Artifax: Artifax Software Limited (Company Number 2007321) whose registered office is at 17A West Street, Epsom, Surrey KT18 7RL.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer (whether as named users or as concurrent users) to use the Services and the Documentation, as outlined in the Quote.

Billing Date: the first day of the next month following the Installation Date, or as otherwise specified in the Quote.

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

Change of Control: as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.6 or clause 14.7.

Contract Minimum Term: as defined in the Quote.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach: each take the meaning given in the GDPR.

Customer: has the meaning given in the Quote and includes the Customer's director(s), partner(s) and other authorised signatories.



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

Data Loss Event: any event that results in unauthorised access to Personal Data held by Artifax under the Agreement and any actual loss or destruction of Personal Data in breach of the Agreement, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter:

- a) unless and until the General Data Protection Regulation (EU: 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and then
- b) any successor legislation to the GDPR or the Data Protection Act 1998.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted to Data Subjects on to access their Personal Data, pursuant to the Data Protection Legislation.

Documentation: the documentation made available to the Customer by Artifax to the Customer from time to time which sets out instructions for the Software and/or any Services.

Effective Date: the date the Customer accepts the Quote.

Extended Support Hours: as defined in the Quote.

Expenses: includes any expenses and disbursements reasonably incurred by Artifax in connection with the Agreement including, without limitation, the travel and subsistence costs of any of Artifax's directors, employees, consultants, contractors or other persons appointed by Artifax.

Fees: the Subscription Fees plus any Service Fees.

Installation Date: means the date given in the Quote (or if no such date is specified in the Quote, the date agreed in writing between the parties following the Effective Date but prior to the Billing Date) on which installation and configuration of the Customer's access to the Software and any related Services shall be carried out.

LED: the Law Enforcement Directive (EU: 2016/680).

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Quote: the quote sent to the Customer by email or otherwise detailing the Services, the Fees, the number and type of User Subscriptions and such other information as is relevant to the Agreement.



Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 evaluation the effectiveness of such measures.

Renewal Period: each successive period of 12 months (or such other period of time as is defined in the Quote) following the end of the Minimum Contract Term.

Services: the services to be provided by Artifax to the Customer under the Agreement (including, without limitation, installation and configuration of the Customer's access to the Software and/or any general services passport) as detailed in the Quote.

Service Fees: the fees payable by the Customer to Artifax for the provision of any Services detailed in the Quote.

Software: ArtifaxEvent, ArtifaxAgora, any related application programming interfaces, and any other software applications provided by Artifax from time to time.

Subscription Fees: the fees payable by the Customer to Artifax for the User Subscriptions, as detailed in the Quote.

Subscription Term: has the meaning given in clause 3.1 (being the Contract Minimum Term together with any subsequent Renewal Periods).

Sub-processor: any third party appointed to process Personal Data on behalf of Artifax in relation to the Agreement.

Tender: any tender documents submitted by Artifax to the Customer (or other public body or relevant authority) relating to the provision of the Services.

Support Services Policy: as attached at appendix 1.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 4.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Agreement.

Virus: any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise), or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.



3. Term and installation

3.1 The Agreement shall, unless otherwise terminated as provided in clause 17, commence on the Effective Date and continue for the Contract Minimum Term and, thereafter, the Agreement shall be automatically renewed for each Renewal Period, unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Contract Minimum Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Contract Minimum Term or Renewal Period, or
- (b) otherwise terminated in accordance with the provisions of the Agreement

and the Contract Minimum Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

3.2 Installation and setup of the Customer's access to the Software shall take place on the Installation Date, or such other date as the parties may agree from time to time in writing. The Customer acknowledges that it may be unable to access the Software or until installation and setup has been completed by Artifax.

3.3 Where the Services include installation of the Software at the Customer's or other nominated premises, the Customer shall:

- (a) provide Artifax with all necessary information, facilities, support and services reasonably required by Artifax to carry out such Services including (without limitation and at no charge to Artifax) adequate office accommodation, a secure work space, telephone services, access to the applicable computers, software, hardware and systems
- (b) full access to the areas in the locations in which the Services are to be performed
- (c) take all reasonable steps to ensure the health and safety of Artifax's staff while they are at the Customer's premises (or any premises under the Customer's control), and
- (d) ensure that the computers, hardware or software Artifax are asked to use, modify or install the Software on are owned by the Customer or legally licensed for use by the Customer.

The Customer acknowledges that Artifax shall not be responsible for any data losses suffered by the Customer whether as a result of Artifax carrying out the Services or the Customer's use of the Software, and Artifax provides no guarantee that any Software installed or configured on the Customer's own hardware will be bug or error free.



4. Billing, charges and payment

4.1 The Customer acknowledges and agrees that:

- (a) any Service Fees are payable on full on the Effective Date, upon production of an invoice by Artifax
- (b) Subscription Fees are payable in full in advance of the next Billing Date upon production of an invoice by Artifax, unless otherwise agreed in writing by Artifax. Artifax may in its sole discretion permit the Customer to make monthly payments, provided that such payments are made via direct debit, and
- (c) any invoices issued by Artifax relating to Expenses are payable in full in arrears upon presentation, and such invoices shall be prepared by Artifax as and when necessary as deemed by Artifax in its sole discretion, and
- (d) if any particular invoice issued by Artifax does not specify payment terms, such payment shall fall due immediately upon the date of that invoice, unless agreed otherwise in writing by Artifax.

4.2 The Customer shall:

- (a) on the Effective Date provide to Artifax valid, up-to-date and complete payment information acceptable to Artifax (including, where agreed by Artifax, a duly executed direct debit mandate from the Customer in favour of Artifax) and any other relevant valid, up-to-date and complete contact and billing details, and
- (b) pay any Service Fees to Artifax, and the Customer acknowledges that no Installation Date shall be booked until any such Service Fees have been settled in full.

4.3 Where the Customer provides:

- (a) direct debit or debit or credit card details to Artifax, the Customer hereby authorises Artifax to take such payments or bill such debit or credit card:
 - (i) on the Billing Date, such further Fees payable in respect of the Contract Minimum Term in accordance with any payment terms outlined in the Quote or otherwise agreed in writing between Artifax and the Customer, and
 - (ii) subject to clause 3.1, on each anniversary of the Billing Date, for the Fees payable in respect of the next Renewal Period
- (b) other approved payment information to Artifax, Artifax shall invoice the Customer:
 - (i) on the Billing Date for such further Fees payable in respect of the Contract Minimum Term in accordance with any payment terms



outlined in the Quote or otherwise agreed in writing between Artifax and the Customer, and

(ii) subject to clause 3.1, at least 30 days prior to each anniversary of the Billing Date, for the Fees payable in respect of the next Renewal Period, and the Customer shall pay each invoice within 30 days after the date of such invoice.

4.4 If Artifax has not received payment within on or prior to the relevant due date, and without prejudice to any other rights and remedies of Artifax:

- (a) Artifax may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Artifax shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid, and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

4.5 All amounts and fees stated or referred to in the Agreement:

- (a) shall be payable in the currency specified in the Quote
- (b) are, subject to clause 4.3(b), non-cancellable and non-refundable
- (c) are exclusive of value added tax, which shall be added to Artifax's invoice(s) at the appropriate rate.

4.6 Where the number of User Subscriptions or the scope of the Services is other changed after the Effective Date, Artifax shall be entitled to increase the total Fees due under the Agreement, including the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 6.3 and any other fees payable pursuant to clause 7.3 and the Agreement shall be deemed varied accordingly.

4.7 Where there is any other increase in Fees prior to the commencement of a Renewal Period, Artifax shall notify the Customer of such increase at least 30 days prior to taking payment by issuing an invoice or further Quote in respect of that Renewal Period.

5. User subscriptions

5.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 6.3 and clause 4.1, the restrictions set out in this clause 5 and the other terms and conditions of the Agreement, Artifax hereby grants to the Customer a non-exclusive,



non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

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

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time
- (b) in relation to named User Subscriptions, it will not allow or suffer any named User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation
- (c) in relation to concurrent User Subscriptions, it will require each individual Authorised User utilising the concurrent User Subscription to maintain the confidentiality of the login and password details for that concurrent User Subscription and not share or permit any third party to use them without the Customer's prior consent
- (d) each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential
- (e) it shall maintain a written, up to date list of current Authorised Users and provide such list to Artifax within 5 Business Days of Artifax's written request at any time or times
- (f) it shall permit Artifax to audit the Services in order to establish the identity of each Authorised User. Such audit may be conducted no more than once per quarter, at Artifax's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business
- (g) if any of the audits referred to in clause 5.2(f) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Artifax's other rights, the Customer shall promptly disable such passwords and Artifax shall not issue any new passwords to any such individual, and
- (h) if any of the audits referred to in clause 5.2(f) reveal that the Customer has underpaid Fees to Artifax, then without prejudice to Artifax's other rights, the Customer shall pay to Artifax an amount equal to such underpayment as calculated in accordance with the prices set out in the Quote within 14 Business Days of the date of the relevant audit.



- 5.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, or that facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or is otherwise illegal or causes damage or injury to any person or property, and Artifax reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 5.4 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means, or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, or
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation, or
 - (c) use the Services and/or Documentation to provide services to third parties, or
 - (d) subject to clause 18.9, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 5, and
- 5.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Artifax.
- 5.6 The rights provided under this clause 5 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.



6. Additional user subscriptions

- 6.1 Subject to clause 6.2 and clause 6.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Quote, and Artifax shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Agreement.
- 6.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Artifax in writing. Artifax shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where Artifax approves the request, Artifax shall activate the additional User Subscriptions within 3 Business Days of its approval of the Customer's request.
- 6.3 If Artifax approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Artifax's invoice, pay to Artifax the relevant fees for such additional User Subscriptions as set out in the Quote (or any additional Quote which shall, once signed and dated by both parties constitute a variation to the Agreement, in accordance with clause 18.4) and, if such additional User Subscriptions are purchased by the Customer part way through the Contract Minimum Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Artifax for the remainder of the Contract Minimum Term or then current Renewal Period (as applicable), unless otherwise specified in the Quote.

7. Services

- 7.1 Artifax shall, during the Subscription Term, in such manner as may be agreed from time to time between Artifax and the Customer, provide the Services and make available the Documentation to the Customer on and subject to the terms of the Agreement.
- 7.2 Artifax shall use commercially reasonable endeavours to make the Software available 24 hours a day, seven days a week.
- 7.3 Artifax will, as part of the Services, provide the Customer with Artifax's standard customer support services during Normal Business Hours in accordance with Artifax's Support Services Policy in effect at the time that the Services are provided. Artifax may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase Extended Support Hours separately at Artifax's then current rates.
- 7.4 The Customer may from time to time request access to additional Services outside of those specified on the original Quote. Any such request must be made by on a separate



Quote, which once signed and dated by both Artifax and the Customer, shall be incorporated into the Agreement and shall constitute a variation to the Agreement in accordance with clause 18.4.

- 7.5 Where Artifax agrees to deliver Services to the Customer and such Services are incapable of being delivered through no fault of Artifax's, the Customer agrees to pay any cancellation fees to Artifax as may be detailed in a Quote.

8. Data protection, privacy and security

- 8.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Artifax is the Processor. Artifax shall notify the Customer as soon as is reasonably practicable if it considers that any of the Customer's instructions or actions infringe the Data Protection Legislation.

- 8.2 Artifax shall provide reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the provision of the Services
- (c) an assessment of the risks to the rights and freedoms of Data Subjects, and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 8.3 Artifax shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:

- (a) process that Personal Data only in accordance with the Agreement unless it is required to do otherwise by law, and where this is the case, Artifax shall promptly notify the Customer before processing it (unless such notification is prohibited by law)
- (b) ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, having taken account of the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development of the Software, and the cost of implementing any such measures
- (c) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications,



impact assessments and consultations with supervisory authorities or regulators

- (d) ensure that it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that appropriate confidentiality undertakings are in place with such Contractor Personnel
- (e) notify the Customer without undue delay on becoming aware of a Personal Data breach
- (f) not transfer any Personal Data outside of the EU unless the Customer provides its prior written consent to do so, and the following conditions are fulfilled:
 - (i) the Customer or Artifax have provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46 or LED Article 37)
 - (ii) the Data Subject has enforceable rights and effective legal remedies
 - (iii) Artifax complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not bound in this way, uses reasonable endeavours to assist the Customer in meeting its obligations), and
 - (iv) Artifax complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of Personal Data
- (g) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement, unless Artifax is required by law to retain the Personal Data, and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.

8.4 Artifax shall notify the Customer as soon as is reasonably practicable if it:

- (a) receives a Data Subject Access Request (or a purported one)
- (b) receives a request to rectify, block or erase any Personal Data
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Agreement



- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law, or
- (f) becomes aware of a Data Loss Event.

Artifax's obligations under this clause to notify the Customer shall include the provision of further relevant information in phases, as details become available.

8.5 Taking into account the nature of the processing, Artifax shall provide the Customer with full assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 8.4 by providing, as soon as is reasonably practicable:

- (a) the Customer with full details and copies of the complaint, communication or request
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject
- (d) assistance as requested by the Customer following any Data Loss Event, or
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

8.6 Artifax shall maintain complete and accurate records and information to demonstrate its compliance with this clause, provided always that this requirement shall not apply where Artifax employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional
- (b) the Customer determines that the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR, and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

8.7 Prior to allowing any Sub-processor to process any Personal Data related to the Agreement, Artifax shall:

- (a) notify the Customer in writing of the intended Sub-processor and processing
- (b) obtain the Customer's written consent,



- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause such that they apply to the Sub-processor, and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require

and Artifax confirms that it shall remain liable for all acts and omissions of any Sub-processor.

9. Customer data

- 9.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 9.2 Artifax shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Artifax shall be for Artifax to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Artifax. Artifax shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Artifax to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

10. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Artifax makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Artifax. Artifax recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Artifax does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

11. Artifax's obligations

- 11.1 Artifax undertakes that the Services will be performed with reasonable skill and care.



- 11.2 The undertaking at clause 11.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Artifax's instructions, or modification or alteration of the Services by any party other than Artifax or Artifax's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Artifax will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 11.1. Notwithstanding the foregoing, Artifax:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free, or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements, and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 11.3 The Agreement shall not prevent Artifax 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.
- 11.4 Artifax warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

12. Customer's obligations

The Customer shall:

- (a) provide Artifax with:
 - (i) all necessary co-operation in relation to the Agreement, and
 - (ii) all necessary access to such information as may be required by Artifax in order to provide the Services, including but not limited to Customer Data, security access information and configuration services
- (b) comply with all applicable laws and regulations with respect to its activities under the Agreement
- (c) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's



provision of such assistance as agreed by the parties, Artifax may adjust any agreed timetable or delivery schedule as reasonably necessary

- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Artifax, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services
- (f) ensure that its network and systems comply with the relevant specifications provided by Artifax from time to time, and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Artifax's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

13. Proprietary rights

13.1 The Customer acknowledges and agrees that Artifax and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

13.2 Artifax confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.

14. Confidentiality

14.1 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
- (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, or



(d) is independently developed by the receiving party, which independent development can be shown by written evidence.

- 14.2 Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and 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.
- 14.3 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.
- 14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed 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 such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Artifax's Confidential Information.
- 14.7 Artifax acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.8 No 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.
- 14.9 The above provisions of this clause 14. shall survive termination of the Agreement, however arising.

15. Indemnity

- 15.1 The Customer shall defend, indemnify and hold harmless Artifax against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:



- (a) the Customer is given prompt notice of any such claim
 - (b) Artifax provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense, and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 15.2 In the defence or settlement of any claim, Artifax may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.3 In no event shall Artifax, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Artifax, or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Artifax, or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Artifax or any appropriate authority.
- 15.4 The foregoing and clause 16.3(b) state the Customer's sole and exclusive rights and remedies, and Artifax's (including Artifax's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16. Limitation of liability

- 16.1 Except as expressly and specifically provided in the Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Artifax shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Artifax by the Customer in connection with the Services, or any actions taken by Artifax at the Customer's direction
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement, and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.



16.2 Nothing in the Agreement excludes the liability of Artifax:

- (a) for death or personal injury caused by Artifax's negligence,
- (b) for fraud or fraudulent misrepresentation, or
- (c) against fines or claims made under the GDPR.

16.3 Subject to clause 16.1 and clause 16.2:

- (a) Artifax shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for 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, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under the Agreement, and
- (b) Artifax's total aggregate liability in contract (including in respect of the indemnity at clause 15), 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 the total Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

17. Termination

17.1 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 10 days after being notified in writing to do so
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
- (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.2 On termination of the Agreement for any reason:



- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party
- (c) Artifax may destroy or otherwise dispose of any of the Customer Data in its possession unless Artifax receives, no later than ten days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Artifax shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Artifax in returning or disposing of Customer Data,
- (d) any outstanding Fees owed to Artifax by the Customer shall immediately be payable in full, including any annual Fees payable on a monthly basis by the Customer, and
- (e) 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.

18. Force majeure

18.1 Interpretation. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). Words in the singular shall include the plural and in the plural shall include the singular. A reference to one gender shall include a reference to the other genders. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision. Where something is required to be done 'in writing', that includes by email.

18.2 Force majeure. Artifax shall have no liability to the Customer 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, network downtime or errors, the failure of any of Artifax's upwards infrastructure provider(s), strikes, lock-outs or other industrial disputes (whether involving the workforce of Artifax 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 Artifax's or its sub-contractors, provided that the Customer is notified of such an event and its expected duration.

- 18.3 Conflict. If there is an inconsistency between any of the provisions in the main body of this document and the Quote, the provisions in the main body of this document shall prevail.
- 18.4 Variation. No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.5 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.
- 18.6 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.
- 18.7 Severance. 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. 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.
- 18.8 Entire agreement. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.
- 18.9 Assignment. The Customer shall not, without the prior written consent of Artifax, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. Artifax may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.



- 18.10 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).
- 18.11 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.
- 18.12 Notices. Any notice or other communication given to a party under or in connection with the Agreement shall be by email, using the email addresses regularly used in communications between Artifax and the Customer. Such notices are deemed received one hour after the timestamp indicating the email was sent, provided that the email does not bounce back to the sender at any time within the following 72 hours. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.13 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.
- 18.14 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).



Appendix 1: Support Services Policy

1. Artifax shall provide support during Normal Business Hours. For outside the normal support hours of operation Artifax shall provide a mobile phone number. Support calls outside standard support hours will be charged according to Artifax's standard scale of charges, from time to time.
2. If the Customer at any time discovers any fault with the supported items it shall as soon as is reasonably practicable notify Artifax of the same.
3. Artifax shall use reasonable commercial endeavours to ensure that the fault is corrected within the category time scales referred to below using reasonable care and skill.

Category A: a fault which makes the support items (or any part thereof) unusable and which has a material effect upon the functionality, accuracy or performance of any function upon which the Customer relies for the efficient conduct of the relevant part of its business.

Artifax shall respond within 30 minutes and use reasonable endeavours to attempt to fix the fault concerned within four working hours, in each case of notification (but in the event that Artifax fails to achieve a four working hour fix, it will use its reasonable endeavours to achieve a fix as soon as possible thereafter). In providing a fix for Category A faults, Artifax's first priority shall be to restore the support item's functionality to working order as soon as possible

Category B: a fault which is not Category A or Category C, i.e. faults that can easily worked round which do not have a material effect upon the functionality, accuracy or performance of any function upon which the Customer relies for the efficient conduct of the relevant part of its business.

Artifax shall use reasonable endeavours to respond to the notification within one hour and to attempt to fix the fault concerned as fast as possible and in any event within 10 working days of notification (but in the event that Artifax fails to achieve a fix within this timescale, it will use reasonable endeavours to achieve a fix as soon as possible thereafter). In doing so Artifax shall not be required to work outside normal working hours

Category C: a minor cosmetic fault, which does not affect the accuracy or performance of the supported items and also questions about the setting up or use of the system.

Artifax shall respond to the notification within one hour and shall attempt to fix the fault within 6 months of notification (but in the event that Artifax fails to achieve a fix



within this timescale, it will use reasonable endeavours to achieve a fix as soon as possible thereafter). In doing so Artifax shall not be required to work outside normal working hours.

4. The Customer acknowledges that Artifax may provide a temporary, practical work around solution (as opposed to a permanent fix) for a fault; if Artifax does provide a temporary work-around solution it will however use its reasonable endeavours to provide a permanent fix as soon as possible thereafter.
5. Immediately following such a software fault correction being completed, Artifax shall deliver to the Customer the corrected version of the object code for the software, including documentation specifying the nature of the correction and providing instructions for the proper use of the corrected version of the software.