



Terms & Conditions

Version 4.5
12/04/2023

Address: 2 St Andrews House, Vernon Gate, Derby, DE1 1UJ
Derventio Education Ltd is a company registered in England and Wales
with company number: 6970437 and VAT number: 977856834
Registered Address: The Mills, Canal Street, Derby, DE1 2RJ

SUBJECT MATTER OF THE AGREEMENT

We are Derventio Education Limited, a company registered in England and Wales (Company Registration Number 06970437) and our registered office is at The Mills, Canal Street, Derby, DE1 2RJ ("**Derventio**", "**we**", "**us**" or "**our**"). Our main trading address is at First Floor, Gleneagles House, Vernon Gate, Derby, DE1 1UP. Our registered VAT number is 882995161.

We provide hosted software services relating to school, college and university performance and improvement, which we make available to subscribers via the internet. These are the terms and conditions on which we will provide our services to you.

A contract will come into existence between you and us based on these terms and conditions upon your acceptance of our services, which will take place on the earlier of (i) our receipt of your signed copy of our Proposal (as defined below), (ii) our receipt of your purchase order number, or (iii) your access to or use of our services.

1. INTERPRETATION

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

"Authorised Users"	those Individuals authorised by you to use the Services
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5
"Client Data"	the data inputted by you, by your Authorised Users or by Derventio on your behalf for the purpose of using the Services or facilitating your use of the Services
"Documentation"	the document made available to you by Derventio online (or otherwise) describing the Services and providing instructions for the use of the Services
"Effective Date"	the start date for the Services being the date the Services are first provided to you
"Fees"	the fees payable by you to Derventio for the Services as detailed in the Proposal or as separately detailed from time to time
"Initial Subscription Term"	the initial term as set out and detailed in the Proposal
"Individual"	an individual engaged by you whether under a contract of service or a contract for service (directly or indirectly)
"Normal Business Hours"	8.30 am to 4.30 pm local UK time, each Business Day
"Proposal"	the price quotation sent to you by us in respect of our services, a copy of which is available upon request the renewal fees being the rate prevalent at the time

"Renewal Fees"	of the renewal or as otherwise agreed between the parties
"Renewal Period"	the period described in clause 13.1
"Services"	the subscription services provided by Derventio to you under these terms as set out and detailed in the Proposal or as otherwise agreed between the parties
"Software"	the online software applications provided by Derventio as part of the Services
"Subscription Term"	has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods)
"Service Level Agreement"	Derventio's policy for providing support in relation to the Services as made available to you online via Derventio's website
"Virus"	anything 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 rearranging, 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

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.3 A reference to writing or written includes fax and email.

2. USER SUBSCRIPTIONS

- 2.1 Subject to you purchasing the Services in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of these terms, Derventio hereby grants to you a non-exclusive, non-transferable right to permit Authorised Users to use the Services and the Documentation during the Subscription Term solely for your internal operations.
- 2.2 The duration of the subscription will be as specified on the order form supplied to Derventio by the customer and will be the duration under which Derventio will process your data.
- 2.3 In relation to the Authorised Users, you undertake that each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential.
- 2.4 You shall not and you shall procure that no Individual shall access, store, distribute or transmit any Viruses, or any material during the course of your use of the Services that:
- 2.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.4.2 facilitates illegal activity;
 - 2.4.3 depicts sexually explicit images;
 - 2.4.4 promotes unlawful violence;
 - 2.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.4.6 in a manner that is otherwise illegal or causes damage or injury to any person or property, and Derventio reserves the right, without liability or prejudice to its other rights, to disable your access to any material that breaches the provisions of this clause.
- 2.5 You shall not and you shall procure that no Individual shall:
- 2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (a) and except to the extent expressly permitted under these terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, Services and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services and/or Software; or
 - 2.5.2 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
 - 2.5.3 use the Services and/or Documentation to provide services to third parties; or
 - 2.5.4 subject to clause 15.5, 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
 - 2.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.6 You 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 Derventio.
- 2.7 The rights provided under this clause 2 are granted to you only.

3. SERVICES

- 3.1 Derventio shall, during the Subscription Term, provide the Services and make available the Documentation to you on and subject to these terms.
- 3.2 Derventio shall use commercially reasonable endeavours to provide 99.99% service availability in each calendar month excluding periods of scheduled maintenance in respect of which Derventio shall endeavour to give no less than 7 days prior notice. Derventio shall in the event it fails to do so then Derventio shall extend the Subscription Term by one additional calendar month without charge.
- 3.3 Derventio will, as part of the Services and at no additional cost to you, provide you with Derventio's standard customer support services during Normal Business Hours in accordance with Derventio's Service Level Agreement in effect at the time that the Services are provided. Derventio may amend the Service Level Agreement in its sole and absolute discretion from time to time and it is your responsibility to check the Service Level Agreement from time to time.

4. CLIENT DATA

- 4.1 You 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.
- 4.2 Derventio shall follow its archiving procedures for Client Data. In respect of data stored on Derventio's hosted servers (including third party hosted servers), Derventio shall ensure that a full daily back up of Client Data is taken at any time after 5pm on each Business Day. Derventio shall take reasonable care to ensure the completion and integrity of such back up of Client Data. The back up of Client Data will be stored at multiple locations (including with third parties).
- 4.3 In the event of any loss or damage to Client Data, your sole and exclusive remedy shall be for Derventio to use commercially reasonable endeavours to restore the lost or damaged Client Data from the latest complete back-up of such Client Data maintained by Derventio in accordance with the archiving procedure described above. Derventio shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by you or any third party (except those third parties subcontracted by Derventio to perform services related to Client Data maintenance and back-up).
- 4.4 Derventio shall, in providing the Services, comply with its procedures relating to the privacy and security of the Client Data. Derventio shall keep the Client Data secure in accordance with privacy laws.
- 4.5 If Derventio processes any personal data on your behalf when performing its obligations under these terms, the parties record their intention that you shall be the data controller and Derventio shall be a data processor and in any such case:
 - 4.5.1 you acknowledge and agree that the personal data is stored in the UK in order to carry out the Services and Derventio's other obligations under these terms;
 - 4.5.2 you shall ensure that you are entitled to transfer the relevant personal data to Derventio so that Derventio may lawfully use, process and transfer the personal data in accordance with these terms on your behalf;
 - 4.5.3 you shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

- 4.5.4 Derventio shall process the personal data only in accordance with these terms and to fulfil its obligations under these terms and in accordance with any lawful instructions reasonably given by you from time to time; and
- 4.5.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 4.5.6 Derventio will act on the written instructions of you as the controller (unless required by law to act without such instructions)
- 4.5.7 Derventio will only engage a sub-processor with the prior consent of you as the data controller.
- 4.5.8 Derventio will assist you as the data controller in meeting your GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact statements.
- 4.5.9 Derventio will delete or return all personal data to you as the controller, as requested at the end of the contract.
- 4.5.10 Derventio will submit to audits and inspections, provide you as the controller with whatever information you need to ensure that both parties meet their Article 28 obligations, and tell you immediately if we are asked to do something infringing the GDPR or other data protection law of the EU or a member state.

4.6 Nature and purpose of processing

- 4.6.1 Derventio Education will process the personal data as necessary to allow the subscription to be used by the customer and as instructed to do so by the Customer in their use of the system. Processing the data consists of the following: collecting, saving, updating and deleting data.
- 4.6.2 Data is processed for the purpose to allow the customer to login and use the software system that they have purchased from Derventio Education, namely to manage staff performance, self-evaluation and development planning within their organisation.

Purpose of Processing	Categories of Individuals	Categories of Personal Data
Staff Appraisals	Customer Employees	Contact Details
CPD	Customer Employees	Contact Details
Self-Evaluation	Customer Employees	Contact Details
Development Planning	Customer Employees	Contact Details

- 4.7 Duration of Processing
- 4.7.1 Derventio Education will process your personal data for the duration of the subscription with us, unless otherwise agreed upon in writing.
- 4.8 Type and Categories of Personal Data
- 4.8.1 Customers may submit Personal data to the system, this is determined and controlled by the customer.
- 4.8.2 Additionally, the customer may submit personal data to Derventio Education as the processor, for the sole purpose of adding it to the system for the customer to access.

- 4.8.3 The following categories of data subjects will be handled, Customer Staff Members authorised by the Customer to use the subscription.
- 4.8.4 The following data will be processed:
- (a) Data entered by the Controllers end users in the process of using the system
 - (b) Data provided to the Processor by the Controller to enter into the system for the Controllers end users to process by using the system.
- 4.8.5 Only personal data will be processed by the system and will be limited to first and last name and job title. Optionally, email addresses and photographs may be processed, if they are supplied by the controller.
- 4.8.6 No sensitive personal data will be processed by Derventio Education as the data processor.

5. **THIRD PARTY PROVIDERS**

- 5.1 You acknowledge that the Services may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that you do so solely at your own risk. Derventio makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not Derventio. Derventio recommends that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Derventio does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

6. **DERVENTIO'S OBLIGATIONS**

- 6.1 Derventio undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable care and skill.
- 6.2 Other information in respect of the Services which appears on Derventio's websites or in Derventio's brochures and advertising material and does not form part of the Documentation is not binding and only represents an indication of the Services available and Derventio does not warrant that the Services provided will necessarily comply.
- 6.3 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Derventio's instructions, or modification or alteration of the Services by any party other than Derventio or Derventio's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Derventio will, at its expense, use all commercially reasonable endeavours to correct any such non-conformance, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Derventio:
- 6.3.1 does not warrant that your use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and

- 6.3.2 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 you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 These terms shall not prevent Derventio from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these terms.
- 6.5 Derventio warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms.

CLIENT'S OBLIGATIONS

- 7.1 You shall:
- 7.1.1 provide Derventio with:
- (a) all necessary co-operation in relation to these terms; and
- (b) all necessary access to such information as may be required by Derventio, in order to provide the Services, including but not limited to Client Data, security access information and configuration services;
- 7.1.2 provide Derventio with up to date contact and billing information and keep Derventio informed of any changes thereto;
- 7.1.3 comply with all applicable laws and regulations with respect to its activities under these terms;
- 7.1.4 carry out all of your other responsibilities set out in these terms in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, Derventio may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with these terms and conditions and shall be responsible for any Authorised User's breach of these terms;
- 7.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for Derventio, its contractors and agents to perform their obligations under these terms, including without limitation the Services;
- 7.1.7 ensure that its network and systems comply with the relevant specifications provided by Derventio from time to time; and
- 7.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Derventio's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

8. CHARGES AND PAYMENT

- 8.1 You shall pay the Fees to Derventio for the Services for the Subscription Term in accordance with this clause 8.
- 8.2 You shall provide Derventio with valid, up-to-date and complete approved purchase order information acceptable to Derventio and any other relevant valid, up-to-date and complete contact and billing details.

- 8.3 Derventio shall invoice you:
 - 8.3.1 on the Effective Date for the Fees payable in respect of the Services for the Initial Subscription Term; and
 - 8.3.2 subject to clause 13.1, on the anniversary of the Effective Date, for the subscription Fees in respect of the subscription Services which are payable for the next Renewal Period, which shall be charged as the Renewal Fees, and you shall pay each invoice on receipt of the invoice without any set off or other deduction.
- 8.4 If Derventio has not received payment by the due date, and without prejudice to any other rights and remedies of Derventio:
 - 8.4.1 Derventio may, without liability to you, disable your password, account and access to all or part of the Services and Derventio shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
 - 8.4.2 without liability to you, Derventio shall be under no obligation to provide any support services in accordance with Derventio's Service Level Agreement while the invoice(s) concerned remain unpaid;
 - 8.4.3 Derventio reserves the right to seek to recover any outstanding amounts due by other means, including referring the debt to an external debt recovery agent and/or by taking appropriate legal action, and if the outstanding payment is referred to an external debt recovery agent, you will be liable for additional fees and charges and you agree to pay such charges in addition to, and together with, the outstanding amount owed.
- 8.5 All amounts and fees stated or referred to in these terms:
 - 8.5.1 shall be payable in pounds sterling;
 - 8.5.2 are, subject to clause 12.4.2, non-cancellable and non-refundable;
 - 8.5.3 are exclusive of value added tax, which shall be added to Derventio's invoice(s) at the appropriate rate.

9. PROPRIETARY RIGHTS

- 9.1 You acknowledge and agree that Derventio and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these terms do not grant you any rights to, or in, 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.
- 9.2 In the event of any improvements or enhancements to Derventio's intellectual property ("**Improvements**") or any other intellectual property rights are created, developed, authored or otherwise derived by Derventio or its representative, distributor or agent, in connection with the Services even if such Improvements or other intellectual property rights are derived with your input, you acknowledge and agree that they shall be (as between Derventio and you) the property of Derventio unless otherwise agreed in writing by Derventio, and you hereby irrevocably waive any claim you may have in respect of any entitlement or compensation in relation to such Improvements or other intellectual property rights. If an Improvement or other intellectual property rights are created jointly by you and Derventio, Derventio shall be entitled to exploit such Improvements or other intellectual property rights (including by commercialising it) anywhere in the world and in any manner, without having to account or report to you.
- 9.3 In the event that any Improvement is created, developed, authored or otherwise derived by you in connection with the exploitation of the rights granted under these terms:
 - 9.3.1 you shall promptly provide all details of such Improvement (including any computer code) to Derventio; and
 - 9.3.2 you hereby grant Derventio a perpetual, irrevocable, worldwide, royalty-free, fully assignable and fully sub-licensable licence to use, exploit, modify and incorporate such Improvement with the Software or with other

Derwentio products and to commercialise it (whether on its own or combined with other products) to all its other clients.

10. CONFIDENTIALITY

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these terms. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of or fulfilment of its obligations pursuant to these terms.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these terms.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 You acknowledge that details of the Services, and the results of any performance tests of the Services, constitute Derwentio's Confidential Information.

10.6 Derwentio acknowledges that the Client Data is the Confidential Information of yours.

10.7 This clause 10 shall survive termination of these terms however arising.

11. INDEMNITY

11.1 You shall defend, indemnify and hold harmless Derwentio 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 your use of the Services and/or Documentation, provided that:

11.1.1 you are given prompt notice of any such claim; and

11.1.2 Derwentio provides reasonable co-operation to you in the defence and settlement of such claim, at your expense; and

11.1.3 you are given sole authority to defend or settle the claim.

- 11.2 Derventio shall defend you, your officers, directors and employees against any claim that the Services or Documentation infringes any UK patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
 - 11.2.1 Derventio is given prompt notice of any such claim;
 - 11.2.2 you provide reasonable co-operation to Derventio in the defence and settlement of such claim, at Derventio's expense; and
 - 11.2.3 Derventio is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, Derventio may procure the right for you 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 these terms on 2 Business Days' notice to you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 11.4 In no event shall Derventio, its employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
 - 11.4.1 a modification of the Services or Documentation by anyone other than Derventio; or
 - 11.4.2 your use of the Services or Documentation in a manner contrary to the instructions given or made available to you by Derventio; or
 - 11.4.3 your use of the Services or Documentation after notice of the alleged or actual infringement from Derventio or any appropriate authority.
- 11.5 The foregoing and clause 12.4.2 state your sole and exclusive rights and remedies, and Derventio's (including Derventio's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. LIMITATION OF LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of Derventio (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you:
 - 12.1.1 arising under or in connection with these terms;
 - 12.1.2 in respect of any use made by you of the Services and Documentation or any part of them; and
 - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms.
- 12.2 Except as expressly and specifically provided in these terms:
 - 12.2.1 you assume sole responsibility for results obtained from the use of the Services and the Documentation by you, and for conclusions drawn from such use. Derventio shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Derventio by you in connection with the Services, or any actions taken by Derventio at your direction;
 - 12.2.2 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 these terms, and
 - 12.2.3 the Services and the Documentation are provided to you on an "as is" basis.
- 12.3 Nothing in these terms excludes the liability of Derventio:

- 12.3.1 for death or personal injury caused by Derventio's negligence; or
- 12.3.2 for fraud or fraudulent misrepresentation; or
- 12.3.3 for any matter for which it would be illegal for Derventio to exclude or attempt to exclude liability.
- 12.4 Subject to clause 12.2 and clause 12.3:
 - 12.4.1 Derventio shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these terms; and
 - 12.4.2 Derventio's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms shall be limited to the total Fees paid for the Services during the 12 months immediately preceding the date on which the claim arose.

13. TERM AND TERMINATION

- 13.1 These terms shall, unless otherwise terminated as provided in this clause 13, continue for the Initial Subscription Term and, thereafter, these terms shall be automatically renewed for successive periods of the same length as the initial term (each a "**Renewal Period**") unless:
 - 13.1.1 either party notifies the other party of termination, in writing via email or via recorded postal delivery, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case these terms shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
 - 13.1.2 otherwise terminated in accordance with the provisions of these terms and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".
- 13.2 Without affecting any other right or remedy available to it, either party may terminate these terms with immediate effect by giving written notice to the other party if:
 - 13.2.1 the other party fails to pay any amount due under these terms on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 13.2.2 the other party commits a material breach of any other terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 13.2.3 the other party repeatedly breaches any of these terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these terms;
 - 13.2.4 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;
 - 13.2.5 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;
 - 13.2.6 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;

- 13.2.7 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;
- 13.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 13.2.9 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;
- 13.2.10 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;
- 13.2.11 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 13.2.4 to clause 13.2.10 (inclusive); or
- 13.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or operations.
- 13.3 On termination of these terms for any reason:
 - 13.3.1 all licences granted under these terms shall immediately terminate;
 - 13.3.2 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;
 - 13.3.3 Derventio may destroy or otherwise dispose of any of the Client Data in its possession unless Derventio receives, no later than ten days after the effective date of the termination of these terms, a written request for the delivery to you of the then most recent back-up of the Client Data. Derventio shall use commercially reasonable endeavours to deliver the back-up to you within 30 days of its receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by Derventio in returning or disposing of Client Data; and
 - 13.3.4 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 these terms, which existed at or before the date of termination shall not be affected or prejudiced.

14. FORCE MAJEURE

- 14.1 Derventio shall have no liability to you under these terms if it is prevented from or delayed in performing its obligations under these terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, misuse, alteration or interference by you or any third party in the Services (including virus and hacker attacks), strikes, lock-outs or other industrial disputes (whether involving the workforce of Derventio or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, terrorist attack, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or other natural disaster or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

15. GENERAL

- 15.1 Except as provided herein, no variation of these terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives), except Derventio can update these terms from time to time without notice to you provided the changes are minor and for any substantial changes on at least 50 days' notice to you.
- 15.2 No failure or delay by a party to exercise any right or remedy provided under these terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.3 If any provision (or part of a provision) of these terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.4 These terms, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into these terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms or not) relating to the subject matter of these terms, other than as expressly set out in these terms.
- 15.5 You shall not, without the prior written consent of Derventio, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms. Derventio may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.
- 15.6 Nothing in these terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.7 These terms do not confer any rights on any person or party (other than the parties to these terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 15.8 Any notice required to be given under these terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these terms, or such other address as may have been notified by that party for such purposes, or sent by email or fax to the other party's email address or fax number as set out in these terms, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email or fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 15.9 These terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law

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