

NetFM UK Ltd Terms and Conditions

1. SERVICES

1.1 The Supplier shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to these terms.

1.2 The Customer may use the Service and Documentation for its internal business purposes only.

1.3 The Supplier may update the Services, provided that there shall be no material reduction in their functionality.

2. RESTRICTIONS

2.1 Except as expressly set out in these terms or as permitted by applicable law, the Customer undertakes that it will not, and will not permit anyone else to:

- (a) store, copy, modify, distribute, or resell any of the information or other content made available pursuant to the Services;
- (b) compile or collect any such content as part of a database or other work;
- (c) use any automated tool (e.g., robots, spiders) to access or use the Services;
- (d) rent, lease, or sublicense the Customer's access to the Services to another person;
- (e) use any Services for any purpose except for Customer's own internal use;
- (f) circumvent or disable any digital rights management, usage rules, or other security features of the Services;
- (g) use the Services in a manner that overburdens, or that threatens the integrity, performance, or availability of, the Services; or
- (h) remove, alter, or obscure any proprietary notices (including copyright and trademark notices) on any portion of the Services.

3. SUPPLIER'S OBLIGATIONS

3.1 The Supplier undertakes to provide the Services substantially in accordance with the agreed SLA (Service Level Agreement).

3.2 The Supplier shall not be liable for breach of the undertaking at clause 3.1 to the extent that any non-conformance is caused by use of the Services contrary to the Supplier's reasonable instructions, or modification or alteration of the Services by any party other than the Supplier (or someone authorised by the Supplier).

3.3 If the Supplier is in breach of the undertaking at clause 3.1, it will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with alternative but equivalent services. Such correction or substitution is the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 3.1.

3.4 The Supplier:

- (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.

3.5 These terms shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these terms.

3.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms and undertakes to comply with the provisions of the Bribery Act 2010.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary cooperation in relation to this Agreement; and

- (ii) all necessary access and information as may be required by the Supplier in order to provide the Services;

- (b) comply with all applicable laws and regulations with respect to its activities under these terms;

- (c) ensure that no personal data (as defined in Data Protection Legislation) is entered in the Software;

- (d) ensure that the Customer's authorised users use the Services and the Documentation in accordance with these terms and shall be responsible for any authorised user's breach of these terms;

- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these terms, including without limitation the provision of the Services;

- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time necessary to provision of the Services; and

- (g) be, to the extent permitted by law and except as otherwise expressly provided in these terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres.

4.2 If the Customer delays in meeting its obligations under this clause 4, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary.

5. CHARGES AND PAYMENT

5.1 The Customer shall pay the Charges on the Payment Terms

5.2 The Supplier shall be entitled to increase the Charges with effect from each anniversary of the date of this agreement by the greater of 3% or the percentage increase in the latest-published Retail Prices Index.

5.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

5.4 All amounts and fees stated or referred to in these terms:

- (a) shall be payable in pounds sterling;
- (b) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

6. INDEMNITY

6.1 The Customer acknowledges and agrees that it is in control of the uses to which it puts the Services and accordingly it shall indemnify and keep indemnified the Supplier against claims, actions, proceedings, losses, damages, expenses and costs 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) the Supplier 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.

6.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgement or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

6.3 In the defence or settlement of any claim, the Supplier 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,

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terminate this agreement on 2 business days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

6.4 In no event shall the Supplier, its employees, agents and subcontractors 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 the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the reasonable instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement.

6.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees, agents' and subcontractors') entire obligations and liability, for intellectual property infringement.

7. LIMITATION OF LIABILITY

7.1 Except as expressly and specifically provided in these terms:

- (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. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier 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 these terms; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

7.2 Nothing in these terms excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

7.3 Subject to clause 7.1 and clause 7.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, 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 these terms; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to Charges paid during the 12 months immediately preceding the date on which the claim arose.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, Services and the Documentation. Except as expressly stated herein, these terms do 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 agreements in respect of the Services or the Documentation.

8.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these terms.

9. CONFIDENTIALITY

9.1 Each party may be given access to information that is proprietary or confidential and is clearly labelled as such (Confidential Information) from the other party in order to perform its obligations under these terms.

9.2 Subject to clause 9.4, 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 these terms.

9.3 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 breach of these terms.

9.4 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.

9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

9.6 The Supplier acknowledges that the data inputted by the Customer (or on its behalf whether by the Supplier or otherwise) for the purpose of using the Services or facilitating the Customer's use of the Services and/or generated in the course of the Customer's use of the Services (**Customer Data**) is the Confidential Information of the Customer.

10. CUSTOMER DATA

10.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

10.2 Unless the parties agree otherwise in writing, the Supplier shall only be obliged to retain a copy of Customer Data for a period of six months following the date on which those Customer Data were first inputted for the purpose of using the Services or facilitating the Customer's use of the Services.

10.3 The Supplier shall follow its back-up procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

10.4 Each party undertakes to comply with all applicable requirements of all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018. 2018 (**Data Protection Legislation**). This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.5 The parties acknowledge that in relation to any personal data in the Customer Data (**Personal Data**) for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

10.6 Without prejudice to the generality of clause 10.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this Agreement.

10.7 Without prejudice to the generality of clause 10.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by law to otherwise process that Personal Data. Where the Supplier is relying on law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by law unless the law prohibits the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and

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resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the UK or EEA unless the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iii) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) 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;

(f) notify the Customer without undue delay on becoming aware of a personal data breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.8 The Customer consents to the Supplier appointing third-party processors of Personal Data under this agreement as notified by the Supplier from time to time. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processors into a written agreement which reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

10.9 The Customer shall notify the Supplier within 30 days of any reasonable objection to the appointment of a third-party processor of Personal Data and the parties shall enter into good faith discussions to resolve the objection.

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11. TERMINATION

11.1 Each party may terminate this agreement immediately by written notice to the other party if it commits a material or persistent breach of these terms which it fails to remedy (if remediable) within 14 days after the service of written notice requiring it to do so.

11.2 On termination of this agreement for any reason:

(a) all licences granted under these terms shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

(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) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination shall not be affected or prejudiced.

12. FORCE MAJEURE

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

the Customer is notified of such an event and its expected duration.

13. VARIATION

13.1 Subject to clause 13.2 No variation of these terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.2 The Supplier shall be entitled to vary these terms unilaterally, provided that there is no material adverse effect upon the rights and obligations of the Customer as a result. The Supplier shall notify the Customer in writing in advance of any change that will or is reasonably likely to have a material adverse effect and the Customer shall be entitled by notice in writing to terminate this agreement within thirty days of the date of the Supplier's notice.

14. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these terms 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.

15. RIGHTS AND REMEDIES

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

16. SEVERANCE

16.1 If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

16.2 If any provision or part-provision of these terms is deemed deleted under clause 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. ENTIRE AGREEMENT

17.1 These terms and the Contract Particulars constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

18. ASSIGNMENT

- o Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.

19. NO PARTNERSHIP OR AGENCY

- o Nothing in these terms 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,

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the assumption of any obligation or liability and the exercise of any right or power).

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

20. THIRD PARTY RIGHTS

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

21. NOTICES

21.1 Any notice required to be given under these terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract Particulars, or such other address as may have been notified by that party for such purposes.

21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours,

22. GOVERNING LAW

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

23. JURISDICTION

23.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims) provided that the Supplier may enforce any judgement of the courts of England and Wales in the courts of any jurisdiction