

Sword Sports & Events

Sword Venue

Software Terms

Standard Terms & Privacy

Sword Sports & Events and its affiliates

Route de Crassier 7

CH-1262 Eysins

Switzerland

## Introduction

Sword has the right and title to license the Software, and has agreed to grant to the Customer a licence to use the Software on the terms and conditions set out in an Agreement, and to provide Services on the terms and conditions of the related Agreement.

**NOW IT IS HEREBY AGREED** as follows:

### **1 Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Affiliate” means in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

“Business Day” means any day other than a Saturday or Sunday, or bank or public holiday in Switzerland.

“Charges” means the charges set out in the relevant Transaction Document.

“Confidential Information” means all confidential and proprietary information of a party disclosed to the other party, whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary or that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed, and including in respect of Sword trade secrets and know-how (including the concepts, techniques and ideas embodied in the Software and the structure, sequence and organisation of the Software).

“Customer Data” means the data inputted into the information fields of the Software by the Customer, by Users, or by Sword on the Customer’s behalf.

“Data Protection Legislation” means (i) the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the European Union and then (ii) any successor legislation to the GDPR.

“Date of Disposal” means the date on which a Divested Entity ceases to be an Affiliate of the Customer or ceases to be owned by the Customer.

“Divested Entity” means any (a) company which at any time is an Affiliate of the Customer, and which ceases to be an Affiliate of the Customer, or (b) business or undertaking which at any time is owned by the Customer, and which ceases to be owned by the Customer.

“Documentation” means any documentation provided by Sword to the Customer with the Software.

“GDPR” means the General Data Protection Regulation (EU2016/679).

“Hosting Provider” means such third party as Sword may contract from time to time to provide the Hosting Services, including (as will be notified to the Customer) Amazon Web Services, Microsoft Azure or any other provider, and any replacement from time to time.

“Hosting Services” means the hosting services provided by Sword in respect of the Software.

“Implementation Fees” means the charges for the Implementation Services as set out in the relevant Statement of Work.

“Implementation Services” means the installation, configuration and training services to be provided by Sword in respect of the Software in accordance with clause 2.

“Intellectual Property Rights” means inventions, patents, technical information and know-how of all descriptions, utility models, trademarks, service marks, rights in design (registered and unregistered), copyrights (including all rights in computer software), database rights, business and trade names and associated goodwill, domain names and all other industrial or intellectual property or other rights or forms of protection of a similar effect in any part of the world and all rights in relation to any of them, applications to register any of them and the rights to apply for or claim priority in respect of any of them.

“Licence Period” means the licence period set out in the relevant Transaction Document.

“Maintenance and Support Services” means the maintenance and support services provided by Sword in respect of the Software.

“Maintenance Release” means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a Major Release.

“Major Release” means any new version of the Software which from time to time may be publicly marketed and offered for purchase by Sword. A Major Release shall be described with a major release number prefix and a lower number for the version. New modules released by Sword from time to time that provide complementary but separate functionality to the Software referenced in a Transaction Document do not constitute Major Releases and such new modules must be licensed as separate items of “Software” (eg Apps, RPM and Risk Connectivity are separate items of “Software”).

“Modification” means a Maintenance Release or a Major Release.

“Professional Services” means professional services, other than Implementation Services and Maintenance and Support Services, requested by the Customer from time to time and set out in an agreed Statement of Work.

“Roles Schedule” means Sword’s standard roles schedule setting out the roles and authorities attaching to each licence granted to the Customer, a copy of which is available on the Support Portal.

“Service Credits” means credits payable in respect of failure to meet the Service Levels for availability of the Hosting Services, as provided in the Support Policy.

“Service Levels” means the availability service levels for the Hosting Services provided in the Support Policy.

“Services” means together the Professional Services, the Maintenance and Support Services and the Implementation Services, or such of them as the context requires.

“Software” means the Software referenced in a Transaction Document signed by both parties in the form set out in Schedule 1, and any Modification which is acquired by the Customer or provided by Sword during the

Term.

“Standard Support Hours” means from Monday to Friday 8AM CET to 5PM CET on Working Days (and “Standard Support Hour” shall mean any of these hours).

“Statement of Work” means a statement of work in the form provided in Schedule 2 in respect of the Implementation Services and any other Professional Services requested by the Customer from time to time.

“Support Policy” means Sword’s standard support policy for the Software, a copy of which will be provided to the Customer on the Effective Date and is available on the Support Portal.

“Support Portal” means Sword’s support portal or working space, log in details for which can be provided to the Customer.

“Term” means the period of [●] years from the Effective Date.

“Transaction Document” means a document in the form set out in Schedule 1.

“User” means any employee, agent or independent contractor of the Customer authorised under this Agreement to access and use the Software through the Hosting Services via a designated log-in.

“Working Day” means a normal working day in Switzerland.

1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.

1.3 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 All headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular, and a reference to one gender shall include a reference to the other genders.

1.7 Each Statement of Work and Transaction Document signed between the parties forms part of this Agreement and are subject to its terms. If there is any inconsistency between the terms of this Agreement on the one hand and any Statement of Work or Transaction Document on the other the terms of the Statement of Work or Transaction Document shall prevail.

## 2 Implementation Services

- 2.1 Sword shall use reasonable endeavours to provide the Implementation Services in accordance with each Statement of Work and shall use reasonable endeavours to meet any performance dates specified in a Statement of Work but any dates for performance are estimates only.
- 2.2 Sword shall:
- 2.2.1 appoint a manager to act as the Customer's first point of contact on all matters relating to the Implementation Services;
  - 2.2.2 promptly inform the Customer of the absence (or anticipated absence) of such manager and for such period of absence, provide a suitably qualified replacement;
  - 2.2.3 observe, and ensure that its personnel observe, all health and safety rules and reasonable security requirements that apply at the Customer's premises and that are made known to it prior to the commencement of the Implementation Services; and
  - 2.2.4 before each date on which the Implementation Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to the Implementation Services.
- 2.3 Each Statement of Work will set forth the projected work effort and schedule applicable to the Implementation Services. All statements and agreements in respect of performance times are good faith estimates based upon information available and circumstances existing at the time made, and each Statement of Work is subject to equitable adjustment upon any material change in such information or circumstances, the occurrence of an excusable delay or upon modification of the scope, timing or level of work to be performed by Sword. Either party will be entitled to propose changes to a signed Statement of Work. It is mutually acknowledged that any such change may affect the Implementation Fees payable under the applicable Statement of Work. Neither party shall have any obligation respecting any change until an appropriate change order or amendment to the applicable Statement of Work is executed and delivered by both parties.
- 2.4 Sword will be excused from delays in performing, or from a failure to perform, the Implementation Services to the extent that such delays or failures result from the Customer's failure or delay in furnishing necessary information, equipment or access to facilities, delays or failure by the Customer in completing tasks required of the Customer or in otherwise performing the Customer's obligations under this Agreement, and any assumption contained in a Statement of Work which is untrue or incorrect will be considered an excusable delay or excusable failure to perform and may impede or delay completion of the Implementation Services. The Customer further acknowledges that such delays or failures may result in additional Implementation Fees. Sword shall promptly notify the Customer of any act or omission of the Customer or other event or matter referenced in this clause 2.4.
- 2.5 For any Implementation Services to be provided by Sword at any of the Customer's sites, the Customer shall ensure that such sites are safe and provide Sword's personnel with:
- 2.5.1 reasonable access to and use of the Customer's facilities and relevant information, including software, hardware and documentation, and an adequate Internet connection; and

- 2.5.2 any other items set forth in a Statement of Work.
- 2.6 The Customer will ensure that all Customer personnel who may be required for the successful completion of the Implementation Services will, on reasonable notice and in a timely manner:
- 2.6.1 be available to assist Sword's personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures;
- 2.6.2 participate in the Implementation Services as outlined in the relevant Statement of Work;
- 2.6.3 participate in progress and other Implementation Services related meetings as defined in the relevant Statement of Work; and
- 2.6.4 be available to assist Sword with any other activities or tasks required to complete the Implementation Services in accordance with the relevant Statement of Work.
- 2.7 The Customer shall fully co-operate, and shall procure that all relevant third parties fully co-operate, with Sword in the performance of the Implementation Services. The Customer shall provide in a timely and accurate manner such information as Sword may reasonably require in respect of the Implementation Services.
- 2.8 If the Customer requests Sword to provide Professional Services it shall inform Sword and where Sword agrees to provide such Professional Services the parties shall seek to agree a Statement of Work. Once a Statement of Work is agreed and signed between the parties Sword shall provide the relevant Professional Services in accordance with this clause 2, with the words "Implementation Services" being read as replaced with the words "Professional Services".

### **3 Licence**

- 3.1 Sword hereby grants to the Customer for the Licence Period set out in the relevant Transaction Document a personal, non-transferable, non-exclusive licence to access and use the Software and the Documentation through the Hosting Services for its own internal business purposes only, and in particular where relevant for the purpose set out in the relevant Transaction Document, subject to the terms and conditions of this Agreement.
- 3.2 The Customer acknowledges and agrees that it is licensed to permit access to the Software and the Documentation through the Hosting Services for up to the number of Users provided for in the relevant Transaction Document and that Users are granted rights in respect of the Software in accordance with the Roles Schedule. Additional licences can be purchased at Sword's then current fee rates or as otherwise agreed with Sword. Sword may amend the Roles Schedule at any time without notice to the Customer and the Customer acknowledges that it is bound to whichever version of the Roles Schedule is available on the Support Portal from time to time. Notwithstanding the above, Sword shall not amend the Roles Schedule in a manner that is materially and adversely detrimental to the Customer without giving the Customer at least two months' prior written notice.
- 3.3 In relation to calculating the number of Users, Users are counted on a named user basis and a person will count as a User regardless of whether he accesses the Software directly or indirectly, with the exception that the parties may agree that persons accessing the Software indirectly but deriving benefit from it shall count as a separate class of beneficiary rather than as a User

("Beneficiaries"). No sharing of access authorisations by Users is permitted. A separate fee will apply in respect of Beneficiaries. All references to Users in this Agreement shall be deemed references to Beneficiaries where the context allows. Under no circumstances shall Beneficiaries be permitted to access the Software directly.

3.4 The Customer shall:

3.4.1 ensure that the number of persons accessing and using the Software does not exceed the number of Users for which the Customer has paid the Charges, and shall act reasonably in redesignating Users;

3.4.2 ensure that each User keeps a secure password for his access and use of the Software, that such password is changed no less frequently than monthly and that each User keeps his password confidential;

3.4.3 ensure that Users do not exceed their authorities or roles set out in the Roles Schedule;

3.4.4 ensure that it meets the system requirements and pre-requisites for the Software as notified to it from time to time by Sword; and

3.4.5 keep a complete and accurate record of the Customer's Users, and produce such record to Sword on request from time to time.

3.5 Subject to ensuring strict compliance with the terms of this Agreement and remaining within the number of Users permitted by the relevant Transaction Documents, the Customer shall be permitted to sub-licence its rights in respect of the Software and the Documentation to any of its Affiliates engaged in the same project for which access to and use of the Software is licensed by Sword. The Customer shall be responsible for any breach of this Agreement arising from the acts or omissions of any such Affiliate.

3.6 In addition to clause 3.5, subject to ensuring strict compliance with the terms of this Agreement and remaining within the number of Users permitted by the relevant Transaction Documents, the Customer shall be permitted to sub-licence its rights in respect of the Software and the Documentation to any Divested Entity engaged in the same project for which access to and use of the Software is licensed by Sword for a period not exceeding six months from the Date of Disposal. The Customer shall be responsible for any breach of this Agreement arising from the acts or omissions of any such Divested Entity.

3.7 Unless agreed otherwise by Sword, the Customer is responsible for obtaining and paying for any other software required to access and use the Software, including any operating system software, database software, or third party application software.

#### **4 Copying the Documentation**

4.1 The Customer may make copies of the Documentation as may be necessary for its lawful use.

4.2 The Customer further acknowledges and agrees that:

- 4.2.1 any copy of the Documentation must bear the same copyright marks and any proprietary and legal notices as the original;
- 4.2.2 the provisions of this Agreement shall apply to any copy of the Documentation as they apply to the original; and
- 4.2.3 the Customer shall keep exclusive possession of and control over any copy of the Documentation in its possession and shall effect and take commercially reasonable measures to safeguard the Documentation from access or use by any unauthorised person.

## 5 Maintenance and Support Services

- 5.1 Unless provided otherwise in the relevant Transaction Documents and subject to earlier termination of this Agreement Sword shall provide the Maintenance and Support Services for the relevant Licence Period upon the terms and conditions of this Agreement, and in particular in accordance with the Support Policy.
- 5.2 If Sword terminates the Maintenance and Support Services due to the Customer's breach, and the Customer subsequently requests Sword to re-commence providing such Maintenance and Support Services and Sword agrees to do so, Sword shall be entitled as a condition to re-commencing the Maintenance and Support Services to charge a re-commencement fee equivalent of the Charges that would have been paid during the period of no support had Maintenance and Support Services been provided uninterrupted and to reflect any effort required of Sword to implement any Maintenance Releases released by Sword during that period.
- 5.3 Sword shall provide the Maintenance and Support Services during Standard Support Hours. Sword may provide Maintenance and Support Services outside the Standard Support Hours at its sole discretion, which provision may be subject to charges at its then standard rates for such additional services.
- 5.4 Sword may amend the Support Policy at any time without notice to the Customer and the Customer acknowledges that it is bound to whichever version of the Support Policy is available on the Support Portal from time to time. Notwithstanding the above, except as provided in clause 8.3 Sword shall not amend the Support Policy in a manner that is detrimental to the Customer without the Customer's prior written consent.
- 5.5 The Customer shall:
  - 5.5.1 notify Sword promptly of any fault in the Software or the Hosting Services which requires Sword to provide Maintenance and Support Services;
  - 5.5.2 comply with the Support Policy;
  - 5.5.3 provide reasonable co-operation to Sword to assist diagnosis and replication of any fault; and
  - 5.5.4 provide Sword with access to its premises and the Software (including by remote access) to the extent necessary to enable Sword to perform the Maintenance and Support Services.



- 5.6 In addition to any exclusions in the Support Policy, the Maintenance and Support Services do not include:
- 5.6.1 support or maintenance of any software, accessories, attachments, computer hardware, systems or other devices other than the Software (including any software application built or developed using the Software) or any other computer programs provided by Sword;
  - 5.6.2 diagnosis or rectification of problems not attributable to the Software or the Hosting Services;
  - 5.6.3 any modifications by the Customer or a third party to the Software not authorised in writing by Sword;
  - 5.6.4 any fault which occurs when the Software is interacting with equipment and/or software not supplied or approved by Sword;
  - 5.6.5 any fault arising from the Customer's breach of this Agreement or operator error; or
  - 5.6.6 rectification or restoration of lost or corrupted data to the extent not caused by the Software or Sword.
- 5.7 Any additional services that Sword provides to the Customer covering the matters in clause 5.6 shall be provided under and on the basis of the terms in this Agreement and shall be charged for by Sword at its then standard rates for such additional services.

## **6 Implementation Fees and Charges**

- 6.1 In consideration of the provision of the Implementation Services, the Customer shall pay the Implementation Fees. The Customer will also reimburse Sword for all reasonable out-of-pocket travel, living and other ancillary expenses paid or incurred by Sword in connection with the Implementation Services and any other reimbursable items set forth in each Statement of Work.
- 6.2 Sword will invoice the Customer for all Implementation Fees and reimbursable items payable to Sword on a monthly basis or as otherwise set out in a Statement of Work.
- 6.3 In consideration of the grant of the licence to access and use the Software to the Customer and the provision of the Maintenance and Support Services and the Hosting Services, the Customer shall pay the Charges in accordance with the relevant Transaction Document. The Charges shall not reduce notwithstanding any reduction in the number of Users, unless expressly agreed otherwise by Sword. Where the Charges are by reference to the number of employees within the Customer's organisation, the Customer shall notify Sword promptly if and when the number of employees increases so that the Customer moves into the next Charges bracket. The Customer shall at such time pay any increased Charges for that bracket pursuant to clause 6.6. No refunds are due if the number of employees decreases.
- 6.4 No payment shall be considered made until it is received by Sword in cleared funds. The Charges do not include travel or subsistence expenses reasonably and properly incurred in the provision of the Maintenance and Support Services which the Customer shall reimburse to Sword on receipt of a

proper invoice.

- 6.5 All sums due under this Agreement and reimbursable items are exclusive of applicable local sales tax for which the Customer shall be responsible.
- 6.6 The Customer shall pay all valid and undisputed invoices within 30 days of receipt or as otherwise set out in a Statement of Work or Transaction Documents. The Customer shall notify Sword of any dispute in respect of any invoice within 14 days of its receipt of such invoice and shall in any event pay any part that is not subject to dispute in accordance with this clause 6.6. All sums paid by the Customer to Sword under this Agreement are non-refundable.
- 6.7 Sword will have no obligation to perform any Services or provide any Hosting Services when any sum required to be paid by the Customer remains due and unpaid beyond the date such amount is due. Sword shall give the Customer no less than five Business Days' prior written notice of its intention to exercise such right of suspension.
- 6.8 If the Customer fails to pay any sum by its due date, then without prejudice to Sword's other rights and remedies, Sword may charge interest on the overdue sum at the rate of 4% per annum. Such interest shall accrue on a daily basis until actual payment of the overdue amount, whether before or after judgment.
- 6.9 Subject to clause 6.10, the Customer shall not assert any credit, set-off or counterclaim against Sword in order to justify withholding payment of any amounts due under this Agreement (whether in whole or in part).
- 6.10 If the Customer is required by law to deduct withholding tax from any payment to Sword under this Agreement, the Customer shall use reasonable endeavours to reduce that tax to the lowest level possible and shall promptly provide to Sword evidence of receipt by the relevant tax authority of any sum that is deducted by the Customer as withholding tax. If Sword is unable to recover the full amount of the deduction, the Customer agrees to make an additional payment to Sword on demand at any time by Swords that the total sum received by Sword is the same as it would have been had no such deduction been made.

## **7 Obligations of the Customer in respect of the Software**

- 7.1 The Customer shall access and use the Software, and may sub-licence its Affiliates and Divested Entities to access and use the Software, to process data for its and their own internal business purposes only, and in particular where relevant for the purpose set out in the relevant Transaction Documents, and shall not make the Software available for access or use by any person or entity other than the Users (or Beneficiaries where agreed). Under no circumstances shall the Customer in its use of the Software act as a service bureau or an application service or managed services provider.
- 7.2 Sword may audit the Software regarding the name and password for each User, and/or require such information from the Customer as to Use of the Software and the number of Users and/or employees as Sword may reasonably require, which information the Customer shall provide promptly to Sword. Such audit may be conducted no more than once per quarter, at Sword's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business. If such audit reveals that the number of Users (or Beneficiaries) has been exceeded, or where Charges are by reference to the number of

employees within the Customer's organisation, that the number of employees exceeds the number in the bracket for which the Customer has paid Charges, the Customer shall pay to Sword such Charges as would have been levied (in accordance with Sword's Charges per User or Beneficiary current at the date of the audit) had it paid for the correct number of Users or Beneficiaries or for the correct price bracket, together with interest at the rate provided in clause 6.8 from the date unauthorised use commenced to the date of payment. Subject to such breach not being a persistent or deliberate breach by the Customer and the Customer paying the correct Charges from such date, Sword shall not pursue any further remedy against the Customer in respect of such breach. Sword shall give notice in writing to the Customer at such time as it considers a breach to be persistent or deliberate and any further breach of the same or of a similar nature shall permit Sword to exercise its rights for material breach not capable of remedy under clause 16.

7.3 Sword additionally reserves the right to require the Customer from time to time to submit a declaration of compliance with the provisions of this Agreement, including in relation to the number of employees within the Customer's organisation from time to time, such declaration to be provided within 60 days of the Customer's receipt of such request.

7.4 The Customer shall not:

7.4.1 attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

7.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

7.4.3 access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Hosting Services.

7.5 The Customer shall provide all assistance as may reasonably be required by Sword under this Agreement.

## **8 Hosting Services**

8.1 In consideration of the Customer paying the Charges Sword shall provide the Hosting Services in accordance with this Agreement for the relevant Licence Period.

8.2 In using the Hosting Services the Customer shall comply with Hosting Provider's acceptable use policy.

8.3 In addition to any rights to amend the Support Policy from time to time, Sword may by written notice to the Customer change the Hosting Services and any support commitments in respect of the Hosting Services where the Hosting Provider changes the Hosting Services or any such support commitments.

- 8.4 In addition to its rights under clause 8.3, Sword may amend the provisions of this clause 8 by written notice to the Customer where the Hosting Provider amends its terms and conditions of service in a manner affecting this Agreement.
- 8.5 If Sword provides the Customer with any log-in credentials and private keys for the Hosting Services, such details and keys are for the Customer's internal use only and the Customer may not sell, transfer or sub-licence them to any other entity or person.
- 8.6 Without prejudice to its other rights and remedies, Sword may suspend the Hosting Services immediately on written notice if the Customer's use of the Hosting Services:
- 8.6.1 poses a security risk to the Hosting Services or any third party or the systems of the Hosting Provider or customer of the Hosting Provider;
  - 8.6.2 is in breach of this Agreement;
  - 8.6.3 may expose Sword or the Hosting Provider to any liability; or
  - 8.6.4 may be fraudulent.
- Suspension of the Hosting Services in accordance with clause 8.6 does not affect the Customer's liability for Charges incurred after such date. Further, the Customer shall not be entitled to any Service Credits during any period of suspension.
- 8.7 The Customer warrants that it has all necessary rights in respect of all data and information that is processed or stored through the Hosting Services, including the Customer Data.
- 8.8 Without prejudice to the generality of clause 8.2 the Customer shall not use the Hosting Services:
- 8.8.1 to host, store, send, relay or process any material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or which is pornographic or lewd material;
  - 8.8.2 in a manner that may give rise to any form of legal action against Sword or any third party;
  - 8.8.3 to send or process any messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail; or
  - 8.8.4 for any purpose which is unlawful, fraudulent, or that infringes any third party rights.
- 8.9 Sword shall use reasonable endeavours to meet the Service Levels. If Sword fails to meet the Service Levels as provided in the Support Policy, any Service Credits payable under the Support Policy represent the Customer's exclusive remedy in respect of such failure.
- 8.10 The Hosting Services are provided "as is". Sword makes no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Hosting Services or content of the Hosting Provider, including any warranty that the Hosting Services or such content will be

uninterrupted, error free or free of harmful components, or that any content will be secure or damaged. Except to the extent prohibited by law, Sword disclaims all warranties, including any implied warranties of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or quiet enjoyment and any warranties arising out of any course of dealing or usage of trade.

- 8.11 In any case, subject to clause 12.2, Sword's aggregate liability under this Agreement in respect of the Hosting Services will be limited to EUR 10'000.
- 8.12 The Customer will defend, indemnify, and hold harmless Sword, and its employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning:
- 8.12.1 the Customer's use of the Hosting Services;
  - 8.12.2 breach of this Agreement; or
  - 8.12.3 the Customer's data and information, including Customer Data, processed or stored through the Hosting Services, including any claim involving alleged infringement or misappropriation of third party rights by such data and information.

## **9 Intellectual Property Rights**

- 9.1 The Customer acknowledges that as between it and Sword all Intellectual Property Rights in the Software, the products of the Services and the Documentation belong to Sword, and the Customer shall have no rights in or to the Software other than the right to access and use it in accordance with the terms of this Agreement. The Customer's rights in respect of the products of the Services and the Documentation are limited to the right to use such materials for the purpose of accessing and using the Software in accordance with this Agreement.
- 9.2 The Customer shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of the Intellectual Property Rights in the Software, the products of the Services or the Documentation except under the terms of this Agreement.
- 9.3 The Customer shall not delete, modify or otherwise alter in any manner whatsoever any copyright marks or proprietary or legal notices in or on the Software or the Documentation.
- 9.4 The Customer shall give Sword full particulars in writing of any use by any person, firm, or company of the Intellectual Property Rights in the Software, the products of the Services or the Documentation which may infringe Sword's right, title and interest in and to the Intellectual Property Rights in the Software, the products of the Services or the Documentation
- 9.5 The Customer shall ensure that all Users are advised that all Intellectual Property Rights in the Software, the products of the Services and the Documentation are the property of Sword and the Customer shall ensure that all Users comply with the terms and conditions of this Agreement.

- 9.6 Sword acknowledges that Sword has no rights in the Customer Data or any output data arising from the Customer's use of the Software.
- 9.7 Sword shall follow its archiving procedures for Customer Data as described in the Support Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Sword to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Sword in accordance with the archiving procedure described in the Support Policy. Sword 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 Sword to perform services related to Customer Data maintenance and back-up).

## 10 Indemnities

- 10.1 Sword undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use of the Software as permitted by this Agreement infringes the Intellectual Property Rights of a third party ("Infringement Claim") and shall be responsible for any damages, reasonable costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of any such Infringement Claim. For the avoidance of doubt, clause 10.1 shall not apply where the Infringement Claim in question is attributable to access or use of the Software (or any part thereof) by the Customer other than as permitted by this Agreement, use of the Software in combination with any hardware or software not supplied or specified by Sword if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current Major Release. It is a condition of the indemnity in this clause 10.1 that:
- 10.1.1 Sword is given immediate and complete control of the Infringement Claim;
  - 10.1.2 the Customer does not prejudice Sword's defence of the Infringement Claim; and
  - 10.1.3 the Customer gives Sword all reasonable assistance with the Infringement Claim at Sword's expense.
- 10.2 If an Infringement Claim is made or threatened then without prejudice to the rights and remedies of the Customer under clause 10.1, Sword may at its option:
- 10.2.1 procure the right for the Customer to continue using those elements of the Software to which the Infringement Claim relates; or
  - 10.2.2 modify or replace those elements of the Software to which the Infringement Claim relates in order to remove them from the scope of the Infringement Claim provided that:
    - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and function of the original item;
    - (b) there is no additional cost to the Customer; and
    - (c) the terms of this Agreement shall apply to the modified or replaced items.

10.3 This clause 10 states the entire liability of Sword to the Customer in respect any Infringement Claim.

## 11 Warranties

11.1 Sword warrants to the Customer that the Services will be performed:

11.1.1 in accordance with all applicable laws; and

11.1.2 with reasonable skill and care and using suitably experienced personnel.

11.2 If the Customer notifies Sword in writing of any breach by Sword of the warranties contained in clause 11.1.2, Sword shall, at its own expense, use reasonable endeavours to remedy that breach within 30 days following receipt of such notice, failing which the Customer may pursue such rights and remedies as are available to it.

11.3 In respect of the Software licensed under a Transaction Document, Sword warrants that:

11.3.1 it has the right to grant to the Customer a licence to access and use the Software as contemplated by this Agreement; and

11.3.2 the Software will conform in all material respects to the Documentation and be free from material defects for a period of 60 days from completion of the Implementation Services ("Warranty Period").

11.4 Subject to clause 11.5, if within the Warranty Period, the Customer notifies Sword of any defect or fault in the Software in consequence of which it fails to conform to clause 11.3.2, Sword shall, at its option, promptly repair or replace the Software.

11.5 Sword shall not be liable for any breach of the warranties set out in clause 11.3.2 to the extent such breach is caused by a modification, variation or addition to the Software not performed by or on behalf of Sword, or any incorrect use, abuse or corruption of the Software by the Customer, or any other defect or deficiency in, or a failure of, the equipment through which the Software is accessed. The Customer must provide all reasonable information requested by Sword to resolve the defect or fault.

11.6 Sword does not warrant that the Software or Hosting Services will meet the Customer's requirements or that the operation of or access to the Software or Hosting Services will be uninterrupted or error-free.

11.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are to the fullest extent permitted by law hereby excluded.

## 12 Liability

12.1 The Customer's attention is drawn to clause 8 which sets out specific provisions for liability in respect of the provision or failure to provide the Hosting Services. Subject as expressly provided in clause 8, clause 8 applies to the Hosting Services in preference to this clause 12.

- 12.2 Nothing in this Agreement shall limit either party's liability to the other for:
- 12.2.1 death or personal injury resulting from a party's negligence;
  - 12.2.2 fraud or fraudulent misrepresentation;
  - 12.2.3 liability for an Infringement Claim;
  - 12.2.4 breach of clause 7.1 or 7.4;
  - 12.2.5 breach of clause 15; or
  - 12.2.6 any liability that cannot be limited or excluded under applicable law.
- 12.3 Subject to clause 12.2:
- 12.3.1 Sword shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), 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 this Agreement;
  - 12.3.2 Sword's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to £50,000; and
  - 12.3.3 the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or if it did rely on any representations, whether written or oral, not expressly set out in this Agreement, that it shall have no remedy in respect of such representations and (in either case) Sword shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

### 13 Data Protection

- 13.1 Terms that are defined in the Data Protection Legislation shall have the same meanings when used in this clause 13. References in this clause 13 to personal data are to personal data provided to Sword by the Customer. If Sword processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that Customer shall be the "controller" and Sword shall be the "processor", and in any such case:
- 13.1.1 both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13.1.1 is in addition to, and does not replace, a party's obligations under the Data Protection Legislation;
  - 13.1.2 clause 13.1.6 sets out the subject matter, nature and purpose of processing by Sword, the duration of the processing and the types of personal data and categories of data subject;



- 13.1.3 without prejudice to the generality of clause 13.1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Sword for the duration and purposes of the processing;
- 13.1.4 without prejudice to the generality of clause 13.1.1, Sword shall, in relation to any personal data processed in connection with the performance of its obligations under this Agreement:
- (a) process that personal data only on the written instructions of the Customer unless Sword is required by the laws of any member of the European Union or by the laws of the European Union applicable to Sword to process personal data ("Applicable Laws"). Where Sword is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, Sword shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit it from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - (d) not transfer any personal data outside of the European Economic Area unless following conditions are fulfilled: the Customer or Sword has provided appropriate safeguards in relation to the transfer, the data subject has enforceable rights and effective legal remedies, and Sword complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred;
  - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer within undue delay on becoming aware of a personal data breach;

- (g) 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
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13.1 and allow for audits on reasonable prior written notice by the Customer or the Customer's designated auditor, at the Customer's own cost, and Sword shall immediately inform the Customer if, in its opinion, an instruction under this clause 13.1.4(h) infringes the Data Protection Legislation or other Applicable Laws;
- 13.1.5 the Customer consents to Sword appointing a third party or third parties as a third-party processor of personal data as necessary in order to provide the Services, provided that Sword shall inform the Customer of any intended changes concerning the addition or replacement of third party processors, thereby giving the Customer the opportunity to object to such changes. If the Customer does not object in writing to such changes within five days of receipt of Sword's notice the Customer shall be deemed to have no objection. Sword confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in clause 13.1. As between the Customer and Sword, where a third-party processor engaged by Sword fails to fulfil its data protection obligations, Sword shall remain fully liable to the Customer for the performance of such obligations;
- 13.1.6 the following table sets out the subject matter, nature and purpose of processing of personal data by Sword under this Agreement, the duration of the processing and the types of personal data and categories of data subject:

**Subject matter:** Sword provides the Software for use by the Customer through a system hosted for and maintained by Sword.

**Nature:** the system Sword provides is a transactional system of record. The processing is automated and is of data input by or on behalf of the Customer. As a system of record Sword provides storage and automated archiving of data.

**Purpose:** to provide the Services.

**Duration:** term of this Agreement and any transitional services period.

**Types of Personal Data:** contact data including name, address, email and phone numbers. No special categories of personal data are held in the system.

**Categories of Data Subject:** employees of the Customer.

## 14 Confidentiality

- 14.1 Each party (as "Receiving Party") agrees that it shall not use, divulge or communicate to any person, other than its sub-contractors, Affiliates and the Hosting Provider, without the express prior written consent of the other party (as "Disclosing Party") any Confidential Information of the Disclosing Party which may come to the Receiving Party's knowledge or into its possession.
- 14.2 The Receiving Party shall ensure that persons referenced in clause 14.1 are aware of the provisions of this clause 14 and the Receiving Party shall be responsible to the Disclosing Party in respect of any loss or damage which may be sustained or incurred by the Disclosing Party as a result of any breach of this clause 14 by the Receiving Party or any such persons.

- 14.3 The restrictions contained in this clause 14 shall not apply to any Confidential Information which:
- 14.3.1 is or becomes generally available to the public other than as a result of a breach of this Agreement;
  - 14.3.2 the Receiving Party can demonstrate was in its possession prior to the time of disclosure to it by the Disclosing Party;
  - 14.3.3 was lawfully acquired from others who did not obtain it in circumstances which gave rise to any obligation of confidentiality (express or implied) owed to the Disclosing Party; or
  - 14.3.4 is required to be disclosed by law or the requirements of any recognised stock exchange.
- 14.4 The provisions of this clause 14 shall survive the termination of this Agreement.

## 15 Export

- 15.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the European Union or US government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 15.2 Each party undertakes:
- 15.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to clause 15.1; and
  - 15.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 16 Termination

- 16.1 Without prejudice to any other right or remedy a party may have hereunder or at law, either party may terminate this Agreement immediately at any time by notice in writing to the other party if:
- 16.1.1 the other party is in material breach of this Agreement and fails to rectify such breach (in the case of a breach capable of being remedied) within 30 days of receiving a written notice requiring it to do so; or
  - 16.1.2 any of the following events occurs:
    - (a) an order is made or an effective resolution is passed for the winding up of the other party except for the purpose of solvent amalgamation or reconstruction;

- (b) the other party ceases or threatens to cease to carry on its business or substantially the whole of its business;
  - (c) an encumbrancer takes possession or receiver is appointed of any substantial part of the other party's assets;
  - (d) any distress, execution, sequestration or other like process is levied or enforced upon or carried out against property of the other party and is not discharged within 21 days;
  - (e) the other party is unable to pay its debts;
  - (f) the other party enters into a composition or voluntary arrangement with its creditors or has a receiver or administrative receiver or administrator appointed in respect of all or any of its assets; or
  - (g) the other party suffers in another jurisdiction relevant to it any action analogous to clauses 16.1.2(a) to (f) above.
- 16.2 The party terminating pursuant to clause 16.1.1 may as an alternative to termination of this Agreement as a whole terminate this Agreement only so far as relevant to Software licensed and Services or Hosting Services provided under particular Transaction Documents or Statements of Work and this Agreement shall in such event be deemed amended to remove such Transaction Documents or Statements of Work.
- 16.3 Termination of this Agreement by effluxion of time at the end of the Term affects only the ability of the Customer to seek Software, Hosting Services and Services from Sword under the terms of this Agreement and does not affect the Customer's continuing right to access and use the Software and receive the Hosting Services and the Services and Sword's right to enforce its rights pursuant to its terms.
- 16.4 Termination of this Agreement by effluxion of time at the end of a Licence Period affects only the ability of the Customer to access and use the Software and receive the Services and/or the Hosting Services provided under the relevant Transaction Document or Statement of Work and does not affect the Customer's continuing right to access and use any Software and receive any Services and/or Hosting Services provided under other Transaction Documents or Statements of Work, or the continuance in force of this Agreement.
- 16.5 Subject to clauses 16.3 and 16.4, on termination of this Agreement, or where relevant on expiry of the relevant Licence Period, all rights granted to the Customer under this Agreement, or where relevant under the relevant Transaction Documents, shall cease and the Customer shall immediately:
- 16.5.1 cease all activities authorised under this Agreement, or as relevant the Transaction Documents;
  - 16.5.2 return the relevant Software and the Documentation and all copies of the relevant Documentation to Sword or, at the option of Sword, destroy the same and on written request, certify to Sword that they have been so destroyed; and

- 16.5.3 where the Agreement has been terminated by Sword under clause 16.1 or by either party under clause 17.3 pay to Sword any unpaid portion of the Charges and any other sums stated to be due to Sword pursuant to Transaction Documents and Statements of Work then in effect, or where applicable the terminated Transaction Documents and Statements of Work. Such Charges and other sums payable include all sums referenced in the applicable Transaction Documents and Statements of Work and falling due after the effective date of termination, which payments the Customer acknowledges and agrees represent a genuine pre-estimate of Sword's loss in the applicable circumstances.
- 16.6 On termination of this Agreement, or where relevant on expiry of the relevant Licence Period, Sword may destroy or otherwise dispose of any of the relevant Customer Data in its possession unless Sword receives, no later than ten days after the effective date of the termination of this Agreement, or expiry of the relevant Licence Period, a written request for the delivery to the Customer of the then most recent back-up of the relevant Customer Data. Sword 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 sums outstanding at and resulting from termination or expiry (whether or not due at the date of termination or expiry). The Customer shall pay all reasonable expenses incurred by Sword in returning or disposing of Customer Data. If there is any conflict between this clause 16.6 and clause 13.1.4(g) in respect of any Customer Data that is also personal data, clause 13.1.4(g) shall prevail.
- 16.7 Any expiry or termination of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of clauses that are expressed to come into force or continue in force on expiry or termination or that do so by implication.

## 17 Force Majeure

- 17.1 Neither party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including acts of God, failure of the internet or telecommunication networks, war, terrorism, natural disaster, fire, strikes, and civil disorder (collectively referred to as "Force Majeure").
- 17.2 If the performance by a party of its obligations under this Agreement is affected by Force Majeure, then:
- 17.2.1 it (the "Affected Party") shall give written notice to the other (the "Non-Affected Party") specifying the nature and extent of the Force Majeure, promptly on becoming aware of the Force Majeure and will at all times use reasonable endeavours to mitigate the severity of the Force Majeure;
- 17.2.2 the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and
- 17.2.3 the Affected Party shall not be entitled to payment from the Non-Affected Party in respect of extra costs and expenses incurred by the Affected Party by virtue of the Force Majeure.
- 17.3 If the Force Majeure in question prevails for a continuous period in excess of 30 days after the date

on which it begins, the Non-Affected Party may give notice in writing to the Affected Party to terminate this Agreement in respect of all or such part of this Agreement as the Affected Party is unable to perform as a result of the Force Majeure in question. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice to terminate is given and if the Customer is the Non-Affected Party the Software, Hosting Services or Services in respect of which it is seeking to terminate this Agreement. Once a notice to terminate has been validly given, this Agreement will terminate in whole or in part (as aforesaid) on the termination date set out in the notice, unless prior to such date the Affected Party resumes full performance of this Agreement.

## **18 Non-solicit**

- 18.1 Neither party shall for a period of six months from the Effective Date directly or indirectly, solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any employee of the other party who is employed or engaged in the sale or procurement of the Software or the receipt or provision of the Services.
- 18.2 A party shall not be in breach of clause 18.1 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 18.3 If either party commits any breach of clause 18.1, the breaching party shall, without prejudice to any other rights or remedies of the claiming party, on demand, pay to the claiming party a sum equal to one year's basic salary that was payable by the claiming party to that employee, plus the recruitment costs incurred by the claiming party in replacing such person.

## **19 Amendments**

- 19.1 Unless expressly provided otherwise, no amendment of any provision of this Agreement shall be effective unless made by a written instrument signed by both parties.
- 19.2 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 19.3 Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect.
- 19.4 No failure or delay by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.
- 19.5 Except as expressly provided in this Agreement, the Customer shall not sub-license, assign, transfer or novate the benefit or burden of this Agreement in whole or in part, or allow the Software or Documentation to become the subject of any charge, lien or encumbrance, or deal in any other manner with any or all of its rights and obligations under this Agreement, without Sword's prior written consent.

- 19.6 This Agreement may be executed in any number of counterparts and on separate counterparts, and each counterpart shall when executed constitute an original of this Agreement and together all such counterparts shall constitute one and the same document. Executed copies of this Agreement transmitted electronically in either Tagged Image File Format (**TIFF**) or Portable Document Format (**PDF**) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.
- 19.7 This Agreement, together with any Transaction Documents and Statements of Work signed after the Effective Date, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding (whether informal, written or oral) between the parties relating to the subject matter of this Agreement.
- 19.8 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. No right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## 20 Notices

- 20.1 Any notice given to a party under or in connection with this Agreement shall be in writing in English and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at or sent by first class post or by email to the address of the party receiving such notice as set out above or as notified between the parties for the purpose of this clause.
- 20.2 Any notice shall be deemed to be given to and received by the addressee:
- 20.2.1 at the time the same is left at the address of or handed to a representative of the party to be served;
  - 20.2.2 by post on the date not being a Sunday or public holiday two days following the date of posting; and
  - 20.2.3 if sent by email, at 9am on the next Business Day and provided that if any email produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient or "out of office" reply, such email shall be deemed not to have been received by the addressee.
- 20.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission did not produce an automated response of the nature referenced in clause 20.2.3.

## 21 Third Party Rights

- 21.1 Clause 8 is entered into for the benefit of the Hosting Provider. Except as expressly provided a person who is not a party to this Agreement shall not have any rights to enforce any of its terms.

21.2 The rights of the parties to terminate, rescind or agree a variation, waiver or settlement to this Agreement are not subject to the consent of any other person, including the Hosting Provider.

## 22 **Governing Law**

This Agreement and any non-contractual obligations in connection with it shall be governed by and construed in accordance with Swiss law and the parties submit to the exclusive jurisdiction of Swiss courts.