



## **SOFTWARE AS A SERVICE AGREEMENT**



# Operative Provisions

## 1. Definitions

In this Agreement unless the context otherwise requires:

‘ADDITIONAL CHARGES’ means the charges at FRS’s rates from time to time for work undertaken on a time and materials basis and agreed by Customer prior to FRS incurring such charges

‘ASSOCIATED DOCUMENTATION’ means the instruction manuals, user guides, release notes and other information (identified by title and reference number in the Schedule) to be made available from time to time during this Agreement by FRS at its discretion in either printed or machine readable form to the Customer

‘AUTHORISED USERS’ means those named users nominated by the Customer to use the Hosted Services and the associated documentation, up to the maximum number of users for which SaaS subscriptions have been paid.

‘CUSTOMER DATA’ means all data, including all text, images, sound, software, image or video files, materials and all derivatives of such data that are uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by or on behalf of the Customer to FRS for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer.

‘DELIVERY DATE’ means the date at which the customer is granted access to the hosted services specified in the Schedule.

‘EARLIEST TERMINATION DATE’ means the date specified in the Schedule as the earliest anniversary of the Delivery Date by which the Customer can give 90 days’ notice to terminate this Agreement under Clause 17.1.1

‘FEES’ means both the fees for implementation, training services and the SaaS subscription for the right to allow Authorised Users to use the hosted services and Associated Documentation set out in the Schedule

‘FORCE MAJEURE’ means an act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade, labour dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water, internet or telephone service; failure of the transportation of any personnel equipment, machinery supply or material; breach of contract by any essential personnel; any other matter or cause beyond the control of a party;

‘HOSTED SERVICES’ means the provision of access (via a supported web browser) to the software programs and any additional modules in object code form identified by title and/or reference number in the Schedule including any New Release of the same.

‘IMPLEMENTATION DATE’ means the date of commencement of the project by FRS and/or the set-up of software programs to which access will be granted via the Hosted Services

‘IMPLEMENTATION SERVICES’ means the provision or delivery of Training and Technical Support in accordance with clause 6 and the Schedule

respectively ‘NEW RELEASE’ means any improved modified or corrected version of any of the Software Programs or Associated Documentation from time to time made available as part of the hosted services by FRS.

‘PLATFORM’ means the software programs, database software, system and server software and hardware, managed and used by or on behalf of FRS to provide the Hosted Services.

‘RESPONSE TIME’ means the response time for Technical Support set out in clause 6.3

below ‘RPI’ means the Retail Prices Index or any official index replacing it

‘SaaS SUBSCRIPTION’ means the quarterly amount paid by the customer to FRS for the provision of the Hosted Services.

‘SOFTWARE PROGRAMS’ means the FRS software to which access is provided via the Hosted Services

‘SUPPORTED WEB BROWSER’ means the current release from time to time of any web browser specified by FRS as a ‘supported’ browser.

‘TECHNICAL SUPPORT’ means the provision of technical support as defined in clause 6 in respect of each of the Hosted Services in the

Schedule ‘TRAINING’ means the training defined in the Schedule

## 2. Grant of right to access hosted services and provision of implementation services

2.1 FRS in consideration of the payment by the Fees (in accordance with clause 3 below hereby) up to the Earliest Termination Date hereby:

2.1.1 grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Hosted Services and Associated Documentation during the term of this Agreement, solely for the Customer’s own business operations, and

2.1.2 undertakes to the Customer to provide the Training and Technical Support upon the terms and conditions of this Agreement.

## 3. Fees

3.1 The Fees shall include the cost of:

3.1.1 the provision of the Implementation Services and Training

3.1.2 the provision of access for Authorised Users, via a Supported Web Browser, to the most recent available version of the Hosted Services; and

3.1.3 the provision of Technical Support as defined in schedule 6 below.

3.2 The Fees (together with value added tax thereon) shall be levied by FRS and shall be payable by the Customer on the terms specified in the schedule and in default FRS may at its sole discretion and without any liability whatsoever to the Customer suspend the Customer’s use of the Hosted Services until payment is received in full.

- 3.3 The quarterly SaaS Subscription for Hosted Services shall, on each anniversary of this Agreement, increase (and not decrease) by a percentage amount equal to UK Retail Price Index (RPI). In addition to any annual increase, infrastructure requirements shall be reviewed from time to time with any reasonable changes to be incorporated by prior agreement into quarterly SaaS subscription fee for hosted services.
- 3.4 FRS reserves the right to charge the Customer interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 5 per cent per annum from the due date thereof until payment.

**4. Delivery**

- 4.1 FRS shall provide the Customer access to the Hosted Services on the Delivery Date. FRS shall also provide the Customer with one copy of each of the Associated Documentation either on the Delivery Date or as soon thereafter as is possible.
- 4.2 The Customer's signing of this Agreement shall authorise FRS and its employees to provide assistance as required to access the Hosted Services from the customer's equipment but this shall be done entirely at the Customer's risk and without any liability on the part of FRS and its employees for any consequential damage caused to the existing equipment and systems of the Customer.

**5. Subscriptions**

- 5.1 In relation to Authorised Users, the Customer undertakes that:
- 5.1.1 the maximum number of Users that it nominates to access the Hosted Services shall not exceed the number of Authorised Users for which SaaS Subscriptions have been paid.
- 5.1.2 each Authorised User shall keep secure his / her password for the use of the Hosted Services.
- 5.1.3 users shall not be permitted to share Authorised User subscriptions to access the Hosted Services, unless agreed in advance with FRS for specific exceptions.
- 5.1.4 any increase in the required number of Authorised Users will be notified to FRS and will be subject to a corresponding increase in the quarterly SaaS Subscription fee.

**6. Technical support and availability of hosted services**

- 6.1 With effect from the Delivery Date and for the duration of this Agreement but subject always to due payment of both the initial deposit contribution and the ongoing quarterly SaaS Subscription FRS shall provide in respect of each of the Hosted Services Technical Support within the Response Time defined in Clause 6.3 below. Technical Support shall also include, from time to time and at the sole discretion of FRS, the deployment of New Releases such that Authorised Users have access to the latest version of the Hosted Services.
- 6.2 The Customer shall supply in writing (or by e-mail) to FRS a detailed description of any fault requiring Technical Support and the circumstances in which it arose forthwith upon becoming aware of the same. The Technical Support shall be provided by FRS by e-mail and/or telephone only. Technical Support will also be available via the FRS UK support desk between the hours specified in clause 6.3 below.
- 6.3 The Response Time shall be such that between the hours of 8:30 am and 5.00 pm Monday through Friday (excluding UK bank and other public holidays), FRS shall use its reasonable endeavors to reproduce reported faults and to provide a solution thereto in a timely manner commensurate with the severity of the fault. The type of solution provided shall be at the sole discretion of FRS and may involve a New Release of the Hosted Services.
- 6.4 FRS, its agents and sub-contractors shall use reasonable endeavors to maintain the availability of the Hosted Services to the Customer but does not guarantee 100% availability. FRS shall make the Hosted Services available for a minimum of 98% of the time except as provided below. Availability will be calculated per calendar quarter as follows:

$$\left\{ \left[ \frac{\text{total} - \text{non-excluded} - \text{excluded}}{\text{total} - \text{excluded}} * 100 \right] \right\} \geq 98\%$$

Where

- 6.4.1 Total means the total number of minutes in the calendar quarter
- 6.4.2 Non-excluded means downtime that is not excluded
- 6.4.3 Excluded means
- o Any planned downtime for maintenance carried out with at least 8 hours' notice and out of office hours
  - o Any unavailability caused by any Force Majeure event
  - o Any unavailability caused by an internet service provider
  - o Any unavailability caused by the Customer's systems or networks
- 6.5 Should FRS fail to make the Hosted Services available as set forth in 6.4 above in a calendar quarter, the Customer may continue to receive the Hosted Services but shall receive a refund for one full day of subscription fees for each active subscription affected in that quarter, for each full or partial hour of Service unavailability below the percentage specified in 6.4 above. In no case shall the total refund for any quarter exceed 20% of the subscription fees paid by the customer for such quarter. Should FRS fail to make the Service available as specified in 6.4 above in two consecutive calendar quarters, the Customer may, in lieu of receiving the above described refund for the second quarter, terminate the agreement by providing notice of termination as set out in clause 17. The remedies described in this paragraph shall be the sole remedies available to the customer for breach of availability of Hosted Services, and must be submitted in writing with supporting documentation within 10 days of the end of the applicable quarter.
- 6.6 Technical Support shall not include the diagnosis and rectification of any fault resulting from:
- 6.6.1 the improper use, operation or neglect of the Hosted Services;
- 6.6.2 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by FRS;
- 6.6.3 the use of the Hosted Services by Customer for a purpose for which they were not designed.
- 6.7 FRS may upon request by the Customer (at FRS's sole discretion), provide Technical Support notwithstanding that the fault results from any of the circumstances described in clause 6.6 above. FRS shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 6.9 below.
- 6.8 Without prejudice to clause 6.7 above FRS shall be entitled to levy reasonable Additional Charges in the manner set out in clause 6.9 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.
- 6.9 Additional Charges shall be levied on the basis set out in the Schedule by FRS quarterly in arrears and shall be payable by the Customer (together with value added tax thereon)

within 20 days of receipt of an invoice therefor.

## **7. Customer data**

- 7.1 FRS and its authorised agents will treat all Customer Data as confidential and will only process the data to the extent and in such a manner as is necessary for the provision of the Hosted Services. The Customer must comply with the Data Protection Agreement entered into between the parties.
- 7.2 The Customer hereby grants to FRS a non-exclusive license to the Customer Data to the extent reasonably required for the performance of FRS's obligations and the exercise of FRS rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, to the extent reasonably required for the performance of FRS obligations and the exercise of the FRSs rights under the Agreement.
- 7.3 The Customer warrants to the Provider that the Customer Data / the use of the Customer Data by FRS in accordance with this Agreement will not:
- 7.3.1 breach the provisions of any law, statute or regulation;
  - 7.3.2 infringe the Intellectual Property Rights or other legal rights of any person; or
  - 7.3.3 give rise to any cause of action against FRS

In each case in any jurisdiction and under any applicable law.

- 7.4 The customer will defend, indemnify and hold harmless FRS from and against any loss, cost, liability or damage, including legal fees, for which FRS becomes liable arising from or relating to any claim relating to Customer Data, including but not limited to any claim brought by a third party alleging that Customer Data, or your use of the Hosted Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law.
- 7.5 FRS has no obligation to monitor any content uploaded to the Hosted Services. Nonetheless, if we deem such action necessary based on your violation of this Agreement or in response to takedown requests, we may (1) remove Your Data from the Hosted Services or (2) suspend your access to the Hosted Services. We will generally alert you when we take such action and give you a reasonable opportunity to cure your breach, but if we determine that your actions endanger the operation of the Hosted Service or other users, we may suspend your access immediately without notice. You will continue to be charged for the Hosted Service during any suspension period. We have no liability to you for removing or deleting Your Data from or suspending your access to any Hosted Services as described in this section.
- 7.6 FRS implements appropriate technological and organisational security measure and procedures to help protect Customer Data from security attacks. However, you understand that use of the Hosted Services necessarily involves transmission of Customer Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of Customer Data lost, altered, intercepted or stored across such networks. We cannot guarantee that transmissions of Customer Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers.
- 7.7 Other than its security obligations under clause 7.6, FRS assumes no responsibility or liability for Customer Data, and the Customer shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it.
- 7.8 The storage limits associated with the Hosted Services are based on data sizing information. FRS reserves the right to charge for additional storage.
- 7.9 FRS or its authorised agents shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable FRS to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 7 days.
- 7.10 Within the maximum period of 1 Business Day following receipt of a written request from the Customer, FRS shall use reasonable endeavors to restore to the Platform the Customer Data stored in any back-up copy created and stored by FRS in accordance with Clause above. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.
- 7.11 We will remove or delete Customer Data (to the extent that it is technically possible to do so) within a reasonable period of time after the termination of your agreement.

## **8. Property and confidentiality in hosted services**

- 8.1 The Software Programs, to which access is provided via the Hosted Services, contain confidential information of FRS and all copyright trademarks and other intellectual property rights in the Software Programs are the exclusive property of FRS.
- 8.2 The Customer shall:
- 8.2.1 keep confidential the Software Programs and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Hosted Services (including where appropriate the Associated Documentation);
  - 8.2.2 reproduce the appropriate FRS's copyright and trade mark notices on any copies Associated Documentation provided by FRS;
  - 8.2.3 notify FRS immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Hosted Services by any third party; and
  - 8.2.4 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of FRS in both the Software Programs and Hosted Services.
- 8.3 The Customer shall inform all relevant employees, agents and sub-contractors that the Software Programs and Hosted Services constitute confidential information of FRS and that all intellectual property rights in the Software Programs are the property of FRS and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause.
- 8.4 In the event of the Customer requiring FRS to develop further the Software Programs access to which is supplied under this Agreement, the charges for such development will be as agreed between the parties. Further, the Customer acknowledges and agrees that all intellectual property rights in (or arising as a result of) such development shall, in any event, be the legal and beneficial property of FRS.
- 8.5 FRS agrees to grant a non-exclusive right of access and use of any intellectual property arising under clause 8.5 to the Customer on the terms agreed under clause 8.4

## **9. Copying of Associated Documentation**

- 9.1 The Customer shall be entitled to take copies of the Associated Documentation but only as it reasonably requires to support the day to day use of the Hosted Services.

## **10. Warranty**

- 10.1 Subject to the exceptions set out in clause 10.4 below and the limitations upon its liability in clause 11 below FRS warrants that:
- 10.1.1 its title to and property in the Software Programs is free and unencumbered and that it has the right power and authority to grant rights to use the same upon the terms and conditions of this Agreement;
- 10.1.2 it will perform the Services with reasonable care and skill.
- 10.2 The Customer shall give notice to FRS as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 10.3 Subject to clause 10.4 below FRS shall remedy any breach of the warranties set out in clause 10.1 above by the provision of Technical Support.
- 10.4 FRS shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clause 6.6 above.
- 10.5 Without prejudice to the foregoing FRS does not warrant that the Use of the Hosted Services and associated Software Programs will meet the Customer's requirements or that their operation will be uninterrupted or error free.
- 10.6 Except provisions that may not be excluded by law, all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Hosted Services, Software Programs and the provision of the Services are hereby excluded.
- 10.7 The Customer accepts that the Software Programs were not designed and produced to its individual requirements and that it was responsible for their selection.

## **11. Limitation of liability**

- 11.1 The following provisions set out FRS's entire liability (including any liability for the acts and omissions of its affiliates, employee's agents and sub-contractors) to the Customer in respect of:
- 11.1.1 any breach of its contractual obligations arising under this Agreement; and
- 11.1.2 any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 11.

- 11.2 Any act or omission on the part of FRS or its affiliates, employees agents or sub-contractors falling within clause 11.1 above shall for the purposes of this clause 11 be known as an 'Event of Default'.
- 11.3 FRS's liability to the Customer for (a) death or injury resulting from its own or that of its affiliates, employees' agents' or sub-contractors' negligence; (b) infringement of intellectual property rights pursuant to clause 12.1; and / or (c) breach of any confidentiality obligations, shall not be limited.
- 11.4 Subject to the limits set out in clause 11.5.1 below FRS shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of FRS or its affiliates, employees, agents or sub-contractors.
- 11.5 Subject to the provisions of clause 11.3 above FRS's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
- 11.5.1 £10,000 in the case of an Event of Default falling within clause 11.4 above; and
- 11.5.2 in the case of any other Event of Default 50% of the aggregate of the Fees paid in the immediately preceding period of 12 months under clause 4 of the Schedule less the reasonable commercial value of training, travel and subsistence expenses.
- 11.6 Subject to clause 11.3 above FRS shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or FRS had been advised of the possibility of the Customer incurring the same.
- 11.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 11.8 The Customer hereby agrees to afford FRS not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.
- 11.9 Except in the case of an Event of Default arising under clause 11.3 above FRS shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon FRS within 3 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 11.10 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 11.11 The terms of this section 10 shall survive the expiry or termination of this Agreement for any reason.

## **12. Intellectual property rights indemnity**

- 12.1 FRS will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Software Programs by the Customer infringes the patent copyright registered design or trade mark rights of said third party (an 'Intellectual Property Infringement') provided that the Customer:
- 12.1.1 gives notice to FRS of any Intellectual Property Infringement forthwith upon becoming aware of the same;
- 12.1.2 gives FRS the sole conduct of the defense to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of FRS; and
- 12.1.3 acts in accordance with the reasonable instructions of FRS and gives to FRS such assistance as it shall reasonably require in respect of the conduct of the said defense including without prejudice to the generality of the foregoing the filing of all pleadings, statements of case and other court process and the provision of all relevant documents.
- 12.2 FRS shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 12.1 above.
- 12.3 FRS shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.
- 12.4 In the event of an Intellectual Property Infringement FRS shall be entitled at its own expense and option either to:
- 12.4.1 procure the right for the Customer to continue using the Hosted Services and Software Programs; or

12.4.2 make such alterations modifications or adjustments to the Software Programs so that they become non-infringing without incurring a material diminution in performance or function; or

12.4.3 replace the Software Programs with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

12.5 If FRS in its reasonable judgement is not able to exercise any of the options set out at clauses 12.4.1, 12.4.2 or 12.4.3 above within 180 days of the date it received notice of the Intellectual Property Infringement then the Customer without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by 30 days' notice upon FRS. Upon any such termination FRS shall have no liability to the Customer in respect of the termination of this Agreement as a result of the aforesaid.

### **13. Confidentiality**

13.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this Agreement and thereafter save that which is:

13.1.1 already in its possession other than as a result of a breach of this clause;

13.1.2 in the public domain other than as a result of a breach of this clause, or

13.1.3 save as permitted by clause 13.3.

13.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 13.1 above by its employees, agents and sub-contractors.

13.3 The Customer consents to FRS disclosing to third parties the fact that the Customer is, or has been, a customer of FRS.

### **14. Training**

14.1 FRS shall provide to the Customer, commencing upon the Implementation Date, the implementation and training services set out in the Schedule.

14.2 Any additional training services requested by the Customer shall be provided by FRS for Additional Charges levied on the basis set out in the Schedule.

### **15. Duration of Agreement**

15.1 This Agreement shall continue until terminated in accordance with the provisions of clause 17 below.

### **16. Customer's representatives**

16.1 The Customer shall communicate to FRS upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by FRS of the Services during the currency of this Agreement. The Customer shall forthwith inform FRS of any change in the identity of any such person(s) or department.

### **17. Termination**

17.1 This Agreement may be terminated:

17.1.1 by either party upon giving not less than 90 days' notice to expire on an anniversary of the Delivery Date but subject always to any Earliest Termination Date specified in the Schedule;

17.1.2 forthwith by FRS if the Customer either fails to pay any material sum due hereunder within 30 days of the due date therefore or commits a substantial breach of clause 5;

17.1.3 forthwith by FRS if there is any change in the ownership or control of the Licensee; or

17.1.4 forthwith by FRS if the Licensee makes any composition or arrangement with its creditors; has a proposal for a voluntary arrangement or a composition of debts or a scheme or arrangement approved; has an application made in respect of itself to the Court for the appointment of an Administrator; has a winding up order made or a resolution for a voluntary winding up passed or a receiver or manager of its business or undertaking is duly appointed; has an administrative receiver appointed; possession is taken by or on behalf of any creditor of any property the subject of a charge or ceases for any reason to carry on business.

17.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

17.3 In the event of either party terminating the Agreement pursuant to clause 17, FRS shall be entitled to terminate access to the software programs accessed via the Hosted Services in accordance with the required notice period defined above.

### **18. Force majeure**

18.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.

18.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.

18.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

### **19. Waiver**

19.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as

a waiver of any breach or default by the other party.

**20. Notices**

20.1 Any legal proceedings, notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent by Recorded Delivery or Registered pre-paid post or sent by Express Delivery Courier to the other party at the address above or any other address notified in writing in place thereof.

20.2 Any notice or other information given by post under clause 20.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing the same was so posted or 7 days after delivery by air mail; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted or accepted by the Express Courier, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

**21. Invalidity and severability**

21.1 If any provision of this Agreement shall be found by any court or other competent authority to be invalid or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

**22. Entire agreement**

22.1 FRS shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings incorporated or referred to in this Agreement.

**23. Assignment**

23.1 The Customer shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations hereunder nor transfer the rights to the use (in whole or in part) of the Hosted Services without the prior written consent of FRS.

**24. Taxation**

24.1 Subject only to clause 25.1, all amount/s stated in this Agreement are expressed exclusive of value added tax, withholding tax or any other similar fiscal imposition and represent the sum/s due and payable to FRS.

24.2 Where the Customer is required to deduct withholding tax, a double taxation treaty exists between the United Kingdom and the country in which the Customer is treated as trading for taxation purposes and the Customer provides a valid withholding tax certificate then the net sum/s due and payable to FRS shall be the amount/s stated in this Agreement less the amount/s of the applicable and duly certificated withholding tax.

**25. Compliance**

25.1 Each party shall in all matters connected with the Agreement observe and comply with all statutes, statutory instruments, bylaws and other regulations of any local and other statutory/government authority or public body having jurisdiction (including all EU Directives); environmental regulations; the Modern Slavery Act 2015 and the Human Rights Act 1998. The Licensee shall ensure that it has and maintains throughout the term of the Agreement suitable policies and procedures to prevent the infringement of such fundamental principles and rights.

25.2 Neither party shall not engage in any activity, practice or conduct which could constitute, facilitate or cause (in whole or in part) the commission of an offence under the Bribery Act 2010. Each party shall ensure that it has and maintains throughout the Term suitable policies and procedures to prevent the commission of any offence under the Bribery Act 2010 and/or any subordinate legislation introduced under the Bribery Act 2010.

**26. VAT**

26.1 Save insofar as otherwise expressly provided all amounts stated in this Agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefore.

**27. Headings**

27.1 Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

**28. Law**

27.1 This Agreement and any dispute or claim arising out of or in connection with either of it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. In relation to any legal action or proceedings arising out of or in connection with this Agreement ("Proceedings") each of the parties irrevocably submits to the exclusive jurisdiction of the English Courts and waives any objections to Proceedings in such Courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.