

# SOLUTION 7 LIMITED - EXCEL FINANCIAL REPORTING STANDARD TERMS AND CONDITIONS

Last updated on 21 February 2023

Please do NOT copy and amend these Licence Terms and Conditions.

## 1. Definitions and Interpretation

1.1 In this Agreement the following expressions have the meanings set opposite:

- an Affiliate:** an entity that, at the relevant time, is directly or indirectly Controlled by the Licensee, where **Control** means the power, directly or indirectly, to direct or cause the direction of the management of an entity, regardless of whether through the ownership of shares, by contract, or in any other way, and **Controlled** is to be interpreted accordingly;
- this Agreement:** these Terms, as amended from time to time in accordance with Clause 11.2;
- an Authorised Contact:** an individual whom the Licensee has notified to Solution 7 as an authorised contact or a replacement for an authorised contact, provided that the Licensee may not have more than two Authorised Contacts at any one time;
- Beta Functionality:** any functionality of the Solution 7 Software which is marked or designated as Beta;
- a Clause:** a clause in this Agreement;
- the Commencement Date:** the date on which Solution 7 first provides a Licence Key under this Agreement to the Licensee;
- a Controller:** has the meaning given to that expression in the Data Protection Legislation;
- the Currency:** the currency stated in the Quote;
- the Current Version:** the last version of the Solution 7 Software and the immediately preceding version of the Solution 7 Software made available by Solution 7 to licensees generally, but not any software provided for the purposes of a trial or any beta test version of any of the Solution 7 Software or any version developed or modified to meet the requirements of one or more particular licensees;
- the Data Protection Legislation:** the United Kingdom Data Protection Act 2018 and any other law or regulation relating to the Processing of Personal Data to which Solution 7 is subject at the relevant time;
- a Data Subject:** has the meaning given to that expression in the Data Protection Legislation;
- the Documentation:** any user documentation included with, or provided by Solution 7 in connection with, the Solution 7 Software;
- an Error:** a material failure of the Current Version to provide the functions described in the Documentation;
- the Instance of Netsuite:** the single instance of Oracle's Netsuite Software with the Account ID set out in the Quote, including any sandbox created from that instance and any release preview account used for regression testing Oracle's Netsuite Software;
- Intellectual Property Rights:** patents, rights to any invention, copyrights and related rights, moral rights, rights in computer software, trade marks, service marks, trade names, domain names, rights in any get-up, goodwill and the right to sue for passing off or unfair competition, registered designs, other rights in designs, rights of confidence, rights in any know-how, trade secrets, rights to extract and exploit data, database rights, any similar or equivalent rights protected in any jurisdiction, whether now existing or coming into existence at some future date and whether or not registered, any application for (and rights to apply for and be granted) any of the above, any renewals or extensions of, and rights to claim priority from, any such rights, and any accrued rights of action in respect of any of the above;
- the Initial Licence Period:** the licence period set out in the initial Quote, starting on the Commencement Date;

<b>the Licence:</b>	the right to use the Solution 7 Software granted in Clause 2.1;
<b>the Licence Fee:</b>	the fee payable by the Licensee in return for the Licence and the provision of the Support Services during the then current Licence Period, as set out in the Quote;
<b>a Licence Key:</b>	a key which allows the use of the Solution 7 Software for a period of time;
<b>a Licence Period:</b>	the Initial Licence Period or, on a renewal, any renewal Licence Period set out in the Quote, subject to the earlier termination of this Agreement in accordance with Clause 5.5, 6.5, 7.3 or 8;
<b>the Licensee:</b>	the company or organisation to which the Quote is addressed;
<b>the Licensee Confidential Information:</b>	any information relating to the Licensee's or any Affiliate's business, clients or business affairs, including the Licensee Data;
<b>the Licensee Data:</b>	the data inputted or imported into the Software by or on behalf of the Licensee or any Affiliate (whether that data belongs to the Licensee, an Affiliate or any other person);
<b>the Open-Source Software:</b>	the open-source software as defined by the Open Source Initiative ( <a href="http://opensource.org">http://opensource.org</a> ) or the Free Software Foundation ( <a href="http://www.fsf.org">http://www.fsf.org</a> ) made available to the Licensee with the Solution 7 Software, as modified and updated from time to time by the provision of the Support Services (if any) or the Professional Services (if any) provided by Solution 7 to the Licensee;
<b>the Maximum Number of Concurrent Users:</b>	the maximum number of concurrent users set out in the Quote, as varied by the agreement of the Parties in writing from time to time;
<b>the Netsuite Account ID:</b>	is that set out in the Quote;
<b>the Parties:</b>	Solution 7 and the Licensee and each of them is a <b>Party</b> ;
<b>Personal Data:</b>	has the meaning given to that expression in the Data Protection Legislation;
<b>to Process:</b>	has the meaning given to that expression in the Data Protection Legislation;
<b>Professional Services:</b>	consultancy, installation, configuration, integration and development services, training and any other services (except Support Services) provided by Solution 7 (either directly or through a third party) to the Licensee in connection with any of the Software;
<b>the Quote:</b>	the quotation issued by Solution 7, setting out (amongst other things) the name and address and company or business number of the Licensee, the Licensee's VAT number (if applicable), the Licence Period, the Maximum Number of Concurrent Users, the Licensee's NetSuite Account ID and the Licence Fees, signed (without amendment) on behalf of the Licensee and returned to Solution 7;
<b>the Services:</b>	any services, including any Professional Services and any Support Services, supplied by Solution 7 (either directly or through a third party) to the Licensee in connection with any of the Software;
<b>Solution 7:</b>	Solution 7 Limited, a company registered in England under number 3415375, whose registered office is at the Magdalen Centre, Oxford Science Park, Oxford OX4 4GA, England;
<b>the Solution 7 Confidential Information:</b>	any information relating to Solution 7's business, clients or business affairs (including the Solution 7 Software, the User Documentation and any information relating to the Solution 7 Software);
<b>Solution 7's Personnel:</b>	Solution 7's employees, staff, workers, contract staff, officers and subcontractors;
<b>the Solution 7 Software:</b>	the Solution 7 Software, identified in the Quote (in object code), as modified and updated from time to time by the provision of the Support Services (if any) or any Professional Services provided by Solution 7 to the Licensee;

<b>the Software:</b>	any of the Solution 7 Software and any of the Open-Source Software;
<b>the Support Services:</b>	the services described in Clause 4.1;
<b>the Third Party Software:</b>	any third party software required to use the Solution 7 Software (as stated on Solution 7's website from time to time) and any other third party software advised to the Licensee by Solution 7 from time to time and which is necessary or advisable for the use of the Software;
<b>a Trial Licence:</b>	a legally binding licence agreement with Solution 7 allowing a prospective Licensee to use the Solution 7 Software, free of charge, for up to 90 days;
<b>a User:</b>	an individual authorised by the Licensee or any Affiliate to use the Software, but only for so long as that individual is an employee, member of the contract staff, consultant or an auditor of the Licensee or an Affiliate, and any other individual who accesses any of the Software through the Licensee's or any Affiliate's IT system or using the password or ID of any individual authorised by the Licensee or by any Affiliate to use the Software;
<b>VAT:</b>	any value added, sales, turnover or similar tax imposed on the sale or supply of the Software or any of the Services;
<b>Working Hours:</b>	9 am to 5 pm (London time) Mondays to Fridays, except bank, public or statutory holidays in England; and
<b>Writing:</b>	includes text stored and transmitted electronically.

- 1.2 Any reference in this Agreement to a statute or regulation is to be construed as a reference to that statute or regulation as amended, extended or re-enacted from time to time, and it includes any subordinate legislation from time to time in force made under it.
- 1.3 Unless the context otherwise requires, in this Agreement, words in the singular include the plural and words in the plural include the singular.
- 1.4 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.
- 1.5 The rule known as the *ejusdem generis* rule does not apply to this Agreement. Accordingly general words introduced by the word **other** will not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things.
- 1.6 Any obligation in this Agreement not to do something, includes an obligation not to allow that thing to be done.
- 1.7 Any words in this Agreement following the expressions **including**, **include**, **in particular**, or any similar expression, are merely illustrative and do not limit the sense of the words, description, definition, phrase or expression preceding those expressions.
- 1.8 In this Agreement a **person** includes a natural person, a corporate or unincorporated body (whether or not it has a separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.9 A reference in this Agreement to a **Party** includes that Party's permitted assigns.
- 1.10 Any reference in this Agreement to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing will, in respect of any jurisdiction except England and Wales, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
- 1.11 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version will prevail.
- 1.12 If there is any conflict or inconsistency between this Agreement and any on-line terms and conditions for the Solution 7 Software or any terms and conditions accompanying the Solution 7 Software, this Agreement will prevail.

## 2. Licence and Restrictions

- 2.1 Subject to the other provisions of this Clause 2, the Licensee and the Affiliates may use the Solution 7 Software on the terms set out in this Agreement. The Licence is non-exclusive and non-transferable. Any Open-Source Software is not licensed by Solution 7 but is provided subject to the terms imposed by the licensor of that Open-Source Software. Those terms are available from Solution 7 on request.

2.2 Solution 7 will provide the Licensee with a Licence Key which will allow the Licensee and the Affiliates to use the Solution 7 Software during the then current Licence Period, but that Licence Key will cease to allow the use of the Software if the Licensee has not paid the Licence Fee or any other monies due to Solution 7 in accordance with this Agreement.

No Licence Fee is payable in respect of the Licensee's or any Affiliate's use of any of the Open-Source Software.

2.3 The Solution 7 Software may be used only by up to the Maximum Number of Concurrent Users at any one time, and where a version of the Solution 7 Software is set out in the Quote or the Documentation, this Agreement permits the use only of that version of the Solution 7 Software. If the Licensee or any Affiliate wants to increase the Maximum Number of Concurrent Users, or to change or to use a different version of the Solution 7 Software, the Licensee must obtain an additional licence or extension of the Licence from Solution 7. Any addition or extension to the Licence may be subject to the Licensee paying additional licence fees and, where applicable, additional support and other service fees.

2.4 If the Third Party Software includes any of Oracle's Netsuite software, the Solution 7 Software may be used only on the Instance of the Netsuite Software. If the Licensee wants itself, any Affiliate or any other person to be able to use the Solution 7 Software on an additional or different instance of the Netsuite Software or to use any Beta Functionality which Solution 7 has withdrawn, the Licensee must obtain an additional licence or extension of the Licence from Solution 7. Any addition or extension to the Licence may be subject to the Licensee paying additional licence fees and, where applicable, additional support and other service fees.

2.5 Subject to the termination of this Agreement in accordance with Clause 5.5, 6.5, 7.3 or 8, the Licence is for the then current Licence Period and, at the end of the then current Licence Period, the Licence will automatically renew for the Licence Period set out in the Quote issued for the renewal. On that renewal Solution 7's then current Standard Terms and Conditions (**the Renewal Terms**) will apply instead of these Standard Terms and Conditions. Unless the Licensee obtains an additional licence or extension allowing the use of a different version of the Solution 7 Software under Clause 2.3, the Licence is restricted to use of the version of the Solution 7 Software first provided to the Licensee or the Current Version.

2.6 Only the Licensee, the Affiliates and their respective employees, contract staff and consultants working within their organisation for their benefit and their auditors using the Solution 7 Software for the Licensee's or an Affiliate's benefit may use the Solution 7 Software. Unless the Licensee first obtains Solution 7's consent in writing, neither the Licensee nor any Affiliate may transfer the Solution 7 Software or share its use with anyone else; nor use the Solution 7 Software for anyone else's benefit (including using it to provide software as a service, outsourcing services, application services or facilities management services). Neither the Licensee nor any Affiliate may sub-license the use of the Solution 7 Software. The Licensee will be responsible for each Affiliate and each User complying with this Agreement.

2.7 The Licensee and the Affiliates may make copies of the Solution 7 Software for back up purposes and for use by their respective employees, contract staff and consultants working within their organisation for their benefit and for use by their auditors using the Solution 7 Software for the Licensee's or its Affiliates' benefit. The Licensee must keep each copy of the Solution 7 Software secure, in the Licensee's possession, and under its control, at all times.

2.8 The Licensee must ensure that every copy of the Solution 7 Software made by the Licensee or any Affiliate bears the copyright and other proprietary notices on the Solution 7 Software downloaded by or on behalf of the Licensee or any Affiliate or their respective employees, contract staff, consultants or auditors. Neither the Licensee nor any Affiliate nor any User may remove, obliterate or modify any of those notices.

2.9 Neither the Licensee nor any Affiliate may, without first obtaining Solution 7's consent in writing, modify, or engage anyone to modify, the Solution 7 Software, or combine it with, or incorporate it in, any other software. If anyone except Solution 7, or its authorised agent, modifies the Solution 7 Software, Solution 7 will be released from any obligation to provide the Support Services and any other services in relation to the Software and Solution 7 will be entitled to raise, and the Licensee will pay, Solution 7's additional charges for any services which Solution 7 may provide in respect of the modified Software.

2.10 Except as permitted under any applicable law out of which it is unlawful to contract, neither the Licensee nor any Affiliate may reverse engineer any of the Solution 7 Software to determine any design structure, concepts or methodology behind the Solution 7 Software, or to incorporate it in any other software or any product, or for any other purpose.

2.11 The Licensee and the Affiliates will make and retain sufficient back-ups of the Software and the Licensee Data to ensure that in the event of any of the Software or any of the Licensee Data being lost or corrupted, the same can be restored and any disruption to the Licensee's or any Affiliate's business avoided.

2.12 The Licensee and each Affiliate may allow any User to use the Solution 7 Software for the Licensee's or that Affiliates' benefit (but for no other purpose), provided that:

2.12.1 the Maximum Number of Concurrent Users is not exceeded;

- 2.12.2 the Licensee ensures that each User uses the Solution 7 Software in accordance with the terms of this Agreement and any acceptable use policy that Solution 7 may issue from time to time; and
- 2.12.3 the Licensee has paid Solution 7 for each User.
- 2.13 Neither the Licensee nor any Affiliate may use the Software:
  - 2.13.1 unless it has, and throughout each Licence Period continues to have, a current and valid licence to use the Third Party Software with such upload functionality as may be necessary to allow it to use the Software in a way which meets its requirements; and
  - 2.13.2 if the Third Party Software includes any of Oracle's Netsuite software, they all use the Software on the same single instance of the Third Party Software.
- 2.14 Neither the Software nor any technical data relating to it may be used by the Licensee, any Affiliate or any other person in breach of any applicable export control laws or regulations, including those of the United Kingdom, the European Union and the United States. The Licensee will not, and will ensure that each Affiliate does not, export the Software or any technical data relating to it to any country: for which an export licence or other governmental approval is required unless it first obtains such licence or approval; or which is subject to any sanction or embargo applied by the United Kingdom Government, the European Union or any other competent authority.
- 2.15 Immediately on its ceasing to be Controlled by the Licensee, any entity which has been an Affiliate and its Users:
  - 2.15.1 immediately stop using the Solution 7 Software and destroy all copies of the Solution 7 Software then in its or their possession or under its or their control; and
  - 2.15.2 at Solution 7's request, immediately return to Solution 7 or destroy any and all Confidential Information of Solution 7,

but the former Affiliate and its employees, contract staff, consultants and auditors will continue to comply with Clause 9 and the Licensee will continue to be liable to Solution 7 for any failure by the former Affiliate or any of its employees, contract staff, consultants and auditors to comply with this Agreement.

The Licensee will, will if so requested by Solution 7, certify in writing that any Affiliate or former Affiliate and their respective employees, contract staff, consultants and auditors have complied with this Clause 2.15.

### **3. Testing and Acceptance**

- 3.1 The Licensee has the opportunity to take a Trial Licence. It is for a potential licensee to decide whether or not to take a Trial Licence. Therefore, by entering into this Agreement, the Licensee acknowledges that it has had the opportunity to test the Software and it accepts the Software.
- 3.2 The Licensee will, before it or any of the Affiliates uses any Error correction, update, modification, customisation or new version of the Software in a production or live environment, test it in a sandbox or other test environment or platform sufficiently thoroughly to establish that that update, modification, customisation or new version functions satisfactorily. If the Licensee is not satisfied that the update, modification, customisation or new version functions satisfactorily, the Licensee must notify Solution 7 immediately of any actual or suspected problem or defect and neither the Licensee nor any Affiliate may use that Error correction, update, modification, customisation or new version in a production or live environment.
- 3.3 The Licensee will be deemed to have accepted any Error correction, update, modification, customisation or new version of the Software if the Licensee or any Affiliate uses it in a production or live environment.

### **4. Professional and Support Services**

- 4.1 The following Support Services are included in the Licence Fee:
  - 4.1.1 the provision during Working Hours of a help desk for the purpose of advising the Licensee in relation to problems encountered in using the Software;
  - 4.1.2 the provision of any Error corrections to the Software issued to Solution 7's licensees generally from time to time; and
  - 4.1.3 the provision of any updates to the Software issued to Solution 7's licensees generally from time to time,

subject to any restrictions or limitations on the Support Services notified by Solution 7 to the Licensee from time to time.

- 4.2 The Support Services and any other services under this Agreement will be provided to the Licensee and Solution 7 will not be obliged to provide any such service to any Affiliate.
- 4.3 A third party, if authorised by Solution 7, by special arrangement with the Licensee and subject to the terms agreed between that third party and the Licensee, may provide help desk services to the Licensee and the Affiliates. Solution 7 will not be responsible for the provision of any such services or the omission of any third party to provide those services.
- 4.4 Solution 7 is not obliged to provide any Professional Services to the Licensee or any Affiliate, but will try and provide that sort of service to the Licensee if requested by the Licensee if and when Solution 7 can (either directly or through a third party). If the Licensee requests any Professional Service and Solution 7 agrees to provide it, the Parties will record the Professional Service(s) to be provided and the fees payable for them in writing, signed on behalf of each Party. The terms of this Agreement will apply to the provision of any Professional Service by Solution 7 (either directly or through a third party).
- 4.5 The Licensee will keep Solution 7 informed of any changes to the Authorised Contacts or their contact details. Solution 7 may decline to provide assistance under Clause 4.1.1 if a call requesting assistance is made by anyone except an Authorised Contact. Solution 7 may decline to provide assistance under Clause 4.1.1 or may charge the Licensee for providing that assistance, if the Licensee makes more than 30 calls per Authorised Contact to Solution 7's helpdesk in any 3 month period, not taking into account calls to report any Error.
- 4.6 The Support Services are not provided for any version of the Solution 7 Software except the Current Version. If the Licensee requests support or assistance for any other version, and if Solution 7 agrees to supply that support or assistance, Solution 7 may charge for, and the Licensee will pay for, that support and assistance at Solution 7's rates in force at that time.
- 4.7 If the Licensee provides any of the Licensee Data to Solution 7 or allows Solution 7 access to any of the Licensee Data when the Licensee requests support (or at any other time) the Licensee will ensure that that Licensee Data does not contain any Personal Data.
- 4.8 It is in the interests of Data Subjects and consistent with the Licensee's and the Affiliates' obligations under the Data Protection Legislation, that the Licensee and the Affiliates do not provide Personal Data to Solution 7 and do not provide Solution 7 with access to Personal Data and, where the Licensee or any Affiliate has provided any Personal Data to Solution 7, the Licensee irrevocably authorises Solution 7 to delete or destroy that Personal Data.
- 4.9 Clauses 4.7 and 4.8 do not apply to any Personal Data which Solution 7 Processes as a Controller. Solution 7 will use the contact details of the Licensee's and the Affiliates' employees and contract staff and consultants provided to it by the Licensee in order to manage, administer and perform this Agreement and to invoice the Licensee. Solution 7 will do so as a Controller under the Data Protection Legislation. The Licensee warrants that it has, and will have, all rights and consents necessary to allow it to provide those contact details to Solution 7 for the purposes stated in this Clause 4.9.

## **5. Fees**

- 5.1 Subject to Clause 5.2, the Licensee will pay Solution 7 the Licence Fee. Although the Licence Fee may be stated in one currency in any quote issued by Solution 7 or on the Signature Page, the Licence Fee and any other fees, charges and expenses payable under this Agreement will be invoiced in, and will be payable in, the Currency stated on the Signature Page. If there is any need to convert any currency into another to give effect to this provision, the conversion rate will be that given on [www.exchangerates.org.uk](http://www.exchangerates.org.uk) when Solution 7 prepares the invoice. If [www.exchangerates.org.uk](http://www.exchangerates.org.uk) ceases to publish conversion rates, Solution 7 may choose a different source of currency conversion rates.
- 5.2 Solution 7 may revise the Licence Fee with effect from the end of each Licence Period by giving the Licensee notice in writing. The revised Licence Fee will be payable by the Licensee if the Licensee or any Affiliate wishes to use or uses the Solution 7 Software for longer than the then current Licence Period.
- 5.3 The Licensee will reimburse Solution 7 for all travel, subsistence and other expenses incurred by Solution 7 or Solution 7's Personnel in providing any of the Software or any services to the Licensee, provided that those expenses have been agreed in advance of being incurred. If the Licensee and Solution 7 are unable to reach such agreement on those expenses, Solution 7 will not be obliged to provide any service to the Licensee or any Affiliate if the provision of that service involves Solution 7's Personnel incurring any such expenses.
- 5.4 All fees, charges and expenses payable under this Agreement are exclusive of any VAT, customs duties or other taxes or duties on the sale or supply and on the export and import of any goods or services. The Licensee will pay these in addition to the Licence Fee and other fees and charges payable under this Agreement.
- 5.5 The Licensee will pay, without any deduction, set off or withholding, all fees, charges and expenses payable under this Agreement within 30 days after the date of Solution 7's invoice for the same. If any deduction or withholding is required by law, the Licensee will pay Solution 7 such sum as will, after the deduction or withholding has been made, leave Solution 7 with the same amount as it would

have been entitled to receive in the absence of any requirement to make a deduction or withholding. If the Licensee is required by law to make a deduction or withholding, the Licensee will, within seven days after making the deduction or withholding, provide Solution 7 with a statement in writing showing the gross amount of the payment, the amount of the sum deducted and the actual amount paid. Solution 7 may, without prejudice to any other right or remedy available to it under this Agreement, at law or in equity, terminate this Agreement, or suspend work under it if, within 14 days after receiving notice in writing of the Licensee's failure to pay in accordance with the terms of this Clause, the Licensee still fails to make those payments in full.

- 5.6 Without prejudice to any other right or remedy which may be available to Solution 7 under this Agreement, at law or in equity, the Licensee will pay, on demand, interest calculated on a daily basis on all sums not paid within 30 days after the date of Solution 7's invoice and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2013, regardless of whether the Licensee is in the United Kingdom. The Licensee will also pay Solution 7's reasonable expenses (on an indemnity basis) in connection with the Licensee's failure to pay any fees or charges when due, including legal expenses and the costs of collection.
- 5.7 On the termination of this Agreement, without prejudice to any other right or remedy available to either Party under this Agreement, in law or in equity, the Licensee will pay all unpaid fees and charges accrued up to that date and all costs and expenses which Solution 7 has then already incurred or agreed to incur in connection with any work done or to be done for the Licensee or any Affiliate.
- 5.8 The fees and charges payable under this Agreement are not refundable except pursuant to Clause 6.4 or 7.3.

## **6. Warranties**

- 6.1 Solution 7 warrants to the Licensee that Solution 7 is the owner of the Intellectual Property Rights in the Solution 7 Software or that it has the right to license the Licensee to use the Solution 7 Software provided the Licensee complies with, and ensures that each Affiliate complies with, this Agreement.
- 6.2 Subject to the Licensee and each Affiliate complying with Clause 2 and all monies payable by the Licensee to Solution 7 under this Agreement having been paid in full, Solution 7 warrants to the Licensee that: the Solution 7 Software (as made available by Solution 7 to the Licensee but excluding any Beta Functionality) will, for 90 days after the Commencement Date, function substantially in accordance with the Documentation when properly used on the equipment and an operating system specified in the Documentation, provided that this 90 day warranty (or any warranty of functionality of any duration) will not apply where the Licensee has already been using the Solution 7 Software under any other form of licence except a trial licence; and Solution 7 will use reasonable skill and care in the performance of this Agreement.
- 6.3 The Licensee and each Affiliate acknowledges that any Open-Source Software and any Beta Functionality is made available "as is", without any warranty from Solution 7 and is subject to the disclaimer in Clause 6.13, and that Solution 7 may withdraw any Beta Functionality at any time.
- 6.4 Provided the Licensee provides a copy of the Licensee Data and anything else needed to reconstruct the problem, Solution 7 will investigate any purported breach of the warranty in Clause 6.2 reported by the Licensee in writing within the period specified in Clause 6.2 and, where appropriate, Solution 7 will endeavour to correct that Error within a reasonable time, or to provide avoidance or remedial information, or Solution 7 will refund the Licence Fee paid by the Licensee for the Solution 7 Software.
- 6.5 Any refund of any Licence Fee made by Solution 7 to the Licensee will be in full and final settlement of any and all liability Solution 7 may have to the Licensee or any Affiliate or any other person (under this Agreement or in any other way in connection with the licensing, supply, development, implementation, configuration, support or maintenance of the Software) and will automatically terminate the Licence and any obligation to provide the Support Services or any Professional Service.
- 6.6 Solution 7 will not be liable under any warranty or any other provision of this Agreement to the extent that any failure of any of the Software to comply with any warranty, or to the extent that any error, defect, bug or deficiency in any of the Software, or Solution 7's failure to correct or delay in correcting it, results from the Licensee or any Affiliate not having complied with this Agreement, or from any other act or omission on the Licensee's or any Affiliate's part, on the part of any User or on the part of any other person. In particular, Solution 7 will not be liable if any modification has been made to any of the Software by anyone except Solution7.
- 6.7 Solution 7 will not be liable under any warranty or under any other provision of this Agreement to the extent that any loss or damage is caused by the Licensee's or any Affiliate's failure to implement, or the Licensee's or any Affiliate's delay in implementing, any upgrade, update, new release, revision, version or modification of any of the Software which would have remedied or mitigated the effects of any error, defect, bug or deficiency.
- 6.8 The Licensee will notify Solution 7 of any Error which it or any Affiliate experiences or suspects exists. When notifying Solution 7 of any actual or suspected Error, the Licensee must provide a documented example of it and all other information and materials needed to reproduce it including an example of where and when the actual or suspected Error occurred and a listing of the related input and output and an explanation in writing of the actual or suspected Error.

- 6.9 Because of the nature of software, Solution 7 does not warrant that any of the Software will be error free or that it will run without interruption, or that every Error, defect, bug or deficiency can be or will be corrected. The existence of any of Error, defect, bug or deficiency will not constitute a breach of this Agreement.
- 6.10 The Licensee and each Affiliate acknowledges and agrees that the proper use of the Software is dependent on the Licensee and each Affiliate and their respective Users exercising proper skill and care in inputting, importing and uploading data into the Software, the accuracy of any data processed by the Software and the checking and correct interpretation of any output provided by the Software. Solution 7 will not be liable for that output or for the consequences of decisions taken by the Licensee or any Affiliate or other person on the basis of that output.
- 6.11 The Licensee and each Affiliate acknowledges and agrees that the Software is standard software provided to Solution 7's licensees generally and it has not been developed to meet the Licensee's or any Affiliate's requirements and that it is the Licensee's and the Affiliates' responsibility to check that the facilities and functions of the Software meet their requirements.
- 6.12 The internet, world wide web, telecommunications networks and services and the Licensee Data are outside Solution 7's control, and Solution 7 will not be responsible or liable for any error, omission or delay in the same, or the inability to use such service, or for any content introduced by any such service.
- 6.13 The express undertakings and warranties given by Solution 7 in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of Solution 7 implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these implied warranties, conditions, terms, undertakings and obligations are, to the extent permitted by law, excluded.
- 6.14 The Licensee warrants that it has:
- 6.14.1 has and throughout each Licence Period will continue to have, all rights and full authority to: (i) give any acknowledgement, undertaking, warranty given in this Agreement on behalf of each Affiliate; (ii) agree to the provision of this Agreement on behalf of each Affiliate; (iii) procure the compliance of each Affiliate with this Agreement; (iv) give any consent, licence, authorisation, instruction or waiver under this Agreement on behalf of each Affiliate; and (v) give or receive any notice under this Agreement on behalf of each Affiliate;
- 6.14.2 Controls and, throughout each Licence Period will continue to Control, each Affiliate; and
- 6.14.3 not been induced to enter into this Agreement by any representation or by any warranty (whether oral, or in writing) except those specifically set out in this Agreement as warranties. The Licensee waives for itself and on behalf of and each Affiliate any and all claims for breach of any warranty and any and all claims for any misrepresentation, (negligent or of any other kind, unless made by Solution 7 fraudulently) not specifically set out in this Agreement as a warranty.

## **7. Intellectual Property Rights**

- 7.1 Solution 7 acknowledges that all Intellectual Property Rights in the Licensee Data are and will remain the Licensee's property. The Licensee will have sole responsibility for, and will ensure the legality, reliability, integrity, accuracy and quality of, the Licensee Data.
- 7.2 The Licensee and each Affiliate acknowledges that all Intellectual Property Rights in the Solution 7 Software and in all documentation relating to that software, as between the Licensee and Solution 7, are and will remain Solution 7's property or that of Solution 7's licensors and that Solution 7 may license others to use them.
- 7.3 If Solution 7 becomes aware of any claim or allegation to the effect that any of the Software or its licensing or distribution infringes the rights of any person, Solution 7 may, at its option: modify any of the Software; or procure for the Licensee and the Affiliates the right to continue to use the Software; or replace the Software; or terminate this Agreement and the Licence and refund a proportion of the Licence Fees paid by the Licensee for the Solution 7 Software for the then current Licence Period. That proportion will be calculated on the basis that the Licence Fee for the Solution 7 Software is pro-rated evenly over the then current Licence Period and that the refund will reflect the proportion of the then current Licence Period left to run as at the termination of this Agreement under this Clause 7.3.
- 7.4 Clause 7.3 sets out all of Solution 7's liabilities and obligations and all of the Licensee's and any Affiliate's remedies in relation to any of the Software infringing any Intellectual Property Rights and in relation to any breach of the warranty in Clause 6.1.

## **8. Termination**

- 8.1 Either Party may terminate this Agreement immediately on giving notice in writing to the other if:



- 8.1.1 the other (which includes in the case of the Licensee being given notice under this Clause 8.1, any Affiliate failing to comply with this Agreement) commits any material or persistent breach of this Agreement and (in the case of a breach capable of being remedied) it has failed to remedy it within 30 days after receiving notice requiring it to remedy the breach. (A persistent breach is one that occurs three or more times in any 12 month period.); or
- 8.1.2 the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if the other becomes subject to an administration order, or if the other enters into any voluntary arrangement with its creditors, or if the other applies to a court for, or obtains, a moratorium in relation to its debts, or if any similar process to any of the above is begun in any jurisdiction, or if the other ceases or threatens to cease to carry on business or its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 8.2 Solution 7 may suspend the performance of this Agreement by Solution 7 if any of the circumstances mentioned in Clause 8.1.1 arises in relation to the Licensee or any Affiliate or if any of the circumstances mentioned in Clause 8.1.2 arises in relation to the Licensee. That suspension will not prejudice Solution 7's right later to terminate this Agreement, either for the same or for a different reason.
- 8.3 Either Party may terminate this Agreement by giving the other not less than 90 days' notice in writing, that notice to expire on the day immediately before the end of the then current Licence Period.
- 8.4 On the termination of this Agreement (however it happens), the Licensee's and each Affiliate's right to use the Solution 7 Software will immediately and automatically terminate, and the Licensee, all Affiliates and all Users will cease using the Solution 7 Software.
- 8.5 The termination of this Agreement (however it happens) will not affect any accrued rights or liabilities of either Party, nor will it affect the coming into force or the continuing in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.
- 8.6 Clauses 1, 2.9, 2.10, 2.14, 2.15, 3, 4.4, 4.8, 4.9 5, 6 (except 6.1, 6.2 and 6.4), 7, 8.4, 8.5, 8.6, 9, 10.2, 11, 12, 13, 14, 15, 16, 17, 18 and 19 will survive the termination of this Agreement and continue in full force and effect without limit in time.

## **9. Confidentiality**

- 9.1 Solution 7 will keep confidential, and not use for any purpose except providing the Software and the Services to the Licensee, any Licensee Confidential Information which the Licensee or any Affiliate discloses or makes available to Solution 7. Solution 7 will notify the Licensee as soon as reasonably possible if Solution 7 becomes aware of any unauthorised use of any of the Licensee Confidential Information or breach of confidence relating to the Licensee Confidential Information by anyone.
- 9.2 The Licensee will keep, and will ensure that each Affiliate will keep, the Solution 7 Confidential Information confidential, and not use it for any purpose except exercising its rights under this Agreement. The Licensee will notify Solution 7 as soon as reasonably possible if the Licensee or any Affiliate becomes aware of any unauthorised use of any of the Solution 7 Confidential Information or breach of confidence relating to the Solution 7 Confidential Information by anyone. The Licensee will allow, and will ensure that each Affiliate allows, Solution 7 at any time to check that the Licensee and the Affiliates have complied with this Agreement and, for that purpose, the Licensee will allow, and will ensure that each Affiliate allows, Solution 7 and its employees and agents, to carry out an audit or inspection, provided that that audit or inspection is carried out during the Licensee's normal working hours and on not less than 7 days' notice in writing given in advance. The Licensee will provide, and ensure that each Affiliate provides, Solution 7 with all documents and records necessary to allow Solution 7 to ascertain whether the Licensee and the Affiliates have complied with this Agreement. If the audit or inspection reveals that the Licensee or any Affiliate has not complied with this Agreement, without prejudice to any other right or remedy which may be available to Solution 7 under this Agreement, at law or in equity, the Licensee will pay the costs of that audit and inspection and immediately make up any underpayment.
- 9.3 The Licensee will not, and will ensure that none of the Affiliates will, without first obtaining Solution 7's consent in writing or in accordance with Clause 9.5, disclose any of the Solution 7 Confidential Information to anyone except to:
- 9.3.1 their respective employees, contract staff and consultants working within their organisation for their benefit and then only to those employees, contract staff and consultants working within their organisation for their benefit who need to know or to have access to the Solution 7 Confidential Information in order to use the Software in accordance with this Agreement; or
- 9.3.2 their respective auditors, HM Revenue and Customs, any other tax authority, any regulatory body to which the Licensee or that Affiliate is subject, or any other person having a right, duty or obligation to know the Licensee's or that Affiliate's business, but then only in pursuance of that right, duty or obligation.

The Licensee will ensure that the people mentioned in this Clause 9.3 are made aware, before the disclosure to them of any of the Solution 7 Confidential Information, that it is confidential to Solution 7 and that they owe a duty of confidence to Solution 7.

The Licensee will give, and will ensure that each Affiliate gives, Solution 7 all assistance reasonably required by Solution 7 in connection with any action or proceedings which it may institute against that person for breach of confidence.

9.4 Solution 7 will not, without first obtaining the Licensee's consent in writing, disclose any of the Licensee Confidential Information to anyone except to:

9.4.1 Solution 7's Personnel who need to know or to have access to the Licensee Confidential Information in order to perform this Agreement or exercise Solution 7's rights under this Agreement; or

9.4.2 Solution 7's auditors, HM Revenue and Customs, any other tax authority, any regulatory body to which Solution 7 is subject, or any other person having a right, duty or obligation to know Solution 7's business, but then only in pursuance of that right, duty or obligation.

Solution 7 will ensure that the people mentioned in this Clause 9.4 are made aware, before the disclosure to them of any of the Licensee Confidential Information, that it is confidential to the Licensee and that they owe a duty of confidence to the Licensee.

Solution 7 will give the Licensee all assistance reasonably required by the Licensee in connection with any action or proceedings which it may institute against that person for breach of confidence.

9.5 The provisions of this Clause 9 do not apply to any information which is in or comes into the public domain unless as a result of a breach of this Clause 9, or which is trivial or obvious, or which is a matter of public record, or which by its nature cannot be confidential, provided that the Solution 7 Software and the User Documentation is not to be treated as being in the public domain by reason that they are licensed or supplied to Solution 7's customers.

9.6 Nothing in this Clause 9 will prevent either Party from making any disclosure of the other Party's Confidential Information required: by law; by the order of any court of competent jurisdiction; or to comply with any regulatory requirement. If the Licensee or any Affiliate is subject to any freedom of information or similar legislation, it may make any disclosure that it is obliged to make under that legislation provided: (i) the Licensee informs Solution 7 as soon as reasonably possible of the requirement to make that disclosure; (ii) the Licensee takes, and ensures that the relevant Affiliate takes, all reasonable steps requested by Solution 7 to limit lawfully the information so disclosed; and neither the Licensee nor any Affiliate makes any disclosure of any information which is exempt from disclosure under that legislation.

## **10. The Licensee's Information and Facilities**

10.1 The Licensee will provide, and will ensure that each Affiliate provides, Solution 7, free of charge, with all information, materials, documentation, resources and facilities reasonably requested by Solution 7 to allow Solution 7 to perform this Agreement. The Licensee will ensure that all Users, staff, contractors and other suppliers of the Licensee and of any Affiliate co-operate fully with Solution 7 and cause no delay. Where Solution 7 requests the Licensee or any Affiliate to provide information or to take a decision which is necessary to allow Solution 7 to perform its obligations, the Licensee will do so, and will ensure that that each Affiliate does so, promptly and so as not to cause any delay.

10.2 The Licensee is solely responsible for:

10.2.1 it and each Affiliate procuring and maintaining equipment, operating systems and software (except the Software), data feeds, network connections and telecommunications links from its systems necessary to allow it to use the Software in a way which meets the Licensee's and each Affiliate's requirements;

10.2.2 all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to any of that or those equipment, operating systems and software (except the Software), data feeds, network connections and telecommunications links from its systems; and

10.2.3 without prejudice to Clause 10.2.1, obtaining and maintaining a current licence to use any third party software that may be necessary to allow the Licensee and each Affiliate to use the Software in a way which meets the Licensee's and each Affiliate's requirements.

## **11. Entire Agreement and Amendments**

11.1 This Agreement, together with the Quote, supersede all earlier agreements, arrangements and understandings between the Parties in respect of its subject matter, and constitute the complete agreement between them relating to that subject matter. In particular, any online terms or agreement to which the Licensee or any employee, member of the contract staff, consultant or an auditor of the Licensee or an Affiliate has agreed or in future agrees when installing the Software are superseded by this Agreement and (if not already terminated) will come to an end on the Commencement Date, except any such terms which survive the expiry or termination

of those online terms or that online agreement. This Agreement prevails over any terms proposed by the Licensee, including in or with any purchase order.

11.2 No addition to, or modification of, any provision of this Agreement will be binding on either Party unless recorded in writing and signed (including by means of an electronic signature) by a duly authorised representative of each of them.

11.3 The amendment, termination or rescission of this Agreement will not require the agreement or consent of any Affiliate, and Solution 7 and the Licensee are free to agree any amendment, termination or rescission of this Agreement as they see fit, subject only to Clause 11.2.

## **12. Notices**

All notices given by Solution 7 under this Agreement must be in writing and be sent to the postal address or e-mail address of the Licensee set out in the Quote or any other contact address or e-mail address for notices which the Licensee designates by notice given to Solution 7 in accordance with this Clause 12. Any notice given by the Licensee under this Agreement must be in writing and sent to Solution 7's registered office from time to time or to [legal@solution7.co.uk](mailto:legal@solution7.co.uk), or to any other address or any e-mail address for notices which Solution 7 designates by notice given to the Licensee in accordance with this Clause 12. Any notice must be delivered by hand, by courier, by first class pre-paid post or by e-mail and will be deemed to have been received: if delivered by hand or courier, when delivered; if sent by pre-paid first class post, 72 hours after posting; and if sent by e-mail, on that e-mail being accessible by the intended recipient.

## **13. Limitations and Exclusions of Liability**

13.1 Subject to Clause 13.4, Solution 7's aggregate total liability for all and any claims in connection with the Software, the Support Services, any Professional Service and the performance or non-performance of this Agreement, whether in contract, or tort (including negligence) or arising in any other way, will not exceed the Licence Fee paid by the Licensee for the Licence Period immediately preceding the date on which the claim is first notified by the Licensee to Solution 7.

13.2 Despite anything else contained in this Agreement (except Clause 13.4), Solution 7 will not be liable to the Licensee or any Affiliate or to any other person for any of the following, in each case whether arising from negligence, or breach of contract, or in any other way, even if Solution 7 had been advised of, or knew of, the likelihood of that loss or type of loss arising:

13.2.1 loss of profits;

13.2.2 loss of savings;

13.2.3 loss of use;

13.2.4 loss of business;

13.2.5 loss of opportunity;

13.2.6 loss or spoiling of data;

13.2.7 loss of contracts,

(in each case whether direct or indirect);

13.2.8 indirect or loss or damage;

13.2.9 consequential, incidental or special loss or damage;

13.2.10 punitive damages; and

13.2.11 liquidated losses or damages.

13.3 The Licensee and each Affiliate acknowledges that the above limitations of and exclusions on Solution 7's liability are reasonable in the light of Solution 7's insurance arrangements and that Solution 7 is willing to accept a higher limitation on its liability provided it is able to obtain full insurance cover for its liabilities and the Licensee pays the costs of obtaining and maintaining any increased cover.

13.4 Nothing in this Agreement limits or excludes Solution 7's liability for death or personal injury caused by its negligence or for fraud or any liability that the law does not permit to be excluded or limited.

13.5 Solution 7 will not be liable for any failure of the Solution 7 Software to operate with equipment or operating system or any data feed not specified in the Documentation or for any degradation in performance or reduction in functionality caused by the use of the Solution 7 Software with any operating system, equipment, software or data feed not specified in the Documentation.

13.6 The Licensee will be liable to Solution 7 for any and all damages, losses, liabilities and expenses suffered or incurred by Solution 7 as a result of the act or omission of each Affiliate and each User as though that act or omission were the Licensee's own act or omission.

13.7 Any failure to comply with this Agreement by any Affiliate or any User, and any failure of any User to comply with any acceptable use policy issued by Solution 7 from time to time, will be deemed to be a breach of this Agreement by the Licensee.

13.8 Subject to Clause 13.4, Solution 7 will have no liability to any Affiliate or any User and each Affiliate irrevocably waives any claim which it may have against Solution 7, and the Licensee will indemnify Solution 7 against any and all losses, damages, costs and expenses incurred by Solution 7 in connection with all and any claims brought against Solution 7 by any Affiliate or by any User (or both).

#### **14. Delays**

14.1 Despite anything else contained in this Agreement, Solution 7 will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including any act or omission on the Licensee's part or on the part of any Affiliate, any User or any other person, and any bug, defect, error, fault or deficiency in any software or data not provided by Solution 7, or in any equipment), and Solution 7 will be granted a reasonable extension of time for the performance of its obligations.

14.2 Solution 7 will endeavour to comply with any timetable, project plan or dates which it has given to the Licensee for the performance of this Agreement but they are estimates only, and Solution 7 will not be liable for any delay or failure to supply or perform in accordance with that timetable or project plan, or those dates.

#### **15. Assignment**

15.1 Neither the Licensee nor any Affiliate may assign, or transfer, or sub-contract this Agreement or sub-license any of its rights or obligations under it, whether in whole or in part, without first obtaining Solution 7's consent in writing.

15.2 Solution 7 may assign all its rights and obligations under this Agreement to any person who acquires its business of licensing the Solution 7 Software.

#### **16. Severability**

If any part of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will not be affected.

#### **17. Waiver**

No forbearance or delay by either Party in enforcing its rights under this Agreement, or at law or in equity will prejudice or restrict those rights. No waiver of any right or breach will operate as a waiver of any later right or breach. No right, power or remedy conferred on, or reserved to, either Party is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

#### **18. Law and Jurisdiction**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, and this Agreement is to be construed in accordance with, the laws of England and Wales. The English Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of, or in connection with, this Agreement or its subject matter or formation, except that Solution 7 may bring proceedings to protect its Intellectual Property Rights or Confidential Information (or both) in any jurisdiction.

#### **19. Partnership and Third Parties**

19.1 Nothing in this Agreement creates, evidences or implies any partnership or joint venture between the Parties or between Solution 7 and any Affiliate, or the relationship between them of principal and agent. Any third party which provides any help desk or Professional Service to the Licensee or any Affiliate is acting as principal and not as Solution 7's agent. Solution 7 will not be liable to the Licensee, any Affiliate or anyone else for the acts or omissions of others.

19.2 No one except the Parties has any rights or is entitled to the benefit of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise. The amendment, termination or rescission of this Agreement will not require the agreement or consent of any Affiliate.