Kbase Connect Terms of Business (Development and Licensing)

1 Agreement

1.1 By signing the Initial Requirements Document, the person doing so (the **Client**) is entering into an agreement - the Project Agreement - with Kbase Connect Ltd on, and subject to, these terms.

2 Interpretation

2.1 These terms and the other Project Documents are to be interpreted in accordance with Clause 23.

3 Services

3.1 Kbase Connect will prepare a Functional Specification for the Solution which reflects and expands upon the Initial Requirements Document.

3.2 Once the Client has accepted the Functional Specification, Kbase Connect will use reasonable commercial efforts to create, host and maintain the Solution for the Client in accordance with these terms.

4 Client Material

4.1 The Client will supply the Client Material in accordance with the Project Documents.

4.2 The Client warrants that it has all rights and permissions which are necessary for it to supply the Client Material, to include it in the Solution, and to authorise Kbase Connect to use it in accordance with the Project Agreement.

5 Testing and Acceptance

5.1 Kbase Connect will inform the Client when the Solution is or will be available for the Client to test and, if one is necessary, will provide the Client with a URL and password to enable the Client to review it and test it. If the Solution is not suited to testing by the Client via an internet connection, Kbase Connect will deliver an executable copy of the Solution to the Client.

5.2 The Client will test the Solution to determine whether it is Compliant.

5.3 If the Solution is Compliant, the Client will promptly give Kbase Connect notice of this (an **Acceptance Notice**). If the Solution is not Compliant, the Client will promptly give Kbase Connect notice of this, including full details of why it is not Compliant (a **Rejection Notice**).

5.4 If the Client has served a valid Rejection Notice, Kbase Connect will modify and resubmit the Solution.

5.5 Clauses 5.1 - 5.4 apply to each version of the Solution submitted for testing until such time as a version is Compliant or the Client terminates the Project Agreement pursuant to Clause 19.2.

5.6 The Client will be deemed to have accepted the Solution at the earliest of the following times:

5.6.1 When the client has had a version available for testing for 7 days and has not served a valid Rejection Notice;

5.6.2 When the Client has used the Solution for any purpose other than determining whether it is Compliant;

5.6.3 When the Client has used the Solution in a live environment.

6 Hosting

6.1 This Clause 6 applies after the Client has given Kbase Connect an Acceptance Notice.

6.2 Kbase Connect will arrange for the Solution to be hosted on the Equipment.

6.3 If the Solution includes a website, Kbase Connect will arrange for that website to be accessible via the Solution URL in accordance with the Availability and Performance Service Levels.

6.4 Kbase Connect will take reasonable steps to secure the Solution against unauthorised changes while it is being hosted pursuant to this Clause 6 by requiring the use of an administration password known only to the Client. The Client will keep the password secret.

7 Maintenance and Support

7.1 This Clause 7 applies after the Client has given Kbase Connect an Acceptance Notice and for so long as the Client has paid the Charges for this maintenance and support service. (The Charges for the hosting service described in Clause 6 include the Charges for this maintenance and support service.)

7.2 Kbase Connect will provide advice by telephone and e-mail to up to two competent trained employees of the Client in order to help the Client use the Solution. This is an advice and guidance service; it is not a substitute for management consultancy, project management, implementation control, system consultancy, or product training.

7.3 If the Client notifies Kbase Connect of a problem with the Solution that is a Solution Defect, Kbase Connect will take reasonable commercial steps to investigate it and fix it in accordance with the Maintenance and Support Service Levels, and will promptly notify the Client if it believes that it will not be able to do so in accordance with those service levels or at all.

7.4 If the Client notifies Kbase Connect of a problem with the Solution that is not a Solution Defect (whether that is known at the outset or is shown to be the case later), Kbase Connect will take reasonable commercial steps to investigate it and to either fix it or reduce its impact, but it does not give any commitment that it will do so in accordance with the Maintenance and Support Service Levels and the Client will pay for this work at the rates specified in the Project Documents.

8 Transfer

8.1 At the Client's written request, and following its receipt from the Client of the Transfer Charge in cleared funds, Kbase Connect will: (i) execute any transfer documents required to transfer the registration of the Solution URL into the Client's name, (ii) provide the Client with a copy of the source code for the Solution, and (iii) grant the Client a perpetual, non-exclusive licence under Kbase Connect's Intellectual Property Rights in the Solution permitting the Client to use the Solution and to maintain and develop it (and to have a third party host, maintain and develop it for the Client).

Kbase Connect Terms of Business (Development and Licensing)

9   Project Management

9.1   Each party will liaise and co-operate with the other, and will make all reasonable efforts to ensure that all communications between them regarding the Project are made through the Project Managers.

9.2   Each party will ensure that it responds to the other's requests for information promptly, accurately and as fully as is possible and reasonable.

9.3   Each party represents and warrants that its Project Manager has the necessary expertise to fulfil that role and has full authority to represent it and bind it on all matters relating to the Project and the Project Agreement.

10   Charges and Payment

10.1   The Client will pay the Charges in accordance with the Project Documents and these terms.

10.2   The Charges stated in the Project Documents do not include VAT, which Kbase Connect will add and the Client will pay at the applicable rate.

10.3   Unless explicitly stated otherwise, all hosting and maintenance and support Charges are payable in advance.

10.4   Kbase Connect may vary the Charges by giving at least 60 days' notice before they are due. If it does so, and the Client does not wish to accept the increase, the Client is entitled to terminate the Project Agreement by giving notice within 30 days.

10.5   If Kbase Connect does not receive any monies by the time they are payable then, without prejudice to its other rights and remedies and without liability to the Client, it may at its sole option:

10.5.1   suspend performance of its obligations under the Project Agreement until payment has been received in full (together with any interest accrued under Clause 10.5.3) and in cleared funds;

10.5.2   terminate the Project Agreement (or any part of it) immediately on notice or after such period of notice as it shall specify and claim damages; and/or

10.5.3   charge interest on them from when they became payable until they have been received in cleared funds. Interest will accrue daily at the rate of 4% above the base lending rate from time to time of the Bank of England. If Kbase Connect obtains judgment for any monies, interest accrues at this rate before and after that judgment

10.6   Kbase Connect is relieved from all its obligations under the Project Agreement (**including any Availability and Performance Services Levels and/or Maintenance and Support Service Levels)** while any monies are due and payable to it under that agreement remain unpaid.

10.7   Kbase Connect may set off against any liability it has to the Client any monies which are due from the Client under the Project Agreement or any other agreement.

11   Intellectual property rights

11.1   Subject to Clause 11.2, all title, rights and interests (including all Intellectual Property Rights) in and to the following belong to, and vest in, Kbase Connect: the Project Documents; the Solution; all design documents and materials other than those provided by the Client; any associated documentation. The Client does not acquire any title, right or interest in or to any of these, and assigns (including by way of an assignment of future copyright) all such title, rights and interests to Kbase Connect absolutely with full title guarantee and free of all encumbrances and licences.

11.2   The Client retains all title, rights and interests (including all Intellectual Property Rights) in and to the Client Material except to the extent that it reproduces, records or embodies anything previously provided by Kbase Connect.

11.3   The Client irrevocably authorises Kbase Connect to use the Client Material for the purpose of performing its obligations under the Project Agreement and to retain a copy of the Client Material for its records. This authorisation to use the Client Material for the purpose of performing Kbase Connect's obligations under the Project Agreement lasts for the duration of the Project Agreement and for a reasonable time thereafter so as to enable Kbase Connect to end the hosting arrangements and remove the Solution from the Equipment. This authorisation to retain a copy of the Client Material in Kbase Connect's records is perpetual.

12   Kbase Connect warranties

12.1   Kbase Connect warrants that: (i) it will perform any services under the Project Agreement with reasonable skill and care; (ii) it will design any website which is part of the Solution with the intention of improving and increasing the Client's search engine rankings and levels of business; (iii) the Solution will comply with its description in the Project Documents; (iv) the Solution will comply with the Functional Specification in all material respects; and (v) the Solution will operate with the Equipment.

12.2   Subject to Clause 12.1, Kbase Connect does not give any assurance (whether as a condition, warranty, other term, representation or otherwise) that the Solution will be of any particular quality or fit for any purpose.

12.3   Subject to Clause 12.1, Kbase Connect does not give any assurance (whether as a condition, warranty, other term, representation or otherwise) that the Solution will operate with, or be compatible with, any hardware or software.

12.4   Subject to Clause 12.1, Kbase Connect does not give any assurance (whether as a condition, warranty, other term, representation or otherwise) that the Solution will achieve any improvement or increase in the Client's search engine rankings or levels of business.

12.5   Subject to Clause 12.1, Kbase Connect does not give any assurance (whether as a condition, warranty, other term, representation or otherwise) that the content of the Solution will comply with any legal, regulatory or professional requirements. This is the Client's responsibility.

12.6   Kbase Connect warrants that it will not knowingly infringe the rights (including any Intellectual Property Rights) of a third party in the course of creating, developing, hosting, maintaining and supporting the Solution.

12.7 Kbase Connect does not give any assurance (whether as a condition, warranty, other term, representation or otherwise) concerning any aspect of the Project, the Solution or the Services other than those stated in these terms or the Project Documents. Any other condition, warranty, other term or representation concerning the Project, the Solution or Kbase Connect's services which would otherwise be implied is excluded, whether it would be implied by virtue of any circumstances, any rule of law, any previous transactions between the Client and Kbase Connect, any general commercial practices, or the nature of the Project, the Solution or the services. In particular, any term which would otherwise be implied by section 3, 4 or 5 of the Supply of Goods and Services Act 1982, and any similar term which would otherwise be implied by common law, is excluded.

13 Indemnities

13.1 Kbase Connect will indemnify the Client, and will keep it indemnified on demand, against all losses, liabilities, costs (including legal professional fees and other legal costs) and expenses suffered or incurred by the Client in connection with any claim by any third party that the Solution infringes any Intellectual Property Right of any person as a result of Kbase Connect having knowingly and wilfully infringed the rights (including any Intellectual Property Rights) of a third party.

13.2 The Client will indemnify Kbase Connect, and will keep it indemnified on demand, against all losses, liabilities, costs (including legal professional fees and other legal costs) and expenses suffered or incurred by Kbase Connect in connection with any claim by any third party that anything done by Kbase Connect pursuant to the Client's specific instructions or directions infringes any right (including any Intellectual Property Right) of any third party.

14 Restrictions of Kbase Connect's liability

14.1 Kbase Connect's only obligation and liability for the Testing Period is to amend the Solution and re-submit it for testing.

14.2 If the Client has issued a termination notice with a Rejection Certificate in accordance with Clause 19.2, Kbase Connect's liability is restricted to refunding all Charges received from the Client other than the Charge (if any) identified in the Project Documents as a separate charge for the Functional Specification.

14.3 If the Client has issued an Acceptance Notice, Kbase Connect's obligations and liability for any problems with the Solution (including any Solution Defects) is restricted to providing maintenance and support services pursuant to Clause 7, refunding a fair and reasonable part of those Charges which the Client has paid, and reducing any Charges to be paid by a fair and reasonable amount. The refund of the Charges paid, and the reduction in the Charges to be paid, will be a fair and reasonable part of those Charges to reflect the extent to which, and the time for which, the Solution is not Compliant.

14.4 Kbase Connect's liability for failing to comply with Clause 7 is restricted to refunding a fair and reasonable part of those Charges which the Client has paid for those maintenance and support services for the relevant period to reflect the extent to which, and the time for which, Kbase Connect failed to so comply.

14.5 Kbase Connect's directors, officers, employees and agents do not have any liability to the Client under the Project Agreement, and they may each rely on this Clause 14.5.

14.6 Kbase Connect is not liable for any problem with the Solution that is not a Solution Defect.

14.7 Kbase Connect is not liable for failing to remedy any problem with the Solution that is not a Solution Defect.

14.8 Kbase Connect is not liable for the consequences of any delay in delivering the Solution.

14.9 Kbase Connect is not liable for any indirect or consequential loss or damage.

14.10 Kbase Connect is not liable for any loss of revenue, profit, goodwill or reputation, or for any damage to any of these.

14.11 Kbase Connect is not liable for any losses, damage, liabilities, costs (including legal professional fees and other legal costs) or expenses suffered or incurred by the Client in connection with, or as a result of, any claim by any third party except under Clause 13.1.

14.12 Kbase Connect is not liable for the failure of the Solution to fulfil any legal, regulatory or professional requirement.

14.13 Kbase Connect is not liable for the consequences of any computer code which is transmitted through the Solution or any e-mail and is intended to cause unauthorised computer activity (including any virus, Trojan or worm) unless it has been introduced maliciously by Kbase Connect or its staff or contractors.

14.14 Unless Kbase Connect has agreed a higher limit (in writing and signed on behalf of Kbase Connect), Kbase Connect's total aggregate liability for all loss, damage, expense and costs (including legal professional fees and other legal costs) suffered or incurred by the Client in connection with the Project, the Solution, and all breaches of the Project Agreement, is limited to £100,000.

14.15 The exclusions and restrictions of Kbase Connect's liability in these terms cover its liability on any legal or equitable basis for the loss, damage, expense, costs and other items described:

14.15.1 even if they are of a kind which would arise in the ordinary course of things;

14.15.2 even if they are of a kind which Kbase Connect is aware (or ought to be aware) could or would occur in the circumstances;

14.15.3 however they might arise, even if they result from Kbase Connect's negligence or from other negligence for which Kbase Connect would otherwise be liable.

14.16 As special exceptions, Kbase Connect does not exclude or restrict any liability it would otherwise have for any of the following: (i) any breach of any obligations which may be implied by Section 2 of the Supply of Goods and Services Act 1982; (ii) any personal injury resulting from negligence; (iii) fraud.

Kbase Connect Terms of Business (Development and Licensing)

15   **Events beyond Kbase Connect's reasonable control**

15.1   Kbase Connect is not be in breach of the Project Agreement, or liable to the Client in any way whatsoever, for failing to fulfil an obligation to the extent that its failure to do so is due to a cause beyond its reasonable control (which includes the acts and omissions of the person hosting the Solution and anything which is the Client's fault or is due to the Client's failure to fulfil its obligations).

16   **Confidentiality**

16.1   Each party will keep confidential any Confidential Information it acquires and will use that information only in connection with the Project.

16.2   A party may disclose any Confidential Information it acquires in confidence to its lawyers for the purpose of obtaining legal advice.

16.3   A party may disclose any Confidential Information it acquires if it is legally required to do so.

16.4   A party may use and disclose any Confidential Information it acquires to the extent that: (i) it also acquires that particular information otherwise than in connection with the Project, and is entitled to use it; or (ii) that information has ceased to be confidential otherwise than as a consequence of a breach of this Clause 16.

16.5   Any use or disclosure of any Confidential Information by the staff of a party or its contractor is deemed to be made by that party.

17   **Data protection**

17.1   In this clause 17, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** (and similar expressions) shall have the meanings given to them in the Data Protection Legislation.

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

17.3   Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17.3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

17.4   If and to the extent that Kbase Connect processes any personal data in the course of providing Kbase Connect's services, the parties acknowledge that for the purposes of the Data Protection Legislation, the Client shall be the controller and Kbase Connect shall be the processor.

17.5   The Client will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to Kbase Connect for the duration and purposes of the Project Agreement.

17.6   Without prejudice to the Kbase Connect's obligations under clause 17.3, Kbase Connect shall, in relation to the processing of any personal data by Kbase Connect in the course of providing its services:

    17.6.1   process that personal data only on the written instructions of the Client unless Kbase Connect is required by the laws of any member of the European Union or by the laws of the

European Union applicable to Kbase Connect to process personal data (**Applicable Laws**). Where Kbase Connect is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, Kbase Connect shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Kbase Connect from so notifying the Client;

17.6.2   immediately notify the Client if, in its opinion, any instruction given by the Client or its personnel infringes the Data Protection Legislation;

17.6.3   ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

17.6.4   ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

17.6.5   not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

    (a)   the Client or Kbase Connect has provided appropriate safeguards in relation to the transfer;

    (b)   the data subject has enforceable rights and effective legal remedies;

    (c)   Kbase Connect complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

    (d)   Kbase Connect complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;

17.6.6   assist the Client, at the Client's reasonable cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

17.6.7 notify the Client without undue delay and in any case within 24 hours on becoming aware of a personal data breach;

17.6.8 at the written direction of the Client, delete or return personal data and copies thereof to the Client following expiry or termination of the provision of the Services by Kbase Connect unless required by Applicable Laws to store the personal data; and

17.6.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the Client or the Client's designated auditor not more than once in any 12-month period from the date of this Agreement (except where the Client knows or reasonably believes that there has been a personal data breach involving Kbase Connect) during Kbase Connect's normal working hours.

17.7 The Client acknowledges and agrees that Kbase Connect shall generally be authorised to engage third parties in connection with its activities and obligations in relation to the processing of personal data under this Agreement (each a **sub data processor**) provided that:

17.7.1 Kbase Connect enters into a written agreement with each sub data processor on terms which are substantially the same as, and not less onerous than, those set out in this Agreement;

17.7.2 Kbase Connect shall remain responsible to the Client for the performance of its obligations under this Agreement or any Project Agreement notwithstanding the appointment of any sub data processor and shall be liable for the acts, omission and neglects of each sub data processor;

17.7.3 in the event that Kbase Connect wishes to make any changes concerning the addition or replacement of any sub data processor:

(a) it shall give the Client not less than 60 days' written notice of the proposed change including details of the identity of such sub data processor and a description of the nature and extent of the processing to be undertaken by them;

(b) if the Client objects to any change proposed under clause 17.7.3(a), it shall notify Kbase Connect with the grounds for such objection in writing not less than 30 days prior to expiry of the 60 day notice period and the parties shall use their respective reasonable endeavours to address and resolve those grounds of objection or agree alternative arrangements for the Client;

(c) if the parties shall be unable to resolve the grounds of objection or agree alternative arrangements, either party may terminate the provisions of the Services to the extent affected by the proposed change or, where this is not possible, the Project Agreement under which Kbase Connect provides its service to the Client without notice or liability.

17.8 Either party may, at any time on not less than 30 days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

18 Publicity

18.1 A party will not make a public announcement relating to the Project or the Project Agreement without the other party's permission. This obligation survives termination of the Project Agreement for any reason whatsoever.

19 Duration and termination of the Project Agreement

19.1 The Project Agreement continues until it is brought to an end in accordance with this Clause 19.

19.2 The Client may bring the Project Agreement to an end by giving a termination notice with a Rejection Notice if: (i) it has previously issued a Rejection Notice identifying the same Solution Defect; (ii) it has co-operated with Kbase Connect in connection with Kbase Connect's attempts to cure that Solution Defect; and (iii) Kbase Connect has failed to cure it within 30 Business Days (or such longer period as the Client has agreed to). If it does so, Kbase Connect will refund all Charges received from the Client other than the Charge (if any) identified in the Project Documents as a separate charge for the Functional Specification.

19.3 The Client may bring the Project Agreement to an end after the Initial Period by giving at least 1 months' notice. That notice may be given before the end of the Initial Period, but it must expire at or after that time.

19.4 The Client may bring the Project Agreement to an end during the Initial Period by giving notice and paying all the Charges that relate to the Initial Period.

19.5 Kbase Connect may bring the Project Agreement to an end by giving at least 1 month's notice. If it does so, it will refund any Charges it has received which relate to any period after the Project Agreement ends.

19.6 Kbase Connect may bring the Project Agreement to an end immediately if any of the following apply:

19.6.1 The Client is in breach of these terms and that breach cannot be remedied.

19.6.2 The Client remains in breach of these terms more than 7 days after being notified: (i) that it is in breach, (ii) what the breach consists of, (iii) that it is required to remedy that breach.

19.6.3 The Client: (i) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (ii) is insolvent; (iii) is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution otherwise than for the purposes of a solvent amalgamation or reconstruction; (iv) has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; (v) enters into, or proposes, any composition or arrangement with its creditors generally;

or (vi) is subject to any analogous event or proceeding in any applicable jurisdiction.

19.7 Kbase Connect may bring the Project Agreement to an end immediately if, in its reasonable opinion, that is necessary in order to avoid any infringement of a third party's Intellectual Property Rights. If it does so, it will refund a fair and reasonable part of any Charges it has received which relate to any period after the Project Agreement ends.

20 Consequences of termination

20.1 If the Project Agreement ends for any reason:

20.1.1 The Client's licence to use the Solution ends;

20.1.2 All monies due under the Project Agreement become payable immediately;

20.1.3 Kbase Connect will end the hosting arrangements and will arrange for the Solution to be removed from the Equipment.

20.1.4 Subject to Clause 20.1.5, the Client will return the Project Documents (and all copies of them) to Kbase Connect without delay.

20.1.5 Kbase Connect will comply with Clause 8.1 if the Client waives the refund of any Charges in addition to paying the Transfer Charge.

20.2 If the client has brought the Project Agreement to an end pursuant to Clause 19.2, and Kbase Connect has retained a Charge for the Functional Specification, the Client is entitled to retain the Functional Specification and to use it (and to authorise a third party to use it) for the purpose of creating an alternative to the Solution.

21 Notices

21.1 To be valid, a notice must be in writing and must be sent by fax, e-mail or recorded delivery to the receiving party's Project Manager using the contact details stated in the Project Documents.

21.2 A properly served notice takes effect when it is available to the recipient (or would be if the recipient were there to receive it) except that a notice which first becomes available for reading after 5.00 pm takes effect at 9.00 am on the next Business Day.

22 General

22.1 To the extent that there is any conflict between them, a later document takes priority over an earlier one. In particular, the Functional Specification takes priority over the Initial Requirements Document.

22.2 Kbase Connect may assign the benefit of the Project Agreement to any third party, but the Client may not assign or otherwise confer the benefit of the Project Agreement to or on any third party in any way whatsoever.

22.3 Kbase Connect may delegate the performance of any of its obligations to a third party.

22.4 Except where the Project Agreement expressly provides otherwise, it does not confer on any person other than the parties any right to enforce

or rely on any term of the Project Agreement. The parties are entitled to exercise their rights (if any) to rescind, terminate or vary the Project Agreement without the consent of any third party and without informing any third party.

22.5 If any provision of these terms is invalid, unenforceable or unlawful, the other provisions continue to apply.

22.6 If any invalid, unenforceable or unlawful provision of these terms would be valid, enforceable or lawful if some part of it were deleted, it applies with whatever deletion is necessary to give effect, so far as is possible, to the apparent commercial intention of the parties.

22.7 A party does not vary the Project Agreement, or forego its right to exercise or claim any right or remedy, by reason of any failure or delay in exercising or claiming that or any other right or remedy, and the other party will not claim that such a delay or failure has such an effect.

22.8 Without limiting the scope of Clause 22.7, Kbase Connect remains relieved from its obligations in accordance with Clause 10.6, and retains all its rights under these terms (including the right to sue for payment and to bring the Project Agreement to an end), notwithstanding that it may have continued to act in accordance with these terms after any monies have become overdue, and notwithstanding that it may have accepted payment of any other monies which may subsequently have fallen due.

22.9 A waiver or variation of the Project Agreement is not binding on either party unless it has been recorded in writing and signed on behalf of both parties.

22.10 The Project Documents and these terms record the entire agreement between the parties concerning the Project and the Solution, and supersede any previous agreement regarding them. In entering into the Project Agreement, neither party has relied on any statement or representation which is not recorded in these terms or the Project Documents. This does not affect the rights or liabilities of either party in respect of any fraud.

22.11 This agreement is subject to English law, and the English courts have exclusive jurisdiction over any dispute concerning or arising out of the Project Agreement, the Project or the Solution.

23 Interpretation

23.1 In these terms and the Project Agreement, the following words and expressions have the following meanings:

'Acceptance': The Client's actual or deemed acceptance of the Solution.

'Acceptance Notice': A notice given by the Client pursuant to Clause 5.3.

'Availability and Performance Service Levels': The levels of the Solution's availability and performance described in the Project Documents.

'Business Day': Monday to Friday, except public holidays.

'Charges': The fees and other charges stated in the Project Documents.

Kbase Connect Terms of Business (Development and Licensing)

'Client Data': The data inputted by the Client or Kbase Connect on the Client's behalf in connection with the provision of Kbase Connect's services (including any personal data as defined in clause 17.1).

'Client Material': The documents, files and other material identified in the Project Documents as material to be provided by the Client, together with any other material provided by the Client.

'Compliant': The Solution is compliant with the warranties in Clause 12.1.

'Confidential Information': All information of a confidential nature acquired by a party in connection with the Project which concerns the Project or the affairs of the other party and is either clearly of a confidential nature or is identified as confidential at the time of its acquisition.

'**Data Protection Legislation**': shall mean (i) before 25 May 2018, the Data Protection Act 1998; (ii) on and from 25 May 2018 and unless and until the GDPR is no longer directly applicable in the UK, the GDPR; and (iii) any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR.

'Equipment': The equipment identified in the Project Documents as the equipment on which the Solution is to be hosted for the Client.

'Functional Specification': The document to be written and issued by Kbase Connect as a full specification of the Solution, and identified as such.

'**GDPR**': the General Data Protection Regulation (Regulation (EU) 2016/679).

'Initial Period: The first 3 months of the Project Agreement.

'Initial Requirements Document': The document to be written and issued by Kbase Connect as a provisional and basic description of the Solution, and identified as such.

'Intellectual Property Rights': All intellectual property rights (both those existing at the start of the Project Agreement and those arising at any time thereafter), wherever in the world arising, whether or not registrable whether or not registered, and including any application for registration. These include copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, design rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

'parties': The original parties to the Project Agreement and their permitted successors and assigns.

'Personal Data': Has the same meaning as in the Data Protection Act 1998.

'Project': The creation, development, maintenance, support and hosting of the Solution in accordance with these terms and the Project Documents.

'Project Agreement': The contract for the design, creation, hosting, maintenance and support of the Solution, which consists of these terms and the Project Documents.

'Project Documents': (i) The Initial Requirements Document and Functional Specification; together with (ii) any other documents which have been signed on behalf of Kbase Connect and the Client and are referred to in either of the documents described in (i) or refer to either of those documents.

'Project Manager': The individuals representing the parties in connection with the Project and identified as such in the Project Documents, or as subsequently substituted by a party giving notice.

'Rejection Notice': A notice given by the Client pursuant to Clause 5.3.

'Maintenance and Support Service Levels': The maintenance and support service levels identified in the Project Documents.

'Solution': A website and/or website related application and/or offline software application created by Kbase Connect and conforming to the description in the Project Documents.

'Solution Defect': A failure of the Solution to comply with the Project Documents in any material respect when in operation on the Equipment, where that failure is due to any aspect of the Solution itself (excluding the Client Material). A failure due to the Equipment or the hosting service is not a Solution Defect.

'Solution URL': the URL identified as such in the Project Documents.

'Testing Period': The period from the date of this Agreement until the Client has either served an Acceptance Notice or has served a termination notice with a Rejection Notice in accordance with Clause 19.2.

'Transfer Charge': The charge (if any) identified as such in the Project Documents.

23.2 An obligation to refrain from doing something (in whatever language that obligation is expressed) includes an obligation not to attempt or purport to do that thing.

23.3 References to Kbase Connect, the Client and the parties include their permitted successors and assigns.

23.4 References to statutory provisions include any regulations made under those provisions and are to those statutory provisions as amended or re-enacted from time to time.

23.5 References to any gender include all genders.

23.6 Words in the singular include the plural and words in the plural include the singular.

23.7 The use of the word '*including'* and the phrase '*in particular'* are only intended to illustrate specific examples. The use of these words and examples does not restrict the scope of any term of the Project Agreement in any way whatsoever.

23.8   Any provision of the Project Agreement is a continuing one throughout the term of the Project Agreement, and notwithstanding the use of the present tense it is not limited to the time at which the Project Agreement is concluded.