ENDIDA LIMITED

TERMS AND CONDITIONS FOR SUBSCRIPTION SERVICES

1   INTERPRETATION

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

1.2   **"Authorised Users"** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.4.

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

1.4   **"Confidential Information"** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.

1.5   **"Customer Data"** the data inputted by the Customer, Authorised Users, or Endida on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

1.6   **"Documentation"** the document made available to the Customer by Endida to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

1.7   **"Effective Date"** the date specified as such on the Order Form or, if no such date is specified, the date on which the Services are first made available to the Customer.

1.8   **"EULA"** an end user licence agreement for a Service that a Customer is required to agree to at the point of use in order to use the Service which may be between (a) the Customer and Endida, or (b) between the Customer and one of Endida's Licensors.

1.9   **"Heightened Cybersecurity Requirements"** any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User (but not Endida) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

1.10   **"Initial Subscription Term"** the initial term of this Agreement as set out in the Order Form.

1.11   **"Licensor"** means any person that has granted Endida a licence or authority to sub-license or resell any of the Services.

1.12   **"Normal Business Hours"** 8.00 am to 6.00 pm local UK time, each Business Day.

1.13   **"Order Form"** means the Order Form attached to these terms and conditions for the subscription to the Services which includes details of the Services order, the Subscription Fees, the Effective Date and the Initial Subscription Term.

1.14   **"Renewal Period"** the period described in clause 14.1.

1.15   **"Services"** the subscription services provided by Endida to the Customer under this Agreement as further detailed in the Order Form.

1.16   **"Software"** the online software applications provided by Endida as part of the Services.

1.17   **"Subscription Fees"** the subscription fees payable by the Customer to Endida for the User Subscriptions, as set out in the Order Form.

1.18   **"Subscription Term"** has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

1.19   **"User Subscriptions"** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

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

1.21   **"Vulnerability"** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

1.22   Clause headings shall not affect the interpretation of this Agreement.

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

1.24   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.25   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.26   Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.27   A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.28   A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.29   A reference to **writing** or **written** includes email.

2   APPLICATION OF THESE TERMS

2.1   These terms and conditions apply to any order for Services placed by the Customer pursuant to an Order Form. Together the Order Form and these terms form an Agreement between Endida and the Customer.

2.2   These terms and conditions apply to the exclusion of all other terms or conditions which the Customer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by Endida.

2.3   In addition this Agreement, the Customer may be required to comply with a EULA in relation to the Services or any Software comprised in the Services, at the point of use. The Customer undertakes to comply with the terms of any applicable EULA (and to ensure that its Authorised Users do so).

3   USER SUBSCRIPTIONS

3.1   In consideration of the Customer paying the Subscription Fees, and subject to the terms of this Agreement, Endida grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

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

3.2.1   the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

3.2.2   it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

3.2.3   each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential; and

3.2.4   it shall maintain a written, up to date list of current Authorised Users and provide such list to Endida within 5 Business Days of Endida's written request at any time or times.

3.3   The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

3.3.1   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2   facilitates illegal activity;

3.3.3   depicts sexually explicit images;

3.3.4   promotes unlawful violence;

3.3.5   is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.3.6   is otherwise illegal or causes damage or injury to any person or property;

and Endida reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4   The Customer shall not:

3.4.1   except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

3.4.1.1   attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1.2   attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2   access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

3.4.3   use the Services and/or Documentation to provide services to third parties; or

3.4.4   subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

3.4.5   attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or

3.4.6   introduce or permit the introduction of, any Virus or Vulnerability into Endida's network and information systems.

3.5   The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Endida.

3.6   The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4   ADDITIONAL USER SUBSCRIPTIONS

4.1   Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order Form and Endida shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

4.2   If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Endida in writing. Endida shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where Endida approves the request, Endida shall activate the additional User Subscriptions.

4.3   If Endida approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Endida's invoice, pay to Endida the relevant fees for such additional User Subscriptions as set out the Order Form and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Endida for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

5   SERVICES

5.1   Endida shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

5.2   Endida shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned and emergency maintenance.

5.3   Endida will, as part of the Services, provide the Customer with Endida's standard customer support services during Normal Business Hours.

6   DATA PROTECTION

6.1   Each party shall comply with its obligations under the UK General Data Protection Regulation, the Data Protection Act 2018, and all applicable data protection laws ("**Data Protection Legislation**") in connection with the performance of its obligations under this Agreement.

6.2   The parties acknowledge their understanding that, where personal data (as defined in Data Protection Legislation) is processed in the course of providing the Services, the Customer shall be the data controller and Endida shall be the data processor.

6.3   Clause 6.5 sets out the scope, nature and purpose of processing carried out under this Agreement by Endida on behalf of the Customer, the duration of the processing and the types of personal data and categories of data subject.

6.4   Where Endida processes personal data on behalf of the Customer, Endida shall:

6.4.1   process such personal data only in accordance with the Customer's documented instructions;

6.4.2 not export the personal data outside the UK and the EEA without the Customer's written consent (unless required to do so by the laws of a member of the European Union) and such consent is hereby given provided that the Endida shall ensure that any such transfer is made to a country that offers adequate safeguards for the protection of personal data or is otherwise made in accordance with Data Protection Legislation;

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

6.4.4 maintain appropriate technological and organisational measures to keep the personal data secure, such measures to be proportionate to the risk involved;

6.4.5 not engage another data processor (for the processing it performs under this Agreement) without prior specific or general written authorisation of the Customer. Such such general authorisation is hereby given;

6.4.6 where Endida engages another data processor, it will;

6.4.6.1 notify the Customer with details of the proposed sub-processor in advance to give the Customer an opportunity to object; and

6.4.6.2 enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Customer and Endida, Endida shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause;

6.4.7 at the Customer's cost, assist the Customer by appropriate technical and organisational measures to respond to requests by data subjects to exercise their rights under Data Protection Legislation (including subject access requests, exercise of the right to rectification, to erasure, to restriction of processing, to object to automated decision making and the right to data portability);

6.4.8 assist the Customer, at the Customer's cost, 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;

6.4.9 notify the Customer without undue delay on becoming aware of a personal data security breach;

6.4.10 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this Agreement unless required by applicable law to store the personal data; and

6.4.11 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor.

6.5 The details of the personal data processing referred to in clause 6.3 are as follows:

Categories of Individuals	Customer staff Any other individuals whose details the Customer inputs into the Software and Services
Categories of Relevant Personal Data	Email addresses, user names, passwords and any other data the Customer inputs into the Software and the Services
Special categories of Relevant Personal Data	None known, unless the Customer inputs any such data
Nature and purpose of the processing	Processing will be carried out for the purposes of providing the Services. Software will be hosted by Endida. The Customer will input data into the Software for the purposes of security monitoring on the dark web, detecting security breaches and/or conducting penetration testing.
Duration of processing	Throughout the Subscription Term

7 ENDIDA'S OBLIGATIONS

7.1 Endida undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Endida's instructions, or modification or alteration of the Services by any party other than Endida or Endida's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Endida will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 Endida:

7.3.1 does not warrant that:

7.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or

7.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or

7.3.1.3 the Software or the Services will be free from Vulnerabilities or Viruses; or

7.3.1.4 the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 This Agreement shall not prevent Endida from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.5 Endida warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.6 The Customer shall be responsible for keeping its own back-ups of Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Endida shall be for Endida to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Endida. Endida shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Endida to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.

8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

    8.1.1 provide Endida with:

        8.1.1.1 all necessary co-operation in relation to this Agreement; and

        8.1.1.2 all necessary access to such information as may be required by Endida;

    in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

    8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

    8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Endida may adjust any agreed timetable or delivery schedule as reasonably necessary;

    8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

    8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Endida, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

    8.1.6 ensure that its network and systems comply with the relevant specifications provided by Endida from time to time; and

    8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Endida's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9 CHARGES AND PAYMENT

9.1 The Customer shall pay the Subscription Fees to Endida for the User Subscriptions in accordance with this clause 9 and the Order Form.

9.2 The Customer shall on the Effective Date provide to Endida valid, up-to-date and complete credit card details or approved purchase order information acceptable to Endida and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

    9.2.1 its credit card details to Endida, the Customer hereby authorises Endida to bill such credit card:

        9.2.1.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

        9.2.1.2 subject to clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

    9.2.2 its approved purchase order information to Endida, Endida shall invoice the Customer:

        9.2.2.1 on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

        9.2.2.2 subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

    and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3 If Endida has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Endida:

    9.3.1 Endida may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Endida shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

    9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Endida's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this Agreement:

    9.4.1 shall be payable in pounds sterling;

    9.4.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;

    9.4.3 are exclusive of value added tax, which shall be added to Endida's invoice(s) at the appropriate rate.

9.5 Endida shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer.

10 PROPRIETARY RIGHTS

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

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

11 CONFIDENTIALITY

11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with this Agreement, including but not limited to:

11.1.1 any information that would be regarded as confidential by a reasonable business person relating to:

11.1.1.1 the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

11.1.1.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);

11.1.2 any information developed by the parties in the course of carrying out this Agreement and the parties agree that:

11.1.2.1 details of the Services, and the results of any performance tests of the Services, shall constitute Endida Confidential Information; and

11.1.2.2 Customer Data shall constitute Customer Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

11.2 The provisions of this clause shall not apply to any Confidential Information that:

11.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

11.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

11.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

11.2.4 the parties agree in writing is not confidential or may be disclosed; or

11.2.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

11.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

11.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or

11.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

11.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

11.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this Agreement.

11.8 On termination or expiry of this Agreement, each party shall:

11.8.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

11.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

11.8.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

11.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.11 The above provisions of this clause 11 shall continue to apply after termination or expiry of this Agreement.

12   INDEMNITY

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

12.1.1 the Customer is given prompt notice of any such claim;

12.1.2 Endida provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

12.1.3 the Customer is given sole authority to defend or settle the claim.

12.2 Endida shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.2.1 Endida is given prompt notice of any such claim;

12.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Endida in the defence and settlement of such claim, at Endida's expense; and

12.2.3 Endida is given sole authority to defend or settle the claim.

12.3	In the defence or settlement of any claim, Endida may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall Endida, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

12.4.1 a modification of the Services or Documentation by anyone other than Endida; or

12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Endida; or

12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Endida or any appropriate authority.

12.5 The foregoing state the Customer's sole and exclusive rights and remedies, and Endida's (including Endida's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13 LIMITATION OF LIABILITY

13.1 Except as expressly and specifically provided in this Agreement:

13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Endida shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Endida by the Customer in connection with the Services, or any actions taken by Endida at the Customer's direction;

13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

13.2 Nothing in this Agreement excludes the liability of Endida:

13.2.1 for death or personal injury caused by Endida's negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

13.3.1 Endida shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

13.3.2 Endida's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13.4 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Endida's Intellectual Property Rights".

14 TERM AND TERMINATION

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with the provisions of this Agreement;

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

14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

14.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

14.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

14.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

14.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

14.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

14.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

14.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

14.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

14.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.3 to *clause 14.2(j)* (inclusive);

14.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

14.2.13 the other party's 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;

14.3 On termination of this Agreement for any reason:

14.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

14.3.3 Endida may destroy or otherwise dispose of any of the Customer Data in its possession unless Endida receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Endida shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Endida in returning or disposing of Customer Data; and

14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15 FORCE MAJEURE

Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this Agreement by giving 7 days' written notice to the affected party.

16 CONFLICT

If there is an inconsistency between any of the provisions in the main body of this Agreement and the s, the provisions in the main body of this Agreement shall prevail.

17 VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18 WAIVER

18.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19 RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20 SEVERANCE

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

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

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

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22 ASSIGNMENT

22.1 The Customer shall not, without the prior written consent of Endida, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

22.2 Endida may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Customer.

23 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24 THIRD PARTY RIGHTS

24.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

25 NOTICES

25.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

25.1.2 sent by email to the address specified in the Order Form.

25.2 Any notice shall be deemed to have been received:

25.2.1 if delivered by hand, at the time the notice is left at the proper address;

25.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

25.2.3   if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

25.3   This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26   GOVERNING LAW

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

27   JURISDICTION

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