

1. DEFINITIONS AND INTERPRETATION

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

Account Managers: Customer's Account Manager and the Acora Account Manager.

Acora: means the member of the Acora group of companies named in the Order.

Acora Account Manager: Acora primary representative appointed under Clause 12.1.

Acora Assets: the computer hardware, software and other equipment, owned and/or used by Acora in the performance of the Services, title in which does not pass to the Customer.

Agreement: the agreement between the Parties for the Services which shall incorporate these Service Agreement Terms, the Order and any documents referred to in the Order.

Charges: the fees, charges and payments payable to Acora by the Customer for the Services as set out in the Order.

Confidential Information: has the meaning in Clause 10.

Customer: the person, company or other legal entity named as such in the Order.

Customer's Account Manager: Customer's primary representative appointed under Clause 12.2.

Customer Assets: computer hardware and software owned by and/or licensed to the Customer.

Customer Locations: Customer premises to which Acora has agreed to provide the Services.

Disclosing Party: Party that discloses Confidential Information to the other Party.

Dispute Notice: a written notice from a Party detailing a dispute to be subject to Clause 15.

Force Majeure: acts, events, omissions or accidents beyond a Party's reasonable control, including general strikes, lock-outs or other national industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm.

GDPR: the General Data Protection Regulation 2016 and any successor or delegated legislation and the terms **controller, data subject, personal data, personal data breach, processing and processor** shall each have the meaning set out in Article 4 of GDPR, and the terms process and processed shall be interpreted accordingly.

IPR: intellectual property rights, being patents, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, to inventions, in confidential information (including know-how and trade secrets), computer software, databases and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Level 2 and Level 3 Referral Personnel: Parties' representatives that deal with disputes in accordance with Clause 15, as advised to each Party by the other Party in writing from time to time.

Order: Acora standard form of order signed by the Parties that details the Services, Charges and related matters forming the subject matter of the Agreement.

Party: either Acora or the Customer and "**Parties**" means Acora and the Customer

Receiving Party: Party that receives Confidential Information from the other Party.

Services: the managed services to be provided by Acora to the Customer and as set out in the relevant Order.

Service Transfer: has the meaning in Clause 4.3.

Service Transfer Date: the date of a Service Transfer.

SLA: agreed Services performance levels and measurements.

Software: Software programs proprietary to Suppliers either used by Acora under the Agreement and/or which are licensed to the Customer and are subject to the Services.

Software Licensor: any Supplier who provides a software licence to Acora or the Customer in relation to Software.

Supplier: a third party provider of goods and/or services not in the direct control of Acora;

Term: the period of the Agreement set out in the Order.

Termination Payment: a sum equal to six (6) months Charges at the rate payable by the Customer to Acora under the Agreement at the date of termination or the balance of the Charges payable for the remainder of the Term, whichever is the lower.

Transferring Employees: the employees who would transfer under TUPE under a Service Transfer.

TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006.

VAT: value added tax.

Working Day: a calendar day that is not a Saturday, Sunday or public holiday in England.

1.2 References to Clauses are to the Clauses of these Service Terms and any headings in these Service Terms and/or any document comprising the Agreement will not affect the interpretation of the Agreement.

1.3 In the event of any conflict or inconsistency between these Acora Managed Services Terms and the relevant Order, the terms of the Order shall take precedence.

1.4 A person includes a corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.5 Words in the singular include the plural and vice versa and any reference to one gender includes the other genders.

1.6 References to statutes or statutory provisions relate to them as they are in force for the time being, and include any amendment, extension, or re-enactment and any subordinate legislation of them for the time being in force.

1.7 A reference to **writing** or **written** includes e-mail from an email account of a duly authorised individual of the relevant Party.

1.8 Any phrase introduced by the words **including, includes, in particular** or **for example** or similar will be construed as illustrative and will not limit the generality of that phrase.

2. AGREEMENT AND TERM

2.1 By signing the Order Acora agrees to provide the Services and the Customer agrees to take and pay for the Services, subject to the terms of the Agreement.

2.2 The Customer appoints Acora as its sole and exclusive provider of the Services for the Term, upon and subject to the terms of the Agreement, and agrees that it will not appoint any third party service provider to provide services which are the same or equivalent to the Services for the Term.

2.3 The Agreement will commence on the date set out in the Order and will continue for the Term, unless or until terminated in accordance with Clause 13.

2.4 Subject always to the provisions of Clause 2.2, nothing in the Agreement will restrict the right of the Customer to enter into agreements with Suppliers for the provision of such other services that the Customer requires to meet its business needs, provided that such provision by Suppliers will not adversely affect the provision of the Services or (unless otherwise agreed in writing) require Acora to accommodate such Supplier services within the Services.

2.5 Nothing in the Agreement will prevent Acora from entering into agreements with other customers and third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Agreement.

2.6 The Parties will carry out their respective obligations and responsibilities under the Agreement in a timely and efficient

- manner and will each comply with all applicable laws and regulations with respect to the operation and performance of the Agreement.
- 2.7 The Agreement and any documents referred to in it, constitute the whole Agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the Services, including any confidentiality agreement and/or any Customer purchase order issued in relation to the Services, the terms of which will not apply to the Agreement. For the avoidance of doubt, any existing agreements between the Parties in respect of the provision of services that are being replaced and superseded by the Services will be terminated with effect from the Effective Date.
- 2.8 Each of the Parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement. This Clause 2.8 will not apply to any statement, representation or warranty made fraudulently, or to any provision of the Agreement which was induced by fraud, for which the remedies available will be all those available under the law governing the Agreement.
- ### 3. SERVICES
- 3.1 Acora will, for the Term, provide the Services with all reasonable skill and care and consistent with the standards and practices expected of a reputable provider of such Services and, where applicable, in accordance with relevant SLAs.
- 3.2 Acora will only provide additional services, outside of the Services, where these are agreed in writing between the Parties and these will be charged to and paid for by the Customer in accordance with Acora's standard rates in force from time to time or as agreed in writing by the Parties prior to such additional services being provided to the Customer.
- 3.3 The Customer acknowledges and agrees that the provision of the Services is dependent upon the co-operation and assistance of the Customer and that, in the event of any delays or refusals of the Customer in relation to the Customer's provision of such assistance as is reasonably necessary and/or as has been agreed in writing by the Parties, Acora may adjust any timetable or delivery schedule set out in the Agreement, including the start date of any Services, as is reasonably necessary to reflect such refusals and/or delays.
- 3.4 Acora will employ a sufficient number of suitably trained and experienced personnel to ensure the proper fulfilment of its obligations under the Agreement and will be solely responsible for providing (or procuring at its own cost the provision by its sub-contractors (if any) of) the Services.
- 3.5 Acora will ensure that the Acora employees engaged in the the Services comply with the Customer's policies that relate to attendance at the Customer Locations in the provision of the Services, provided that such policies are supplied to Acora by the Customer in advance and that their implementation has been agreed between the Parties. This requirement is also subject to such policies not restricting Acora's ability to provide the Services in accordance with the Agreement.
- 3.6 To enable Acora to provide the Services in accordance with the Agreement, the Customer will provide Acora with:
- (a) all necessary co-operation in relation to the Services;
 - (b) all necessary access to such premises, information and Customer Assets as may be reasonably required by Acora;
 - (c) security access information and Software interfaces to the Customer's data and business applications in order for Acora to provide the Services;
 - (d) such personnel assistance as may be reasonably requested by Acora from time to time;
- (e) details of any and all restrictions or requirements for the conduct of Acora's personnel while on the Customer's premises, including any health and safety requirements; and
 - (f) anything else the Parties agree in writing as being necessary to perform or enable the performance of the Services.
- 3.7 The Customer will further ensure that Acora's personnel who attend the Customer Locations will be provided with safe and secure working conditions and environment and in compliance with all health and safety laws, regulations and practices.
- 3.8 There will be deemed to be no failure on the part of Acora to provide the Services and/or comply with the SLAs (if any) where Acora can reasonably establish that such failure to provide the Services and/or comply with any SLAs is as a result of any:
- (a) acts, omissions and/or failings of the Customer;
 - (b) acts, omissions and/or failings of any Supplier including any communications and utility providers;
 - (c) environmental conditions affecting the Acora Assets and/or the Customer Assets but not under Acora's control (nor attributable to the actions or omissions of Acora);
 - (d) planned maintenance, including emergency planned maintenance provided that Acora gives reasonable notice of such planned maintenance to the Customer;
 - (e) failure caused by any test of the Customer's or Acora's disaster recovery procedures agreed between the Parties;
 - (f) movements of and/or interference with the Customer Assets and/or Acora Assets by or on behalf of the Customer without the written approval of Acora;
 - (g) adaptations or other customisations by or on behalf of the Customer to any Software used in or the subject of the Services without the written approval of Acora; or
 - (h) event of Force Majeure.
- 3.9 The Customer also acknowledges and agrees that, where any aspect of the Services is dependent upon a Supplier (including any warranty and support arrangements) and such Supplier operates within different service and performance parameters to those set out in the SLAs, the service and performance parameters of such Supplier will apply and will replace and supersede the SLAs in relation to the relevant aspects of the Services.
- ### 4. TRANSFER OF EMPLOYEES
- 4.1 The Customer warrants, represents and undertakes to Acora that no employees, workers or staff of the Customer and/or any third parties engaged by the Customer will transfer to Acora under TUPE and the Customer acknowledges that Acora has prepared the Charges and has entered into the Agreement on that basis.
- 4.2 If, notwithstanding the Customer's warranty, representation and undertaking in Clause 4.1, and/or to the extent that TUPE applies in relation to the Agreement:
- (a) the Customer will indemnify Acora in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by Acora including all legal expenses and other professional fees (together with any VAT thereon) by Acora in connection with TUPE; and
 - (b) Acora will be entitled to terminate the Agreement immediately without Acora incurring any penalty or liability to the Customer, upon written notice to the Customer.
- 4.3 The Agreement envisages that the identity of the provider of the Services (or any part of the Services) may change whether as a result of termination of the Agreement, or part, or otherwise resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of TUPE then, in such event, the Customer or any third party service provider appointed by the Customer in to such services would inherit liabilities in respect of Transferring Employees.

- 4.4 Acora will perform and discharge its obligations in respect of the Transferring Employees for its own account up to and including the date of the Service Transfer Date.
- 4.5 The Customer will assume (or will procure that any third party replacement service provider will assume) the outstanding obligations of Acora in relation to any Transferring Employees from the Service Transfer Date, including any accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.
- 5. CHARGES AND PAYMENT**
- 5.1 The Customer will pay the Charges on the dates and in accordance with the payment terms set out in the Agreement and, where required by such payment terms, will pay the Charges by direct debit. The Customer acknowledges and agrees that payment of all Charges in full and upon the relevant due dates for payment of such Charges is an essential condition of the Agreement.
- 5.2 All Charges, amounts and fees stated or referred to in the Agreement are exclusive of VAT, which will be added to Acora's invoice(s) at the appropriate rate.
- 5.3 The Customer will reimburse Acora for all actual, reasonable travel expenses including, airfare, hotel and meals incurred by Acora in performance of the Services, provided that such travel expenses have been agreed in writing between the Parties prior to being incurred.
- 5.4 Acora will invoice the Customer on the last day of each month for all expenses incurred and agreed between the Parties and all additional services performed by Acora during that month. Save where and to the extent to which the cost of the additional services is payable by the Customer under the direct debit mandate, each invoice for such expenses and additional services is due and payable 30 days after the invoice date.
- 5.5 If Acora has not received payment of the relevant Charges or any other sums due under the Agreement from the Customer by the due date, and without prejudice to any other rights of Acora, interest will accrue on such overdue amounts at the rate of four per cent (4%) over the base lending rate of Lloyds Banking Group Plc per month commencing on the due date and continuing until fully paid.
- 5.6 In addition to and without prejudice to any other rights and remedies available to Acora under the Agreement, the Customer acknowledges and agrees that, in the event that the Customer delays, fails, refuses and/or cancels payment of any of the Charges (or any other sums due to Acora by the Customer under the Agreement), Acora will have the right to suspend provision of the Services.
- 6. ACORA AND CUSTOMER ASSETS**
- 6.1 Acora Assets remain the property of Acora and Acora may move or use Acora Assets as it sees fit for the provision of the Services. Any Acora Assets, to which the Customer is given access by Acora as part of or in connection with the Services, will be at Acora's discretion and subject to the Customer using and accessing such Acora Assets in accordance with the Agreement and any restrictions or instructions provided to the Customer by Acora.
- 6.2 The Customer acknowledges that it (and not Acora) shall have sole responsibility for any adverse impact on the Services and/or the SLAs resulting from any movement of or interference with any Acora Assets by the Customer, without the consent of Acora.
- 6.3 Acora will be liable for the loss of or damage to any of the Customer Assets located on any of Acora's premises and/or at the Customer Locations that is due to Acora's negligent or wilful act or omission. The Customer will be liable for the loss of or damage to any of Acora Assets or the Customer Assets which is due to the Customer's negligent or wilful act or omission.
- 7. INSURANCE**
- 7.1 Acora will maintain a policy or policies of insurance, which Acora considers (acting reasonably) necessary to provide an adequate level of cover for professional indemnity public liability and insurance.
- 7.2 The Customer will maintain a policy or policies of insurance, which the Customer considers (acting reasonably) necessary to provide an adequate level of cover in respect of all risks which may be incurred including death or personal injury, loss of or damage to property in relation to Acora's staff or contractors while on the Customer's premises and in relation to the Customer Assets and/or any Acora Assets delivered to or used at the Customer Locations.
- 7.3 Each Party will give the other Party, within 5 Working Days of a written request, copies of all insurance policies referred to in this Clause 7 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 7.4 Where and to the extent that a Party is in breach of its obligations under this Clause 7.3 and, having been given reasonable notice and opportunity to rectify such breach by the other Party, such period being no less than twenty-eight (28) days, has failed or refused to do so, the Party claiming such breach will be entitled but not obliged to obtain appropriate insurance cover to rectify any shortfall in the relevant insurance cover by the breaching Party and to Charge such other Party for the reasonable cost of such insurance cover.
- 8. IPR**
- 8.1 The Parties acknowledge and agree that the ownership and rights in all of the IPR of each Party and any third party remain with the relevant Party and such third party respectively and that no IPR of the Parties and/or any third party will under the Agreement in any way or for any purpose pass to the other Party.
- 8.2 The Customer may not make adaptations or variations to the Acora Assets and/or Software without the prior consent of Acora or disassemble, decompile, reverse translate or in any other manner decode such Acora Assets and/or Software except as permitted by law.
- 8.2 In relation to Software, the Customer acknowledges and agrees:
- (a) Acora provides no warranty in respect of such Software and the Customer must rely upon any warranties provided by the Software Licensor;
- (b) Software Licensors own all IPR in such Software and the Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software or any related documentation.
- (c) the Customer shall be solely responsible for its compliance with the terms imposed by the relevant Software Licensor in relation to the use and possession of such Software.
- 9. DATA SECURITY AND PROTECTION**
- 9.1 The Parties acknowledge that, as between the Parties, the Customer owns its own data which is to be the subject of the Services and is responsible for the content of such data. Acora will use reasonable endeavours not to introduce into the Customer Assets or Customer's data on those Customer Assets any viruses, disabling code or comparable phenomena. In the event that, despite the efforts of Acora under this Clause 9.1, any such viruses, disabling code or comparable phenomena are introduced to the Customer Assets and/or data within those Customer Assets by Acora, Acora will take all necessary steps to remove such viruses, disabling code or comparable phenomena from the Customer Assets and to restore any affected data.
- 9.2 The Customer acknowledges and agrees that Acora will not have any responsibility for the day-to-day and operational

- management of the Customer's data (including but without limitation any of the Customer's data that relates to Customer's clients and/or customers) and/or the use and manipulation of such data. The Customer further acknowledges and agrees that it remains responsible at all times for the use and management of all such Customer data.
- 9.3 The Parties will each be responsible for securing the physical security of the premises which such Party occupies and controls to prevent unauthorised access to the Customer Assets or Acora Assets and any data that will be held by that Party at such premises in relation to the Agreement.
- 9.4 Where and to the extent that Acora actually comes into the possession of and/or is required to process Customer Personal Data in performance of this Agreement and/or the Services, the Customer and Acora acknowledge that for the purposes of GDPR, the Customer is the controller and Acora is the processor of the Customer Personal Data.
- 9.5 Each Party will ensure that it complies with its statutory obligations under GDPR in relation to the Customer Personal Data and Customer Personal Data that is to be or may be processed under the Agreement will be any personal data that is included in the corporate records from the Customer including records relating to the Customer's customers, the Customer's employees and/or Users (as defined in Schedule 1).
- 9.6 Acora may process Customer Personal Data for the duration of the Agreement and only to the extent, and in such a manner, as is necessary for the purposes of performing the Services and/or in accordance with the Customer's reasonable instructions from time to time and will not process such Customer Personal Data for any other purpose. Acora further undertakes to the Customer in relation to the processing of Customer Personal Data by Acora that it will:
- (a) ensure that any Acora personnel authorised to process Customer Personal Data are subject to a duty of confidentiality;
 - (b) maintain an appropriate level of technical and operational security to any processing of Customer Personal Data by Acora, proportionate to the risk involved in such processing;
 - (c) only engage third parties in the sub-processing of Customer Personal Data on terms substantially similar to the terms of Clauses 9.4 to 9.9 and only upon written consent of the Customer, such consent not to be unreasonably withheld or delayed;
 - (d) advise the Customer of any data subject access requests made directly to Acora by a data subject to whom Customer Personal Data relates and provide reasonable assistance to the Customer in responding to such data subject access request in relation to the Customer Personal Data processed by Acora, taking into account the nature of the processing and the information available to Acora;
 - (e) provide reasonably required assistance to the Customer in meeting its obligations under GDPR in relation to the security of processing, the notification of Customer Personal Data breaches and data protection impact assessments, insofar as it relates to the processing of Customer Personal Data by Acora, while taking into account the nature of the processing and the information available to Acora;
 - (f) save where and to the extent required by law and/or other regulatory requirements, delete and/or return to the Customer all Customer Personal Data held by Acora within a reasonable time following the Customer's request following expiry of the Term;
 - (g) allow for and contribute to audits conducted by or on behalf of the Customer in relation to Acora's processing of Customer Personal Data and make available to the Customer information necessary to verify that Acora is complying with its obligations under Clauses 9.4 to 9.9; and
- (h) save where and to the extent expressly agreed by the Customer either in the Agreement or otherwise in writing, shall not process Customer Personal Data outside the European Economic Area (EEA).
- 9.7 The Customer hereby authorises and instructs Acora to process Customer Personal Data on its behalf for the purposes of fulfilling its obligations under the Agreement and in providing the Services and hereby acknowledges and agrees that:
- (a) Acora is reliant on the Customer for direction as to the extent to which Acora is entitled to use and process the Customer Personal Data and, consequently, Acora will not be liable for any claim brought by a data subject arising from any action or omission by Acora, to the extent that such action or omission resulted directly from the Customer's instructions; and
 - (b) the Customer remains responsible for its own legal, regulatory and contractual compliance in relation to the obtaining, holding and use of personal data, including but not limited to the Customer Personal Data, to which it has access and which is to be the subject of the Services, including but without limitation the extent to which the Customer is permitted to supply to and allow such Customer Personal Data to be held and/or processed by Acora as part of the Services.
- 9.8 Subject always to the provisions of Clause 14, each Party will indemnify the other Party's from and against all and any third party claims, losses, liabilities, costs and expenses, finally determined by a court of England and Wales, arising directly as result of the indemnifying Party being breach of its obligations under this Clause 9 in relation to GDPR.
- 9.9 As soon as Acora becomes aware of a personal data breach (including a suspected personal data breach) in relation to the Customer Personal Data and insofar as such personal data breach is caused directly by any act or omission on the part of Acora, it will:
- (a) notify the Customer without undue delay of such personal data breach;
 - (b) co-operate with and provide to the Customer sufficient information for the Customer to be able to comply with its obligations (including where applicable to notify the supervisory authority and/or the data subject) under GDPR;
 - (c) rectify the relevant personal data breach as soon as reasonably possible, and shall notify the Customer concerning progress and completion of such rectification activity; and
 - (d) keep the Customer informed about the nature of personal data breach, how it arose, Acora's investigations and any remediation activity.
- 9.10 The Parties acknowledge that GDPR and associated guidance may change during the Term and agree to work together in good faith to update the Agreement and any related processes and procedures in order to reflect any such changes where and to the extent necessary.
- ## 10. CONFIDENTIALITY
- 10.1 Under the Agreement "Confidential Information" means:
- (a) technical information belonging to or in the possession of the Disclosing Party which relates to the Agreement or which is disclosed under the protection of or with reference to the Agreement including, without restriction, documents, lists, data, drawings, designs, flow charts, formulae, specifications, test results, performance data and reports, computer programs, algorithms, hardware configuration;
 - (b) commercial, marketing and financial information, data and reports, lists, correspondence, evaluations, recommendations and advice provided by the Disclosing Party to the Receiving Party and relating to the Agreement or which is disclosed under the protection of or with reference to the Agreement;
 - (c) quotations, concepts, marketing proposals, branding strategies, designs, technical data, trade secrets and know-how, research,

- technical requirements, howsoever recorded, whether in eye or machine readable form and whether provided verbally or by demonstration and whether disclosed to the Receiving Party before or after the signature of the Agreement and for whatever purpose it is or has been disclosed. All such information recorded or provided verbally or by demonstration will be Confidential Information unless identified to the Receiving Party by the Disclosing Party to the contrary;
- (d) documents, correspondence and other items of the Customer and of Acora that relate to the Customer and/or the Agreement; and/or
- (e) any information specifically identified by the Disclosing party to the Receiving Party as being confidential.
- 10.2 Each Party agrees that the Confidential Information of the other Party will be used solely for the purposes of the Agreement. The Parties further agree that they will each keep the Confidential Information of the other Party in the strictest confidence and will not disclose or divulge or allow to be disclosed or divulged such Confidential Information of the Disclosing Party in any manner or to any person whatsoever (whether an employee or contractor of the Receiving Party or any other party) except on a need-to-know basis to those employees, contractors, representatives and advisers of the Receiving Party assigned to evaluate the Confidential Information for the purposes of the Agreement or to persons previously approved in writing by the Disclosing Party.
- 10.3 The undertakings restrictions and obligations under Clause 10.2 will not apply to information which:
- (a) is or becomes publicly known other than through any act or omission of the Receiving Party;
- (b) was in the Receiving Party's lawful possession before its disclosure by the Disclosing Party;
- (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure;
- (d) is independently developed by the Receiving Party and can be shown to be so developed by written evidence; and/or
- (e) the Receiving Party may be entitled or bound to disclose where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their Services.
- 10.4 The undertakings given and restrictions and obligations imposed under Clause 10.2 will not prohibit disclosure of the relevant Confidential Information by the Receiving Party where and to the extent (and no further) that it is ordered by a court of competent jurisdiction or by any applicable law and/or regulation. In the event that the Receiving Party is required to make such a disclosure it will immediately notify the Disclosing Party where it is permitted to do so by such court and/or applicable law and/or regulation.
- 10.5 The Receiving Party will promptly notify the Disclosing Party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and will give the Disclosing Party all reasonable assistance in connection with any proceedings, which it may institute against such person for breach of confidence.
- 10.6 The Receiving Party agrees it will return or, at the Disclosing Party's request, destroy, the Confidential Information of the Disclosing Party and any copies, and extracts thereof and delete any computer or other records of such Confidential Information and will certify such destruction and/or deletion to the Disclosing Party's reasonable satisfaction promptly at the earlier of (i) the Disclosing Party's request at any time or (ii) the expiration or earlier termination of the Agreement.
- 10.7 The Receiving Party acknowledges that damages alone would not be a sufficient remedy for unauthorised use or disclosure of the Confidential Information. Accordingly, in the event of a breach or threatened breach of Clause 9.3, the Disclosing Party will be entitled, without prejudice to any other rights or remedies it may have, to the granting of such injunctive or equitable relief as may be deemed proper by the court.
- 10.8 This Clause 10 will survive termination of the Agreement, however arising and the obligations of confidentiality contained in the Agreement will, unless otherwise agreed in writing by the Parties, continue for a period of five (5) years from the date of disclosure of the relevant Confidential Information or, if later, the date of termination of the Agreement.
- 11. NON-SOLICITATION**
- 11.1 Except in respect of (a) any transfer of staff pursuant to TUPE or (b) upon mutually agreed and written terms, neither Party will directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any individual employed or engaged by such other Party on either a permanent or temporary basis in the provision of the Services or, in the case of the Customer, in receipt of the Services, at any time during the Term or for a further period of 12 months after termination of the Agreement other than by means of general advertising open to all comers and not specifically targeted at anyone employed or engaged by the other Party.
- 11.2 If either Party commits any breach of Clause 11.1, the breaching Party will, within 30 days of an appropriate invoice, pay to the claiming party by way of liquidated damages the greater of £100,000 or a sum equivalent to 12 months' gross pay that was payable to that employee, worker or independent contractor by the claiming party together with the recruitment costs incurred by the claiming Party in replacing such individual. The Parties acknowledge that the sums payable under this Clause 11.2 represent a genuine pre-estimate of the loss that a Party is likely to suffer if the other Party breaches Clause 11.1.
- 12. ACCOUNT MANAGEMENT**
- 12.1 Acora will appoint the Acora Account Manager and will use reasonable endeavours to ensure continuity of the Acora Account Manager but has the right to change such Acora Account Manager from time to time where necessary in the interests of Acora's business. Any change in the Acora Account Manager will be notified to the Customer in writing by Acora.
- 12.2 The Customer will appoint the Customer's Account Manager and will use reasonable endeavours to ensure continuity of the Customer's Account Manager but has the right to change such Customer's Account Manager from time to time where necessary in the interests of the Customer's business. Any change in the Customer's Account Manager will be notified to Acora in writing by the Customer.
- 12.3 The Customer Account Manager and the Acora Account Manager will meet or communicate with such frequency as agreed between the Parties.
- 12.4 The Parties will use reasonable endeavours to ensure that all communications and instructions in relation to the provision of the Services will be through the Account Managers. No agreement purportedly reached by any members of Acora's and the Customer's personnel in relation to the Services will be binding on Acora and the Customer unless approved in writing by officers of both Parties having legal authority to bind the Parties contractually.
- 12.5 The Customer will advise Acora in writing and as soon as reasonably practical, of any material adverse change in its ownership, structure and financial position.
- 13. TERMINATION**
- 13.1 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate the Agreement without further liability to the other Party immediately upon written notice to the other if:
- (a) the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to

- remedy that breach within 30 days of that Party being notified in writing of the breach;
- (b) an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party;
 - (c) an order is made appointing an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule B1 to the Insolvency Act 1986);
 - (d) a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets;
 - (e) the other Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
 - (f) the other Party ceases, or threatens to cease, to trade; or
 - (g) the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 13.2 Without prejudice to the termination rights of the Parties in Clause 13.1, Acora will further be entitled to terminate the Agreement without incurring any further liability to the Customer: (i) upon giving no less than 7 days written notice where the Customer will have failed to make payment of any Charges on the due date for payment and will have failed to make such payment within thirty (30) days of such due date; or, (ii) immediately on giving written notice to the Customer pursuant to Clause 4.2(b) or Clause 14.7.
- 13.3 On termination of the Agreement for any reason:
- (a) all rights under the Agreement will cease and Acora Assets and/or Software supplied on a subscription basis;
 - (b) the Customer will immediately pay all sums outstanding prior to the date of termination;
 - (c) each Party will return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party;
 - (d) Acora will co-operate with the Customer and/or any replacement supplier appointed by the Customer and provide such transitional assistance as may be reasonably required by the Customer to facilitate the migration of the Services from Acora to replacement services provided by the Customer and/or the Customer's replacement supplier. The management of such transitional assistance will be the responsibility of the Customer and any assistance from Acora will be provided by Acora and paid for by the Customer in advance as additional services subject to prior written agreement by the Parties;
 - (e) each Party will without delay return the other Party's Confidential Information and Acora will return to the Customer all Customer data in its possession or in the possession of any sub-contractors of Acora, such data to be returned in the format of the most recent backup copies of such data created and held by Acora as part of the Services; and
 - (f) the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.
 - (g) the Customer will agree a novation from Acora of any and all agreements with Suppliers entered into by Acora on the Customer's behalf (including any network, communications and/or hosted arrangements) and the Parties agree to take all reasonably necessary steps to enable such Supplier agreements to be novated from Acora to the Customer before or as soon as reasonably practicable after the relevant date of termination of the Agreement. The relevant novation of the Supplier's agreements will be in the format required by the relevant Supplier and will provide that the Customer will be liable for the performance of the relevant Acora obligations under such Supplier agreements, including but not limited to the payment of the Supplier's charges.
- 13.4 Where the Agreement is terminated by Acora under Clauses 13.1 and/or 13.2, the Customer will immediately pay to Acora:
- (a) any Charges due and payable prior to termination and which have not been paid by the Customer prior to the relevant termination, including any interest payable thereon under the Agreement;
 - (b) the Termination Payment, which The Customer acknowledges and agrees represents a genuine pre-estimate of Acora's loss as a result of the early termination of the Agreement caused by the Customer's acts or omissions leading to such termination;
 - (c) any reasonable and unavoidable payments and costs to third parties incurred in the provision of the Services; and
 - (d) any costs incurred by Acora in providing the Services prior to termination, payment for which has been deferred by Acora by including them within future Charges that were to be paid during the Agreement but after such termination.
- ## 14. LIABILITY
- 14.1 Except as expressly provided in the Agreement, this Clause 14 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of any: (i) liability arising out of or in connection with the Agreement, including any breach of the Agreement however arising; (ii) use made by the Customer of the Services, any deliverables (including Software) supplied by Acora or any part of them; or (iii) representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement. The Customer acknowledges that the limitations and exclusions of Acora set out in the Agreement are reasonable and reflected in the Charges payable to Acora under the Agreement and the Customer will accept risk or insure accordingly.
- 14.2 Except as expressly and specifically provided in the Agreement:
- (a) the Customer agrees and acknowledges that it will have sole responsibility for results obtained from the use by the Customer of the Services including any results obtained through the use of any Software provided as part of the Services, and for conclusions drawn from such use. Acora will have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Acora by the Customer in connection with the Services, or any actions taken by Acora at the Customer's direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 14.3 Nothing in the Agreement excludes either Party's liability for:
- (a) death or personal injury caused by such Party's negligence;
 - (b) for any damage or liability incurred by a Party as a result of fraud or fraudulent misrepresentation by the other Party; or
 - (c) any other liability which a Party may not lawfully exclude.
- 14.4 Subject to Clause 14.2, Clause 14.3 and Clause 14.9:
- (a) neither Party will be liable to the other for: (i) any loss of profits; (ii) loss of business; (iii) depletion of goodwill and/or similar losses; (iv) loss of anticipated savings; (v) loss of contract; (vi) loss of use; (vii) pure economic loss, or (viii) for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and
 - (b) Acora's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement

will be limited to a sum equivalent to the total amount of Charges (excluding VAT) paid or payable by the Customer to Acora under the Agreement in the Term.

- 14.5 Subject to Clause 14.6 the Customer will defend, indemnify and hold harmless Acora from and against any and all losses, damages, expenses and costs (including court costs and reasonable legal fees) arising from any claims, actions, or proceedings made by any third party arising from the Customer's use of any Software, Customer Assets, Acora Assets and/or the Services.
- 14.6 Acora will defend, indemnify and hold harmless the Customer from and against any and all losses, damages, expenses and costs (including court costs and reasonable legal fees) arising from any claims, actions, or proceedings made by any third party that the provision of the Services or the Customer's possession or use of the Acora Assets (including any Software forming part of the Acora Assets) infringes the IPR of a third party PROVIDED THAT:
- (a) Acora is given prompt notice of such claim;
 - (b) the Customer provides reasonable co-operation to Acora in the defence and settlement of such claim, at Acora's expense; and
 - (c) Acora is given sole authority to defend or settle the claim.
- 14.7 In the defence or settlement of a claim relating to the infringement of a third party's IPR under Clause 14.6, Acora may obtain for the Customer the right to continue to receive the Services or possess or use the relevant Acora Assets in the manner contemplated by the Agreement, replace or modify the Services or the relevant Acora Assets so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement immediately by notice in writing and without liability accruing to the Customer.
- 14.8 Acora will not in any circumstances have any liability if the alleged infringement of a third party's IPR under Clause 14.6 is based on:
- (a) a modification of the Services or the Acora Assets and/or Software by anyone other than Acora; and
 - (b) use or combination of the Services or the Acora Assets and/or Software with other software or technology not previously approved by Acora in circumstances where, but for such combination, no infringement would have occurred.
- 14.9 Clauses 14.6 to 14.8 inclusive state the Customer's sole and exclusive rights and remedies, and Acora's entire obligations and liability, in the case of any claims, actions, or proceedings made by any third party that the provision of the Services or the Customer's possession or use of the Acora Assets and/or relevant Software infringes the third party's IPR.

15. DISPUTE RESOLUTION

- 15.1 Any dispute between the Parties concerning the Agreement will be determined in accordance with this Clause 15 and such dispute will be deemed to have arisen when a Party serves on the other Party a Dispute Notice.
- 15.2 Unless the Agreement has already been terminated by the date of the Dispute Notice, Acora will continue performing its obligations under the Agreement regardless of the nature of the dispute and the Customer will continue to perform its obligations under the Agreement including the making payment of all Charges.
- 15.3 After service of the Dispute Notice, the following procedure will be followed by the Parties (and all periods specified in this Clause 15.3 will be extendable by mutual agreement):
- (a) within 5 Working Days of receipt by a Party of the Dispute Notice from the other Party, the Account Managers will meet to attempt to resolve the dispute;
 - (b) if the Account Managers are unable to resolve the dispute within 10 Working Days from the receipt of the Dispute Notice, such dispute will be escalated to the Level 2 Referral Personnel of

- each of the Parties who will meet within the following 5 Working Days to attempt to resolve the dispute; and
 - (c) if the Level 2 Referral Personnel are unable to resolve the dispute within 10 Working Days from escalation under Clause 15.3(b), the dispute will be escalated to the Level 3 Referral Personnel of each of the Parties who will meet within the following 10 Working Days to attempt to resolve the dispute.
- 15.4 If the dispute is not resolved under Clause 15.3:
- (a) disputes of a technical nature concerning the interpretation of the Services, SLAs or any similar or related matter will be referred for mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure and, unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation, a Party must give notice in writing to the other Party of the dispute requesting mediation. A copy of the mediation request should be sent to CEDR Solve and the mediation will start not later than 28 Working Days after the date of the relevant mediation request. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings; and
 - (b) in accordance with Clause 19.9, all disputes in relation to legal issues, or situations where disposition of the legal issues would dispose of all other issues in dispute, will be brought before the English courts and the Parties agree to co-operate in the speedy conduct of such legal proceedings.

16. ASSIGNMENT AND SUBCONTRACTING

- 16.1 Neither Party may assign, transfer, charge, or deal in any other manner with its rights or obligations under the Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 16.2 The Customer agrees that Acora may sub-contract performance of the Services to a third party. In no event will any sub-contracting relieve Acora from its liability for performance of the Services and its obligations under the Agreement.

17. ANTI-BRIBERY

- 17.1 Acora will comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and will;
- (a) comply with those Customer's ethics, anti-bribery and anti-corruption policies supplied to Acora in writing by the Customer, provided that Acora will not be liable under the Agreement if, as a result of such observation, it is in breach of any of its other obligations under the Agreement or any law or regulation;
 - (b) have and will maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the requirements and policies referred to in Clause 1.1(a) and (b) respectively, and will use all reasonable endeavours to enforce them, where appropriate;
 - (c) report to the Customer any request or demand for any undue financial or other advantage of any kind received by Acora in connection with the performance of the Agreement;
 - (d) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of Acora or acquires a direct or indirect interest in Acora (and Acora warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Agreement); and
 - (e) will undertake regular reviews of its policies and procedures (being no more than once a year) to ensure its compliance with this Clause 17 and it will provide such supporting evidence of compliance as the Customer may reasonably request.
- 17.2 Breach of this Clause 17 will be deemed a material breach for the purposes of Clause 13.1(a).
- 17.3 For the purpose of this Clause 17 the meaning of foreign public official will be determined in accordance with the relevant

provisions of the Bribery Act 2010 (and any guidance issued under that Act).

18. GENERAL

- 18.1 **Notices.** Any notice required to be given under the Agreement will be in writing and will 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 Agreement, or such other address as may have been notified by that Party for such purposes, or sent by email to the relevant email address of the relevant authorised individual at the other Party.
- 18.2 **Announcements.** The Parties agree that any media releases, public announcements and public disclosures by the Parties relating to the Agreement or its subject matter, including promotional or marketing material, will be co-ordinated with and approved by the Parties prior to release.
- 18.3 **No agency between the Parties.** Nothing in the Agreement is intended to or will operate to create a partnership between the Parties, or authorise either Party to act as an agent for the other, and neither Party will have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 18.4 **Waiver** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 18.5 **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 will 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 will apply with
- 18.6 **Force Majeure** Neither Party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement or from carrying on its business by Force Majeure provided that the other Party is notified of such an event and its expected duration as soon as possible after its occurrence
- 18.7 **No Set-Off** All amounts due from the Customer to Acora under the Agreement will be paid in full without any deduction or withholding other than as required by law. The Customer will not be entitled to claim any credit, set-off or counterclaim to justify withholding payment of any such amount in whole or in part.
- 18.8 **Third party rights** The Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 18.9 **Governing Law and Jurisdiction** The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation will be construed and operated in accordance with English Law and will be subject to the exclusive jurisdiction of the courts of England and Wales.